

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF)
JOHN OUELLET) DOCKET NO. 78-26S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

A Motion to Modify the Order of the Vermont Labor Relations Board in the grievance of John Ouellet and the Vermont State Employees Association, Inc., dated April 7, 1978, was filed by the State of Vermont on May 2, 1978. A hearing on the Motion was held in Montpelier on June 15, 1978. The State was represented by the Honorable Jeffrey L. Amestoy, Assistant Attorney General, and the Grievant by Alan S. Rome, Attorney for the Vermont State Employees Association, Inc.

Findings of Fact

1. In accordance with the Board's Order, dated April 7, 1978, Grievant has been reinstated to his position as a correctional officer with the Department of Corrections, St. Albans Correctional and Diagnostic Facility, St. Albans, Vermont.
2. Grievant has received back pay retroactive to the time of his discharge. The amount of back pay was determined on a five day, 40 hours per week, "straight time" basis.
3. The period of time between the date that Grievant was discharged and the date he was reinstated was 119 days.
4. Prior to his dismissal, Grievant had consistently worked on the night shift at the St. Alban's Correctional and Diagnostic Facility and had been paid the extra \$.15 per hour "shift

differential" for working the night shift. Correctional officers are usually chosen to work on the night shift because they are able to work well without supervision.

5. Correctional officers normally work a weekly schedule of five days on and two days off, including whatever holidays occur during their scheduled work week.

6. The normal policy of the Department of Corrections as to holiday pay is as follows:

a) If an employee works on a holiday, he is paid the base rate salary for that day, plus an additional eight hours of pay.

b) If an employee does not work on a holiday an additional day's salary is added on to his normal five day, 40 hour a week salary.

7. Seven holidays occurred during the 119 day period of Grievant's separation from the Department of Corrections.

8. The back pay awarded to the Grievant by the Department of Corrections following the Board's Order of April 7, 1978, did not include an extra \$.15 per hour in "shift differential" pay; and, while the award did include payment for seven holidays on a straight time basis, it did not include the extra holiday pay normally granted to correctional officers whether they work a holiday or not.

9. During the period of Grievant's separation from the State, he was paid unemployment compensation by the Department of Employment Security. Through his attorney, Alan S. Rome, Esq., Grievant has agreed to repay this sum to the Department of Employment Security pending the resolution of the matters of

"shift differential" pay and extra holiday pay by the Board.

Opinion

The issue is whether or not the back pay awarded to Grievant by order of the Board should include an additional \$.15 per hour in "shift differential" pay and extra holiday pay for the seven holidays which occurred during Grievant's separation from the Department of Corrections.

In the Board's Findings of Fact, Opinion and Order, dated April 7, 1978, the Board found that the discharge of Grievant was not with "just cause" within the meaning of Article XI of the Vermont State Employees Association Non-Management Unit Contract (Finding No. 31). The Board, therefore, ordered that Grievant be:

"reinstated as a correctional officer with the Department of Corrections, St. Albans, Vermont, with full pay and benefits which shall be retroactive to the effective date of his discharge."

It is the opinion of the Board that since Grievant's discharge was without just cause, the amount of back pay awarded to him should be determined as though he had continued to work for the Department of Corrections throughout the period of his separation. He should not be penalized in any way, financially or otherwise, for a discharge which was unreasonable and without just cause.

Since Grievant had consistently worked the night shift prior to his dismissal, it appears probable that he would have continued to work the night shift during the period of his separation from the Department of Corrections. It is the opinion

of this Board that an award of "full pay and benefits" retroactive to the effective date of dismissal, should include the additional \$.15 per hour in "shift differential" pay which a corrections officer normally receives for working the night shift.

Further, since the period of Grievant's separation included seven holidays, he would have also received the extra holiday pay for each of these holidays had he worked during the period of his separation. It is the opinion of the Board that an award of "full pay and benefits" retroactive to the effective date of dismissal should include extra holiday pay for each holiday which occurred during the period of separation. Since it is impossible at this point to determine which of the seven holidays Grievant would have worked and which ones he would not have worked, the amount of his extra holiday pay should be calculated as though he had not in fact worked on those holidays.

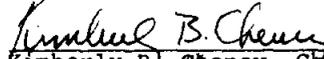
In view of Grievant's stipulated liability to repay the unemployment compensation awards to the Department of Employment Security, no further order by this Board is appropriate or required.

Order

In accordance with the Findings of Fact, and Opinion expressed above, it is hereby ORDERED that the State's Motion to Modify the Board's Order in the grievance of John Ouellet be GRANTED. The Order in the grievance of John Ouellet is hereby MODIFIED to add to the Order, dated April 7, 1978, the following: Grievant's back pay shall be calculated to include \$.15

per hour in "shift differential" pay, and extra holiday pay for seven non-working holidays.

Dated at Montpelier, Vermont, this 28th day of June, 1978.



Kimberly B. Cheney, Chairman



William G. Kemsley, Sr.,
Commissioner

Commissioner Robert H. Brown was not present at the June 16, 1978 hearing. The Reporter for the hearing was Beverlee Hill.