

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
VERMONT STATE EMPLOYEES	)	DOCKET NO. 88-70
ASSOCIATION (Re: EXPENSES	)	
REIMBURSEMENT)	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 2, 1988, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of itself and certain Agency of Human Services employees. The grievance alleged that the State of Vermont, Agency of Human Services ("Employer") violated the Expense Reimbursement provision of the collective bargaining agreement between the State and VSEA for the Non-Management, Supervisory, State Police, and Liquor Units, effective for the period July 1, 1988 to June 30, 1990 ("Contracts"), by implementing a policy requiring its employees to lodge at a State-owned facility at Stanley Hall when attending training or other mandatory functions in Waterbury.

The parties agreed that the Board may decide this matter based upon a stipulation of facts, an on-site inspection of the facility, and memoranda of law submitted by the parties. An on-site inspection of the Stanley Hall facilities was conducted by Board members Charles McHugh, Chairman; William Kemsley, Sr., and Louis Toepfer on June 22, 1989. Michael Seibert, Assistant Attorney General, represented the Employer. Michael Zimmerman, VSEA Staff Attorney, represented the VSEA. The parties filed briefs on July 6, 1989.

## FINDINGS OF FACT

1. 32 V.S.A. §1261(a) provides that "unless otherwise provided, all persons in the employ of the state when away from home and office on official duties shall be reimbursed for expenses necessarily incurred..." (Exhibit A).

2. The Contracts contain an article entitled "Expenses Reimbursement," which provides in part:

1. State employees, when away from home and office on official duties, shall be reimbursed for actual expenses incurred for travel accommodations...

... 3. Employees shall be expected to make a reasonable effort to procure lodging and meals with as little expense as possible while not unreasonably sacrificing personal convenience and comfort.

(Exhibit B)

3. Agency of Administration Bulletin 3.4, relating to "Regulations for Reimbursement of Personal Expenses", provides in pertinent part as follows:

...1(c). Reimbursable Claim

Only actual and necessary expenses which are incurred in the conduct of the State's business... shall be reimbursed.

1(d). Avoiding Unnecessary Claims

All activities which may lead to the submission of claims should be conducted in the most economical and prudent manner possible, considering direct and indirect costs to the State and the health and safety of all claimants.

...4. Lodging  
a. Claims

Claims for lodging must be limited to charges which are both reasonable and necessary.

(Exhibit C)

4. Stanley Hall is a three story, State-owned building located on the grounds of the Waterbury Complex in Waterbury, Vermont. Known as the Agency of Human Services Training Center, it has been in operation since 1976. It is open for use by State agencies, and by State funded or State sponsored entities.

5. The first floor contains all of the training rooms, a video room (used for storage of video equipment), the Training Center Coordinator's office, a lounge, and a lobby (with a color television, chairs, and card and board games). Also on the first floor are one men's room and one ladies' room, each equipped with three sinks and three toilet stalls. Neither the men's room nor the ladies' room has a shower. There is one double bedroom with a private bathroom on the first floor. That bathroom has a sink, a toilet, and a bathtub equipped with a shower head.

6. The second floor has two parts. The first part is dedicated to office space for computer services for the Vermont State Colleges system. The other part is dedicated to overnight accommodations. There are eight bedrooms on the second floor. Seven of the eight bedrooms are double rooms, and one is a single room. One double bedroom has a private bathroom equipped with a sink, toilet, and tub. Occupants of the other seven bedrooms must use the second floor community bathrooms, one for men, the other for women. The second floor ladies' room is equipped with one toilet, one sink, and one shower stall. The men's room is equipped with two (or three) sinks, two toilets, and one shower stall, which was replaced in early 1989. In addition, there is one room on the second floor which contains a refrigerator for guests' use. That room is also used as a changing room by Complex employees who exercise during the lunch hour.

7. The third floor is occupied entirely by the offices of the Vermont State Colleges system.

8. There is one pay telephone located on the first floor. In addition, during working hours (i.e., 7:45 a.m. to 4:15 p.m.), the coordinator makes available to users a State telephone, which guests can use only for out-going State business calls. That telephone normally is not available during evening hours, as it is locked in the coordinator's office. Such telephone occasionally has been made available to guests during evening hours. There is one State-owned telephone (not a pay phone) on the second floor which may be used for local calls in the Waterbury-Montpelier area. It can also be used for operator assisted collect or credit card calls. The Security office can be reached on that phone, and instructions for calling security are posted.

9. A full-time Coordinator is available from 7:45 a.m. to 4:15 p.m., Monday through Friday.

10. Cleaning is performed by Contract employees from 4 a.m. to noon to clean training rooms. If a guest is staying on the first floor, the Coordinator leaves instructions for the cleaning staff not to run the vacuum cleaner.

11. There are Security patrols throughout the State Complex beginning at 4:30 p.m. There are three or four security patrols through Stanley Hall during the evening and night hours.

12. There are no individual thermostats to control the temperature in each room. There are three thermostats for the entire building, all located in the training rooms on the first floor. Maintaining comfortable temperatures throughout the building, in light of the nature of the Hall's heating system, is difficult.

13. Since January 1, 1989, rates for overnight accommodations are \$5.00 per person per night. In the case of State employees, their departments are charged directly, and the employee is not charged.

14. In 1988, 655 people used Stanley Hall's overnight accommodations. (Exhibit N). The Coordinator estimated that of that number, between 400 and 450 were State employees.

15. The general nature of employee complaints mentioned in the course of this grievance included: noise, lack of security, inadequate lighting, lack of privacy (e.g. community bathrooms), use of shower facilities by Complex workers who exercise during the lunch hour, rooms too spartan and not comfortable, no individual heat controls, and no place to put wet towels.

16. There is no Agency of Human Services policy, either written or unwritten, concerning compulsory use of Stanley Hall for overnight stays. Each department, however, is free to decide for itself whether employees attending mandatory or voluntary training will be required to stay at Stanley Hall. Employees who attend such training, and whose department has decided to require the use of Stanley Hall, may, if they do not wish to stay there, either return home for overnight rest or find commercial accommodations at their own expense.

17. There has been no change in the Department of Social Welfare reimbursement policy since the current contract was negotiated.

18. For the calendar year 1988, the State received 58 evaluations of Stanley Hall. Thirty-four evaluations rated the facility and restrooms "clean and neat" and the bedroom temperature "comfortable". Seventeen evaluations, while rating the facility and restrooms "clean and neat", rated the bedroom "too hot". Five more,

while rating the facility and restrooms "clean and neat", rated the bedroom "too cold" (Exhibit L).

19. The condition of Stanley Hall has not deteriorated since bargaining was conducted for the current contract. Since VSEA expressed its concerns in July of 1988, the State has made the following improvements to the Hall: added desk lamps to every room, added new mirrors to every room, replaced all towels, improved supply of board games, installed microwave and toaster oven in lounge, installed candy machine in lobby, provided access to lounge for overnight lodgers, and placed new venetian blinds in the rooms.

#### MAJORITY OPINION

The central issue herein is whether the Employer, in requiring employees to lodge overnight at the Stanley Hall facility at Employer expense in lieu of employees being reimbursed for lodging at a commercial establishment, is in violation of the reimbursement provisions of the Contracts. These provisions provide that employees "shall be reimbursed for actual expenses incurred for travel accommodations", and "employees shall be expected to make a reasonable effort to procure lodging and meals with as little expense as possible while not unnecessarily sacrificing personal convenience and comfort".

We recognize that 32 VSA §1261(a) and Agency of Administration Bulletin 3.4 contain provisions relating to lodging. However, the statutory language is helpful only to the extent of requiring that employees be reimbursed for expenses "necessarily incurred". We interpret "necessarily incurred" to apply to arrangements necessary for an employee to arrive at the training site, conduct official State

business and be reasonably sustained. Travel, lodging and meals clearly fall within this category. We reject the Employer's interpretation of "necessarily incurred" to mean that if housing is provided by the Employer at no cost, then any expense incurred by an employee for housing was not "necessarily incurred". The provisions of Agency of Administration Bulletin 3.4 add nothing of significance to the statutory and contractual provisions.

We turn to applying the Contract provisions to the circumstances of this case. The Employer contends that an employee who lodges overnight at Stanley Hall does not have to sacrifice, by any reasonable standards, personal comfort or convenience. VSEA contends that, under the Contract, it is the employee who makes the personal judgment concerning what is necessary to assure "personal convenience and comfort". Since some employees believe their "personal comfort and convenience" is unreasonably sacrificed when they are required to stay there, VSEA contends that requiring employees to stay at Stanley Hall is a violation of the Contract.

The standard which the Board uses is not whether the Employer or the employees in particular consider this to be an unreasonable sacrifice. Instead, the standard is whether a reasonably prudent adult on business away from his or her family would be required to sacrifice personal convenience and comfort by using the Stanley Hall Facilities.

The facilities at Stanley Hall are not grossly substandard. The rooms are spartan, but they are clean and safe. They appear to be as cheerful as possible considering their location. The State has made a sincere effort to provide all of the amenities found in an inexpensive commercial establishment. However, the problem is not so much the

availability of amenities, but rather their location. The television is located in a lobby on the first floor. The telephones are in the halls on the first and second floors. Most important, there are no private bathrooms in seven out of nine rooms. It is not each individual inconvenience which makes Stanley Hall substandard; it is the totality. The inconvenience and lack of privacy which results from community telephones, televisions, and bathrooms combine to make it an unreasonable sacrifice to comfort and convenience.

In this part of the United States, when a traveler acquires accommodations it is assumed that the bathroom facilities will be private, for his or her exclusive use. The exceptions seem to be Country Inns and Bed & Breakfast accommodations where many have semiprivate or shared bathrooms. However, when a traveler chooses to procure lodging at an establishment with shared bathroom facilities, it is by preference for this type of establishment, not because it is required. For an employer to require its employees to stay overnight in a facility where they may have to share one bathroom and one shower with several other guests is to require an unreasonable sacrifice of convenience and comfort. It is to require them to be unreasonably stripped of minimal privacy and convenience.

The other inconveniences add to this unreasonableness. The rooms have no individual temperature controls. The Employer admits that everybody's idea of an ideal temperature is different, and it is impossible to please everyone all of the time. That is why most commercial accommodations allow the guest to regulate the temperature individually.



Most commercial accommodations also provide the guest with a telephone for private use. The phone is available next to the bed 24 hours a day in the event that an emergency should arise at home, or if the guest simply wants to speak privately with office, family or friends. The privacy and added convenience of a telephone in the room is important to an employee who has been separated from family by a work commitment out of town. The lack of private telephones in the rooms at Stanley Hall is an inconvenience.

Finally, it is an inconvenience to the guests to be without a television in their rooms. This is standard equipment in most commercial establishments. It contributes to the guests' overall feeling of privacy and convenience. It is inconvenient, and possibly uncomfortable to have to go downstairs to a public lobby of a government building to watch television.

Except for the community bathrooms, none of these inconveniences in and of itself makes a stay at Stanley Hall an unreasonable sacrifice to convenience and comfort. When combined, however, they constitute a totality of inconvenience that makes Stanley Hall substandard. Many people consider themselves to be spartans, and would find these accommodations more than adequate. We applaud their right to make this choice. However, the many others who expect convenient and comfortable accommodations when away on business should be given the same choice. No State employee should be required to stay in accommodations which reasonably prudent people would consider substandard. While these accommodations may be adequate for the self-proclaimed spartan, that is not the test. A self-proclaimed spartan is not, by definition, a reasonably prudent person.

We therefore conclude that by requiring employees to lodge at Stanley Hall at Employer expense, when on official overnight business in Waterbury, in lieu of employees being reimbursed for lodging at a commercial establishment, the Employer has violated the provisions of the Contracts which allow employees to procure lodging with as little expense as possible without unreasonably sacrificing personal convenience and comfort.

By this decision, the Board is not intending to issue a sweeping statement on the State's authority to provide State run lodgings in lieu of reimbursement for a commercial establishment. This will need to be decided on a case-by-case basis. The Board will have to consider each accommodation to decide if reasonably prudent persons would consider it an unreasonable sacrifice to convenience and comfort and thus a violation of the Contract.

  
Charles McHugh, Chairman

  
William G. Kemsley, Sr.

#### DISSENTING OPINION

I believe there is no violation of the collective bargaining agreement in this matter and that the grievance should not be sustained.

The Agreement requires employees to make a reasonable effort to procure lodgings and meals with as little expense as possible while not unreasonably sacrificing personal convenience and comfort. The

question we face, therefore, is whether the employer's reimbursement policy results in an unreasonable sacrifice of personal convenience and comfort.

The facilities in Stanley<sup>2</sup> Hall are clean, safe, and modestly comfortable. It is hard for me to see how staying there for a few days is an unreasonable sacrifice of personal convenience and comfort.

Although the Agreement does not specify standards for comfort and convenience, it does state specifically that employees are expected "...to procure lodging...with as little expense as possible..." It is far less costly to the employer for employees to stay at Stanley Hall than at one of the local motels. My colleagues in their majority opinion seem to disregard this part of the Contract. Their concern is with the inconvenience of shared bathrooms, television and telephones. In my opinion, they are substituting their personal preference for a close reading of the bargaining agreement.

  
Louis A. Toepfer

ORDER

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

1. The Grievance of the Vermont State Employees' Association is SUSTAINED; and

2. The State of Vermont, Agency of Human Services, shall cease and desist from enforcing the policy that all employees on official duty in Waterbury requiring overnight lodging must stay at the State owned and operated Stanley Hall, in lieu of being reimbursed for lodging at a commercial establishment. The Employer will provide reimbursement as provided in the Contract for any employee who chooses to lodge at a commercial establishment.

Dated this 18th day of August, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman

  
William G. Kemsley, Sr.