

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)
)
)

RICHARD HOLBROOK, FRANK INFANTE,)
MARY SHERMAN and VERMONT STATE)
EMPLOYEES ASSOCIATION, INC.)

Docket No. 77-24 S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a grievance brought by the above-named employees and their collective bargaining representative against the State of Vermont. Grievants seek payment of home office expense allowances in connection with their employment as School Lunch Supervisors of the State Department of Education. The State has refused to make the requested payments.

For the reasons stated below, the Board holds that the Grievants are entitled under the terms of the applicable collective bargaining agreement to receive reimbursement from the State for office allowance expenses at the rate of \$50.00 per month.

Findings of Fact.

1. At all times relevant, Grievants were School Lunch Supervisors employed by the Vermont Department of Education and members of the non-management bargaining unit of State employees. The Board takes judicial notice of the terms of the

applicable collective bargaining agreement between the State and the non-management unit of the Vermont State Employee's Association, Inc.

2. Grievants' responsibilities include field supervision of school lunch programs within the assigned district of each. The Grievants engage in routine and frequent consultations with School districts, parent-teacher groups, and the Department of Education.

3. Grievants are required to have home offices and telephones to carry out effectively their duties. Each has as many as 75 school programs to supervise and the physical limitations on personal visits are prohibitive. Each of the Grievants uses his or her home as a work station for numerous days each month, necessitating numerous outgoing calls. Each Grievant testifying also received about twenty incoming, work-related calls per month at home. The State is aware of and has long acquiesced in the use by School Lunch Supervisors of their homes as a work station.

4. Each Grievant has his or her telephone number listed in their local telephone directory. None of the listings specifically identify Grievant with his State employment. None of the Grievants has been ordered to have his or her phone listed by his supervisors and the State does not pay them for a separate listing in directories. Each Grievant does make his telephone number known to persons in the public who the Grievant feels have a need for the number. The State has not expressly required Grievants to give their home telephone numbers to members of the public.

5. Prior to the Federal 1976 Tax Reform Act, Mary Sherman took a deduction on her Federal tax return for her unreimbursed office expense. Although it is not clear from the evidence that the other Grievants took a tax deduction, no facts were proved which showed the others to be any less entitled to such a deduction than was Ms. Sherman.

6. The State maintained a central office with telephone service made known to the public with which the Grievants dealt. The central office number was published in a newsletter sent regularly to school lunch program personnel. Grievants regularly contacted the central office for messages.

Conclusions of Law and Opinion.

7. Grievants were required by the nature of their employment to maintain home offices. These home offices were not for the sole convenience of the employees. Such offices were not in lieu of State provided space.

8. Before the law was changed by the 1976 Tax Reform Act, Grievants were entitled to claim unreimbursed office expense as a tax deduction.

9. The 1976 Tax Reform Act changes in the law relating to deductions for home office expense are irrelevant to the instant controversy. This matter is to be decided by interpretation of the contract between the parties. This contract pre-dates the 1976 Tax Reform Act and contains no provision for changing the applicable contract rights in the event of change in tax rules referenced in the contract. We hold, therefore, that the tax rules which apply are the rules in existence at the time the parties entered into the collective bargaining agreement notwithstanding any later changes in the law.

10. It was essential to the efficient and effective performance of their jobs that the Grievants made their home telephone numbers known to members of the public with whom they dealt. Regular and frequent office hours at home and the large number of contacts required by their employment would make contact only through a central office impractical. Whether or not expressly required by the State, the facts in evidence clearly indicate large numbers of calls from the public were made to the Grievants' home telephones. Because of the practices actually in force, it was unnecessary for the State to make any express requirement as to making telephone numbers publicly available.

11. The requirement under the contract that home telephone numbers be made known to the public was satisfied in this case by the Grievants making their numbers known to those individuals with whom Grievants regularly dealt. No requirement of general publication is contained in the collective bargaining agreement and the Board knows of no reason to infer such a requirement.

12. The foregoing establishes the Grievants' rights to payment of the \$50.00 per month office allowance provided for in Article XVII of the Non-Management Collective Bargaining Agreement.

Order.

The Grievants shall be entitled to payment of \$50.00 per month in payment from the State of Vermont for home office expense (until a material change occurs in their home office practices). The State shall also pay to Grievants \$50.00 per month for the period from the date of their step one grievance in this matter to the date hereof.

DATED at the City of Montpelier, County of Washington and State of Vermont this 7th day of September, 1978.

VERMONT LABOR RELATIONS BOARD

*Appealed
Dismissed by Ship
June 1978.*

William Kemsley Sr.

William Kemsley, Sr.