

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

ALLEN FARNSWORTH

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DOCKET NO. 85-36

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 20, 1985, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Allen Farnsworth ("Grievant"), alleging the denial of Grievant's request for three days of military leave with pay violated Article 30 of the Agreement between VSEA and the State of Vermont, effective for the period July 1, 1982 to June 30, 1984 ("1982-84 Contract"), and Article 43 of the State-VSEA Agreement for the Non-Management Unit in effect from July 1, 1984 to June 30, 1986 ("1984-86 Contract").

On July 22, 1986, the parties agreed to submit this matter to the Board for its decision, based upon stipulated facts, exhibits and memoranda.

The parties each filed a Memorandum of Law on August 7, 1986. The State filed a Reply Memorandum on August 14, 1986. Grievant filed no Reply Brief.

The Findings of Fact contained herein were agreed to by the parties.

FINDINGS OF FACT

1. The 1982-84 Contract contained the following provision in Article 30, MILITARY LEAVE, Section 1(g):

Annual Training. A permanent-status or limited-status classified employee who is a member of the Organized Reserve or National Guard shall be allowed military leave with pay, at the rate of his minimum bi-weekly compensation pro-rated, for annual

training up to a maximum of 15 workdays scheduled by military authority in any calendar year. A permanent-status or limited-status classified employee who has more than 15 days of summer field training scheduled in one calendar year shall not be entitled to leave with pay for those days in excess of 15, and shall be placed in an off-payroll status, unless he elects to use accumulated annual leave credits for the period of absence. A permanent-status, part-time classified employee shall be granted military leave with pay on a pro-rated basis.

2. The 1984-86 Contract contained the following provision in

Article 43, MILITARY LEAVE, Section 1(g):

Annual Training. A permanent-status or limited-status classified employee who is a member of the Organized Reserve or National Guard shall be allowed military leave with pay, at the rate of his minimum bi-weekly compensation pro-rated, for annual training up to a maximum of 11 workdays scheduled by military authority in any calendar year. A permanent-status or limited-status classified employee who has more than 11 days of annual field training scheduled in one calendar year shall not be entitled to leave with pay for those days in excess of 11, and shall be placed in an off-payroll status, unless he elects to use accumulated annual, personal leave or compensatory time leave credits for the period of absence. A permanent-status, part-time classified employee shall be granted military leave with pay for annual training on a pro-rated basis.

3. The 1984-86 Contract contained the following provision in

Article 48, PERSONAL LEAVE:

An employee who in any fiscal three-month period (commencing July 1, October 1, January 1 or April 1) (1) does not use sick leave, except an employee may use up to four hours of sick leave for medical examinations or routine dental appointments which cannot reasonably be made outside the employee's regular working hours; and (2) is not off-payroll or on any type of leave of absence without pay or suspension without pay, shall be entitled to one personal leave day, but not more than three per fiscal year. Such leave day(s) shall not be: compensable in cash; convertible to other forms of leave; or accumulated from fiscal year to fiscal year except that a personal day earned for the period of April 1 to June 30 may be used in the next succeeding three-month period, but not thereafter.

4. At all times relevant herein, Grievant was a permanent-status employee entitled to all rights afforded him by the contractual provisions cited above.

5. Between January 1, 1984 and June 30, 1984, Grievant used 12 military leave with pay days.

6. Between December 5, 1984 and December 7, 1984, Grievant underwent three days of annual military training, for which he requested three days of military leave with pay, citing Article 43 of the 1984-86 Contract. The State denied Grievant's request for military leave with pay for the three days, and he was placed in an off-payroll status for those three days.

7. Grievant did not elect to use accumulated annual, personal or compensatory time leave credits for the period of absence, as was permitted by Article 43, Section 1(g) of the Contract.

8. As a result of Grievant's off-payroll status for December 5 through 7, Grievant was not entitled to accrue personal leave day credits for the last quarter of 1984.

9. Grievant would have been eligible for a personal leave day for the last quarter of 1984 if he had elected to use accumulated annual, personal or compensatory leave time credits for the December 5 through 7, 1984, period, as was permitted under the 1984-86 Contract.

10. There was no discussion, during bargaining for the 1984-86 Contract, as to whether the reduction of military leave days from 15 to 11 days per calendar year would take effect on July 1, 1984 or January 1, 1985.

11. The termination date of the 1982-84 Contract was June 30, 1984. The effective date of the 1984-86 Contract was July 1, 1984.

OPINION

The issues before the Board, as agreed to by the parties, are as follows:

1. Whether the change in military leave days from 15 to 11 days per calendar year took effect July 1, 1984, or at the beginning of calendar year 1985; and
2. Whether Grievant is entitled to accrue a personal leave day for the last quarter of 1984 despite his failure to use available accumulated leave for the period December 5 through 7, 1984.

We discuss each issue in turn. Grievant contends that since both the 1982-84 and 1984-86 Contracts speak of entitlement to military leave on a calendar year basis, and since the 1982-84 Contract had already in essence fixed the number of such days at 15 for calendar year 1984, the 1984-86 Contract did not reduce the number of military leave days from 15 to 11 until calendar year 1985.

It is our duty to interpret the provisions of a disputed contract, not remake it, or ignore it. In re Grievance of VSEA on Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980). In carrying out this task, we are guided by the rule of construction that a contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. Id.

Construing the 1982-84 and 1984-86 Contracts according to that rule, we are persuaded by the interpretation advanced by VSEA. Both contracts speak of entitlement to military leave on a calendar year basis. This means the military leave benefits effective on January 1,

1984, were to remain in effect for the entire 1984 "calendar year" unless the parties specifically indicated otherwise in the 1984-86 Contract. No such provision was negotiated. For us to adopt any other interpretation of the Contracts would ignore the clear meaning of the term "calendar year", and to do so would be unfair to an employee who rightfully presumed at the beginning of calendar year 1984 that he would be entitled to 15 military leave days for the year, and planned accordingly.

The State cites the Supreme Court decision, In re Grievance of VSEA on Behalf of "Phase Down" Employees, *supra*, at 65, and the Board decision, Grievance of Sherman, 7 VLRB 380, 399 (1984), to support the proposition that where, as here, the parties specifically provided for benefits becoming effective on a date other than the effective date of the Contract,¹ it can only be taken to mean that benefits which are not tied to a particular effective date are to take effect on the effective date of the Contract. Accordingly, the State contends the change in military leave days from 15 to 11 took effect with the rest of the Contract on July 1, 1984.

We agree the decisions cited by the State support the proposition it proffers. However, they do not support the conclusion the State reaches. Here, the parties essentially provided military leave

¹Under the 1984-1986 Contract, Article 35, Observance of Holidays, provides "(e)ffective July 1, 1985, the State reserves the right to treat Washington's Birthday... as a regular workday". Article 50, Salaries and Wages, provides for increases in wages and pay rates at various times during the life of the Contract. Article 54, concerning the medical benefit plan, provides the "terms of coverage... shall remain unchanged until December 31, 1984". Article 56 provides for changes in the maximum covered dental expense effective July 1, 1985.

benefits were to be effective on a date other than the effective date of the Contract by providing for military leave benefits on a "calendar year" basis. The parties essentially provided that those benefits in effect at the beginning of a calendar year would remain in effect for that entire year and any negotiated changes would take effect the next calendar year. Thus, the change in military leave days from 15 to 11 days per calendar year took effect January 1, 1985 and Grievant is entitled to paid military leave days for the December 5 through 7, 1984, period.

We also conclude Grievant was entitled to accrue a personal leave day for the last quarter of 1984, despite his failure to use available accumulated leave for the December 5 through 7, 1984, period. By wrongfully denying Grievant his paid military leave for that period, the Employer improperly placed Grievant on unpaid leave status. If Grievant properly received his entitlement to paid military leave days, he would have been entitled to accrue a personal leave day pursuant to Article 43, Section 1(g), and Article 48 of the 1984-1986 Contract. Thus, he is entitled to accrue a personal leave day for the last quarter of 1984.

ORDER

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

1. The Grievance of Allen Farnsworth is GRANTED;
2. The State of Vermont, Department of Labor and Industry, shall pay Grievant 3 days wages at his rate of pay for the period December 5-7, 1984, plus 12 percent interest per annum, which shall constitute reimbursement to Grievant for the three days of military leave with pay he was entitled to receive for the period December 5-7, 1984; and
3. The State of Vermont, Department of Labor and Industry, shall add one day of personal leave to Grievant's personal leave day bank, which Grievant is entitled to for the last quarter of 1984.

Dated this 12 day of October, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

William G. Kemsley

Catherine L. Frank

Charles H. McHugh