

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF

WILLIAM HILL

DOCKET NO. 78-915

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On July 31, 1978 the Vermont State Employees Association (hereinafter "VSEA") filed a grievance with the Board on behalf of William Hill, a maintenance mechanic A for the Buildings Division, Agency of Administration. The grievance alleged that the State of Vermont has violated Article XVI of the Non-Management Unit Contract by compensating Grievant at straight-time rates for "call-in" work instead of time and one-half rates. The State filed its answer on August 18, 1978.

This matter came for a hearing before the Board on November 30, 1978 in Montpelier. Chairman Kimberly B. Cheney, Board Members William G. Kemsley, Sr. and Robert H. Brown were present. The Grievant was represented by Alan S. Rome, Esquire, attorney for the VSEA. The State was represented by Bennett Greene, Assistant Attorney General.

FINDINGS OF FACT

1. Grievant William Hill is a maintenance mechanic A for the Buildings Division, Agency of Administration. He performs his work at the Chittenden County Correctional Center, Burlington, Vermont. Mr. Hill is a State employee in overtime

category 11.

2. On Saturday, June 17, 1978 Mr. Hill was ordered to report for work on a "call-in" basis at the Correctional Center.

3. Mr. Hill was out on sick leave June 15, 1978 and had not worked 40 hours during the week prior to the Saturday in which he was called in.

4. Mr. Hill was compensated at straight-time rates for the three hours of "call-in" work he performed on June 17, 1978.

5. On July 20, 1978 VSEA received a Step-three decision from Joseph C. Kecskemethy, Director of Employee Relations, denying his grievance requesting time and one-half compensation instead of straight-time compensation for the "call-in" work he performed on June 17.

#### OPINION

Article XVI of the Non-Management Unit Contract pertaining to compensation for "call-in" work, provides that:

"When an employee in categories 11, 12, 15, 18, 19 and 20 is called in and required to work anytime other than his normally scheduled shift, he shall receive a minimum of two hours' pay at overtime rates."

The facts in this case are not disputed by the parties. Grievant was paid for three hours "call-in" work at straight-time rates. Since three hours of straight-time work is equal to two hours of overtime pay, Grievant received the minimum amount of pay which is guaranteed to him by Article XVI of the Contract.

At issue in this case is the interpretation of the language of Article XVI: Does the phrase "at overtime rates" refer solely to the minimum amount of compensation an employee receives for "call-in" work whether he works five minutes or two hours? Or does it refer to the rate of compensation an employee should receive for all hours of "call-in" work whether or not he has worked 40 hours in the week in question and is therefore eligible for overtime pay under the provisions of Article XIV?

The State argues that Article XVI is not an overtime provision as such in that the use of the phrase "overtime" in Article XVI is only a device to determine the amount below which an employee cannot be paid. Thus an employee receives a minimum of two hours compensation at overtime rates for any amount of "call-in" work he performs under three hours. However, if the employee performs three hours or more of "call-in" work, he is only eligible for overtime compensation if he has fulfilled the 40 hour requirement of time actually worked that week under the overtime provision contained in Article XIV of the Contract. In the instant case the Grievant had not worked 40 hours during the week prior to the Saturday he was called in. Therefore, the State compensated him for his three hours of "call-in" work at straight-time rates.

We are not persuaded by the State's argument. As we recently stated in our opinion in Vermont State Colleges Faculty Development Fund Grievance, Docket No. 78-77S, we must assume that every word in the agreement is the subject of hard fought bargaining, and we are bound to interpret the meaning of a specific

provision in the agreement according to the language that was used. Article XIV deals exclusively with employee's compensation for "call-in" work. In our view, the use of the words "at overtime rates" means that an employee will be compensated at overtime rates beginning at a minimum of two hours and for all the time he works over that minimum.

If the parties had intended that three hours or more of "call-in" work should be compensated at overtime rates only if an employee was eligible for overtime under Article XVI, the same minimum compensation could have been stated as three hours of work at straight-time rates which is equal to the presently stated minimum of two hours of work at overtime rates; or it could have specifically stated that compensation for "call-in" work over and above the minimum would be determined pursuant to the provisions of Article XIV. However, as it is presently written, the only reference to rates of pay in Article XVI specifies compensation at overtime rates. We are, therefore, of the opinion that the use of this language means that all "call-in" work is to be compensated at overtime rates whether or not the employee is eligible for overtime under Article XIV when he performs the "call-in" work. Grievant was thus entitled to receive overtime rates of pay on Saturday, June 17, 1978 and should be paid the difference between the straight-time compensation he received and the overtime compensation for the three hours of work.

ORDER

For the reasons stated above, it is hereby ORDERED that the grievance of William Hill be allowed and that William Hill be paid the difference between the straight-time compensation he received for three hours of "call-in" work and the overtime compensation he should have received.

Dated this 17<sup>th</sup> day of December, 1978 at Montpelier, Vermont.

Vermont Labor Relations Board

Kimberly B. Cheney  
Kimberly B. Cheney, Chairman

William G. Keady, Sr.  
William G. Keady, Sr.

Robert H. Brown  
Robert H. Brown

*Appeal  
Dismissed  
2/2/79*