

Vermont Labor Relations Board

GRIEVANCE OF

CHARLES MORRELL

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DOCKET # 77-12S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a grievance filed in accordance with 3 V.S.A., Section 926, by the Vermont State Employees' Association, Inc. on behalf of Charles Morrell, a member of the management bargaining unit, alleging a violation of the collective bargaining agreement between the Vermont State Employees Association, Inc. and the State of Vermont because of an incorrect assessment of the status of personal leave days while the grievant was on summer military duty in 1976. The State's Answer was filed 29 October 1976, and a Stipulation for Submission on Briefs filed 22 December 1976. Following the filing of Memoranda of Law by both parties, the State requested that the testimony of Joseph G. Kecskemethy, Director of Employee Relations for the State of Vermont, be taken in order to explain a statement in State's Exhibit #1, which was the Step III grievance decision. On 3 March 1977 the testimony of Mr. Kecskemethy was heard by the Board.

Discussion of Evidence and Credibility of Witnesses.

In accordance with the Stipulation for Submission on

Briefs, filed 22 December 1976, the allegations as contained in the grievance must be taken as fact, except for such modification as may be provided by the testimony of Mr. Kecskemethy, in which he explained that he did not consider a denial of the grievance to be a violation of the spirit and intent of the military pay provisions contained in Article 32, Section 2, Paragraph (g) of the Management Contract. He intended, so he says, to say that a condition which permits some people to obtain as much as three weeks military duty with State pay and others only two is a condition built into the language of the contract and that is what violates the spirit of the agreement.

Findings of Fact.

1. The grievance was brought by the Vermont State Employees' Association, Inc. in behalf of Charles Morrell and filed 2 October 1976.

2. The grievant, Charles Morrell, is employed by the State of Vermont in the Department of Motor Vehicles as a Highway Safety Program Coordinator.

3. The Vermont State Employees' Association, Inc. (VSEA) is a duly certified bargaining representative for the Management Unit, of which the grievant is a member.

4. VSEA and the State have entered into a collective bargaining agreement regarding annual military field training. Article 32, Section 2, Paragraph (g) provides as follows:

"Annual field training - A permanent-status or limited-status classification employee who is a

member of the Organized Reserve or National Guard shall be allowed military leave with pay at the rate of his minimum bi-weekly compensation prorated for annual field training not to exceed the first fifteen calendar days scheduled by military authority in any calendar year. A permanent-status or limited-status classified employee who has more than fifteen days of summer field training scheduled in one calendar year shall not be entitled to leave with pay for those days in excess of fifteen, and shall be placed in an off payroll status, unless he elects to use accumulated annual leave credits for the period of absence. A permanent-status, part-time classified employee shall be granted military leave with pay on a pro-rated basis..."

5. The grievant was on military leave from June 24, 1976 through July 10, 1976, both dates inclusive.

6. The grievant requested military leave with pay in accordance with the collective bargaining agreement.

7. The grievant received pay but was charged one day of annual leave for July 9, 1976.

8. The 4th of July, which is a legal holiday in the State of Vermont, occurred on Sunday, but was celebrated by most State employees on Monday, July 5, 1976.

9. The Board is unable to find whether other State employees who were on active military duty at the time were treated in any way differently from the grievant.

10. The Board is unable to find whether or not State employees in the past have been treated in any way differently from the grievant when a holiday occurred during an authorized period of military leave.

11. The Board is unable to find that the State has

discriminated against the grievant on the basis that employees, according to the custom and usage in the State service, were treated in a manner differently from the present in prior years or that other State employees on military leave over a holiday period during 1976 were treated in any way differently from grievant.

12. The Board is unable to find that the provisions of Article 32 were applied in a discriminatory manner as to the grievant.

Conclusions of Law and Opinion.

This matter arises out of the filing of a grievance pursuant to statute by a State employee. A "grievance" is defined as "An employee's ... or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation ..." See 3 V.S.A., Section 902 (14) and the Collective Bargaining Agreement. The two provisions of the agreement which may be applicable are Articles XXXII, Section 2, Paragraph (g) relating to military leave and Article XIV, Section 2, Paragraph (g) (i) and (vii). The language of the Collective Bargaining Agreement with respect to "annual field training" is unambiguous. There is absolutely no evidence nor is there an allegation to support a finding of discriminatory application of a rule or regulation, so that the issue lies

in whether or not the decision of the State is contrary to the terms and conditions of the agreement. A permanent-status employee is entitled to compensation for not more than fifteen calendar days of military training in any calendar year. The grievant in this case was compensated for ten work days which occurred during the first fifteen calendar days. If a holiday had not intervened, he would have been paid for eleven work days during the first fifteen calendar days. The language of the contract with respect to holidays under Article XIV indicates that the grievant should be entitled to holiday pay for July 5, 1976. The grievant received holiday pay for July 5, 1976.

Based upon the agreed evidence in this case, there has been no showing of any discrimination against the grievant under the terms of the contract and under the unambiguous language regarding annual field training. If there is any problem with this entire subject of military leave and holiday pay, it lies in the language of the contract itself. The grievance ought to be dismissed.

Order.

NOW, THEREFORE, it is hereby ORDERED that the grievance of Charles Morrell be, and it hereby is, DISMISSED.

Dated at Whitingham, Vermont this 10th day of June,
A.D. 1977.

VERMONT LABOR RELATIONS BOARD

By

John S. Burgess
JOHN S. BURGESS, CHAIRMAN

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

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