

Vermont Labor Relations Board

In Re:]	
]	
GRIEVANCE OF]	DOCKET #77-355
]	
DONALD SHEEHAN]	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This is a grievance filed in accordance with 3 V.S.A., § 926 by the Vermont State Employees' Association, Inc. in behalf of Donald Sheehan, a member of the Non-Management Bargaining Unit, alleging that the grievant maintains a telephone at his home used regularly in the course of business, and for which the number was provided to the public, and for that reason that he was entitled to the "Office Allowance" provided for in Article XVII of the Non-Management Contract. The grievance was dated 15 February 1977 and filed 16 February 1977. The State's Answer, dated 28 February 1977, was filed 3 March 1977. After one postponement of hearing, notice of hearing was mailed to all parties and held in the Governor's Conference Room, Montpelier, Vermont on 12 August 1977. Both parties filed Requests to Find. The grievant was represented by Alan S. Rome, Esquire, Staff Attorney for Vermont State Employees' Association, Inc., and the State was represented by the Honorable Louis P. Peck, Chief Assistant Attorney General, and by the Honorable Jeffrey L. Amestoy, Assistant Attorney General.

Discussion of Evidence and Credibility of Witnesses.

The principal witness was the grievant himself, Donald Sheehan, of Woodstock, Vermont, who had been employed as a Tax Field Examiner A for about 17 months, working out of the Montpelier District. His position took him both in and out of Vermont for audit work. Also testifying was John Lackey, Business Manager of the Vermont Department of Taxes, a State employee for 22 1/2 years. There was a discrepancy between the testimony of these two witnesses, but rather one of emphasis than one of fact. The grievant testified that he had a telephone and that it was used quite frequently by the State authorities themselves in Montpelier to relay messages to him and to give him instructions. On the other hand, Mr. Lackey said that there was no Department requirement that an auditor or tax examiner have a telephone, and that there was no formal listing of the grievant's telephone number in any Tax Department publication. In fact he testified that the Department discouraged such listings since the Department preferred that auditors not furnish continuing taxpayer assistance to the public. He emphasized that supervisors have telephone numbers but the field examiners are not so authorized. The Springfield and Burlington District Supervisors are presently authorized "Office Allowances". Joseph Kecskemethy, Director of Employee Relations, and Rita Ricketson, VSEA research analyst, also testified as to the intent of Article XVII at the time the contract between the Non-Management Unit and the State was negotiated. He felt that the Internal Revenue Service definition was intended and that an office allowance should not be permitted unless the employee would qualify under IRS regulations. She testified to the contrary.

Findings of Fact.

1. The grievant is a resident of Woodstock, Vermont, and has been employed for 17 months as a Tax Field Examiner A with the Vermont Department of Taxes.

2. The grievant is a member of the Non-Management Bargaining Unit of the Vermont State Employees' Association, Inc.

3. The Board has taken judicial notice of the Contract or Agreement between the Non-Management Bargaining Unit and the State of Vermont, and in particular Article XVII thereof, which reads as follows:

"Employees who

(a) are required by the appointing authority to dedicate office space in their homes for the purpose of conducting State business, and have telephones in their homes, the numbers of which are provided to the public for the purpose of conducting State business, and whose

(b) home office spaces qualify for a deduction as office space under federal income tax laws,

shall receive a monthly allowance of fifty dollars. This allowance shall be in addition to their base pay and shall be considered full compensation for all costs and inconveniences incurred as a result of maintaining offices at home in accordance with the above provisions."

4. The duties of a Tax Field Examiner A are primarily auditing and investigating work of more than ordinary difficulty and responsibility, performed under the supervision of a Chief Tax Field Examiner, who, in the grievant's case, is located in Montpelier. He examines accounting books and records, conducts field investigations, conducts interviews and searches tax court cases. He also acts as an Expert Witness in court, traveling out of state for audits of foreign corporations doing business in Vermont. The job requires a considerable familiarity with the federal Internal Revenue Code and Regulations and with Vermont tax

laws and regulations, and requires a bachelor's degree (Grievant's Ex. D).

5. The grievant maintains a section of his home in Woodstock, Vermont as a "business office", which includes two desks, shelves, and a private telephone, all furnished by grievant. This reservation of space is honored by other members of the family as grievant's "office".

6. Employees of the Vermont Tax Department central office frequently make calls to grievant at his home, for business purposes.

7. The initial contact between grievant and a taxpayer being subject to audit or investigation is almost always made by means of telephone.

8. Grievant has a State furnished business card on which he frequently places his home telephone number for the benefit of both the State and the taxpayer. The card itself does have the central office number on the lower righthand corner, printed, with the State's seal affixed and the name and title of the grievant.

9. Other groups of State employees, such as the Electrical Inspectors, performing similar functions under similar circumstances, have been declared eligible by the State for the "Office Allowance" under Article XVII of the Non-Management Contract (Grievant's Ex. E).

10. The grievant is required, and it is necessary for the efficient performance of the State's business, that he maintain an office at his home in Woodstock, Vermont.

11. The Board finds that the grievant is required by the Tax Department to dedicate a certain amount of space in his home in Woodstock as an office for the purpose of conducting State business, and that the grievant has a private telephone line at his home, the number for which

is provided to the public for the purpose of conducting State business.

12. The State is unable to find that the grievant's office space qualifies for a deduction under federal income tax laws, but the Board does not find that it does not so qualify.

13. The transcript of the proceedings are made a part of this record.

Conclusions of Law and Opinion.

The issue which was framed by the parties at the outset of the hearing on the merits was simply whether or not the grievant complies with the criteria set forth in Article XVII of the Non-Management Contract as to "Office Allowance" for his telephone. A critical sub-issue is whether the State should be allowed to designate those persons who are entitled to the allowance, or whether the employee himself should do it, or rather whether or not the facts themselves indicate on their face whether the employee should or should not be entitled to such designation.

There is no question that the State would be placed at a distinct disadvantage if the grievant did not maintain a telephone listed in the local telephone directory at his place of residence. The State does require that he maintain office space in his home in order to conduct his State business. He does provide the number for his telephone both to the central office in Montpelier and to certain taxpayers and other members of the public. While it appears that the State authorizes such telephones to be at State expense only in the case of certain supervisors, it clearly appears that the grievant is entitled to the award under Article XVII of the Non-Management Agreement.

ORDER.

NOW, THEREFORE, it is hereby ordered that the grievant be awarded the office allowance as provided in Article XVII, and that such award be made retroactive to 1 January 1977.

Commissioner Robert H. Brown took no part in these proceedings. Commissioner H. James Wallace participated in the proceedings, but has since resigned his position on the Board.

Dated at Montpelier, Vermont this 17th day of March, A.D. 1978.

VERMONT LABOR RELATIONS BOARD

By

John S. Burgess
JOHN S. BURGESS, Chairman

William G. Kemsley, Sr.
WILLIAM G. KEMSLEY, SR.

Robert H. Brown
ROBERT H. BROWN

*Appeal dismissed
pursuant to Stip.
June 1978*