

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE COLLEGES)	DOCKET NO. 92-52
STAFF FEDERATION, AFT)	
LOCAL 4023, AFL-CIO AND)	
MICHAEL LAFLIN)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 16, 1992, the Vermont State Colleges Staff Federation, AFT Local 4023, AFL-CIO ("Federation") filed a grievance with the Vermont Labor Relations Board alleging that the Vermont State Colleges ("Colleges") violated Article 21, Sections 3 and 5 of the parties' collective bargaining agreement ("Contract"), by refusing to pay certain overtime amounts to Michael Laflin, a security officer at Johnson State College. Specifically, the Federation and Laflin requested payment of overtime for class assignments, study time and certain class time in connection with training which Laflin had received. The grievance cited the federal Fair Labor Standards Act in support of the position that such time constituted hours worked.

A hearing was held on April 8, 1993, before Board Members Charles McHugh, Chairman; Catherine Frank and Louis Toepfer in the Board hearing room in Montpelier. American Federation of Teachers Representative Shawn Flood represented the Federation and Laflin. Attorney Kimberly Rozak represented the Colleges.

At the hearing, the parties agreed that Laflin was entitled to payment of an additional seven hours of overtime for

class time. As a result, the only remaining issue in this grievance is whether Laflin is entitled to overtime pay for the study time he spent at the training.

The Colleges filed a brief on April 26, 1993. The Federation filed a brief on April 28, 1993.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE 1 DEFINITIONS

21. Grievance - The term "grievance" as used in this Agreement means any grievance that would be cognizable for employees under 3 VSA Section 902(14).

ARTICLE 3 MANAGEMENT RIGHTS

1. All management functions and responsibilities, whether or not possessed or exercised by the Vermont State Colleges prior to execution of this Agreement, are reserved exclusively to the Vermont State Colleges, except to the extent that same are expressly restricted by a specific provision of this Agreement.

ARTICLE 21 HOURS OF WORK AND OVERTIME

3. Overtime shall be paid for all hours worked in excess of thirty-seven and one-half (37 1/2) hours per week at the rate of one and one-half (1 1/2) times the employee's regular hourly rate. For purposes of this provision, sick leave will not count as time worked.

5. All overtime payments earned shall be paid in the pay period following the period in which overtime was earned.

2. 3 VSA §902(14) provides as follows:

"Grievance" means an employees', group of employees', or the employees' collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors.

3. Michael Laflin is a full-time security officer at Johnson State College. In the spring of 1992, he was asked by his supervisor, Daniel Cotter, Director of Security at the College, to attend the Tri-State Security Officers' Academy in Middlebury, Vermont. Laflin agreed to do so. The Academy program began on Sunday, June 7, 1992 and ran through Saturday, June 13, 1992. Classes began on Monday, June 8, and continued through Friday, June 12.

4. In addition to attending classes, trainees took tests on the materials they had covered in class. Laflin studied for approximately 23 hours outside of class to review materials and prepare for tests at the Academy (Federation Exhibit 9).

5. The Colleges paid Laflin for all time spent in class while at the Academy, including time spent in optional classes in the evening. The Colleges refused Laflin's request to pay him for time spent outside of class reviewing materials and preparing for tests (Federation Exhibits 6, 8, 9).

6. Cotter and Gary Ackerson, a security officer at Johnson State College, attended Academy training the year prior to Laflin attending the Academy. Neither Cotter nor Ackerson were paid for any study time while at the Academy. Although Ackerson received overtime compensation or compensatory time off for the period he was at Academy training, the evidence does not indicate that any of this was for study time.

7. At the time of the hearing in this matter, Robert Chamberlain had been Dean of Administration at Johnson for the past two and one-half years. In such capacity, he has been

responsible for payroll for all employees at the College. During that period, which included the time Cotter and Ackerson attended the Academy in 1991, Chamberlain has never authorized payment for study time for employees covered by the Contract when they attended training courses.

8. Job consequences such as discipline, demotion, termination, promotion or increased pay did not attach to Laflin's performance on tests at the Academy.

OPINION

Our decision whether Michael Laflin is entitled to overtime payment for his study time at the training he attended turns on our interpretation of Article 21, Section 3, of the Contract. It provides "overtime shall be paid for all hours worked in excess of thirty seven and one-half hours per week". The Contract does not define the term "hours worked", other than to specify that "sick leave will not count as time worked".

Given the lack of a detailed definition, we interpret the term "hours worked" with respect to payment of overtime in light of how overtime generally is handled in the employment setting. Generally, to be compensated as overtime worked, work must be assigned or approved by the employer, explicitly or implicitly, as work which the employer requires to be done. See Grievance of Austin, 6 VLRB 150 (1983). This is consistent with general management rights to "utilize personnel... and means in the most appropriate manner possible", 3 VSA §905(b)(1); as it is management's prerogative to determine when overtime shall be performed.

In applying that standard here, we conclude that the study time spent by Laflin should not be compensated as overtime worked. Laflin's supervisor did not tell him that study time was required. Also, assignment or approval of such work was not implied under the circumstances. This is particularly so given that no specific job consequences, adverse or favorable, attached to Laflin's performance on Academy tests. Also, the past practice indicated that employees had not been compensated for such study time on Academy tests. Given these considerations, and the subjective nature of study time which limits management control of the amount of overtime worked, we are inclined to conclude that the study time here does not constitute hours worked within the meaning of the Contract.

The Federation and Laflin request that we look to the provisions of the federal Fair Labor Standards Act as supporting their position under the Contract with respect to the definition of hours worked. This we decline to do. The Board has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). In deciding grievances, the Board is limited by the statutory definition of grievance, which is in pertinent part the "expressed dissatisfaction... with aspects of employment or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation". 3 VSA §902(14).

Statutory provisions are not encompassed within this definition unless they are incorporated into a collective bargaining agreement, rule or regulation. Bovnton v. Snelling, 147 Vt. 564 (1987). In re McMahon, 136 Vt. 512 (1978). There is nothing in the Contract leading us to conclude that the parties incorporated the provisions of the Fair Labor Standards Act into the Contract. Accordingly, we believe it is inappropriate for us to rely on the provisions of a federal statute under such circumstances.

ORDER

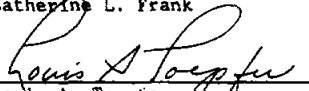
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of the Vermont State Colleges Staff Federation, AFT Local 4023, AFL-CIO and Michael Lafiin is DISMISSED.

Dated this 1st day of July, 1993, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


Louis A. Toepfer