

VERMONT LABOR RELATIONS BOARD

Grievance of:
VSEA, Meat Inspectors,
Department of Agriculture

Docket No. 77-17S-1

FINDINGS OF FACT, OPINION, AND ORDER

STATEMENT OF THE CASE

This is a Step IV grievance filed by the Vermont State Employees' Association, Inc. (hereinafter referred to as "VSEA") on behalf of the Meat Inspectors of the Vermont Department of Agriculture. The grievance was filed on October 20, 1976. The State's Answer was filed on November 12, 1976. The merits hearing was held on December 3, 1976 in the Highway Conference Room, Vermont Department of Highways, State Administration Building, Montpelier. Vermont, Commissioners Burgess, Kemsley and Wallace being present. Requests for Findings and Memoranda of Law were filed by both parties. VSEA and the Meat Inspectors were represented throughout by Alan S. Rome, Esq., and the State was represented throughout by the Honorable Paul F. Hudson, Esq., Assistant Attorney General.

FINDINGS OF FACT

1. The Meat Inspectors in question are members of the Non-Management Unit and are employees covered by the Non-Management Contract between the State of Vermont and the VSEA, Inc., for the period in question.

2. The Board takes judicial notice of both Non-Management Contracts between the State of Vermont and VSEA. Specifically, the two contracts are the present contract (July 5, 1976 - June 30, 1979) and the previous

contract (1974-1976), between the respective parties.

3. Mr. Dominic Colanton, a VSEA Field Representative, had sought reimbursement of travel time for the Meat Inspectors, under Section XIV 5(c) of the present non-management contract and Section VIII, 7(3) of the previous contract.

4. In reply to Mr. Colanton's grievance at the Step II level, Mr. Ronald A. Allbee, Deputy Commissioner of Agriculture, replied as follows:

We have paid mileage from their homes, which are their duty stations, to their work areas but have not paid time. We feel that if we are pushed on this issue we will have to reassign duty stations for six of the inspectors who travel the greatest distance.

(Grievant's Exhibit "A")

5. The Board finds that the homes of the Meat Inspectors had clearly been designated as work stations by Agriculture Department.

6. On November 1, 1976, the working stations of the Meat Inspectors were changed from their homes to designated wholesale slaughtering plants.

7. The Agriculture Department had greatly benefitted from the official designation of Meat Inspector's homes as their working stations. Dr. Alfred Janawicz, Director of the Livestock Division, testified to the importance of job rotation, and the need for inspectors to travel to great numbers of wholesale plants, in order to maintain the excellence of the Meat Inspection program. The designation of homes as working stations served such beneficial purpose.

8. Agriculture Rules and Regulations, Sections 200.1 - 200.6, mandate separate offices, for the exclusive use of the Meat Inspectors. (Admitted as State's "4".) Light and heat is, also, supposedly, to be furnished. Janitorial service and proper ventilation are, also, required, along with locker facilities for files and clothing.

9. The Board finds that these regulations have not been carried out. Through the testimony of Dr. Janawicz and several Meat Inspectors, it it found that White's plant in East Montpelier has no office for the Meat Inspectors.

10. The quarters provided at White's plant for the Meat Inspectors are clearly unsuitable, pursuant to their own regulations, supra.

11. The Board finds that there has been no office provided for the Meat Inspectors at Crowley's plant in Sharon. In fact, the supposed "office" at Crowley's is, in fact, a toilet.

12. The Board, also, finds that offices, as called for by the Department of Agriculture Rules and Regulations 200.1 - 200.6, are not provided for the Meat Inspectors, also, at Day's plant in Sharon, and Dresser's plant in St. Johnsbury. In none of these plants have separate offices been provided for the inspectors, nor is there adequate heat, lighting, ventilation, or sufficient locker facilities.

13. Because of the lack of sufficient office facilities at the plants, the inspectors do the bulk of their evaluation reports at home, along with the required lab reports, although not technically required to do so. Many files and cabinets are, also, kept at the inspector's home work station. NO, if any, plants have offices in which the inspectors can write these reports, or locker facilities in which to store this valuable data.

14. Mr. Gene Haight, Meat Inspector, testified on his own behalf. His home had been declared work station for job purposes by the Agriculture Department. Mr. Haight had been paid mileage but had never had his driving time from working station to the plant counted for overtime purposes.

15. Mr. Haight testified to a total of 470 round-trip miles per week between plant and his work station. His home is in E. Arlington, VT. When told that his work station had been changed to Lamoge Brother's plant in Rutland, he was forced to resign. He could not financially endure this new change in his situation.

16. Before the change in work stations, Mr. Haight was paid mileage from E. Arlington to Rutland plants and return on Monday (90 miles round-trip); Springfield on Tuesdays and Fridays (220 cumulative round-trip miles); and Pittsford on Thursdays (110 round-trip miles).

17. The Board finds that several other classes of state employees, also, have their homes as work stations. Examples given at the hearing were as follows: Liquor Control Inspectors, Motor Vehicle Inspectors, Passenger Tramway Technicians. It is found that the aforementioned state employees are given time and mileage from their homes, because home has been designated as the work station.

18. The Transcript and exhibits are made a part of these findings for purposes of appeal.

OPINION

Under the provisions of 3 V.S.A. #902 (14) the Board must look to the Collective Bargaining Agreement, the Non-Management Agreement between the State of Vermont and Vermont State Employees' Association, Inc. Section XIV,

5(c) and VIII, 7 (3) of the present and previous contracts must, therefore, be scrutinized:

employees are not eligible for overtime compensation for travel time except where an employee is traveling from work location to work location.

Until November 1, 1976, the Meat Inspectors had always had their homes declared as work stations. (See Grievant's "A", letter from Deputy Commissioner Allbee). Per the testimony of Dr. Alfred Janawicz, Director of Livestock Division, it is clear that this arrangement benefitted both the Department and the Meat Inspectors alike. The Department was benefitted because of the ease with which job rotation could be realized, along with the great number of inspectors able to get to numerous meat plant sites. It benefitted the inspectors because they could get mileage from their officially designated duty stations.

State claims that the contract and 32 V.S.A. #1261 impede on the attempts of the Meat Inspectors to gain travel time allowances. The aforementioned statute states as follows:

When an administrative official or employee works out of his home in the usual course of his employment rather than out of an office, he shall be reimbursed for his expenses in the same manner as though he were working out of an office, and for the purposes of this section, his home shall be considered as his office.

32 V.S.A. 1261(a)

Because of the benefit to both the inspectors and to the running of the meat inspection program, these inspectors clearly were "working out of their homes in the usual course of their employment," and, therefore, entitled

to reimbursement as if they had been working out of any other state office. The inspectors should have had their travel time computed for overtime purposes under the guidelines of the contractual and statutory provisions as aforementioned.

The Board recognizes that other state employees customarily use their homes as their working stations: Liquor Control Inspectors, Motor Vehicle Inspectors, and Passenger Tramway Technicians. These employees get both mileage and have travel time computed for overtime purposes. If these employees benefit from the statutory and contractual provisions as mentioned, why not Meat Inspectors? Are they any less deserving? The Board thinks not.

The Board, also, is puzzled by the State's position on this subject. If the homes are not the offices, where do offices exist for the Meat Inspectors? The Board has heard much testimony, graphically describing the so-called "offices" provided by the meat plants: bad lighting; no lockers or ventilation; little desk or locker space. One should not even mention the toilet one inspector was forced to use as his "office". The Board, unfortunately, finds the Vermont Department of Agriculture in obvious violation of its own Rules and Regulations, 200.1 - 200.6 (State's Exhibit "4").

As for the contractual protestation on the part of the State pertaining to "home" as work location, the Board finds an important difference between "home" and the aforementioned "working out of one's home in the course of one's business." 32 V.S.A. #1261(a) Certainly, if one goes from home to a work location, overtime benefits should not apply. But if, as in the case with Liquor Control Inspectors, Motor Vehicle Inspectors, and Passenger

Tramway Inspectors, and Meat Inspectors, "home" is "work station," the normal and customary benefits should apply. 32 V.S.A. #1261(a).

Finally, the State argues that the Governor never approved the action. Therefore, the action was void. 32 V.S.A. #1261(a) states that the Governor must approve expenses "between home and an office of the agency." Again, in the case at hand, "home" had already been designated "work station" by the Department of Agriculture. Secondly, the Meat Inspectors were not traveling from home to an office of the agency, but to the private meat plants themselves.

ORDER

Because of the Findings of Fact and Opinion as stated, supra, it is ordered that the grievance is hereby GRANTED. The Department of Agriculture is given thirty (30) days to compute travel time information which may be pertinent to the grievance, retroactive to the date when the original decision was made to make homes "working stations." Both parties shall then meet with the Board in order to accurately assess proper retroactive payments for the Meat Inspectors.

Dated at ^{Montpelier} ~~Brettsboro~~, Vermont, this 15th day of September, 1978

*Sup @ Affirmed
Order. June 14 1982*

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney

Kimberly B. Cheney, Esq., Chairman

William G. Kemsley Sr.

William G. Kemsley, Sr.

Robert H. Brown

Robert Brown, Esq.

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STIPULATION

NOW COMES the Vermont State Employees' Association, Inc., by and through its Attorney, Alan S. Rome, Esq., and the State of Vermont, Department of Agriculture, by and through its Attorney, Louis P. Peck, Esq., and STIPULATE to the following, pertaining to above entitled matter:

1. The parties STIPULATE to submit the PROPOSED ORDER to the Labor Relations Board in the aforementioned matter.
2. The parties agree to the signatures of the presently constituted Board on to this ORDER, once approved.
3. This STIPULATION does not estop either party from the opportunity to appeal the decision to the Vermont Supreme Court.

Dated at Montpelier, Vermont, this 15 day of September, 1978.

VERMONT STATE EMPLOYEES' ASSOCIATION, INC.

By: Alan S. Rome

Alan S. Rome, Esq.

Dated at Montpelier, Vermont, this 15 day of September, 1978.

STATE OF VERMONT
DEPARTMENT OF AGRICULTURE

By: Louis P. Peck
Louis P. Peck, Esq.