

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
RAYMOND ROESSNER	)	DOCKET NO. 89-28

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 24, 1989, the Vermont State Employees' Association ("VSEA") filed a grievance with the Vermont Labor Relations Board on behalf of Raymond Roessner ("Grievant"). The grievance alleges that the State of Vermont, Department of Corrections ("Employer"), violated Article 29 of the collective bargaining agreement between the State and VSEA for the Corrections Unit, effective for the period July 1, 1988 to June 30, 1990 ("Contract") by (1) ordering Grievant in to work the second half of the night shift on September 29, 1988, despite Grievant's written request for exclusion from overtime work, and despite the absence of an emergency; and (2) not following the correct "order-in" procedure.

A hearing was held on September 28, 1989, before VLRB Members Louis Toepfer, Acting Chairman; William Kemsley, Sr. and Leslie Seaver. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. Michael Seibert, Assistant Attorney General, represented the State.

Memoranda were filed by both parties on October 5, 1989. Subsequent to the hearing, the parties resolved the issue concerning whether the correct "order in" procedure was followed herein, thus leaving only one issue for the Board to decide (i.e. whether the Employer violated the Contract by ordering Grievant in to work notwithstanding his request to be excluded from overtime work).

## FINDINGS OF FACT

1. Article 29 of the Contract, "Overtime", provides in pertinent part:

### SECTION 2. DISTRIBUTION OF OVERTIME

... c. On request in writing at any time, an employee shall be excluded from consideration for overtime. This exclusion may... be revoked by the supervisor under emergency circumstances when any or all employees will be required to work.

### SECTION 3. Correctional Facility Overtime Distribution

1. Each correctional facility shall maintain the following lists for the purpose of distributing overtime:

List 1. Permanent classified COA's (Correctional Officer A's) and COB's (Correctional Officer B's), integrated alphabetically.

List 2. Permanent classified COC's (Correctional Officer C's), alphabetically...

#### ... 4. SHORT NOTICE OVERTIME

##### a. DEFINITION

Short notice overtime is defined as overtime for which notice is given, less than 24 hours but at least two hours in advance.

##### b. DISTRIBUTION

Short notice overtime... shall be offered first to employee(s) on List 1 in descending alphabetical order, and then to employees on List 2.

#### 5. VERY SHORT NOTICE OVERTIME

##### a. DEFINITION

Very short notice overtime is defined as overtime for which less than two hour's notice is given.

##### b. DISTRIBUTION

Very short-notice overtime... shall be offered first to all on-shift COA's and COB's and COC's who are on List 1 or 2 in descending alphabetical order.

#### 6. ORDER-IN/ORDER-OVER

##### a. DEFINITION

Order-in is the procedure by which correctional officers are ordered in to perform overtime work if there are insufficient volunteers

##### b. PROCEDURE

In cases where employees must be ordered-in, on-shift temporaries and bargaining unit personnel will be held over. In the case of an order-in situation, if temporaries (part-time or full-time) cannot be utilized, employees on List 1 or List 2 will be ordered in.

c. Order-ins or order-overs will normally be limited to four (4) hours (Grievant's Exhibit 1).

2. Grievant has been a Correctional Officer B (Pay Grade 15) at the Chittenden Community Correctional Center ("CCCC") since 1983.

3. During Grievant's term of employment at the CCCC, he has worked under three superintendents: Richard Turner (1983-86); Heinz Arenz (1986-88); and Phil Scripture (May 1988 to present).

4. Since approximately 1985, Grievant has continuously been on the overtime exclusion list pursuant to the Contract and previous contracts, which is a list of employees who have requested to be excluded from consideration for overtime work. Grievant periodically updates his request for overtime exclusion; the most recent such request was August 19, 1988.

5. As of September 28, 1988, there were approximately 40 employees at the CCCC. On that date, Grievant and one other employee were the only CCCC employees on the overtime exclusion list.

6. Prior to the event grieved herein, Grievant had never before been ordered to work overtime.

7. The CCCC operates on three shifts. The first shift hours are from 7:30 a.m. to 3:30 p.m. The second shift hours are from 3:30 p.m. to 11:30 p.m. The third shift hours are from 11:30 p.m. to 7:30 a.m.

8. When filling a vacancy on any of the three shifts, it is the practice at the CCCC to divide the shift into two four-hour parts, and to fill each part with a different employee.

9. On September 29, 1988, Grievant was scheduled to work the first shift from 7:30 a.m. to 3:30 p.m.

10. On September 28, 1988, shortly after 10:00 p.m., two employees scheduled to work the pending third shift (i.e., from 11:30 p.m. to 7:30 a.m.) called the second shift supervisor, Gary Dillon, to report that they were sick and unable to work (Grievant's Exhibit 7).

11. In order to fill the resulting vacancies for the first part of the third shift (i.e., from 11:30 p.m. to 3:30 a.m.), Dillon sought volunteers from the employees then working on the second shift. There were no volunteers from this group, and Dillon ordered two employees from the second shift to remain for four hours over their scheduled shift. Neither of these employees were on the overtime exclusion list (Grievant's Exhibit 7).

12. In order to fill the resulting vacancies for the second part of the third shift (i.e., 3:30 a.m. to 7:30 a.m.), Dillon sought volunteers from those employees already scheduled to work the following first shift. Dillon did not ask Grievant to volunteer even though Grievant was scheduled to work the first shift because Grievant was on the overtime exclusion list. Dillon found one volunteer from among the scheduled first shift employees, leaving one vacancy still to be filled (Grievant's Exhibit 7).

13. To fill the final four-hour vacancy, Dillon identified the Correctional Officer B's scheduled to work the September 29 first shift, excluded those officers who were already scheduled to work overtime, and then examined the alphabetical list of Correctional Officer B's to determine who, of the scheduled first shift Correctional Officer B's, had not yet been ordered-in to work or alternately who had been ordered in least recently. Dillon noted, according to the "Correctional Officer 'B'" list, that Grievant had never been ordered in (Grievant's Exhibit 3, 7).

14. Due to Grievant's request for overtime exclusion, Dillon was unsure whether Grievant should be ordered-in to work. Dillon then telephoned Security and Operations Supervisor Wally Mariani, who confirmed that Grievant should be ordered in to work. As a result, Dillon called Grievant at his home at 10:30 p.m. and ordered Grievant to work overtime from 3:30 a.m. to 7:30 a.m., filling the second part of the third shift vacancy, prior to Grievant's scheduled first shift on September 29. Grievant did report to work at 3:30 a.m. on September 29, and worked until 3:30 p.m. that day (Grievant's Exhibit 7).

15. The practice followed by Dillon leading to the ordering in of Grievant to work was consistent with the practice authorized by Mariani and Superintendent Scripture, and consistent with the practice authorized by the CCCC administration for at least the last 12 years. The practice has been that shift vacancies occurring with such short notice normally are treated as an emergency within the meaning of Article 29, Section 2, of the Contract, and within the meaning of similar provisions of previous contracts, and that employees such as Grievant, on the overtime exclusion list, are ordered in to work if there are insufficient volunteers. However, prior to Grievant being ordered in to work on September 29, 1988, at least one shift supervisor, Michael Dineen, assumed that an employee on the overtime exclusion list could not be ordered in.

16. CCCC has a minimum staffing policy requiring certain staffing levels on shifts to ensure control of potentially volatile situations at a correctional facility. Each shift is staffed to meet these minimum staffing levels. If an employee scheduled to work a shift is to be absent, the policy for at least the last 12 years

normally has been that a replacement must be found to cover this shift vacancy to ensure that minimum staffing levels are met.

17. It is not unusual at CCCC for a shift vacancy to occur due to an employee calling in sick. Oftentimes, vacancies are filled by volunteers.

18. There were occasions when Richard Turner was Superintendent where shift vacancies were not filled to save money due to budget constraints. There also have been times when the shift supervisor has assumed the post of a correctional officer during part of a shift because the officer had to make an emergency hospital trip. Also, there have been occasions when a shift supervisor has not filled a shift vacancy by ordering an officer in when the supervisor was unable to get a volunteer to fill the vacancy. However, this latter practice has not been authorized by the CCCC administration.

19. It has been the practice at CCCC that when a vacancy occurs on the third shift, the shift supervisor fills both four-hour slots of that vacancy before the end of the second shift.

#### OPINION

The parties having resolved the issue concerning whether the correct order-in procedure was followed herein, the remaining issue before us is whether the shift vacancy on September 28-29, 1988, was an "emergency" within the meaning of Article 29, Section 2(c) of the Contract, thereby justifying the Employer revoking Grievant's exclusion from overtime and ordering him in to work to cover the shift vacancy. The pertinent Contract language provides that the "exclusion (of any employee from consideration for overtime) may... be revoked by

the supervisor under emergency circumstances when any or all employees will be required to work".

A labor agreement must be interpreted by the common meaning of its words where the language is clear. In re Grievance of VSEA, Inc., 141 Vt. 616, 619 (1982). The cardinal principle in the construction of any contract is to give effect to the true intention of the parties. Grievance of Cronan, et al., \_\_\_ Vt. \_\_\_ (1989). Therefore, words are to be given their plain and normal meaning, except usage may vary the normal meaning of words. Id.

The common meaning of "emergency" is a "situation or occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action". American Heritage Dictionary, New College Edition, 1979. We conclude that the circumstances leading to ordering Grievant in to work to cover the shift vacancy meet this definition. As Grievant points out, the absence of employees due to illness at the correctional facility is a common occurrence and thus generally cannot be considered to be unforeseen. However, Shift Supervisor Dillon could not have foreseen on the night of September 28, 1988, that two employees scheduled to work the third shift that night would call in sick less than two hours before the beginning of the shift. Given the minimum staffing policy at the facility requiring him to secure replacements for these employees to ensure control of a potentially volatile situation at a correctional facility, and given the practice at the facility of filling vacancies in full prior to the beginning of the applicable shift, Dillon was faced with an unforeseen, serious situation demanding the immediate action of filling the shift vacancies. When Dillon was unable to fill

one of the shift vacancies through volunteers, emergency circumstances thus existed. This justified revoking Grievant's exclusion from overtime and ordering him in to work to cover the shift vacancy. We conclude that under the circumstances of this case an emergency condition existed. However, it does not follow that every shift vacancy would be considered an emergency.

The usage of the "emergency" provision of Article 29, Section 2(c) of the Contract at the facility bolsters our conclusion with respect to the meaning of emergency. The practice has been that shift vacancies occurring with such short notice normally have been treated as emergencies during the past 12 years, and that employees on the overtime exclusion list have been ordered into work if there are insufficient volunteers. While the evidence indicates that one shift supervisor assumed that an employee on the overtime exclusion list could not be ordered in, we are persuaded that the practice followed under the circumstances of this case was consistent with the practice authorized by the facility management at all times relevant and generally followed. Other exceptions to the practice, which are noted in the Findings of Fact, either are inapplicable to the circumstances of this case or were not authorized by management.

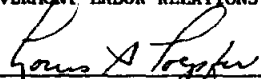



ORDERED

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

Dated this 17<sup>th</sup> day of November, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
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Louis A. Toepfer, Acting Chairman

  
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William G. Kemsley, Sr.

  
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Leslie G. Seaver