

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF VERMONT STATE	)	
EMPLOYEES' ASSOCIATION,	)	DOCKET NO. 12-45
GIBNEY, MYERS, AND JACOBS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

The Vermont State Employees' Association ("VSEA") filed a grievance on December 13, 2012, on behalf of itself, Department of Public Safety employees Jennifer Gibney, Heather Myers and Julie Jacobs ("Grievants"), and "all similarly situated employees" Therein, Grievants contend that the State of Vermont Department of Public Safety ("State") violated Article 25 of the collective bargaining agreement between the State and VSEA for the Non-Management Unit, and Article 29 of the collective bargaining agreement for the Supervisory Unit, in effect for the period July 1, 2012 to June 30, 2014 ("Contracts"), by not paying Grievants weekend differential compensation for overtime they worked on weekend shifts on their regularly scheduled days off.

On April 4, 2013, the State filed a motion to strike the grievance to the extent it refers to, and requests relief for, "similarly situated employees". Grievants filed a memorandum in opposition to the State's motion to strike on April 15, 2013. The State filed a reply to Grievants' opposition to the motion to strike on April 30, 2013. The Board did not rule on the motion prior to, or at, the hearing on the merits.

The Labor Relations Board conducted a hearing on the merits in the Board hearing room in Montpelier on May 9, 2013, before Board Members Richard Park, Chairperson; Alan Willard and Edward Clark, Jr. Michael Casey, VSEA General

Counsel, represented Grievants. Lindsay Browning, Assistant Attorney General, represented the State. The parties filed post-hearing briefs on May 23, 2013.

The State filed a reply brief to Grievants' brief on June 10, 2013. We have not considered this reply brief in deciding this matter. Section 12.16 of Board *Rules of Practice* prohibits the filing of a reply memorandum by a party after the mutually agreed upon deadline for filing briefs.<sup>1</sup> Further, we note that the Board as a matter of practice for more than 20 years has not allowed parties to file reply briefs after merits hearings.<sup>2</sup>

### FINDINGS OF FACT

1. The Shift and Weekend Differential articles of the Contracts provide in pertinent part as follows:

...

5. A "weekend shift" includes any regularly assigned shifts beginning on or after 10 pm Friday night and excludes any other shift beginning on or after 10 pm Sunday night.
6. Employees who actually work on a weekend shift, pursuant to regular assignment, including employees who do not self-activate or self-schedule, shall effective the first pay period in July 2001, receive a weekend differential of thirty-five cents (\$.35) per hour on any weekend shift. Effective the first pay period in July 2002, the weekend differential will increase to forty cents (\$.40) per hour. Employees not regularly assigned to a weekend shift but work overtime then, shall not receive weekend differential. Weekend differential will be added to any other shift differential and to the basic hourly rate before cash overtime is computed.

...

(Grievants Exhibits 1, 2; State Exhibit 1)

2. Weekend differential compensation was originally negotiated as part of the collective bargaining agreement between the State and VSEA for the Corrections bargaining unit covering the period 1988 - 1990. Weekend differential compensation also

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<sup>1</sup> Grievance of United Academics, AAUP/AFT (Re: Clinical Assistant Professors of Nursing), 31 VLRB 88, 114-115 (2010).

<sup>2</sup> Grievance of Dwire, 31 VLRB 1, 3 (2010).

was provided for corrections supervisors under the 1988-1990 collective bargaining agreement for the Supervisor Unit; all other supervisors in the unit did not receive such compensation until the agreement effective 1999 – 2001 and it has been included in all subsequent contracts. Weekend differential compensation was first incorporated into the collective bargaining agreement for the Non-Management unit effective 1999 - 2001, and has been included in all subsequent contracts. The contract language on weekend differential compensation has not changed substantively since 1988, except for changes in the monetary amount of weekend differential compensation (Grievants Exhibits 3, 4, 5, 6).

3. The State Department of Public Safety is responsible for administering dispatch services, including 9-1-1 services, throughout Vermont. There are four Public Safety Answering Points (“PSAPs”) in the state. They are located geographically to serve the four quadrants of the state. They are located in Derby (Northeast), Williston (Northwest), Rutland (Southwest) and Rockingham (Southeast). Each location is supervised by its own PSAP Administrator, who reports to a State Police Captain for that area. Dispatchers of various levels staff the PSAPs twenty fours a day, 365 days a year. Dispatchers answer calls from the public; transmit information from these calls to State and local police, fire and other emergency response personnel; and coordinate communications among the various emergency response agencies.

4. The Derby PSAP, for at least the last eleven or twelve years, has maintained regularly-assigned shifts to which all dispatchers are assigned to work. These shifts consist of: 1) a morning shift from 7 a.m. to 3 p.m., 2) an evening shift from 3 p.m. to 11 p.m.; and 3) a night shift from 11 p.m. to 7 a.m. These regularly assigned shifts

occur on weekdays and weekends. The Derby PSAP has four “pods” that are continuously staffed, with the exception of the 11 p.m. to 7 a.m. shift, when three of the pods are staffed. Each pod covers a geographic area within the Derby PSAP’s region of responsibility.

5. Shift vacancies frequently occur due to dispatchers being on vacation, sick leave or other types of leave. There are three supervisors in the Derby PSAP who are responsible for creating the monthly schedule, and for ensuring that holes in the schedule are filled so that shifts are fully staffed. Dispatchers are required to submit leave requests by the 15<sup>th</sup> of each month so that the following month’s schedule can be completed. Supervisors assign dispatchers to fill holes in the schedule caused by other dispatchers’ leave usage.

6. When filling holes in the schedule, supervisors assign dispatchers to work one of the eight hour shifts described above, or assign dispatchers to work a four hour shift, consisting of either the first four hours or the last four hours of one of the established eight hour shifts.

7. Grievant Jennifer Gibney has been employed in the Derby PSAP since 2002. She was Emergency Communications Dispatcher for the first three years of her employment, and was promoted to her current position of PSAP Supervisor in 2005. She is in overtime category 11, resulting in her receiving overtime compensation at the rate of one and one-half her regular hourly rate for all hours worked in excess of eight in any workday or forty in any workweek. She is a member of the Supervisory Unit represented by VSEA.

8. As a PSAP Supervisor, Gibney performs dispatching duties and also has supervisory responsibilities. Her supervisory duties include supervising dispatchers in their daily duties, writing performance evaluations, reviewing timesheets for accuracy, and submitting completed payroll documents to her immediate supervisor, Jane Berry, the Derby PSAP Administrator. Gibney shares supervisory responsibilities with two other supervisors.

9. Gibney has been regularly assigned to work a weekend shift throughout her work tenure in Derby. Since approximately 2005, her schedule has been to work Sunday and Monday from 3 p.m. to 11 p.m.; and Tuesday, Wednesday and Thursday from 7 a.m. to 3 p.m. Friday and Saturday are her regularly scheduled days off.

10. Since she began working at the Derby PSAP in 2002, Gibney has always claimed weekend differential compensation for all shifts she has worked that begin between the hours of 10 p.m. Friday night and 10 p.m. Sunday night. When Gibney has been assigned to fill a weekend hole in the schedule, and has worked a four hour or eight hour overtime shift, she always has coded her timesheet to claim both overtime compensation and weekend differential compensation. Gibney learned to code her timesheets to claim such weekend differential from supervisors and dispatchers who trained her. The State paid Gibney weekend differential compensation for all such shifts, in addition to time and one-half overtime compensation, until October 2011 (Grievants Exhibit 7, 9, 10; State Exhibit 4).

11. On Saturday, July 28, 2012, Gibney was assigned to work an overtime shift from 7 a.m. to 3 p.m. on her regularly scheduled day off to fill a shift vacancy. When submitting her timesheet for the pay period covering this shift, she coded it to

receive both weekend differential compensation and overtime compensation (Grievants Exhibit 9, p.48).

12. Shortly after Gibney submitted her timesheet, Derby PSAP Administrator Jane Berry advised Gibney that Jacinthe Pellerin, the payroll coordinator who processes payroll for the Department of Public Safety, had removed eight hours of weekend differential compensation for the July 28 shift worked by Gibney. Berry also forwarded Gibney an email from Pellerin indicating removal of the weekend differential compensation. Gibney did not receive weekend differential compensation for July 28. This was the first time Gibney had been notified that she was not entitled to weekend differential compensation in situations where she worked overtime on a regularly scheduled day off, although there had been other occasions since the fall of 2011 of which Gibney was unaware where Pellerin had removed weekend differential compensation from her timesheets in such situations (Grievants Exhibit 8, 9).

13. Grievant Heather Myers was employed as a dispatcher in Derby for more than 27 years until she retired on December 31, 2012. She was in overtime category 11 prior to retirement, and was a member of the Non-Management Unit represented by VSEA. Myers served as a training officer; in this role she trained new dispatchers. She also was a Senior Dispatcher; in this role she performed some supervisory responsibilities over other dispatchers when a PSAP Supervisor was not present.

14. Myers was regularly assigned to work a weekend shift throughout most of her career. During the last ten years of her employment, her schedule was to work Tuesday through Saturday from 7 a.m. to 3 p.m. Sunday and Monday were her regularly scheduled days off.

15. Since the weekend differential contract language was added to the collective bargaining agreement for the Non-Management Unit in 1999, Myers always claimed weekend differential compensation for all shifts she worked that began between the hours of 10 p.m. on Friday night and 10 p.m. Sunday night. When Myers was assigned to fill a weekend hole in the schedule, and worked a four hour or eight hour overtime shift, she always coded her timesheet to claim both overtime compensation and weekend differential compensation. She learned to code her timesheets in this manner from supervisors and dispatchers who trained her. The State paid Myers weekend differential compensation for all such shifts, in addition to time and one-half overtime compensation, until November 2011 (Grievants Exhibit 9, p.65-79; State Exhibit 4).

16. On Sunday, July 22, 2012, Myers was assigned to work overtime from 3 a.m. to 7 a.m. on her regularly-scheduled day off to fill a shift vacancy. When submitting her timesheet for the pay period covering this shift, she coded it to receive both weekend differential compensation and overtime compensation (Grievants Exhibit 9, p.77).

17. Shortly after Myers submitted her timesheet, Berry advised Myers that Pellerin had removed four hours of weekend differential compensation for the July 22 shift worked by Myers. Myers did not receive weekend differential compensation for July 22. This was the first time Myers had been notified that she was not entitled to weekend differential compensation in situations where she worked overtime on a regularly scheduled day off, although there had been other occasions beginning in November 2011 where Pellerin had removed weekend differential compensation from her timesheets in such situations (Grievants Exhibit 9, p.72-77).

18. Grievant Julie Jacobs has been employed as a dispatcher in Derby for approximately 16 years. She is a Senior Dispatcher, and as such substitutes for PSAP supervisors when they are absent. She is in overtime category 11, and is a member of the Non-Management Unit represented by VSEA.

19. Jacobs was regularly assigned to work multiple weekend shifts throughout most of her career. Jacobs always received weekend differential compensation during the years she was assigned to work multiple weekend shifts. In January 2012, her schedule changed to regularly work Sunday through Thursday from 7 a.m. to 3 p.m. Friday and Saturday became her regularly scheduled days off.

20. Since her schedule changed in January 2012, Jacobs continued to claim weekend differential compensation for all shifts she worked that begin between the hours of 10 p.m. Friday night and 10 p.m. Sunday night. When Myers was assigned to fill a weekend hole in the schedule, and worked a four hour or eight hour overtime shift, she always coded her timesheet to claim both overtime compensation and weekend differential compensation (Grievants Exhibit 7, 9, p. 55-58).

21. On Saturday, July 21, 2012, Jacobs was assigned to work overtime from 3 p.m. to 7 p.m. on her regularly-scheduled day off to fill a shift vacancy. On Saturday, July 28, 2012, Jacobs again was assigned to work overtime from 11 a.m. to 7 p.m. on her regularly-scheduled day off to fill a shift vacancy. When submitting her timesheet for the pay period covering these shifts, she coded it to receive both weekend differential compensation and overtime compensation for the July 21 and 28 shifts (Grievants Exhibit 9, p.58).



22. Shortly after Jacobs submitted her timesheet, Berry advised Jacobs that Pellerin had removed four hours of weekend differential compensation for the July 21 shift worked by her, and removed eight hours of such compensation for the July 28 shift she had worked. Jacobs did not receive weekend differential compensation for July 21 or July 28. This was the first time Jacobs had been notified that she was not entitled to weekend differential compensation in situations where she worked overtime on a regularly scheduled day off, although there had been other occasions since January 2012 where Pellerin had removed weekend differential compensation from her timesheets in such situations (Grievants Exhibit 9, p.55, 57, 58).

23. During the period from January 2009 through mid-July 2012, Department of Public Safety dispatchers worked overtime on a weekend shift which was their regular day off on approximately 661 instances. Some of these dispatchers were not regularly assigned to work any weekend shift, while other dispatchers were regularly assigned to work one weekend shift. On 510 of these occasions, dispatchers did not receive weekend differential compensation. In 151 instances, dispatchers received weekend differential compensation. Most of the dispatchers who received weekend differential compensation on these occasions worked in either the Rutland or Derby PSAPs (State Exhibits 4, 5).

24. Jacinthe Pellerin has been payroll coordinator for the Department of Public Safety since March of 2010. She developed Reporting Time Instructions by late May 2010. Page 39 of these instructions provided: "A weekend shift includes any **regularly assigned** shifts beginning on or after 10 pm Friday night and excludes any other shift beginning on or after 10 pm Sunday night. **Employees not regularly assigned to a weekend shift but work overtime then, shall not receive weekend differential.**"

Pellerin sent this portion of the instructions to PSAP administrators in the fall of 2011 or the spring of 2012 after she noticed that some dispatchers were coding their timesheets for weekend differential compensation on their regularly scheduled days off (State Exhibit 3, emphasis in original).

25. It has been the practice of the State that if an employee works overtime hours in excess of his or her regular schedule immediately before or after his or her regularly assigned weekend shift, then the employee receives weekend differential compensation due to the overtime work being contiguous to the regularly assigned weekend shift. The State understands that this practice is consistent with the provisions of the federal Fair Labor Standards Act.

#### OPINION

Grievants, all of whom are regularly assigned to work weekend shifts as part of their normal workweek, contend that they are entitled to weekend differential compensation when they work extra weekend shifts on their regularly scheduled days off. The applicable Shift and Weekend Differential articles of the Contracts provide in pertinent part as follows:

- ...
5. A “weekend shift” includes any regularly assigned shifts beginning on or after 10 pm Friday night and excludes any other shift beginning on or after 10 pm Sunday night.
  6. Employees who actually work on a weekend shift, pursuant to regular assignment, including employees who do not self-activate or self-schedule, shall effective the first pay period in July 2001, receive a weekend differential of thirty-five cents (\$.35) per hour on any weekend shift. Effective the first pay period in July 2002, the weekend differential will increase to forty cents (\$.40) per hour. Employees not regularly assigned to a weekend shift but work overtime then, shall not receive weekend differential. Weekend differential

will be added to any other shift differential and to the basic hourly rate before cash overtime is computed.

In interpreting these provisions of the Contracts, we follow the rules of contract construction developed by the Vermont Supreme Court. The cardinal principle in the construction of any contract is to give effect to the true intention of the parties.<sup>3</sup> A contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole.<sup>4</sup> The contract provisions must be viewed in their entirety and read together.<sup>5</sup> A contract will be interpreted by the common meaning of its words where the language is clear.<sup>6</sup> 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.<sup>7</sup>

Ambiguity exists where the disputed language will allow more than one reasonable interpretation.<sup>8</sup> The threshold question of whether a contract is ambiguous is a question of law.<sup>9</sup> In making this determination, we may consider evidence as to the circumstances surrounding the making of the agreement as well as the object, nature and subject matter of the writing.<sup>10</sup> Ambiguity will be found where a writing in and of itself supports a different interpretation from that which appears when it is read in

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<sup>3</sup> Grievance of Cronan, et al, 151 Vt. 576, 579 (1989).

<sup>4</sup> In re Grievance of VSEA on Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980).

<sup>5</sup> In re Stacey, 138 Vt. 68, 72 (1980).

<sup>6</sup> Id. at 71.

<sup>7</sup> Swett v. Vermont State Colleges, 141 Vt. 275 (1982).

<sup>8</sup> In re Grievance of Vermont State Employees' Association and Dargie, 179 Vt. 228, 234 (2005).

<sup>9</sup> Isbrandtsen v. North Branch Corp., 150 Vt. 575, 577 (1988). Breslauer v. Fayston School District, 163 Vt. 416, 425 (1995).

<sup>10</sup> Isbrandtsen, 150 Vt. at 578. Breslauer, 163 Vt. at 425. Grievance of Verderber and Vermont State Colleges Faculty Federation, 173 Vt. 612, 616 (2002).

light of the surrounding circumstances, and both interpretations are reasonable.<sup>11</sup> If a contract is ambiguous, extrinsic evidence may be relied upon to construe it.<sup>12</sup>

If this analysis concerning whether contract language is ambiguous results in a determination that the language is clear and unambiguous, extrinsic evidence under such circumstances should not be considered as it would alter the understanding of the parties embodied in the language they chose to best express their intent.<sup>13</sup> The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts; not to make or remake them for the parties, or ignore their provisions.<sup>14</sup> If the analysis instead leads to a conclusion that the contract language is ambiguous because the disputed language allows more than one reasonable interpretation, it is appropriate to look to the extrinsic evidence of bargaining history and past practice to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract.<sup>15</sup>

Grievants contend that the contract language is clear and unambiguous. They maintain that it clearly provides that if an employee who actually works a shift pursuant to a regular assignment that begins between the hours of 10 p.m. on Friday, and 10 p.m. on Sunday, then the employee is entitled to weekend differential pay on any weekend shift worked whether it is a regularly assigned shift or a shift on a regularly scheduled day off. Grievants also contend that the contract language is clear that if an employee

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<sup>11</sup> Isbrandtsen, 150 Vt. at 579. Breslauer, 163 Vt. at 425.

<sup>12</sup> Breslauer, 163 Vt. at 425.

<sup>13</sup> Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981).

<sup>14</sup> Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

<sup>15</sup> Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Grievance of Majors, 11 VLRB 30, 35 (1988).

who does not work a weekend shift pursuant to regular assignment, but ends up working an overtime shift on the weekend, the employee does not qualify to receive weekend differential compensation.

Grievants assert that if an employee qualifies for weekend differential pay, and the employee works a time and one-half overtime shift on the weekend, the employee receives both weekend differential pay and time and one-half overtime pay. Grievants reason that time and one-half overtime and weekend differential compensation are intended to compensate employees for two different sacrifices; overtime is to compensate employees for working more hours than the standard eight hour day or forty hour workweek, while weekend differential is to compensate them for sacrificing their weekend. Similarly, Grievants further contend that the contract language providing “(w)eekend differential will be added to any other shift differential and to the basic hourly rate before cash overtime is computed” expressly contemplates that employees who qualify for weekend differential will get both the differential and time and one-half pay when they are assigned to work on an overtime shift on the weekend.

The State also takes the position that the contract language is clear and unambiguous, but reaches a contrary conclusion as to its meaning than Grievants. The State contends that the plain meaning of the weekend differential contract language is that the parties intended an employee to receive weekend differential compensation only when working his or her regularly assigned weekend shift on a non-overtime basis. The State maintains that contract language expressly and unambiguously states that an employee who works overtime hours on a weekend shift which is not his or her regular assignment shall not receive weekend differential compensation.

In viewing the contract provisions in their entirety and reading them together to give effect to the true intention of the parties, we conclude that the contract language clearly and unambiguously provides that employees are entitled to weekend differential compensation when they work any weekend shift as part of their regular assignment. If employees are not regularly assigned to a weekend shift, but they work overtime then, it is expressly provided under the contract language that they shall not receive weekend differential. This is the only reasonable interpretation of the contract language when it is interpreted by the common meaning of its words the parties chose to express their intent.

Grievants contend that an employee is entitled to weekend differential pay on a weekend shift the employee works on a regularly scheduled day off, so long as the employee works any weekend shift that weekend pursuant to regular assignment. This is expressly contrary to the contract language that “(e)mloyees not regularly assigned to a weekend shift but work overtime then, shall not receive weekend differential.”

Further, Grievants’ reasoning that they are entitled to receive both time and one-half overtime pay and weekend differential pay when they work a weekend shift on a regularly scheduled day off, because overtime and weekend differential are intended to compensate employees for two different sacrifices, is logically flawed. Grievants contend they are entitled to overtime pay to compensate them for working more hours than the standard forty hour workweek, and weekend differential to compensate them for sacrificing their weekend. Yet, employees whom are not regularly assigned to work any weekend shift, but end up working a weekend shift, make the same two sacrifices of sacrificing their weekend and working more hours than their standard workweek, but do not receive weekend differential compensation.

If we were to accept Grievants' interpretation of the contract language, we would be concluding that the parties intended to provide both types of compensation to only one of the two groups of employees who make the same sacrifices. If the parties so intended, they would have explicitly so provided in the contract language. Their failure to do so bolsters our conclusion that Grievants are advancing an unreasonable interpretation of the contract language actually negotiated by the parties. The actual language is indicative of the parties' intent that all employees covered by the contract language would receive overtime compensation if they work more hours than their standard forty hour workweek on a weekend shift on a regularly scheduled day off for them, but that they would not receive weekend differential compensation for the same weekend shift.

Grievants point out that this interpretation of the contract language can result in an employee receiving neither overtime compensation nor weekend differential in some circumstances when they work a weekend shift on a regularly scheduled day off. This can occur if an employee takes sick leave during the week on his or her regularly assigned schedule, resulting in the employee not exceeding 40 hours for the week when the employee works a weekend shift which is not regularly assigned. The employee would not receive overtime compensation because used sick leave is not considered time actually worked for the purpose of determining eligibility for overtime compensation pursuant to the overtime articles of the Contracts. The employee also would not receive weekend differential because of working a weekend shift on a regularly scheduled day off. Nonetheless, this is the result the parties have negotiated and Grievants are not treated differently in this respect than other employees covered by the Contracts.

We further conclude that Grievants have advanced an unreasonable interpretation of the contract language providing “(w)eekend differential will be added to any other shift differential and to the basic hourly rate before cash overtime is computed.” Grievants assert that this language expressly contemplates that employees who qualify for weekend differential will get both the differential and time and one-half pay when they are assigned to work on an overtime weekend shift on their regularly scheduled day off. Instead, we conclude that, when the contract provisions are viewed in their entirety and read together, this language simply is a statement that weekend differential compensation which is part of an employee’s regular assignment will be added to the employee’s basic hourly rate to compute overtime pay for overtime worked by the employee beyond their regular assignment.

In sum, we conclude that the State has not violated the Contracts by not paying Grievants weekend differential compensation for overtime they worked on weekend shifts on their regularly scheduled days off. The pertinent contract language clearly and unambiguously provides that employees are not entitled to such compensation in these circumstances. Given our determination that the language is clear and unambiguous, we will not consider the extrinsic evidence of bargaining history and past practice to interpret the contract language as it would alter the understanding of the parties embodied in the language they chose to best express their intent.

The fact that the State at times has provided weekend differential compensation to Grievants and some other employees over the years does not support the continuance of such compensation in the face of contrary contract language. It is unfortunate the State at times so misapplied the Contracts for a substantial period of time with respect to



Grievants, resulting in Grievants understandably assuming they were entitled to such weekend differential compensation. However, a mistaken interpretation or misapplication by an employer of a provision of a contract does not justify granting employee rights to which they are not entitled by a correct interpretation of the contract.<sup>16</sup>

Grievants further contend that the State is violating the federal Fair Labor Standards Act by refusing to pay weekend differential to employees when they work overtime shifts on the weekend, and instead just paying them one and one-half times their basic hourly rate. We conclude that we do not have jurisdiction over this Fair Labor Standards Act claim of Grievants. The Board only has such jurisdiction as is conferred on it by statute.<sup>17</sup> Statutory provisions are not encompassed within the statutory definition of “grievance” unless they are incorporated into a collective bargaining agreement, rule or regulation.<sup>18</sup> Grievants have made no representations that any provisions of the Fair Labor Standards Act are incorporated into the Contracts or rules and regulations applicable to Grievants.

Thus, we dismiss this grievance. We note that it is unnecessary to rule on the State’s motion to strike the grievance to the extent it refers to, and requests relief for, “similarly situated employees”. Since we have concluded that relief is not warranted in this case, there is no need to rule on a motion concerning requested relief for similarly situated employees.

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<sup>16</sup> Grievance of Brown, et al, 20 VLRB 169, 183 (1997). Grievance of Cronan, et al, 6 VLRB 347, 355 (1983); *Reversed on other grounds*, 151 Vt. 576 (1989). Grievance of Cantarra, 1 VLRB 305 (1978).

<sup>17</sup> In re Grievance of Brooks, 135 Vt. 563, 570 (1977).

<sup>18</sup> Boynton v. Snelling, 147 Vt. 564 (1987). In re McMahon, 136 Vt. 512 (1978). Grievance of VSCSF and Laflin, 16 VLRB 276 (1993).

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of the Vermont State Employees' Association, Jennifer Gibney, Heather Myers and Julie Jacobs is dismissed.

Dated this 21st day of June, 2013, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Chairperson

/s/ Alan Willard

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Alan Willard

/s/ Edward W. Clark, Jr.

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Edward W. Clark, Jr.