

Vermont Labor Relations Board

GRIEVANCE OF	}	
	}	DOCKET #77-23S
HERBERT A. CLOGSTON	}	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case .

On 24 November 1976 a grievance was filed by Vermont State Employees' Association, Inc. in behalf of Herbert A. Clogston, dated the same day, and grieving to the effect that the Grievant had been denied compensatory time in lieu of cash payments for overtime worked. The Answer of the State was filed 26 November 1976 and notice of hearing mailed 18 March 1977 to all parties. A hearing was held on 15 April 1977 in the City Council Room, City Hall, St. Albans, Vermont. Memoranda of Law were submitted by both parties as were Requests for Findings of Fact. The Grievant was represented by Alan S. Rome, Esquire, General Counsel for VSEA, and the State was represented by the Honorable Jeffrey L. Amestoy, Assistant Attorney General. The Grievant was present at the hearing in person, as were Joseph G. Kecskemethy, Director of Employee Relations, and John Whitcomb, Superintendent of the St. Albans Correctional Center.

Findings of Fact.

1. Grievant has been employed since 1 June 1975 as a Correctional Officer at the St. Albans Correctional Center, St. Albans, Vermont. He has served as a Guard in Wings A, D and E over this same period.
2. The Board takes judicial notice of the Non-Management Agreement

between VSEA, Inc. and the State of Vermont and in particular of Article XIV, Section 6 (c) which reads as follows:

"Employees eligible for overtime compensation may request compensatory time off in lieu of cash overtime compensation."

3. The State Department of Personnel has issued an interpretive bulletin dated 1 July 1971 which attempted to explain the policy of the State with respect to compensatory time:

"Under the wording ... the employee may request the compensatory time, but the Supervisor or Appointing Authority is not obligated to approve the request."

(State's Exhibit "C").

4. The Grievant was employed for a considerable period of time in D Wing, which contained the lifers and long term prisoners. There had been repeated incidents involving the taking of hostages, violence, fear and tension.

5. The presence of fear and tension created home-life tensions for the Grievant.

6. The St. Albans Correctional Center was understaffed at the time of the matters set forth in the grievance.

7. It had been the policy of the Department of Personnel to encourage supervisors to grant requests for compensatory time in lieu of overtime pay whenever possible.

8. It would be impossible to carry out the goals and objectives of the St. Albans Correctional Center if all requests for compensatory time were granted.

9. It is the policy of the St. Albans Correctional Center to grant overtime duty first to those who have requested it.

10. It is the policy and practice of the St. Albans Correctional Center to permit the filing of requests for compensatory time in lieu of cash and to grant such requests whenever possible.

11. This policy was not followed by the St. Albans Correctional Center for a period of time until 14 November 1976.

12. On 14 November 1976 a new policy was designed by the St. Albans Correctional Center and put into effect after consultations with the employees (State's Exhibit "E").

13. For the period of time at issue here, the St. Albans Correctional Center did not follow its present policy with respect to compensatory time or the previous policy, on the advice of the Attorney General of the State of Vermont, who declared that it would be illegal for the State of Vermont to grant compensatory time to an employee in lieu of overtime pay under the provisions of the Fair Labor Standards Act, as amended in 1974. This Act was declared unconstitutional by the Supreme Court of the United States in National League of Cities v. Usery, 426 U.S. 833 (1976), after which time the present policy was promulgated.

14. After 14 November 1976 the present policy has been in force and effect, and the grievance is now moot.

15. The transcript shall be made a part of these findings for appellate purposes.

Discussion of the Evidence.

There was no great disagreement between the witnesses. The Grievant himself stated that the Guards received compensatory time when the staff deemed it necessary. This also happened in the case of some holidays. The Grievant made requests for compensatory time on Form AA4-SOM-7-75 for the period 10 September through 11 September 1976. The request was made on September 7th. He was denied by Mr. Scripture, his Supervisor. The Grievant felt that he needed some compensatory time for his own peace of mind and to straighten out his home life. Superintendent Whitcomb agreed that compensatory time was necessary in many cases. The

Grievant admitted that he did receive compensatory time both before and after the filing of the grievance and that there is no limitation to a 24-hour total of compensatory time in any one year. Rita Ricketson, VSEA Research Analyst, testified as to the negotiations which led to the adoption of the language contained in Article XIV of the Non-Management Agreement. She felt that the State was obligated to pay cash instead of granting overtime.

Opinion.

The issue which was presented by the parties to the Board was whether or not Article XIV, Section 6 (c) as to compensatory time required that each employee be granted compensatory time upon request rather than only in the discretion of the Supervisors. The language itself states that the employees may request compensatory time off, but it certainly does not appear to be mandatory. The background information received makes it clear that when the Fair Labor Standards Act of 1974 went into effect on 1 January 1975, the Attorney General ruled that employees must be paid in cash rather than granted time off for overtime work. When the Act was ruled unconstitutional in certain respects by National League of Cities v. Usery, 426 U.S. 833 (1976), then the policy was corrected and a new policy initiated which substantially granted the right to the Supervisors to give compensatory time off. It is the Board's opinion that in stressful situations like prison guard duty compensatory time is extremely helpful and often a necessity in order to relieve the tensions which build up from this type of work. However, it appears that an adequate policy has now been developed according to the testimony of the Grievant himself and other witnesses. The matter

appears to be moot. As to the period of time between the application of the Fair Labor Standards Act of 1974 and the Supreme Court Opinion declaring it unconstitutional, the Board cannot say that the advice given by the Attorney General was incorrect or that the St. Albans Correctional Center acted in violation of the contract in denying compensatory time.

ORDER.

In accordance with the foregoing findings of fact and opinion, the grievance ought to be, and it hereby is, DISMISSED.

Commissioner Brown took no part in this decision.

Dated at Burlington, Vermont this 7th day of April, A.D. 1978.

VERMONT LABOR RELATIONS BOARD

By John S. Burgess
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