

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

BERNARD WETHERBY

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DOCKET NO. 82-31

FINDINGS OF FACT, OPINION AND ORDER

On May 20, 1982, Bernard Wetherby ("Grievant") filed a grievance with the Vermont Labor Relations Board, alleging that he was discriminatorily deprived of an economic benefit by the Department of Corrections when the Department issued uniforms to custodial employees but did not issue one to him, a non-custodial employee. The State filed an answer to the grievance on June 5, 1982.

An evidentiary hearing was held before the full Board on January 20, 1983. Grievant represented himself. Assistant Attorney General Scott Cameron represented the State. Both parties made oral arguments at the hearing and waived the filing of briefs.

FINDINGS OF FACT

1. At all times relevant herein, Grievant was a permanent status employee, as that term is used in the Agreement between the State of Vermont and the Vermont State Employees' Association, effective for the period July 1, 1981 to June 30, 1982 ("Contract"). As such permanent status employee, Grievant was entitled to all rights afforded to such employees by statute, by the Rules and Regulations for Personnel administration, and by the Contract.

2. At all times relevant herein, Grievant's position title was Administrative Assistant A, his pay grade was 11, and his workplace was the St. Albans Correctional Facility, St. Albans, Vermont.

3. On February 8, 1982, the Department of Corrections established a policy on Personal Appearance and Dress (State's Exhibit 1). The policy provided custodial employees would be issued standard uniforms, and other employees, classified as non-uniformed personnel, would not be issued uniforms. Employees classified as non-uniformed personnel included central office staff, volunteers, probation and parole field service personnel, and the following employees of correctional facilities: superintendent, assistant superintendent, treatment staff, recreation staff, vocational and industry instructors, and office personnel. Grievant is a "facility office" employee.

4. Custodial employees are responsible for the custody and care of inmates.

5. On or about March 1, 1982, custodial employees of the St. Albans Correctional Facility were issued uniforms provided by the Department of Corrections pursuant to the Departmental policy to provide such uniforms to all custodial employees of the Department. Non-custodial employees, including Grievant, were not provided with uniforms.

6. Grievant works in the facility's business office in the main lobby. Included among his duties are handling personal funds of inmates. His hours of work are 8:00 a.m. to 4:00 p.m. There are seven employees in the main lobby: superintendent, assistant superintendent, three secretaries, and two administrative assistant A's (including Grievant). None of these employees have uniforms.

7. Inmates have access to the main lobby if they have a pass. They gain admittance by showing the pass to guards at two locked doors.

8. In addition to working in the office, Grievant is in charge of the facility kitchen, where seven-eight inmates work. He, along with other non-uniformed employees (superintendent, assistant superintendent, counselors), eat lunch with the inmates since there is no staff dining hall.

9. In addition to the custodial employees, nurses and cooks are provided with uniforms by the Department and have been since a date prior to the implementation of the February 8, 1982, policy on Personal Appearance and Dress. The nurses and cooks wear different uniforms than custodial personnel; the cooks having white uniforms and nurses wearing the "typical" white nursing uniform. In all, 85 percent of the facility's employees are provided with uniforms.

10. The Department of Corrections has never considered administrative assistants A or B custodial employees, and has never issued them uniforms.

11. Article 45, Sections 1-4 of the Contract provide:

1. Uniform policies in effect prior to the effective date of this agreement shall remain unchanged unless modified in accordance with this article.

2. Any uniform policies initiated by management after the effective date of this agreement shall provide the employee with:

- a. The uniform itself or an allowance sufficient to cover the initial purchase of the uniform(s), and
- b. Any necessary cleaning and maintenance.

3. The decision to require the wearing of uniforms shall be made by management alone. The continuation of a clothing allowance or the supplying of work uniforms shall cease when and if a decision to no longer require the wearing of uniforms is made by the appropriate appointing authority.

4. For the purposes of this Article, "uniform" is defined as "dress of a distinctive specific design or fashion worn by a particular group of employees and serving as a means of identification".

12. The successor collective bargaining agreement between the State and VSEA (effective July 1, 1982 - June 30, 1984) to the Contract contains those identical provisions.

OPINION

At issue is whether the Department of Corrections discriminatorily deprived Grievant of an economic benefit when they issued uniforms to custodial employees, but not to Grievant, a non-custodial employee.

We look to the Contract to resolve this matter. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacy, 138 Vt. 68 (1980). Hackel, et al., 140 Vt. 446 (1981). Here, the Contract clearly gives management the right to unilaterally determine who will be given uniforms in providing "the decision to require the wearing of uniforms shall be made by management alone", and through allowing management to unilaterally discontinue clothing allowances and the supplying of work uniforms.

We recognize the continuing nature of the grievance, and are aware a successor contract has gone into effect since the initiation of this grievance. However, management is given the same total discretion regarding who will be provided uniforms under the successor contract which also provides that uniform policies in effect prior to the effective date of the contract shall remain unchanged unless modified by management. The parties have clearly opted to allow management to unilaterally determine who will be given uniforms, and we will not disturb that authority, absent prohibited discriminatory actions by management.

We cannot accept Grievant's contention he was discriminated against because he was not provided with a uniform. The mere fact some employees were provided with uniforms and others were not does not indicate discrimination. In related contexts, the Supreme Court has defined discrimination as the "unequal treatment of individuals in the same circumstances under the applicable rule". Fairchild and the Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt 362 (1982). Nzomo v. Vermont State Colleges, 136 Vt. 97 (1978). Here, Grievant was not in the "same circumstances" as the custodial employees provided with uniforms. Custodial employees are responsible for the custody of inmates, and Grievant's job duties are non-custodial. Also, he was not in the same circumstances as the cooks and nurses provided with uniforms since their job duties clearly differ from his. Those employees who were in the same or similar circumstances as Grievant, other Administrative Assistants in the Department or other employees who worked in the facility business office with him, were not provided with uniforms. Accordingly, we find no discriminatory treatment of Grievant.

ORDER

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

The Grievance of Bernard Wetherby is DISMISSED.

Dated this 3rd day of February, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

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

James S. Gilson
James S. Gilson