VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
VERMONT STATE EMPLOYEES'	)	
ASSOCIATION, RICHARD FRIOT,	)	DOCKET NO. 01-8
RON PIPER, DENISE KINGSBURY,	)	
DEBRA BREER, KATHY KELLY,	)	
JOYCE WADE, ANN STEVENS AND	)	
CHARLENE GOVEA	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 8, 2001, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of itself and Department of Motor Vehicles employees Richard Friot, Ron Piper, Denise Kingsbury, Debra Breer, Kathy Kelly, Joyce Wade, Ann Stevens and Charlene Govea ("Grievants"). Therein, Grievants alleged that the Department of Motor Vehicles ("Employer") violated Article 5, Section 1; Article 15, Section 6; Article 17, Sections 1(b) and (c), 2(b) and 3; and Articles 54, Section 1; of the collective bargaining agreement between the State of Vermont and the VSEA for the Non-Management Bargaining Unit, effective July 1, 1999 – June 30, 2001 ("Contract"); Agency of Administration Bulletin No. 3.4; 32 V.S.A. Section 1261; and past practice by not reimbursing employees for mileage traveled between their home and a work location other than their official duty station.

A hearing was held before Labor Relations Board Members Catherine Frank, Chairperson; Carroll Comstock and John Zampieri on October 4, 2001, in the Board hearing room in Montpelier. Special Assistant Attorney General David Herlihy represented the Employer. Michael Casey, VSEA Associate General Counsel, represented Grievants. The parties filed post-hearing briefs on October 30, 2001.

FINDINGS OF FACT

1. At all times relevant, 32 V.S.A. Section 1261has provided:

> (a) Unless otherwise provided, all persons in the employ of the state when away from home and office on official duties shall be reimbursed for expenses necessarily incurred for travel . . Nothing contained herein shall authorize payment to an administrative official or employee, except the governor, for travel between his place of residence and office, or subsistence thereat except for mileage reimbursement when an employee is called in and required to work at any time other than continuously into his or her normally scheduled shift. Compensation for subsistence, travel and other expenses occurring while conducting business for the state shall be the subject of collective bargaining as defined in section 904(a) of Title 3 . . .
>
> (b) The secretary of administration shall prescribe standards to limit reimbursement for personal expenses and to require approval of specific exceptions prior to the date of travel. These standards shall apply equally to all categories of state employees, subject to the collective bargaining agreement.

2. The constructive travel doctrine was in effect in state government prior to July 1, 1987. The constructive travel doctrine refers to commuting distance between an employee's home and his or her official station being deducted from reimbursable mileage in certain circumstances where the employee was traveling between home and a "field" work location. The constructive travel doctrine operated only in those instances when employees were authorized to begin and/or end their workdays away from their official station. Agency of Administration Bulletin 3.4, effective October 1, 1985, provided in pertinent part as follows concerning the constructive travel doctrine:

> . . .
> 2. TRANSPORTATION – GENERAL PROVISIONS
> . . .
> b. Reimbursement for Commuting Prohibited
> The payment to a state employee for travel between his place of residence and office (official duty station) is not authorized . . . See Constructive Travel . . .
> . . .
> f. Reimbursable Mileage

> Mileage may be reimbursed for the distance actually and necessarily traveled in the performance of official duties as adjusted by the Constructive Travel Limitations . . .

. . .

10. APPLYING CONSTRUCTIVE TRAVEL LIMITATIONS TO MILES TRAVELED

Employees are not eligible for mileage reimbursement for travel between residence and official duty station except for the following circumstances: (1) On a scheduled workday when an employee is authorized to travel from residence to a temporary location(s) before reporting to his/her official duty station. In this case, mileage may be reimbursed from the first temporary location of the workday to the official duty station, plus miles, if any, driven between residence and the initial duty station in excess of the normal commute. (2) When an employee is authorized to travel to a temporary location(s) from his/her official duty station, without returning to the official duty station, mileage from official duty station to the last temporary duty station may be reimbursed plus any mileage in excess of the normal commute between the last temporary location and residence.

On a scheduled workday when an employee travels directly from his/her residence to a temporary location(s) and returns to his/her residence at the end of the workday without reporting to the official duty station (office), mileage is reimbursed at: (a) the lesser of mileage between residence to first temporary location or official duty station to first temporary location and (b) the lessor (sic) of mileage between last temporary location to residence or last temporary location to official duty station. All mileage incurred between first and last temporary location is also eligible for reimbursement.

Normal commute in this section is the distance between residence and official duty station. Temporary location means temporarily performing official duties at a location other than the official duty station (State Exhibit 4).

3. In the collective bargaining agreement covering the period July 1, 1986 – June 30, 1988 ("1986-88 Contract"), the VSEA and the State abolished the constructive travel doctrine through the following language that has appeared in each collective bargaining contract between VSEA and the State since then:

> Beginning July 1, 1987, the "constructive travel doctrine" (i.e., where the normal commutation distance between an employee's home and his/her official duty station is deducted from mileage incurred in the course of business under certain

circumstances) shall be abolished. Administrative rules and policies regarding mileage reimbursement shall be modified in accordance with this Article.
(Grievants' Exhibits 1, 5; State's Exhibit 2)

4. In negotiations for the 1986-88 Contract, VSEA proposed the abolishment of the constructive travel doctrine. Members of the VSEA bargaining team expressed the view during negotiations sessions with the State's negotiators that the doctrine was unfair to employees in certain situations, such as when employees carpooled. It was discussed that an employee who normally carpooled to work had reduced commuting expenses but, if that employee had to take their own vehicle to travel to another work location other than their official duty station, the constructive travel doctrine did not recognize that the employee was incurring increased expenses. This was because the distance of the employee's normal commute would be deducted from allowable mileage reimbursement even though that employee often would not have driven those miles but for having to travel to a temporary work location.

5. In agreeing to abolish the constructive travel doctrine, the parties understood that an employee traveling between home and a temporary work location, without stopping at their office or other official duty station, would receive mileage reimbursement between home and the temporary location. The parties further understood that an employee's official duty station referred to the employee's office or other physical place to which they normally reported for duty. There was no discussion during negotiations that an employee's official duty station had an expansive meaning of encompassing the town or city in which the employee worked.

6. Since July 1, 1987, the practice at the Department of Prevention, Assistance, Transition and Health Access and its predecessor, the Department of Social

Welfare, has been that an employee receives mileage reimbursement for traveling between home and a temporary work location as long as they do not stop at their official station. This includes when the employee travels through the municipality in which their official station is located. Employees of the Department of Labor and Industry also have received mileage reimbursement in such situations.

7. The Secretary of Administration has revised Agency of Administration Bulletin 3.4 at various times. Effective September 14, 1987, Secretary of Administration Thomas Menson revised Agency of Administration Bulletin 3.4 to provide in pertinent part:

> 2(b) Reimbursement for Mileage
> All state employees are entitled to be reimbursed for the use of a privately owned vehicle at a rate per mile as set by the State Employees Bargaining Agreement . . . Reimbursement shall be based on all miles actually and necessarily traveled in the performance of official duties, except that miles traveled between an employee's home and office (duty station) shall not be reimbursed unless an employee is called in under the "Call-in" provision of the State Employees Bargaining Agreement or is required to make multiple trips from home to office on the same day for work beyond the normal work schedule (Grievants Exhibit 9).

8. 1979, 1985 and 1987 versions of Bulletin 3.4 contained the following provision:

> Assignment of Official Duty Station
> Official duty stations shall be set by the appointing authority for all categories of state employees. That station should be where the employee performs most of his/her official duties . . .
> (State Exhibits 3, 4; Grievants Exhibit 9)

9. Secretary of Administration Kathleen Hoyt revised the 1987 version of Bulletin 3.4 effective July 1, 1999. The above-cited provision on "Assignment of Official Duty Station" was revised to provide:

> **Assignment of Official Duty Station** – Appointing authorities shall establish an official duty station for each employee. A work station shall be the town or city

where the employee has been assigned to perform most of his/her official duties . . . (State Exhibit 5)

10. There were no negotiations with VSEA over this revision to Bulletin 3.4 concerning the meaning of official duty station.

11. Effective November 1, 2000, the Department of Motor Vehicles implemented a new policy entitled "Mileage Reimbursement and Overtime". The policy provides in pertinent part:

> All employees who use their private vehicles to travel on Department business will use the most direct or economical route, whenever possible. In cases where an employee starts his/her trip from home and travels through his/her official duty station, reimbursable mileage and, paid work time if applicable, will begin at the official duty station. In this case, traveling through will include passing by the official duty station on the Interstate highway system, state highway, etc., so long as the most direct route passes through the municipality in which the assigned duty station is located. According to Administrative Bulletin 3.4, the miles traveled between an employees home and his/her official duty station <u>will not</u> be reimbursed unless:
>
> > 1. the employee is called-in under the official Call-In provision of the State Employees Bargaining Agreement,
> > or
> > 2. the employee is <u>required</u> to make <u>multiple trips</u> from home to his/her official duty station on the same day for work beyond the normal work schedule.
>
> Example 1: Jane Doe lives in Burlington and her official duty station is Montpelier. Jane is scheduled to travel, in her own vehicle, to Springfield, VT for DMV business. Since Jane passes near her duty station on her way to Springfield, Jane can claim and be reimbursed for mileage from Montpelier to Springfield and the return trip to Montpelier. . .
> (Grievants Exhibit 7, emphasis in original)

12. Grievant Ron Piper has lived in Elmore, Vermont, at all times relevant. He has worked for the Employer for 12 years as an Examiner, trainer and administrative assistant. Piper generally works in the Examiner's office in the Employer's central office, located at 120 State Street in Montpelier. He frequently is assigned to travel to offices the

Employer has throughout the state, such as Newport, Springfield, Rutland, Burlington, Colchester, Saint Johnsbury and Bennington. He is required to arrive at these temporary work locations by the normal beginning of his workday. He is not required to stop at the Montpelier office when traveling. Piper has used his own car for several years when traveling to these temporary work locations.

13. Prior to the new mileage reimbursement policy implemented by the Employer, Piper for several years had claimed and received reimbursement for all miles traveled from his home to work locations throughout the state, even when he traveled through Montpelier enroute to the work locations, as long as he did not stop at his Montpelier office. Piper's supervisor knew of, and did not question, Piper's practice of claiming all miles between home and temporary work locations.

14. Grievant Charlene Govea has worked as an Examiner at the Employer's central office in Montpelier for two and one-half years. She lives in Middlesex, Vermont. At times she is assigned to travel to offices the Employer has throughout the state and arrive there by the start of the workday. She is not required to stop at the Montpelier office when traveling. She has used her own car in traveling to these temporary locations.

15. Prior to the new mileage reimbursement policy, Govea received reimbursement for all miles traveled from her home to work locations throughout the state, even when she traveled through Montpelier enroute to the work locations, as long as she did not stop at the Montpelier office. Govea was instructed by her supervisor to claim mileage reimbursement for all miles between home and temporary work locations.

16. Grievant Joyce Wade has been a Customer Service Representative with the Employer for 10 years. She normally works at the Employer's central office in

Montpelier. She lives in Graniteville, Vermont. At times she is assigned to travel to other offices the Employer has in the state, including Burlington. She drives in her own car through Montpelier on the Interstate when she travels to Burlington from home. She is not required to stop at the Montpelier office when traveling to Burlington. Prior to the new mileage reimbursement policy, Wade received reimbursement for all miles traveled from her home to the temporary work location in Burlington.

17. After the Employer implemented the new mileage reimbursement policy, Piper, Govea and Wade were instructed by their supervisors that they could no longer claim mileage from home to temporary assignments when traveling to assignments that required them to drive through Montpelier to reach. They were told that they could only claim mileage from Montpelier in such situations. Since the implementation of the new policy, they have received mileage reimbursement only from Montpelier in these situations. They have continued to receive mileage reimbursement between home and temporary assignments when traveling to assignments that do not require them to drive through Montpelier.

18. Prior to the implementation of the new mileage reimbursement policy, some other employees of the Employer received mileage reimbursement between home and temporary assignment when traveling to assignments that required them to drive through Montpelier to reach. Other employees of the Employer were not receiving mileage reimbursement in such situations. The Employer implemented the new policy to seek to have uniformity in these situations.

OPINION

Grievants contend that the new mileage reimbursement policy implemented by the Employer violates the Contract abolition of the constructive travel doctrine. Article 54 of the Contract provides that "the 'constructive travel doctrine' (i.e., where the normal commutation distance between an employee's home and his/her official duty station is deducted from mileage incurred in the course of business under certain circumstances) shall be abolished."

The mileage reimbursement policy provides that, in cases where an employee traveling to a temporary work location starts his or her trip from home and travels through his or her official duty station enroute to the temporary work location, reimbursable mileage begins at the official duty station. On return trips from the temporary work location to home, reimbursable mileage ends when the employee travels through the official duty station under the policy. The policy indicates that "traveling through" includes passing by the official duty station on the Interstate highway system or other highway so long as the most direct route passes through the municipality in which the assigned duty station is located.

Grievants contend that reimbursable mileage in these circumstances should begin and end at the employee's home, not the employee's official duty station. In determining whether the Employer's policy violates the contractual abolition of the constructive travel doctrine, we follow the rules of contract construction developed by the Vermont Supreme Court.

A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). If clear and unambiguous, the

provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Swett v. Vermont State Colleges, 141 Vt. 275 (1982). Extrinsic evidence under such circumstances is inadmissible as it would alter the understanding of the parties embodied in the language they chose to best express their intent. Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981).

However, resort to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language is appropriate if sufficient ambiguity exists in the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Where the disputed language is sufficiently ambiguous, it is the duty of judicial or quasi-judicial bodies to construe a contract so as to ascertain the true intention of the parties. Grievance of Gorruso, 150 Vt. 139, 143 (1988). In such circumstances, it is appropriate to look to the extrinsic evidence of past practice and bargaining history to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract. Grievance of Majors, 11 VLRB 30, 35 (1988).

In applying these standards here, we conclude it is necessary to look to extraneous circumstances of usage of the terms “constructive travel” and “official duty station”, as well as examine extrinsic evidence of bargaining history and past practice, to ascertain the true intention of the parties when negotiating the contract language. Since Grievants' central claim in this matter is that the Employer is inappropriately reinstating the constructive travel doctrine, it is important to know what constitutes the constructive travel doctrine. The constructive travel doctrine refers to commuting distance between an employee’s home and his or her official station being deducted from reimbursable mileage where the employee was traveling between home and a “field” work location.

Grievance of Ray, 13 VLRB 67, 79-80 (1991). The constructive travel doctrine operated only in those instances when employees were authorized to begin and/or end their workdays away from their official station. Id. at 80.

Since entitlement to reimbursable mileage depends on whether an employee is traveling from or to their official duty station, it is necessary to understand the meaning of official duty station in state government. Grievants contend that an employee's official duty station refers to the employee's office or other physical place to which the employee normally reports for duty. The Employer contends that official duty station encompasses the municipality in which the employee works.

In cases decided shortly before the State and VSEA negotiated the contract language concerning abolition of the constructive travel doctrine, the Board defined official station as "the place where an employee performs the majority of his/her job duties in a given year, the physical place to which he/she normally reports to work". Grievance of Beyor, 5 VLRB 222, 234 (1982). Grievance of Crilly, 7 VLRB 233, 242 (1984). Thus, Grievants' definition more accurately reflects the usage of the term "official duty station" in state government than does the Employer's definition. It must be presumed that the parties had this definition in mind when they negotiated the contract language at issue in this case.

The understanding of the constructive travel doctrine and the meaning of the term "official duty station" significantly informs our decision as to what the parties understood and intended when they abolished the constructive travel doctrine in negotiation of the 1986-1988 contract. The parties understood that an employee traveling between home and a temporary work location, without stopping at their official duty

station, would receive mileage reimbursement between home and the temporary location. The parties further understood that an employee's official duty station referred to the employee's office or other physical place to which they normally reported for duty.

Given these understandings of the parties, we conclude that, in negotiating the abolition of the constructive travel doctrine, the parties intended that employees would receive mileage reimbursement for traveling between home and temporary work location, when they had to travel through the municipality in which their official station is located enroute to or returning from the temporary work location, as long as they did not stop at their official station. If we were to rule otherwise, we would be ignoring the context in which the parties' negotiations occurred and disregarding the understood meanings of the words they used in the contract.

We are not persuaded by the Employer's contention that an employee's official station had an expansive meaning of encompassing the town or city in which the employee worked. First, such a definition is at odds with Board decisions to the contrary. Also, there was no discussion during negotiations leading to the contract language at issue that an employee's official duty station had an expansive meaning of encompassing the town or city in which the employee worked. Further, the definition advanced by the Employer did not appear until 1999 when the Secretary of Administration revised Bulletin 3.4, more than thirteen years after the abolition of the constructive travel doctrine was negotiated.

The 1999 revision of Bulletin 3.4, defining a "work station" as "the town or city where the employee has been assigned to perform most of his/her official duties", cannot take precedence over the terms of the collective bargaining contract. Bulletin 3.4 was

unilaterally revised by the State without negotiations with VSEA. Employment rules and regulations promulgated by the employer concerning a particular condition of employment are superseded by the collective bargaining contract where the contract addresses the same issue that is covered by the employer policy. Grievance of Graves, 147 Vt. 519, 522-23 (1986).

Also, the evidence presented to us on practices in state government subsequent to the negotiation of the contract language at issue does not assist the Employer's case. Evidence was introduced of consistent practices in two departments of the State that employees receive mileage reimbursement for traveling between home and temporary work location, when they have to travel through the municipality in which their official station is located, as long as they do not stop at their official station. The employing department itself, the Department of Motor Vehicles, had inconsistent practices, as some employees received mileage reimbursement in these situations and other employees were not reimbursed. On balance, the evidence on past practices lends support to a conclusion that the parties intended that employees would receive mileage reimbursement in the situations sought by Grievants.

Nonetheless, the Employer contends that 32 V.S.A. Section 1261 precludes Grievants' claims. Section 1261 provides in pertinent part that "nothing . . . shall authorize payment to an . . . employee . . . for travel between his place of residence and office". The Employer contends that the only reasonable interpretation of "office" is to read it as "the vicinity of the regular work place". We disagree that Section 1261 defeats this grievance. In providing that an employee may not receive payment for travel between the employee's place of residence and "office", the statute provides that an employee

may not receive mileage reimbursement for the employee's normal commute between their home and official duty station. It is not reasonable to give Section 1261's use of the word "office" the expansive meaning advanced by the Employer.

Section 1261 does not address the situation that is at issue in this grievance – whether the employee receives mileage reimbursement when not doing the normal commute, but instead is traveling through the municipality in which the employee's official duty station is located enroute to, or returning from, a temporary work location. Instead, this is a matter for collective bargaining. The VSEA and State addressed this issue in negotiating the abolition of the constructive travel doctrine. Any changes in how this issue should be resolved also have to be the product of collective bargaining.

In sum, we conclude that the mileage reimbursement policy implemented by the Employer violates the provision of Article 54 of the Contract abolishing the constructive travel doctrine. As a remedy, we conclude that the Employer should rescind the mileage reimbursement policy and reimburse the named Grievants for mileage they traveled between home and temporary work location, when they had to travel through the municipality in which their official station is located enroute to or returning from the temporary work location, as long as they did not stop at their official station.

Grievants further seek a remedy on behalf of unnamed similarly situated employees who have been adversely affected by the Employer's mileage reimbursement policy. We believe that to grant a remedy to unnamed employees would not be appropriate since they have not joined in the grievance. Generally, 3 V.S.A. Section 1002(d) prevents us from including similarly situated employees in the grievance absent actual appeals by named and identified employees. Grievance of Beyor, 5 VLRB 222,

232 (1982). The statute appears designed to avoid the complexities of class actions, allowing the Board to act only when specific employees are aggrieved by the same action of the employer. Id.

The Board recognized an exception to this rule in a case where affected employees were a potentially large number of employees scattered throughout the state, whose identity could not be easily ascertained by the union within the time allowed to grieve. Grievance of VSEA (Re: Compensatory Time Credit), 11 VLRB 300 (1988). Here, an exception to the general rule is not appropriate since Grievants have presented no evidence demonstrating that the identity of affected employees could not be identified within the time allowed to grieve.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The Grievance of the Vermont State Employees' Association and Department of Motor Vehicles employees Richard Friot, Ron Piper, Denise Kingsbury, Debra Breer, Kathy Kelly, Joyce Wade, Ann Stevens and Charlene Govea is sustained;

2. The Department of Motor Vehicles shall rescind the mileage reimbursement policy it implemented effective November 1, 2000; and

3. The Department of Motor Vehicles shall reimburse Richard Friot, Ron Piper, Denise Kingsbury, Debra Breer, Kathy Kelly, Joyce Wade, Ann Stevens and Charlene Govea for mileage they traveled between home and temporary work location, when they had to travel through the municipality in

which their official station is located enroute to or returning from the temporary work location, as long as they did not stop at their official station, during the effective period of the above-cited mileage reimbursement policy.

Dated this 20th day of December, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

_____

Catherine L. Frank, Chairperson

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Carroll P. Comstock

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John J. Zampieri