VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 79-85s
FRANK TROYSE, et al.	)	

MEMORANDUM AND ORDER

On January 8, 1981, the Vermont Labor Relations Board issued its Findings of Fact, Opinion and Order in this case. 4 VLRB 11. The Board decision was subsequently appealed to the Supreme Court by the Vermont State Employees Association ("VSEA"). The Court affirmed the Board as to Grievant James Emery, but reversed and remanded as to Grievant Blake Roy. In re Grievance of Troyse, et al., ___ Vt. ___ (April 5, 1983).

A hearing was held before the full Board on July 14, 1983. VSEA was represented by Staff Attorney Michael R. Zimmerman. Special Assistant Attorney General Scott Cameron represented the State. At the hearing, the parties stipulated no new evidence was needed, and submitted the case for decision based on the record and memoranda of law. Memoranda of Law on Remand were filed with the Board by VSEA and the State on July 28, 1983, and July 29, 1983, respectively.

The relevant contractual language, Article XLI of the collective bargaining agreement effective July 1, 1979 to June 30, 1981, provides:

> Employees...who are required by the appointing authority to dedicate office space in their homes for the purpose of conducting State business, and have telephones in their homes, the numbers of which are provided to the public for the purpose of conducting State business... shall receive a monthly allowance of $75.00, effective

> July 1, 1979, increased to $100.00, effective July 6, 1980. This allowance shall be in addition to their base pay and shall be considered full compensation for all costs and inconveniences incurred as a result of maintaining offices at home in accordance with the above provisions.
>
> The failure of the State to publish telephone numbers shall not be the sole basis for denying office allowance under this Article.

In originally determining that Grievant Roy did not qualify for the office allowance, we stated:

> Notwithstanding the fact that he does some work-related activities at home, and has chosen to dedicate some space in his home for that purpose, we cannot find that the nature of his position actually requires the maintenance of home office space. Mr. Roy spends five hours a week working at home. During this time, he spends two and one-half hours making and receiving work-related telephone calls at his home, and two and one-half hours doing some record keeping, report writing, and reading of Federal egg inspection program regulations. In our judgment, however, the portion of his time spent doing so does not rise to the level of inconvenience contemplated as compensable under Article XLI. The need to designate office space in one's home does not automatically follow the regular yet relatively light use of one's home phone for work-related purposes. Nor does it result from an employee's practice of doing some work-related paperwork or reading at home. Mr. Roy was merely required to use some space (less than office space would constitute) at his home and to be available by telephone at home, no more, no less. 4 VLRB 11, at 36-37.

In reversing and remanding to the Board, the Court stated:

> The Board found that Roy did "some work-related activities at home", stating somewhat ambiguously that grievant "was required to use some office space (less than office space would constitute) at his home and to be available by telephone, no more, no less". In ruling on grievant's claim, the Board concluded that the "portion of his time spent [working at home] does not rise to the level of inconvenience contemplated as compensable under Article XLI", and so denied the office allowance.

> Grievant Roy correctly argues that in so ruling the Board introduced a new criterion - a "degree of inconvenience test" - for which no support appears either in the contract or in the Board's prior decisions construing Article XLI and its predecessors. Indeed, the Board did more than merely consider this hitherto unknown criterion: it squarely based its denial of grievant's claim upon it. This it was not permitted to do. The Board was required to apply the criteria set forth in the agreement, and it was error to go beyond the document's plain language and introduce a new and unfounded element as the basis for its decision. In re Muzzy, supra, 141 Vt. at 474, 449 A2d at 975.
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> For this reason, the Board's order with respect to Roy must be reversed and the cause remanded for proper adjudication based solely upon the contractual criteria. Grievance of Troyse, et al., supra.

Grievant Roy contends the sole function of the Board on remand is to make a finding as to the amount due him as office allowance, and not to reconsider whether he qualifies for office allowance. We disagree. In its decision, the Court did not conclude Grievant Roy was entitled to office allowance, and its intent to have the Board on remand determine whether Roy is entitled to an office allowance is indicated by its statement the cause was "remanded for proper adjudication based solely upon the contractual criteria". In re Grievance of Troyse, et al., supra.

In our original decision, we weighed whether the inconvenience of the employee in working at home rose to the level of inconvenience contemplated as compensable under Article XLI and whether the amount of space required to be set aside by the employee constituted "office space". Thus, we viewed entitlement to an office allowance under the Contract as a question of degree. However, the Court rejected our

"question of degree" test with regard to both level of inconvenience and amount of space. The Court held no support appeared in the Contract for the Board's "degree of inconvenience" test, and ruled it was "ambiguous" for the Board to state Grievant was "required to use some space (less than office space would constitute) at his home". In re Grievance of Troyse, et al., supra.

Accordingly, if we are not to consider questions of degree, we believe our task is limited to a very literal construction of Article XLI; to determine whether Grievant Roy was constructively required to set aside any space in his home for the purpose of conducting State business, and have a telephone in his home, the number of which is provided to the public for the purpose of conducting State business.

Grievant meets the telephone requirement, since he was required to have a telephone in his home to daily discuss work-related matters with his supervisors (See Finding 70, 4 VLRB 11, at 26) and his phone number was provided to the public by way of Department of Agriculture publications which listed his name and phone number in reference to his availability for assistance regarding maple quality control and toxic substance emergencies (See Findings of Fact 75 and 76, 4 VLRB 11, at 27-28).

With regard to the requirement to dedicate "office space" for the purpose of conducting State business, we believe it is consistent with the Supreme Court opinion to construe the term "office space" differently from the word "office" and to mean any space required by the nature of the job which is normally associated with the use of an office. Grievant

Roy met this requirement because, whatever his job duties, he was required to store the following material and pieces of equipment used in his work: files, bulletins, reports, manuals, maple samples, apple testing equipment and maple inspection equipment (See Finding of Fact 77, 4 VLRB 11, at 26-27). He was not given office space by the Department to store this material which is normally kept in an office, and thus was constructive required to set aside space in his home for storage. We conclude that, since we are not to consider degrees, this required setting aside of space in his home entitled Grievant Roy to an office allowance. This is in contrast to Grievants Frank Troyse and James Emery who did not meet the contractual requirement with regard to dedication of office space; Troyse because any equipment and supplies required in the course of his duties could be stored in the vehicles provided him by the Department 4 VLRB 11, at 37, and Emery mainly because the Department provided him with adequate office space to do what record keeping, report writing and filing his position required. 4 VLRB 11, at 36.

ORDER

Now, therefore, based on the foregoing reasons and the Findings of Fact contained in the Findings of Fact, Opinion and Order issued January 8, 1981, 4 VLRB 11, it is hereby ORDERED:

1. The Grievance of Blake Roy is ALLOWED: and

2. The State of Vermont shall pay Blake Roy $825.00, which amount represents the office allowance Roy is entitled to for the period July

1, 1979 to the date of his retirement, June 30, 1980, pursuant to Article XLI of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association, effective July 1, 1979 - June 30, 1981.

Dated this 18th day of August, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson