

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 95-33
MAURICE CERUTTI)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On May 23, 1995, Maurice Cerutti ("Grievant"), Civil Engineering Project Supervisor with the Structures Division of the State Agency of Transportation, filed a grievance with the Vermont Labor Relations Board. Therein, Grievant alleged that the State had violated Article 50 of the collective bargaining agreement between the State and the Vermont State Employees' Association ("VSEA") for the Non-Management Unit, effective for the period July 1, 1994, to June 30, 1996 ("Agreement"), by including March 6, 1995, in the pay period which began on February 21, 1995, rather than ending the pay period on March 5, 1995.

A hearing was held before Catherine Frank, Acting Chairperson; Leslie Seaver and Carroll Comstock on September 28, 1995. Grievant represented himself. Michael Seibert, General Counsel for the State Department of Personnel, represented the State. The parties did not file post-hearing briefs.

FINDINGS OF FACT

1. Prior to June 1, 1994, state employees were paid on every other Thursday for a two week payroll period. This meant there were 26 or 27 pay periods per year. In January, 1994, the State and the VSEA reached a tentative agreement to change the pay system effective June 1, 1994, so that employees would be paid twice monthly, or 24 times per year. During negotiations, VSEA negotiators expressed a

concern that the new pay system needed to provide that employees were paid for at least the same number of days per pay period as was the case under the existing system.

2. On January 14, 1994, the State and VSEA entered into an agreement which provided in pertinent part as follows:

1. Effective June 1, 1994, the State may implement a semi-monthly payroll system, for any salary payments due to be made on or after the effective date, under which employees shall be paid at least twice per month, unless paid earlier in accordance with the provisions of the system. Switching to this payroll system shall not reduce employees' annual pay or benefits.

2. The payments received in each pay check under the semi-monthly payroll system shall not be less than the payments for the normal number of work days under the current biweekly payroll system.

3. A general outline of details on pay dates, pay periods and employee deductions are referenced conceptually in the attached Appendix A. Final contract language necessary to integrate this Agreement into the contracts for all bargaining units will be reviewed and signed off as expeditiously as practical prior to June 1, 1994.

4. The agreement of the parties to implement a semi-monthly payroll system shall be effective upon the occurrence of . . . (r)atification of this Tentative Agreement by all bargaining units in conjunction with ratification of revised collective bargaining agreements with all bargaining units prior to June 1, 1994 . . .

(Grievant's Exhibit 2, page 1)

3. Appendix A, attached to the agreement, provided in pertinent part:

1. Pay Dates

Employees shall be paid on the first and sixteenth day of each month, except if those dates fall on a Saturday, a Sunday, or a day observed as a legal holiday. If a pay date falls on a Saturday, a Sunday or the day observed as a legal holiday, the preceding weekday shall be the pay date . . .

2. Pay Periods

Pay periods shall end on the 5th and 20th of each calendar month. Work performed during the pay period ending on the 5th of each month shall be paid on the pay date which falls on the 16th of that month. Work performed during the pay period ending on the 20th of each calendar month shall be paid on the pay date which falls on the 1st of the next month.

...

(Grievant's Exhibit 2, page 2).

4. During negotiations, the State developed charts for pay periods between June 1, 1994, and June 30, 1996, detailing the respective dates of each pay period. The first chart developed by the State included a pay period running from February 21, 1995, to March 5, 1995. This would have resulted in the bulk of state employees being paid for only 9 days during that period due to February being a short month. This meant that employees would have received pay for less days for that pay period than under the existing system, under which the bulk of employees received pay for 10 days each payroll period. After VSEA negotiators expressed concern that each employee receive pay under the new system for at least the same number of days per pay period as under the old system, the State revised the chart to accommodate VSEA's concern. The revised chart, which VSEA approved, provided for a pay period running from February 21, 1995, to March 6, 1995. This meant that the state employees would be paid for 10 days during that period, rather than the nine days provided for in the earlier chart (State's Exhibit 1).

5. At some point prior to May 20, 1994, in conjunction with a ratification vote on a successor collective bargaining agreement to the existing agreement, VSEA submitted the tentative agreement on the changed pay system to

the VSEA membership for approval. The membership ratified the change in the pay system. Maurice Cerutti v. Agency of Administration, State of Vermont and Vermont State Employees' Association, 17 VLRB 95, 98 (1994).

6. The final language agreed to by the VSEA and the State on the new pay system is incorporated into the 1994-1996 collective bargaining agreement ("Agreement"). Article 50 of the Agreement provides in pertinent part as follows:

Effective June 1, 1994, the State may implement a semi-monthly payroll system, for any salary payments due to be made on or after the effective date, under which employees shall be paid at least twice per month, unless paid earlier in accordance with the provisions of the system. Switching to this system shall not reduce employees' annual pay or benefits.

The payments received in each pay check under the semi-monthly payroll system shall not be less than the payments for the normal number of work days under the current biweekly payroll system.

A general outline of details on pay dates, pay periods and employee deductions are referenced conceptually below.

1. Pay Dates

Employees shall be paid on the first and sixteenth day of each month, except if those dates fall on a Saturday, a Sunday, or a day observed as a legal holiday. If a day falls on a Saturday, a Sunday, or the day observed as a legal holiday, the preceding weekday shall be the pay date . . .

2. Pay Periods

Pay periods shall end on the 5th and 20th of each calendar month. Work performed during the pay period ending on the 5th of each month shall be paid on the pay date which falls on the 16th of that month. Work performed during the pay period ending on the 20th of each calendar month shall be paid on the pay date which falls on the first of the next month.

. . .

(Grievant's Exhibit 3)

7. Grievant submitted a time report for the period February 21, 1995, to March 6, 1995, which included 10 work days and a total of 80 hours of work.

Grievant was paid for 80 hours for that time period. If the payroll period had ended on March 5, Grievant would have reported 9 work days and a total of 72 hours of work (Grievant's Exhibit 4).

8. Under the old payroll system in which employees were paid every other week, Grievant was paid for 80 hours of work per payroll period.

OPINION

At issue is whether the State violated Article 50 of the Agreement between the State and the VSEA by including March 6, 1995, in the pay period which began on February 21, 1995, rather than ending the pay period on March 5, 1995. Grievant contends that this configuration of the pay period, and paying him accordingly, violated the Agreement.

A contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. In re Grievance of VSEA on Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980). The contract provisions must be viewed in their entirety and read together. In re: Stacey, 138 Vt. 68, 72 (1980).

In applying these rules of contract construction to this case, we conclude that the State did not violate Article 50 of the Contract. Article 50 provides specifically that "the payment received in each pay check under the semi-monthly payroll system shall not be less than the payments for the normal number of work days under the . . . biweekly payroll system". Grievant received 80 hours of pay for the payroll period at question here under the twice monthly payroll system, the same as he would have received under the previous payroll system in which he was paid for two weeks of work. If we were to accept Grievant's contention that the payroll period should have

ended on March 5 rather than March 6, then he would have worked 72 hours during the payroll period and been paid accordingly. This would have been contrary to the specific mandate of Article 50.

We recognize that Article 50 also provides as a "general outline", which is "referenced conceptually", that "Pay Periods shall end on the 5th and 20th of each calendar month". The qualifying language contained in this provision must be read together with the clear mandate of Article 50 that employees shall not receive less pay under the new system during a payroll period than they would have received under the old system. In reading Article 50 in its entirety, we conclude that the ending of pay periods on the 5th and 20th of each month is a general procedure which gives way if employees will receive less pay under the new system than they would have under the old system.

The general procedure gave way during the payroll period beginning February 21, 1995, when VSEA and the State agreed to include March 6, 1995, in the pay period to take into account the fact that February was a short month. Such action was consistent with Article 50 of the Agreement when read in its entirety. We thus conclude that the State committed no contract violation by including March 6, 1995, in the payroll period at issue, and paying Grievant accordingly.

Moreover, Grievant has demonstrated no adverse impact on him due to the State's action. In order for an employee to have an actionable grievance, there must be an injury in fact to a protected legal interest or the threat of an injury in fact. In re Friel, 141 Vt. 505, 506 (1982). Grievance of Boocock, 150 Vt. 422, 425 (1988). Grievant has not demonstrated any legal injury in this matter. The result of the

State's action was that he was paid half a month earlier for his March 6 work than he would have been if his construction of the contract had been followed. We fail to see how being paid earlier for work performed constituted any legal injury to Grievant.

ORDER

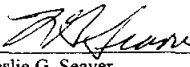
NOW THEREFORE, based on the foregoing Findings of Fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Maurice Cerutti is DISMISSED.

Dated this 20th day of October, 1995, at Montpelier, Vermont.

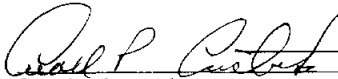
VERMONT LABOR RELATIONS BOARD



Catherine L. Frank. Acting Chairperson



Leslie G. Seaver



Carroll P. Comstock