VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 83-36
EDWARD CRILLY	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 2, 1983, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Edward Crilly ("Grievant"), alleging that the change in Grievant's official duty station from Grafton to Montpelier was in violation of Article 40, Section 8 of the collective bargaining agreement between the State of Vermont and VSEA, effective for the period from July 1, 1982 to June 30, 1984 ("Agreement").

A hearing was held before Board Member William G. Kemsley, Sr., on March 1, 1984. Special Assistant Attorney General Michael Seibert represented the State. Grievant was represented by VSEA Staff Attorney Michael Zimmerman. Chairman Kimberly B. Cheney offered to disqualify himself from the hearing because of a social relationship he had with Department of Public Service Commissioner Richard Saudek. Mr. Cheney was disqualified by request of the parties. Member James S. Gilson was absent from the hearing. The parties stipulated that Mr. Kemsley would conduct the hearing and that Mr. Gilson would review the record and make the decision along with Mr. Kemsley.

Requested Findings of Fact and Memoranda of Law were filed by Grievant and the State on March 13, 1984, and March 19, 1984, respectively. Grievant filed a Reply to the State's Memorandum of Law on March 28, 1984. The State filed no Reply brief.

1. Since 1970 or 1971, Grievant has resided in Grafton, Vermont, which is located in the southern part of the State. For purposes of this grievance, the southern part of the State refers to that portion lying below Randolph, Vermont.

2. Since February of 1975, Grievant has been employed as a Utilities Engineer B (Gas), Pay Scale 18, by the Vermont Department of Public Service ("Department"). Grievant is the only Utilities Engineer B (Gas) in the State of Vermont. Approximately 50 percent of Grievant's wages and benefits are paid with Federal funds (Grievant's Exhibit 1).

3. Grievant's duties require him to cover the entire State. He inspects (during both announced and unannounced visits) natural and propane gas systems for compliance with Federal and state standards. In addition, Grievant is required to respond, during working or non-working hours, to any gas emergencies, wherever they occur. In the latter connection, Grievant keeps the Department's central office (located in Montpelier, Vermont, which is in the central part of the State) informed at all times as to his whereabouts, and carries a "beeper" with him. In the event of gas emergencies occurring during normal working hours, gas companies notify the Department's central office, which notifies Grievant of the emergency. In the event of gas emergencies occurring during non-working hours, gas companies telephone Grievant at his home.

4. Grievant's "normal" workweek consists of eight hours a day, five days a week, Monday through Friday. He is, however, required to respond to gas emergencies whenever they occur.

5. Since he began his employment, Grievant's routine has been to come into the Department's central office in Montpelier,

where he has an office from which he makes telephone calls and does paperwork, only once or twice a week. The remainder of the week, Grievant works in "the field", leaving directly from his home in the mornings.

6. From 1975 through June 30, 1981, Grievant's official station was Montpelier.

7. On February 2, 1981, Grievant submitted a memorandum to Department Commissioner Richard Saudek, which requested a merit increase in pay, a State-owned vehicle for business use, and, in the alternative, to have his home in Grafton designated as his official station (Grievant's Exhibit 4).

8. Commissioner Saudek granted Grievant's request for a merit increase in salary and, effective July 1, 1981, designated Grievant's home in Grafton as his work station (Grievant's Exhibit 6). The memorandum from Saudek to Grievant informing Grievant of the change in his work station provided:

> Over the years that you have worked in your position, it has become increasingly evident that this Department would be better served if your work location were at your home in Grafton, rather than in Montpelier. The major reason for this is that you are monitoring gas systems in Springfield, Bennington and Rutland which require frequent emergency inspections. It is my impression that the gas systems in the northern part of the State (with the exception of Capital City Gas, which is being closed) have not had as many safety problems as the gas systems in those towns.
>
> Therefore, I request that you change your work station to Grafton as soon as possible (Grievant's Exhibit 5).

9. As a result of the change in Grievant's official station to Grafton, Grievant was paid mileage from and to his residence whenever he traveled to and from work locations, wherever situated. Previously, Grievant was paid mileage between his residence and work locations during

normal working hours only if the distance between his home and work location was less than the distance between the work location and Montpelier. Otherwise, Grievant was paid mileage between Montpelier and the work location.

10. When Commissioner Saudek changed Grievant's official station to Grafton in July 1981, the major regulated gas utilities in Vermont were located in Burlington/St. Albans, Rutland, Springfield, Bennington and Barre. In addition to the major utilities, there were smaller utilities scattered throughout the State. At that time, the Bennington, Rutland and Springfield systems, located in southern Vermont, needed particular attention; requiring more attention than did the gas utilities in northern Vermont (i.e. Burlington/St. Albans, Barre).

11. Between July 1981 and March 1983, however, the Springfield and Rutland gas companies were abandoned. As a result, the only remaining major pipeline gas system in southern Vermont was the Bennington gas company.

12. On March 2, 1983, Commissioner Saudek wrote the following memorandum to Grievant:

> The abandonment of both the Rutland and Springfield pipeline gas systems leaves but one regulated gas utility in southern Vermont. Since both a majority of regulated systems and customers using pipeline gas are located in central and northern Vermont, I feel it appropriate to identify your official work station as Montpelier.
>
> This change will be effective Monday, March 7, 1983.
>
> (Grievant's Exhibit 7)

13. In March 1983, the major pipeline gas systems in Vermont were concentrated in central and northern areas. Only Bennington, with approximately 500 customers, remained in southern Vermont. By contrast,

the St. Albans/Burlington pipeline system had approximately 11,000 customers, while the Barre system then had approximately 800 customers. The remaining 150-200 pipeline gas system customers in Vermont were spread among smaller systems in Springfield, Manchester, Ludlow and Brattleboro, which are located in southern Vermont.

14. As a result of the March 1983 change in Grievant's official station to Montpelier, when Grievant is required to travel to work locations in the central and northern part of the State during normal working hours, his mileage is paid from and to Montpelier rather than from and to his residence. When he is required to travel to work locations in the southern portion of the State during normal working hours, he is paid mileage from and to his residence.

15. Saudek did not, as a consequence of the March 7, 1983, change in Grievant's official station, require Grievant to report to Montpelier each day. As before, Grievant only comes into Montpelier one or two days a week, and on the days he does not come into Montpelier, leaves for "the field" directly from his Grafton home. Saudek does not expect Grievant to report to Montpelier in the absence of other work "in the field" and directed Grievant to make Montpelier his principal place of work.

16. Since the closure of the Rutland and Springfield systems, Grievant has not spent less time in the southern part of the State. Rather, because of various problems in that part of the State, Grievant has spent as much, if not more, time in that region.

17. At present, the Killington and Stratton ski areas, located in the southern part of the State, are in the planning stages of construction of gas systems. Grievant has been involved in those systems at this planning stage, and his involvement will continue through construction and operation.

18. Since much of his time is spent inspecting short-term projects, such as emergency and routine repair work and construction activities, it is very difficult to predict where Grievant will spend his worktime from day to day.

19. The approximate distances between Grievant's Grafton residence and various gas systems throughout the State are as follows:

Grafton to Burlington	140-145 miles
Grafton to St. Albans	170 miles
Grafton to Barre	95 miles
Grafton to Bennington	62 miles
Grafton to Springfield	15 -16 miles
Grafton to Manchester	35 miles
Grafton to Brattleboro	40 miles
Grafton to Ludlow	20 miles

20. Grievant's Grafton residence is 100 miles from Montpelier.

21. The approximate distances between Montpelier and various gas systems throughout the State are as follows:

Montpelier to Burlington	38 miles
Montpelier to St. Albans	63 miles
Montpelier to Barre	7 miles
Montpelier to Bennington	124 miles
Montpelier to Springfield	80 miles
Montpelier to Manchester	98 miles
Montpelier to Brattleboro	114 miles
Montpelier to Ludlow	79 miles

(Joint Exhibit 1)

22. At all times relevant herein, the Agreement has provided as follows:

Article 21
CALL-IN PAY

> When an employee is called in and required to work at any time other than continuously into his normally scheduled shift, he shall receive compensation at his overtime rates for all hours worked....

Article 40
EXPENSES REIMBURSEMENT

1. All State employees, when away from home or office on official duties, shall be reimbursed for actual expenses incurred.... Mileage between his place of residence and his normal work station shall not be reimbursable, except when the employee is "called in" under Article 21 or required to travel from his home on official business.

...

5. General principles of Reimbursement
a. Excepting the reimbursement of mileage under Article 21, "Call-in", employees shall not be paid for travel between home and duty station....

...

8. Work locations shall not be changed for the purpose of avoiding reimbursement of expenses.

(Grievant's Exhibit 2)

23. 32 VSA §1261(b) provides:

The secretary of administration shall prescribe regulations to limit reimbursement for personal expenses and to require approval of specific exceptions prior to the date of travel. These regulations shall be adopted in accordance with the administrative procedures act and shall apply equally to all categories of state employees, subject to the collective bargaining agreement as defined in section 904(a) of Title 3.

24. At all times relevant herein, Agency of Administration Bulletin 3.4, promulgated under the authority of 32 VSA §1261(b) has provided, in pertinent part, as follows:

2. Transportation - General Provisions

a. Assignment of Official Duty Station

Official duty stations shall be set by the appointing authority.... That station should be where the employee performs most of his/her official duties. Official duty stations should not be changed unless the change is for a period

of longer than two consecutive weeks. Change of station should be made only to facilitate better performance of official duties by employees and not for their personal convenience.

b. Reimbursement for Commuting Prohibited

32 VSA §1261 prohibits the payment to a State employee for travel between his place of residence and office.

...

10. Constructive Travel Computation

On a scheduled workday when the employee is authorized to travel directly from his home to a temporary location without first reporting to his official duty station, he is entitled to mileage from his home to the temporary point (and return, if applicable), or from his official duty station to the temporary point whichever is the lesser. The lesser payment constitutes the "constructive travel" limitation.

(Grievant's Exhibit 3)

25. The change in Grievant's duty station from Grafton to Montpelier has no effect on Grievant's entitlement to mileage reimbursement from (and to) his home when he is called out during non-working hours, since under the Agreement (i.e., Article 40) he is entitled to mileage reimbursement for the entire actual distance traveled.

26. As a result of the change in Grievant's official station from Grafton to Montpelier, Grievant had the following unreimbursed expenses for the period from March 7, 1983 to January 31, 1984, which expenses he would have been reimbursed had his official station not been changed: $275.55 in unreimbursed meals and $4,123.06 in unreimbursed mileage.

27. Grievant does some work in his home, such as making and receiving telephone calls, writing reports, and reviewing publications. He also stores some equipment in his home.

28. In his Step II grievance decision in this matter, Commissioner Saudek wrote in pertinent part:

> I think the most important consideration should be what work station will enable a state employee to serve the state best. In the case of your position, two of the three principal pipeline gas companies which are regulated by the Public Service Board and the Public Service Department are considerably closer to Montpelier than to Grafton.... You mentioned that there are "small" systems in Springfield, Manchester, Brattleboro and Ludlow. These systems appear to have a total of roughly 150-200 customers and really are geared to serve particular developments or shopping centers. While they obviously need to be kept in a safe condition, I doubt that they would merit the time and attention that the larger systems require.
>
> Mr. Janson of VSEA raised the question of whether the change in office location was made for the sole purpose of avoiding reimbursement to you for your out-of-pocket expenses. As I said to Mr. Janson, I do feel that any cost-cutting measures that can be accomplished are appropriate. In this regard, I think that the presence of the Gas Engineer in Montpelier will undoubtedly lead to more effective regulation and quicker response to safety problems, thereby cutting costs in the long run (Grievant's Exhibit 10).

29. Commissioner Saudek's purpose in changing Grievant's official station back to Montpelier was to improve the efficiency of the Department's service to the State of Vermont and ensure a quicker response to safety problems. He determined that in the long term it was likely the majority of Grievant's work would be performed at work locations closer to Montpelier than Grafton and changed Grievant's official station accordingly. The Commissioner also believed some long-term cost savings to the Department would result from the change. Commissioner Saudek's purpose in changing Grievant's official station was not to cause a reduction in expenses reimbursement to Grievant. The Commissioner is not aware whether the Department has saved money as a result of the change in official station.

OPINION

At issue is whether the change of Grievant's official station from his home in Grafton to Montpelier violated Article 40, Section 8 of the Agreement, which provides work locations shall not be changed for the purpose of avoiding reimbursement of expenses.

First, we need to address whether Article 40, Section 8, applies to this case. The State contends it does not because Commissioner Saudek's action was a change in Grievant's "official duty station" and not simply a change in "work location", and that since Article 40, Section 8, precludes changes in the latter, it is not applicable to the change in Grievant's "official station". Once again, we are called upon to wrestle with the meanings of the terms "work location" and "official station". See Grievance of VSEA on behalf of the Meat Inspectors, Department of Agriculture, 4 VLRB 144 (1981), Grievance of Beyor, 5 VLRB 222 (1982).

In Beyor, we defined "offical 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 normally reports for work.... (A) change in official station by a department head would require a bonafide change in the situs of the majority of the work to be performed by the incumbent of the position being transferred to a different geographical area.... Such changes imply permanency, not temporary work shifts. An "official station" is akin to the notion of where the work is domiciled" Id., at 234-235.

We also defined "work location" in Beyor:

> The term "work location" means, in our view, any geographical place in which the employee performs work. The official station can be a work location, as can a place away from there. In bureaucratic parlance, "the field" is commonly a work location - the term connoting the idea that the employee is performing assigned tasks away from his official station. Id., at 236.

It is apparent that the term "work locations" as used in Article 40, Section 8, refers to "offical stations" since whether an employee is entitled to expenses reimbursement under Article 40 depends on whether that employee is away from his/her offical station. Thus, a change in official station necessarily affects an employee's expenses reimbursement. We are cautioned by our Supreme Court not to read terms into a contract unless they arise by necessary implication. In re Stacey, 138 Vt. 68 (1980). Here, in order to give meaning to Article 40, Section 8, it necessarily implies the term "work locations" refers to "official stations". Accordingly, Article 40, Section 8, applies to the change in Grievant's official station from his home in Grafton to Montpelier. Compare Grievance of VSEA on behalf of Meat Inspectors, supra (Relevent contract language provided that for purposes of eligibility for overtime compensation for travel time the term work location did not include the employee's home).

We turn now to determine whether Grievant's official station was changed for the purpose of avoiding reimbursement of expenses in violation of Article 40, Section 8. In analyzing grievances arising under this section, we will require the grieving employee to carry the burden of proving a violation of the Agreement.

We note that we do not believe the Agreement prevents management from ever making changes in an employee's official station if the result will be a reduction in expenses reimbursement. To so construe the Agreement would inhibit management from making necessary changes in the situs of the majority of work to be performed by an employee (i.e., the employee's "official station") to adapt to bonafide changes in the geographical area where the majority of work needs to be done. It is

apparent Article 40, Section 8, is designed to protect employees from management changing an employee's official station because of temporary work location shifts so as to avoid resultant higher expenses reimbursement, but is not intended to restrict management from making such a change due to a permanent work location shift.

Such a construction of Article 40, Section 8 is consistent with an evident statutory and contractual policy that an official station can only be legally changed if a bonafide permanent relocation is involved, not a temporary change in work locations to suit the convenience of the employer. See 32 VSA §1261(a)(Requires payment of moving expenses to an employee whenever it is necessary to change that employee's official station); Article 47, Section 20 of the Agreement (Grants reduction in force rights to an employee involuntarily transferred out of his/her geographic area); Grievance of Beyor, supra.

Here, Grievant demonstrated that the change in his official station resulted in a significant reduction in reimbursed expenses. However, we conclude Department Commissioner Saudek did not change Grievant's official station for the purpose of avoiding reimbursement of expenses.

At the time Grievant's official station was made his Grafton home in July 1981, three of the five major regulated gas utilities in Vermont were located in the southern part of the State. Those utilities required more attention by Grievant than did the utilities in the northern part of the State. However, between July, 1981, and March, 1983, two of the three major utilities in the southern part of the State were abandoned, leaving but one regulated gas utility in southern Vermont. Due to this changing situation, Commissioner Saudek determined that in the long term it was likely the majority of Grievant's work would be performed at

work locations closer to Montpelier than Grafton and changed Grievant's official station accordingly.

We recognize Commissioner Saudek may have made a mistake in changing Grievant's official station since the evidence indicates that Grievant has not spent less time in the southern part of the State since the closure of the Rutland and Springfield systems. Rather, because of various problems in that part of the State, Grievant has spent as much, if not more, time in that region. Further, the planned construction of gas systems in the Killington and Stratton ski areas located in southern Vermont has commanded Grievant's attention and will continue to do so in the future. Accordingly, it is apparent it may have been a more prudent management decision to leave Grievant's official station in Grafton.

However, while the evidence indicates Commissioner Saudek may have shown a lack of foresight, Grievant has not sustained his burden of proving the change was made for the purpose of avoidance of reimbursement of expenses to Grievant. There was some basis for Commissioner Saudek to conclude the majority of Grievant's work would be performed at locations closer to Montpelier than Grafton since a substantial majority of regulated gas systems and customers are now located in central and northern Vermont due to the abandonment of the Rutland and Springfield systems and no evidence convinces us Commissioner Saudek acted for the purpose of avoiding reimbursement of expenses. The Agreement does not entitle Grievant to relief due to a management decision made in good faith which later events indicate may have been ill advised but only if the action was taken for the prohibited purpose of avoiding reimbursement

of expenses. We hope Commissioner Saudek would change Grievant's official station back to Grafton if he concluded he made a mistake but the Agreement gives us no authority to order that result.

We recognize the change in official station has resulted in personal inconvenience to Grievant. However, an employee does not have a vested right to his or her own personal convenience. In any event, an employee is not left without recourse when a valid change in official station is made. A change in an employee's official station triggers certain rights - moving expenses and reduction in force rights. 32 VSA §1261(a). Article 47, Section 20, of the Agreement. Upon notification that his official station was being changed, Grievant could have exercised these rights. This is unlike the situation in Grievance of Beyor, supra, where moving expenses and reduction in force rights were not made available to the employee and we concluded his official station had not, in fact, been changed.

While we conclude Commissioner Saudek did not violate Article 40, Section 8, of the Agreement and accordingly dismiss this grievance, we question the fairness of the "constructive travel" limitation in effect in State government, as stated in Agency of Administration Bulletin 3.4. An application of the constructive travel limitation in this case means the State actually benefits from Grievant's home being located as far as it is from his official station, at least insofar as reimbursement for mileage is concerned. When Grievant works in the southern part of the State, the State has to reimburse him much less for mileage than if he lived near his Montpelier official station as a result of this "constructive travel" limitation.

However, while this "constructive travel" limitation has not been explicitly bargained by the parties since Agency of Administration Bulletin 3.4 is a unilaterally-promulgated employer document, we recognize it as a binding past practice. Where, as here, the parties have bargained with the knowledge Bulletin 3.4 is applicable, Bulletin 3.4 is a past practice implicitly embedded in the Agreement unless explicitly altered by the Agreement. Grievance of Cronin, 6 VLRB 37 (1983). Grievance of Allen, 5 VLRB 411 (1982). No Agreement provision explicitly alters the "constructive travel" limitation, so we find it a part of the Agreement.

ORDER

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

The Grievance of Edward Crilly is DISMISSED.

Dated this ___ day of June, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

William G. Kemsley, Sr.

James S. Gilson