

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)
) DOCKET NO. 88-39
LLOYD LEMIEUX)

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 23, 1988, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Lloyd Lemieux ("Grievant"). The grievance alleged that the State of Vermont, Department of Motor Vehicles ("Employer") violated Article 51 of the Agreement between the State of Vermont and VSEA for the Non-Management Unit, effective for the period July 1, 1986 to June 30, 1988 ("Contract") by refusing to pay Grievant alternate rate pay for three days when he performed the duties of his supervisor.

Hearings were held before Board Members Charles H. McHugh, Chairman; Catherine L. Frank and Dinah Yessne on October 27 and November 3, 1988. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. Michael Seibert, Assistant Attorney General, represented the State. Briefs were filed by the parties on November 2, 1988. Supplemental briefs were filed on November 3, 1988, and November 4, 1988, respectively.

FINDINGS OF FACT

1. Article 51 of the Contract, Alternate Rate Pay, provides in pertinent part as follows:

2. From time to time, employees may be required by higher authority to take over the job of an employee assigned to a higher pay grade than their own when that

higher-level employee is absent from duty. When time and circumstances permit, vacant higher-level positions will be filled through the merit system under the applicable Rules and Regulations for Personnel Administration. However, because of the absence of an employee for a short period of time, and in management's judgment job continuity must be maintained, eligible employees in this bargaining unit who are required to take over the higher-level job shall receive "alternate rate pay" provided all the following criteria are met:

- a. The employee takes over the job of the higher-level employee (see Paragraph 7 below for definition);
- b. The higher-level work is performed with the authorization of appropriate supervisory personnel;
- c. The position is at least one pay grade higher than the employee's own pay grade; and
- d. The employee takes over the job of the higher-level employee for one full work shift per day.

3. The "alternate rate pay" rate shall be 108 percent of the employee's base rate, in no event less than the minimum nor more than the maximum base rate for the position to which he is assigned. The State will make a good faith effort to compensate employees for alternate rate work within 30 days of the end of the pay period in which earned.

...

5. The following categories of employees shall not be eligible to receive "alternate rate pay" when and if they are required to work at a higher level.

... c. Employees whose position descriptions clearly require them as part of their duties, from time to time or on a continuing basis, to fill in for their supervisors, or to assume other higher-level duties when necessary; and

...

6. The Commissioner of Personnel shall, with the concurrence of VSEA, determine those classes and or positions which shall not be eligible for "alternate rate pay". In the event the parties cannot agree on an exclusion within three workdays of the Commissioner's request for concurrence, the Commissioner shall temporarily exclude the class or position from eligibility in order not to delay administrative processing of necessary personnel actions. The VSEA may appeal the Commissioner's temporary decision to an impartial third party jointly selected by the State and the VSEA. The decision of the third party shall be binding on the State and VSEA. Cost involved in the appeal shall be borne by the losing party.

(Grievant's Exhibit 1).

2. Grievant was hired by the Department of Motor Vehicles on July 1, 1982, as a temporary employee. Grievant became a permanent status employee on November 6, 1983, and since that time has served as a microphotographer in the Department of Motor Vehicles. The duties of this position are basic level microphotography involving the operation of machines used in the reproduction and duplication of papers and documents.

3. At the time of his hire, Grievant was told by his supervisor, Laura Gilbert, that as part of his duties, he would be expected to fill in for her in her absence.

4. From 1983 until mid-1984, there was only one level of microphotographer in the Department of Motor Vehicles. In 1984, two levels were created: Microphotographer A (Pay Grade 4) and Microphotographer B (Pay Grade 6). Grievant was placed in the Microphotographer B position. The two levels were created due in part to the recognition that only the higher level microphotographer would be called upon to assume supervisory responsibilities in the absence of the supervisor.

5. In 1984, a classification study, the so-called "Willis Study", was initiated in State government. The Willis study was a collectively-bargained and legislatively-authorized review of positions in the State classified service. Under the Willis Study, each position was evaluated and placed in a class and assigned a pay grade. Under Willis, the pay structure was revised so that a position was considered to be on the same level as previously if it was assigned a pay grade four levels higher than the pay scale to which the position was formerly assigned. A position assigned a pay grade

less than four levels higher than formerly assigned was considered to be downgraded, and a position more than four levels higher was considered to be upgraded.

6. In late 1984, in connection with the Willis Study, Grievant prepared a handwritten position description. He did so with the assistance of his supervisor, Laura Gilbert. Under the heading "Other Principal Activities", Grievant wrote, in describing his duties, "supervisory functions when supervisor is absent, scheduling and assigning work, making out necessary reports and seeing things are done in a timely manner" (Grievant's Exhibit 12, Page 5).

7. As a result of the Willis study, which was completed in 1986, the Microphotographer A and Microphotographer B classifications were retained. However, all the microphotographer positions in Department of Motor Vehicles were classified as Microphotographer A's, and assigned to Pay Grade 8. Microphotographer positions in Public Records were classified as Microphotographer B's, and assigned to Pay Grade 12.

8. Accordingly, Grievant, as well as other former Microphotographer B's in the Department of Motor Vehicles, were downgraded under the Willis study. Also, as a result of the Willis Study, Grievant's supervisor's position, which involved supervisory and technical work involving operation of the service unit within which Grievant worked, received the title Motor Vehicle Service Unit Supervisor, and her position was reassigned upward from Pay Grade 9 to Pay Grade 18.

9. In June, 1987, Grievant and three other Microphotographer A's from the Department of Motor Vehicles submitted requests for

classification review to the Department of Personnel, contending that they should be placed in the Microphotographer B classification and reassigned to Pay Grade 12. Grievant's request was supported by a position description in which he included the following summary of duties he assumed in his supervisor's absence:

In the absence of the supervisor, supervisory functions are performed on a monthly rotating basis. This is a necessary duty which is not included in the job specs for Microphotographer A. It is performed by "old" Microphotographer B's who have been trained in this area.

Functions Include:

- 1) Daily and weekly reports.
- 2) Planning, coordinating and assigning work for the unit.
- 3) Troubleshooting machine problems; placing calls when necessary.
- 4) Dealing with service rep. supervisors of other units and upper management.

(Grievant's Exhibit 14, Page 4)

10. This position description was prepared by Grievant with the assistance of his present supervisor, Patricia Beaulieu. Beaulieu rotates supervisory duties in her absence as described in the position description. Four of the six Microphotographer A's are included in that supervisory rotation, including Grievant. Beaulieu does not consider the other two Microphotographer A's as being able to assume supervisory duties for any extended period due to a lack of experience, so she limits their supervisory duties to a few hours at a time.

11. Beaulieu was absent, during the 12-month period preceding the Board hearing herein, a total of 26 days, which included her use

of sick and annual leave, as well as some training she attended. Her longest absence was for six work days. Grievant and three other employees rotated with respect to assuming the responsibility for taking the lead in the supervisor's absence over that period of time. Grievant was assigned such duties a total of approximately 10 days.

12. The class specification, which is prepared for each class in State government, provides a representative sample of duties in that class. The class specification is not considered to be all-inclusive with respect to duties performed. On the other hand, the position description, which is done for each position in the State classified service, is intended to be more specific and cover in detail each position.

13. The Microphotographer A class specification does not include supervisory duties performed by Grievant and other Microphotographer A's in Motor Vehicles in the absence of their supervisor in the description of duties performed.

14. In reviewing the classification requests submitted by Grievant and the other Microphotographer A's, the Department of Personnel considered all aspects of the position, including replacing the supervisor in her absence. After review, the Department of Personnel denied the request for reclassification.

15. Subsequent to the denial of the classification review request, two of Grievant's fellow workers submitted a classification grievance, which is pending. Grievant did not join in the grievance.

16. In conjunction with the classification grievance, Claude Magnant, Director of Personnel Operations, sent a memorandum on July 12, 1988, to Jane Kitchell, the chair of the classification panel

hearing the grievance. The memorandum provided in pertinent part as follows with respect to the assumption of supervisory duties by the Microphotographer A's in the supervisor's absence:

...It is our contention that such a lead worker role, performed on a monthly rotating basis in the absence of a supervisor, and designed to involve all six positions, does not rise to the level of classification significance.

(Grievant's Exhibit 17, page 5)

17. The phrase "no classification significance" in the July 12 memorandum was meant by Magnant to mean that, while the supervisory role was taken into account along with all other duties, the supervisory duties were not significant enough to raise the position above Pay Grade 8.

18. On May 2-4, 1988, Beaulieu was absent and, at her direction, Grievant assumed her duties for those three days (Grievant's Exhibit 5).

19. On May 12, 1988, Grievant submitted a request to Beaulieu for alternate rate pay for May 2-4 (Grievant's Exhibit 6).

20. On May 18, 1988, by letter, Beaulieu denied Grievant's request for alternate rate pay for the following stated reason:

Your position description indicates that you may be required to do supervisory functions in the absence of your supervisor. According to Article 51, Section 5(c), this makes you ineligible for alternate rate pay.

(Grievant's Exhibit 7)

OPINION

In dispute is whether Grievant is entitled to alternate rate pay under Article 51 of the Contract for May 2-4 when he assumed the duties of his supervisor in her absence.

The first issue is whether Grievant is entitled to alternate rate pay because the Employer allegedly did not comply with Article 51, Section 6 of the Contract, which provides that "the Commissioner of Personnel shall, with the concurrence of VSEA, determine those classes and/or positions which shall not be eligible for alternate rate pay".

Grievant contends that since the only time that procedure was used was in 1974, and since the resulting list of classes did not include the class Microphotographer, the class as a whole is eligible for alternate rate pay, and it was a violation of the Contract for the Employer to deny Grievant alternate rate pay for the dates in question. Grievant contends that if the Employer wishes to exclude employees from eligibility for alternate rate pay on the basis that the employee's position description requires them to fill in for their supervisor, as in the case here, then the only way to accomplish that end is for the Commissioner of Personnel to comply with the procedure set forth in Section 6 of Article 51.

We disagree with Grievant's interpretation of the Contract. It is clear that Section 6 is directed to identifying positions and/or classes which are never eligible for alternate rate pay. However, employees in Grievant's situation, who are denied alternate rate pay on the basis of their position description, are not categorically disqualified from receiving alternate rate pay. Entitlement to alternate rate pay must be determined on a case-by-case basis. Eligibility for the benefit depends on a comparison of the duties performed with the content of the position description. The determination which must be made in each case is at what point duties performed go over the line set by the job description and become more

than what the position requires. Grievance of Kastner, 10 VLRB 212, 217 (1987). Thus, since the answer to the question whether Grievant's position description bars him from receiving alternate rate pay must be determined on a case-by-case basis, the categorical disqualification on the basis of position or class provided for in Article 51, Section 6, does not apply.

The remaining issue is whether Article 51, Section 5(c) disqualifies Grievant from receiving alternate rate pay. Section 5(c) provides as follows:

The following categories of employees shall not be eligible to receive "alternate rate pay" when and if they are required to work at a higher level.

...Employees whose position descriptions clearly require them, as part of their duties, from time to time or on a continuing basis, to fill in for their supervisors, or to assume other higher-level duties when necessary...

Grievant contends that, even though his position description makes reference to the assumption of his supervisor's duties in her absence, he should receive alternate rate pay when he assumes such duties because he was not paid for his occasional supervisory duties through the assignment of his position to a pay grade.

We conclude that Article 51, Section 5(c), bars Grievant from receiving alternate rate pay under the circumstances of this case. His position description clearly requires him as part of his duties to fill in for his supervisor in her absence on a monthly rotating basis. The evidence indicates that in practice he has filled in for his supervisor in rotation along with three other employees, and on the three days in question he was fulfilling this rotational duty. Thus, his duties on the days in question were consistent with his position description and he is not eligible to receive alternate rate pay.

There is no merit to Grievant's claim that he should receive alternate rate pay because he was not paid for his occasional supervisory duties through the assignment of his position to a pay grade. Grievant's concern that his position is improperly assigned to a pay grade is a proper subject for a classification grievance, not an alternate rate pay grievance.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED the Grievance of Lloyd Lemieux is DISMISSED.

Dated this 1st day of December, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh
Charles H. McHugh, Chairman

Catherine L. Frank
Catherine L. Frank

Dinah Yessne
Dinah Yessne