

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

THOMAS KASTNER

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DOCKET NO. 86-81

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 18, 1986, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Thomas Kastner ("Grievant"). The grievance alleged that the State of Vermont, Agency of Transportation ("Employer") violated Article 51 of the Agreement between the State of Vermont and VSEA for the Non-Management Unit, effective for the period July 1, 1986 to June 30, 1988, ("Contract") by refusing to pay Grievant alternate rate pay during periods when he took over the duties of a higher level employee.

A hearing was held before Board members Dinah Yessne, Acting Chairperson; William G. Kemsley, Sr., and Louis A. Toepfer on July 2, 1987. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. Michael Seibert, Assistant Attorney General, represented the State.

Briefs were filed by the parties on July 23, 1987.

FINDINGS OF FACT

1. Article 51 of the Contract, Alternate Rate Pay, provides in pertinent part as follows:

2. From time to time, employees may be required by higher authority to take over the job of an employee assigned to a higher pay grade than their own when that higher-level employee is absent from duty... (B)ecause of the absence of an employee for a short period of time, and in management's judgment job continuity must be maintained, eligible employees in this bargaining unit who are required to take over the higher-level job shall receive "alternate rate pay" provided all the following criteria are met:

a. The employee takes over the job of the higher-level employee (see Paragraph 7 below for definition);

b. The higher-level work is performed with the authorization of appropriate supervisory personnel;

c. The position is at least one pay grade higher than the employee's own pay grade; and

d. The employee takes over the job of the higher-level employee for one full work shift per day.

3. The "alternate rate pay" rate shall be 108 percent of the employee's base rate...

...

5. The following categories of employees shall not be eligible to receive "alternate rate pay" when and if they are required to work at a higher level:

...

c. Employees whose position descriptions clearly require them as part of their duties, from time to time or on a continuing basis, to fill in for their supervisors, or to assume other higher-level duties when necessary...

...

7. For purposes of this Agreement, the term "to take over the job of an employee in a higher-level position", means that an employee is required by appropriate higher authority to perform a majority of those duties of the higher-level job which are substantially different from his own normal duties, and that the employee will be held accountable for poor performance in the same manner that a newly-assigned permanent employee would be held accountable for poor performance in the higher-level job.

(Grievant's Exhibit 4)

2. Since 1984, Grievant has occupied the position class of Transportation Technician B. The class of Transportation Technician B includes employees working in areas such as paving, construction, bridge work and surveying. Grievant's work involves surveying. The class specification for Transportation Technician B provides as follows with respect to surveying:

Serves as instrument person on complex surveys. Acts as party chief on routine surveys.

(Grievant's Exhibit 2, Page 1)

3. In 1980, prior to Grievant's employment as a Transportation Technician B, a position description form was completed for the

Transportation Technician B surveying position. All persons then employed in that position, along with management, participated in the completion of the form. The completed form was signed by each employee serving in that position. The position description form includes in the description of the duties of the position the following: "Performs the duties of Survey Crew Chief in his absence, on a non-routine basis. 10%" The 10 percent is a reference to the instruction for the question which provides: "Show the percentage of time devoted to each task or group of related tasks" (State's Exhibit 2, Page 1). The position description was applicable at all times relevant herein.

4. There are a number of survey crews in the Agency, the number varying with the season. Crews consist of four to five employees. Each survey crew is headed by a crew chief, who occupies the position class of Transportation Technician C or D (each being a higher pay grade than Technician B). Crews also have an instrument person, rod person(s) and a tape person. The "instrument person" on a crew is a Technician B, the "rod person" may be either a Technician A or Engineering Aide, and a "tape person" may be either a Technician A or Engineering Aide.

5. Grievant's general duties, as a Technician B, are as "instrument person".

6. Crew chiefs generally do not actively engage in actual survey work, but oversee the operations of their crews. They are responsible for the overall operation of their crews, the accuracy and completeness of work being done by the crew, various paperwork (e.g., time sheets, daily reports, notes), and, in general, have sole responsibility for their crews.

7. At some point in 1986, prior to July, an employee named Orvis was assigned to be a crew chief. Grievant was assigned to Orvis' crew, where he performed as instrument person.

8. Grievant, at Orvis' request, directed the work of the survey crew from time to time for a few hours so that Orvis, who was still working, could devote more time to completing paperwork required by his crew chief responsibilities. For those times, Grievant did not claim alternate rate pay because Orvis retained ultimate responsibility for the crew and Grievant assumed only certain of Orvis' responsibilities.

9. From July 14, 1986, to July 25, 1986, Orvis was on vacation. During this two-week period, Grievant assumed total and sole responsibility for the survey crew as crew chief; including logistics, operation and record-keeping responsibilities. During that period, Grievant did not perform his normal "instrument person" duties. He was required to assume all the duties of a crew chief, which duties are substantially different from his own normal duties.

10. Grievant was denied alternate rate pay for the period July 14-25, 1986.

11. Subsequently, Grievant assumed the duties of crew chief on the following occasions when the crew chief was absent from duty:

Monday, September 22, 1986	(11 ½ hours)
Tuesday, September 23, 1986	(11 ½ hours)
Tuesday, October 21, 1986	(11 hours)
Monday, October 27, 1986	(12 hours)
Monday, November 24, 1986	( 8 ½ hours)
Tuesday, November 25, 1986	( 8 ½ hours)
Monday, December 8, 1986	(11 hours)
Tuesday, December 9, 1986	(11 hours)
Friday, May 8, 1987	( 9 hours)
Wednesday, May 13, 1987	(10 hours)
Thursday, May 14, 1987	( 8 hours)

Monday,	May	18, 1987	( 8 hours)
Tuesday,	May	19, 1987	( 9 hours)
Wednesday,	May	20, 1987	( 8 hours)
Thursday,	May	21, 1987	( 8 hours)
Friday,	May	22, 1987	( 8 hours)
Tuesday,	May	26, 1987	( 8½ hours)
Wednesday,	May	27, 1987	( 9 hours)
Thursday,	May	28, 1987	( 8 hours)
Monday,	June	1, 1987	( 8 hours)
Tuesday,	June	2, 1987	( 8 hours)
Wednesday,	June	3, 1987	( 8 hours)
Thursday,	June	4, 1987	(10 hours)
Friday,	June	5, 1987	(10 hours)
Monday,	June	8, 1987	(10 hours)
Thursday,	June	11, 1987	( 8 hours)
Monday,	June	22, 1987	(10 hours)
Tuesday,	June	23, 1987	(12 hours)
Thursday,	June	25, 1987	(12 hours)
Friday,	June	26, 1987	(12 hours)

On these days, Grievant assumed total and sole responsibility for the survey crew as crew chief, including logistics, operation and record-keeping responsibilities. On some of those days, Grievant may have performed his normal "instrument person" duties in addition to crew chief duties. Grievant was required on these days to assume all the duties of a crew chief, which duties are substantially different from his own normal duties.

12. Grievant was not provided alternate rate pay for any of the above dates.

13. The State observed Friday, May 29, 1987, as the State holiday for Memorial Day.

#### OPINION

At issue is whether Grievant was entitled to alternate rate pay under Article 51 of the Contract for those days when he performed the duties of survey crew chief in the absence of the regular chief.

In dispute is whether Article 51, Section 5(c) disqualifies Grievant from receiving alternate rate pay. Section 5(c) provides as follows:

The following categories of employees shall not be eligible to receive "alternate rate pay" when and if they are required to work at a higher level.

...Employees whose position descriptions clearly require them, as part of their duties, from time to time or on a continuing basis, to fill in for their supervisors, or to assume other higher-level duties when necessary...

Grievant contends that Section 5(c) should be deemed applicable to his case because the Contract requirement for clarity in the employee's position description has not been met. The Employer contends that Grievant's position description requires Grievant to substitute for the crew chief to the extent he did here without receiving alternate rate pay.

The position description indicates that Grievant's duties require him to "perform the duties of survey crew chief in his absence, on a non-routine basis", 10 percent of the time. Consistent with Article 51, Section 2(d), we conclude as a threshold matter that this requirement refers to those times when the employee assumes total responsibility for the crew in the absence of the chief for an entire day. Grievant does not contend otherwise. We also conclude that performing such duties "on a non-routine basis", about 10 percent of the time, means that substitution is required from time to time, but not for an extended period or on a continuing basis.

The question we need to determine is at what point substitution goes over the line set by the position description and becomes more than what the position requires. While it is clear from the position description that a Technician B surveyor must take over the crew chief's responsibilities from time to time, the limits of those responsibilities are not spelled out. We conclude that an appropriate

timeframe consistent with the job as shown by the evidence is five or more consecutive work days. When an employee substitutes for a crew chief for five or more consecutive work days, the employee is performing new or additional duties on a continuing basis beyond that required by the job description.

In assuming the duties of the crew chief in the chief's absence on the days in question, Grievant met all other criteria set out in Article 51, Sections 2 and 7, necessary for receiving alternate rate pay. While the Employer contends that Grievant has not met his burden of establishing that, in assuming such duties, he "take(s) over the job of an employee in a higher level position" as that phrase is defined in Article 51, Section 7, the evidence indicates that the duties performed by Grievant when he assumed the duties of crew chief are substantially different from his own normal duties. Further, no evidence was presented that he will not be held accountable for poor performance of these duties. Thus, Grievant has met the contractual definition of "tak(ing) over the job of an employee in a higher-level position".

Accordingly, Grievant should receive alternate rate pay for those periods when he assumed the duties of the survey chief for five or more consecutive work days.

#### ORDER

Now therefore, based on the foregoing facts and for the foregoing reasons, it is hereby ORDERED:

1. The Grievance of Thomas Kastner is SUSTAINED to the extent that the State of Vermont, Agency of Transportation, shall pay Grievant alternate rate pay (plus interest) under Article 51 of the Contract for the following

times for which he performed higher level duties; and is denied in all other respects:

July 14 - July 25, 1986  
May 18, 1987 ( 8 hours)  
May 19, 1987 ( 9 hours)  
May 20, 1987 ( 8 hours)  
May 21, 1987 ( 8 hours)  
May 22, 1987 ( 8 hours)  
May 26, 1987 ( 8½ hours)  
May 27, 1987 ( 9 hours)  
May 28, 1987 ( 8 hours)  
June 1, 1987 ( 8 hours)  
June 2, 1987 ( 8 hours)  
June 3, 1987 ( 8 hours)  
June 4, 1987 (10 hours)  
June 5, 1987 (10 hours)  
June 8, 1987 (10 hours)

2. The interest due Grievant on back pay shall be at the rate of 12 percent per annum and, in each instance, shall run from the date the paycheck was due for the time he performed the higher level duties to the date he receives the alternate rate pay; and

3. The parties shall submit to the Board by October 1, 1987, a proposed order indicating the specific amount of back pay due Grievant; if they are unable to agree on an amount, they shall notify the Board in writing that they cannot agree, and shall indicate specific areas of factual disagreement and a statement of issues which need to be decided by the Board. Any evidentiary hearing necessary on these issues shall be held on October 15, 1987, at 9:00 a.m. in the Labor Relations Board hearing room.

Dated this 17th day of September, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Dinah Yessne  
Dinah Yessne, Acting Chairperson

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

Louis A. Toepfer  
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