

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	DOCKET NO. 88-19
)	
MARY JOANNE WATSON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 8, 1988, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Mary Joanne Watson ("Grievant"). The grievance alleged that the State of Vermont, Department of Social and Rehabilitation Services ("Employer") violated Article 51 of the Contract 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 denying Grievant's request for alternate rate pay for October 6, 1987.

A hearing was held in the Labor Relations Board hearing room before Board members Charles H. McHugh, Chairman; William G. Kemsley, Sr.; and Catherine L. Frank on June 9, 1988. Assistant Attorney General Michael Seibert represented the Employer. VSEA Staff Attorney Michael Zimmerman represented Grievant.

Requested Findings of Fact and Memoranda of Law were filed by the Grievant and Employer on June 16, 1988.

FINDINGS OF FACT

1. Article 51, 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. When time and circumstances permit, vacant higher-level positions will be filled through the merit system under the applicable Rules and Regulations for Personnel Adminis-

tration. However, because 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, in no event less than the minimum nor more than the maximum base rate for the position to which he is assigned. The State will make a good faith effort to compensate employees for alternate rate work within thirty (30) days of the end of the pay period in which earned.

... 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.

2. Grievant has been employed for the past four years as a Social Worker B (Pay Scale 21) at the Newport District Social and Rehabilitation Services Office, in Newport, Vermont. She is a member of the Non-Management Bargaining Unit. There are approximately 15 employees in the Newport District Office. Grievant does not supervise any state employees in her position.

3. The class specification for Social Worker B, which accurately describes the position held by Grievant, provides in pertinent part as follows:

DEFINITION:

Specialized social and rehabilitation casework duties at a professional level involving management and delivery of services to children who are alleged or determined to be in need of care or supervision by reason of abuse, neglect, or abandonment and to their families; to children who are alleged or determined to be status offenders or delinquent and to their families; to children who are available for adoption, adoptive parents, prospective adoptive parents, birth parents and to elderly and disabled adults whose health and welfare may be adversely affected through abuse, neglect or exploitation. Duties are performed in an assigned district under the supervision of a Social Services Supervisor, District Director, or other administrative or professional official, but with significant opportunity for individual discretion and judgment. Supervision may be exercised over subordinate workers or trainees on a regular, temporary, or case basis in accordance with workload and as district staff needs require.

EXAMPLES OF WORK PERFORMED:

Investigates complaints, intake requests and referrals involving the need for care or supervision of children typically in the age span of birth-to-eighteen years, or elderly or disabled adults. Interviews family members, school officials, law enforcement agencies, medical practitioners, and others as part of the investigation of assigned cases. Regularly assesses child's, adult's and family's situation and environment to determine potential for improvement, stability, or continued deterioration. Formulates a case plan designed to protect the child within the current family situation wherever possible. Helps the youth and family to improve individual and family functioning. Assists the youth to develop social skills, educational objectives, and vocational goals as appropriate. Evaluates couples or individuals as potential adoptive parents through interviews, group meetings, reports, and other written materials. Promotes permanence for children through coordination and delivery of services. May be responsible for developing case plan and for evaluating appropriateness of program and/or facility for client's needs. Provides crisis counseling and services for handicapped, elderly, and others as appropriate in order to respond to immediate needs. May work with probate court, client, and family for assignment of guardianship. Establishes appropriate indicators to evaluate progress of case. Administers and monitors the case plan through a variety of casework practices and reviews.

May initiate emergency procedures to remove child from the current living arrangement and provide shelter or treatment facility when appropriate. May recommend use or discontinuance

of specific facilities. Develops court reports and recommendations for transfer of custody. Testifies in court hearings relative to findings and recommendations. Provides case management, counseling and supportive casework services to natural, foster, and adoptive parents, children, guardians, elderly and disabled adults and others. Maintains case records and monitors assigned cases. Provides case follow-up as necessary including supervision of children in adoptive and foster placement. Refers clients and families to additional supportive services as necessary. Performs related duties as required. (Grievant's Exhibit 2).

4. At all times relevant, Grievant's immediate supervisor was Cy Abdelnour, who is employed as Social Services Supervisor (pay grade 23). Abdelnour is considered to be second-in-command at the Newport District Social and Rehabilitation Services Office. Abdelnour is a member of the Supervisory Bargaining Unit.

5. The class specification for Social Services Supervisor, which accurately describes the position held by Abdelnour, provides in pertinent part as follows:

DEFINITION:

Administrative and supervisory work for the Department of Social and Rehabilitation Services involving the provision of social and protective services to clients and their families in an assigned district. Duties include assigning and monitoring of cases, counseling caseworkers, reviewing court reports, and significant interaction with professionals in the educational, medical and legal fields. Supervision is exercised over the professional and para-professional employees. Work is performed under the direction of a Social Services District Director.

EXAMPLES OF WORK PERFORMED:

Supervises, trains, and develops assigned social workers and para-professionals. Interprets policies, directives, and regulations through individual conferences and staff meetings. Reviews recommendations and approves or modifies plans as necessary. Familiarizes subordinate staff with State and community resources. Observes and analyzes work activities and reapportions caseloads and territories as necessary. Confers with staff members of other departments and agencies on particular cases and/or social work problems and practices. Participates in planning staff meetings. Maintains cooperative work relationships with other supervisors in order to achieve a coordinated district program. Interprets programs to communities by talks, makes special studies and surveys as assigned. In the absence of the District Director, assumes responsibility for the administration of programs within a designated district or service area.

Performs related work as required. (Grievant's Exhibit 3).

6. At all times relevant, Betty Jones directed the Newport office. Jones is employed as Social Services Director A (Pay Scale 24). Jones is designated as a manager.

7. The class specification for Social Services District Director A, which accurately describes the position held by Jones, provides in pertinent part as follows:

DEFINITION:

Managerial work for the Social Services Division of the Department of Social and Rehabilitation Services involving the administration, delivery, and evaluation of social services to clients and their families in an assigned district. Duties involve extensive liaison with other human services programs from both the public and private sectors of the district. Program emphasis is upon services to children and juveniles and their families. Supervision is exercised over professional, para-professional and clerical employees. Work is performed under the general direction of the Social Services Assistant Operations Manager or Operations Manager.

EXAMPLES OF WORK PERFORMED:

Manages the delivery and provision of all social and protective services to adults, families, and children within the district. Coordinates the development and use of social services and related resources within the district. Provides direct supervision to social service supervisors and indirectly to all other district staff through regularly scheduled conferences and ongoing evaluation of work performed. Evaluates district service and operational needs and priorities, establishes intervention methods, and organizes district procedures, staff time and community resources to best meet the needs of the service population. Reviews certain case reports and court documents prior to release. Reviews case records and worker activity reports to assure that performance standards are being met and services are being provided in compliance with state and federal regulations. Identifies staff training needs; coordinates and assists in provision of training with the Department's training unit. Undertakes surveys and prepares reports as indicated by the needs of the district and/or as may be requested by Central office. Develops relationships with public and private service agencies involved in the service delivery process. Maintains a high level of managerial and social services program knowledge. Assumes primary responsibility for effective relationships with the courts and juvenile justice system. Meets with the Social Services Assistant Operations Manager and other Central Office staff to present suggestions and ideas relating to program policy and procedures and to participate in overall Division planning. Performs related duties as required. (Grievant's Exhibit 4).

8. On occasions prior to October 6, 1987, Grievant was left "in charge" of the Newport Office by Jones when both Abdelnour and Jones were away from the office.

9. At a staff meeting prior to October 6, 1987, Jones indicated that she and Abdelnour would be out of the office on October 6 and Grievant would be "in charge" that day. There was no discussion with Grievant at that meeting, or at any time subsequent to the meeting, as to where Jones and Abdelnour could be reached, where they were going on that day, or what was meant by being "in charge". Grievant believed "in charge" meant she would be responsible for resolving any routine problems during the day.

10. On October 6, 1987, Jones and Abdelnour were absent from the Newport office all day. They attended a Department training session in Waterbury, Vermont. Jones' secretary, who was working in the Newport office on October 6, knew where Jones was and how to reach her by telephone.

11. Generally, when Grievant had been left in charge on occasions prior to October 6, the duties which she performed included the following: reading and approving court reports, signing off on affidavits, approving and signing off on computer forms, counseling workers with regard to strategies for particular clients, mediating problems between workers and foster parents or client families, signing workers' time reports and assigning workers for investigations. All of these duties are normally performed by supervisors Abdelnour or Jones, and none of these duties are contained in the job description for a Social Worker B. While she was "in charge," Grievant remained responsible for performing those duties of her own position which time permitted.

12. On previous occasions while in charge, Grievant had performed one of the supervisors' major functions, that of reviewing "intakes". These are written reports made by employees in the District office regarding child abuse or neglect. In reviewing these intakes, Grievant had the responsibility to make a decision to investigate the matter, refer the problem to some other agency or to determine whether an emergency situation existed requiring immediate attention.

13. It is unknown specifically which of the supervisory duties Grievant actually performed while in charge on October 6, 1987. She did whatever circumstances required.

14. If Grievant had made an error while in charge of the office, Jones possibly would have taken disciplinary action against Grievant, depending upon what error was made.

15. By memorandum of October 16, 1987, to Jones, Grievant requested alternate rate pay for October 6, 1987. Jones did not approve this request, and she returned the request to Grievant on October 27, 1987, with the following comment: "According to my supervisors you are not eligible for alternate rate pay because Cy and I were both available by phone on that day." (Grievant's Exhibit 5).

OPINION

At issue is whether Grievant was entitled to alternate rate pay under Article 51 of the contract for October 6, 1987, the day that she was "in charge" of the Newport District office. Essentially, the determination of the merits of this grievance turns on the meaning of two provisions of the alternate rate pay article of the Contract. We will address the disputed provisions in turn.

Article 51, Section 2 provides:

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.

The State contends that, while Grievant's supervisors were not in the office that day, they were "on duty" in the sense that they were working for the State and were available by telephone. Accordingly, the State contends they were not "absent from duty" as is required for Grievant to be entitled to alternate rate pay.

We reject this argument. The Contract does not restrict "absent from duty" to situations where the supervisor is on leave, nor does it necessarily follow that a supervisor should not be considered absent when working within the State that day and available by telephone. Under the circumstances herein, it is clear that Jones and Abdelnour were absent from their supervisory duties at the Newport office on October 6, 1987. A logical and practical implication of being away but available by telephone dictates that the supervisors are in a position to address emergencies or major policy decisions if need be. However, it strains common sense that either or both of them, while in a workshop at another location, could by telephone address any meaningful number of supervisory decisions that Grievant was faced with during the course of a full working day. The fact that Grievant was left "in charge" with no elaboration on what "in charge" meant, and no discussion as to where Abdelnour and Jones would be that day, leads us to conclude that Abdelnour and Jones were "absent from duty" within the meaning of the Contract.

In dispute as well is whether Grievant has "taken over the job of an employee in a higher level position" which means under Article 51,

Section 7, that "an employee is required to perform a majority of these duties of the higher-level job which are substantially different from his own normal duties", and provides that "the employee will be held accountable for poor performance in the same manner that a newly assigned employee" would be held. The State contends that Grievant has not met these requirements.

We disagree. While it is not clear specifically which supervisory duties Grievant performed on October 6, 1987, she had been placed in charge on many previous occasions and had performed many duties normally performed by her supervisors which are substantially different than her own as a Social Worker B. It is reasonable to assume that, since these are the duties that Grievant performed while "in charge" on past occasions, Grievant was required to perform them on October 6 had the circumstance arisen absent any contrary instruction from Jones. The fact that it is not clear whether Grievant actually performed those duties on October 6 is not determinative; the controlling consideration is that she was required to perform those duties if necessary. We conclude by a preponderance of the evidence that these duties, which she was required to perform if necessary, constituted a majority of the duties of at least Abdelnour's position which were substantially different from Grievant's position. Further, no evidence was presented that Grievant would not have been held accountable for poor performance of the supervisory duties she performed while "in charge." Therefore, it is reasonable to assume that she was accountable.

Accordingly, given the circumstances of this case, Grievant is entitled to receive alternate rate pay for October 6, 1987.

ORDER

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

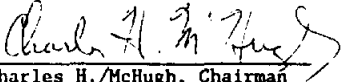
1. The State of Vermont, Department of Social and Rehabilitation Services, shall pay Mary Joanne Watson alternate rate pay, plus interest, under Article 51 of the Contract for October 6, 1987;

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

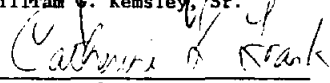
3. The parties shall submit to the Board by September 15, 1988 a proposed order indicating the specific amount of back pay due Grievant; if they are unable to agree on an amount, they shall notify the Board in writing that they cannot agree, and shall indicate specific areas of factual disagreement and a statement of issues which need to be decided by the Board. Any evidentiary hearing necessary on these issues shall be held September 15, 1988, at 9:30 a.m. in the Labor Relations Board hearing room.

Dated the 2nd day of September, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


William C. Kemsley, Sr.


Catherine L. Frank