

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE EMPLOYEES)	DOCKET NO. 88-23
ASSOCIATION (Re: POST)	
ASSIGNMENTS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 2, 1988, the Labor Relations Board issued Findings of Fact, Opinion and Order in this matter, concluding that the State of Vermont, Department of Corrections ("Employer") violated the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association ("VSEA") by unilaterally changing a binding past practice at the Rutland Community Correctional Center ("RCCC") by establishing a policy where employees would be shifted from their post assignments after a certain period of time. 11 VLRB 276.

On September 30, 1988, the Employer appealed the Board decision to the Vermont Supreme Court. On October 7, 1988, the Employer filed a motion to stay the Board Order of September 2, 1988, pending appeal to the Supreme Court. On December 13, 1988, the Employer informed the Board by letter as to the reasons a stay was being requested. VSEA filed a response in opposition to the State's motion on January 3, 1989.

A hearing was held on the Employer's motion for a stay on January 5, 1989, in the Labor Relations Board hearing room before Board Members Dinah Yessne, Acting Chair; William G. Kemsley, Sr., and Louis Toepfer. Michael Seibert, Assistant Attorney General, represented the Employer. Michael Zimmerman, VSEA Staff Attorney, represented Grievant.

FINDINGS OF FACT

In addition to the Findings of Fact in the September 2 decision of the Board, which are incorporated herein by reference, we find the following facts:

There generally are 12 inmates in the high security units of RCCC. On each shift, one correctional officer supervises the 12 inmates. These inmates constitute the highest degree of management problems, as they are assaultive and approximately half of them have suicidal tendencies. The use of force by correctional officers mostly occurs in the high security units.

Officers assigned to work in the high security unit are under a great deal of stress. If they are assigned to high security for too long, they may become callous and generally ineffective in dealing with the inmates. The American Correctional Association has accepted as a standard that high security positions be rotated on a regular basis. While many officers voluntarily agree to be transferred from a high security post to another post, some officers do not want other officers to think they were "driven out" by the inmates or do not recognize that they are ineffective or callous and do not agree to be assigned elsewhere.

At no time during the pendency of this matter has the State conceded that a change in the post assignment procedure is a proper subject for collective bargaining, nor has the Secretary of Administration requested mid-term bargaining on the issue pursuant to 3 VSA §982.

OPINION

The Employer contends that the Board, by ordering the Employer to rescind its policy of shifting employees from their post assignments after a certain period of time, has taken away the Employer's necessary ability to reassign employees for safety and security reasons until the next collective bargaining agreement is negotiated by the State and VSEA in 1990. The State requests that the Board stay its decision because the issue is important enough that the Vermont Supreme Court should be given an opportunity to review the decision before it takes effect.

In determining whether a stay will be granted, we employ the following analysis: 1) whether the party seeking the stay will suffer irreparable harm if the stay is not granted; 2) whether issuance of the stay will substantially harm other parties; and 3) where lie the best interests of the public. Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges, 11 VLRB 1 (1988). Aff'd, Supreme Court Docket No. 87-224, April 5, 1988.

We conclude that a potential for irreparable harm to the Employer exists with respect to inability to transfer officers from high security to other posts. Given the nature of the inmate population in high security and the high degree of stress factor for officers assigned there leading to callousness or general ineffectiveness, we are persuaded that a potential for unnecessary injury to an inmate or unnecessary danger to the security of the facility exists. Potential for irreparable harm to the Employer and the best interests of the public dictate that the Employer be allowed to reassign correctional officers from high security during the pendency of the appeal of this decision.

We are not persuaded that the Employer will be irreparably harmed if the Employer is not allowed to shift other employees from their post assignments in ways contrary to past practice during the pendency of the appeal. We are not persuaded that the Board's order in this effect will substantially harm the safety and security of the facility.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The State's Motion to stay the Board Order of September 6, 1988, is GRANTED to the extent that the Employer may give effect to that portion of its policy set forth in Finding of Fact No. 11 in the September 6 Board decision dealing with high security officers, and is DENIED in all other respects.

Dated this 18th day of January, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Dinah Yessne
Dinah Yessne, Acting Chair

William G. Kemsley, Sr.
William G. Kemsley, Sr.

Louis A. Toepfer
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