

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
ROGER BROWN, VINCE HANAFIN,)	DOCKET NO. 97-9
MAGGIE HAWSKWORTH, GRACE)	
MOROCH, WILLIAM ECK and)	
THOMAS FREEMAN)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 18, 1997, the Vermont State Employees Association, Inc. ("VSEA") filed a grievance on behalf of Roger Brown, Vince Hanafin, Maggie Hawthorn and Grace Moroch ("Grievants") against the State of Vermont Agency of Human Services, Department of Corrections ("Employer"), alleging that the Employer had violated the collective bargaining agreement between the State and the Supervisory Bargaining Unit ("Contract"), effective for the period July 1, 1996 to June 30, 1997. Specifically, Grievants alleged that the Employer violated Article 24 of the Contract on October 22, 1996, when it notified them that they were no longer eligible for the corrections supervisors' competency stipend. On April 22, 1997, Grievants filed a motion to amend their grievance to include William Eck and Thomas Freeman. On May 8, 1997, in response to Grievant's Motion to Amend, the Employer did not object to the inclusion of two additional grievants as long as the Board limited any relief to the filing date of the Motion to Amend.

A hearing was held on May 8, 1997, in the Vermont Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Louis Toepfer and Leslie Seaver. Assistant Attorney General David

Herlihy represented the Employer. VSEA Legal Counsel Samuel Palmisano represented Grievants. Grievants and the Employer filed post-hearing briefs on May 21, 1997 and May 22, 1997, respectively.

FINDINGS OF FACT

1. Prior to 1982, all organized State employees were represented by VSEA in four separate bargaining units: Supervisory, State Police, Liquor Control and Non-Management. Non-supervisory employees in the Department of Corrections were included in the Non-Management Unit.

2. In the early 1980's, correctional employees engaged in a walkout at the Woodstock Community Correctional Center. During subsequent contract negotiations for the Non-Management Bargaining Unit, VSEA and the State agreed that improved training and higher wages for correctional officers were desirable. To achieve these objectives, the parties negotiated a "competency training supplement" for correctional employees; this supplement rewarded employees who attended approved training outside of their normal work schedule with an overtime premium rate of pay.

3. On May 1, 1981, VSEA filed a petition with the Labor Relations Board to form a separate bargaining unit of all correctional employees in the six community correctional centers who then were included in the Non-Management and Supervisory Units; VSEA did not seek to include Department employees working in the probation and parole offices. The Board determined that a bargaining unit consisting of "all employees of the six community correctional centers of the State of Vermont with the exception of employees designated managerial, supervisory, or

confidential pursuant to 3 V.S.A. Section 906, but including correctional facility shift supervisors is appropriate", and ordered an election. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82 (1982). On appeal, the Board was affirmed by the Vermont Supreme Court except for that portion of the order which included correctional facility shift supervisors in the bargaining unit. 143 Vt. 636 (1983). VSEA prevailed in the subsequent election and the Board issued an Order of Certification on February 21, 1984 (VLRB Docket No. 81-25).

4. The competency training supplement for correctional employees became part of the subsequent Corrections Bargaining Unit Contract. Such competency training supplement did not extend to Department employees who worked outside the facilities, such as employees who worked in probation and parole offices, as they were not in the bargaining unit.

5. Since at least 1988, there have been two types of casework supervisors in the Department - those belonging to the associated class of "facilities", and those belonging to the associated class of "probation and parole" (Grievants' Exhibit 3; State's Exhibits 2, 3).

6. A number of societal and Departmental changes occurred during the 1980's, resulting in more integration of work between Department employees working in the correctional facilities and Department employees working in the probation and parole offices. During this reorganization, the State promised probation and parole employees that they would not be assigned or reassigned to work in correctional facilities.

7. On December 5, 1989, VSEA filed a Petition for Unit Clarification with the Board seeking clarification of the existing bargaining unit by adding Non-Management Bargaining Unit Department employees who worked in probation and parole offices to the existing bargaining unit. Petition of the Vermont State Employees' Association, Inc.: (re: Bargaining Unit for Department of Corrections Employees), 13 VLRB 287 (1990).

8. After a hearing on the matter, the Board recognized the societal and Departmental changes since its 1982 decision; namely, an integration of services requiring a collaboration of duties between correctional facility employees and probation and parole employees, a merged chain of command, and the creation of a position, Corrections Services Specialist ("CSS") in which it was possible to work in either a facility or in a probation and parole office. *Id.* at 305. The Board determined that it was appropriate to include probation and parole office employees in the Corrections Bargaining Unit and ordered an election. *Id.* at 309. Employees approved the bargaining unit and VSEA prevailed in the subsequent election; the Board issued an Order of Certification on February 21, 1991 (VLRB Docket No. 89-82).

9. At some point after 1982, VSEA and the State also negotiated a training competency supplement for Department employees in the Supervisory Unit. By 1990, the contractual provision, Article 25 of the 1990 - 1992 Contract for the Supervisory Unit, stated in pertinent part:

**ARTICLE 25
CORRECTIONS SUPERVISORS COMPETENCY
SUPPLEMENT**

1. Effective with the fiscal quarter commencing July 1, 1990, bargaining unit personnel in the Corrections classifications listed in Section 6, a, below shall receive a special overtime premium of \$35 an hour, and those listed in 6, b, \$25 a [sic] hour, or their regular rate of pay, whichever is greater, for participation in competency training as specified below, not to exceed ten (10) hours per calendar quarter.

...

6. ELIGIBLE CORRECTIONS CLASSIFICATIONS

- a. Correctional Foreman
Correctional Facility Shift Supervisor
Correctional Security and Operations Supervisor
- b. Casework Supervisor
Administrative Assistant B

If all (sic) classes are created during the life of the agreement, or if existing classes are modified to different titles, the assignment to rate category will be most closely associated with the existing categories.

(Grievants' Exhibit 9).

10. The 1990 - 1992 Corrections Bargaining Unit Contract competency training supplement was similar to the Supervisory Unit competency supplement. It identified the employees eligible to apply for the stipend and set the hourly rate of pay. Both contracts also set forth procedures which eligible employees were required to follow to receive their stipend.

11. During the 1992 - 1994 contract negotiations between VSEA and the State for the Master Agreement covering the separate bargaining units, the parties went to impasse and fact finding on several issues. One of the issues that the State and VSEA could not agree upon was extending the competency training stipend to Department employees who worked outside the facilities.

12. It was VSEA's position that competency training benefits should be extended to five other positions in the Department: Corrections Services Specialist

("CSS"), Intensive Supervision Parole Officer ("ISPO"), Probation and Parole Officer (P&P), Correctional Officer III ("CO3), and Casework Supervisors ("CS"). The fact finder specifically identified these five positions in his report under the "Corrections Bargaining Unit Issues" (Grievants' Exhibit 8; State's Exhibit 9) .

13. The fact finder issued his report on February 5, 1992. He indicated in his report that VSEA's justification for including these five field positions was because "this stipend was created to recognize the hazards inherent in certain areas of correctional work as well as better prepare those employees for the tasks they face. Subsequent to merging all correctional officers into a single bargaining unit . . . the duties of other members became sufficiently similar [to] those of correctional officers to warrant extending this benefit" (Grievant's Exhibit 8; State's Exhibit 9).

14. It was the State's position that the competency supplement should only be available to employees who "worked inside the wall" and it feared that VSEA would attempt to extend this stipend to an ever-widening group of employees. The fact finder indicated in his report that the State's justification for its position was that "these additional classifications do not face the same type of danger and difficulties as do correctional officers" (State's Exhibits 9, 10).

15. In his discussion of Corrections Bargaining Unit issues, the fact finder stated in pertinent part:

. . . the evidence shows that the CSS, CO3, CS and ISPO classifications do have duties involving danger and special skills which are similar to those faced by correctional officers. Because of this I find that these three (sic) classifications deserve this competency benefit. However, in light of the current economic situation, I am recommending that it be delayed until the final quarter of the forthcoming Agreement.

In making this recommendation, I am mindful of the State's concern

that including these classifications will create a rush for yet additional inclusion, both from within and outside the Corrections Bargaining Unit. Thus, I wish to point out that my finding is based on the particulars facing correctional officers and the CSS, CO3, CS and ISPO classifications, specifically their work within the facilities and the nature of their clients. I do not find that the duties and responsibilities of the P&P officers rise to the same level, nor, based on the evidence provided, that employees working in other units face similar dangers and difficulties (Grievants' Exhibit 8; State's Exhibit 9).

16. The fact finder stated that the "parties should agree to make employees with the CSS, CO3, and IPSO classifications eligible for the competency stipend". It is unknown why the fact finder failed to include the casework supervisor (CS). However, it is noted that the discussion of competency training in the fact finder's report is under "Corrections Bargaining Unit Issues" and such supervisors were in another bargaining unit, the Supervisory Bargaining Unit (Grievants' Exhibit 8; State's Exhibit 9).

17. ISPO's and Corrections Service Specialists appear to be interchangeable terms, ISPO's being an older position designation. To date, there are only four ISPO's left in the Department.

18. The parties used the fact finder's report to reach an agreement as to which employees in the Department would be eligible for the stipend. VSEA agreed that Probation and Parole Officers would not be eligible for the stipend; many Probation and Parole Officers had formerly been correctional officers and, as indicated in Finding of Fact No. 6, had been promised that they would not be required to work again inside a facility.

19. The 1992 - 1994 Corrections Bargaining Unit Contracts and subsequent contracts recognized the expansion of the competency training

supplement for the above-referenced field employees and the contract language further reflected the fact finder's recommendation regarding employees who worked within the facilities. Article 25, Section 7(b), and Section 8, of the 1994 - 1996 Corrections Bargaining Unit Contract stated in pertinent part:

**ARTICLE 25
CORRECTIONS COMPETENCY TRAINING**

...

7. ELIGIBLE CORRECTIONS CLASSIFICATIONS

...

b. Corrections Service Specialist (& Trainee) - effective the final fiscal quarter of the Agreement to be eligible under Section 8.

...

If classes are created during the life of the agreement, or if existing classes are modified to different titles, the assignment to rate category will be most closely associated with the existing categories.

8. CASEWORK & FIELD SUPERVISION

Effective with the beginning of the last fiscal quarter of this agreement, those classes who by virtue of the nature of their job duties and/or class specification, are subject to assignment, or reassignment, (on a temporary or permanent basis) to work in a Correctional facility, shall be eligible as follows:

Corrections Service Specialist (& trainee)
Corrections Officer III
ISPO (CSS)
Casework Supervisor

...

(Grievants' Exhibit 11)

20. Similarly, subsequent Supervisory Bargaining Unit Contracts recognized the expansion of the competency training supplement for field employees and the contract language further reflected the fact finder's recommendation

regarding employees who worked within the facilities. Article 24 of the 1996 - 1997

Supervisory Bargaining Unit Contract states in pertinent part:

ARTICLE 24
CORRECTIONS SUPERVISORS COMPETENCY SUPPLEMENT

1. Effective with the fiscal quarter commencing July 1, 1992, facility personnel in the Corrections classification listed in Section 6, a, below, shall receive a special overtime premium of \$35 an hour, and those listed in 6, b, \$25 a hour, or their regular rate of pay, whichever is greater, for participation in competency training as specified below, not to exceed ten (10) hours per calendar quarter.

...

6. ELIGIBLE CORRECTIONS CLASSIFICATIONS:

...

b. Casework Supervisor
Casework Supervisor in Field Units (effective the final fiscal quarter of the Agreement to be eligible under Section 7).
Administrative Assistant B
Correctional Medical Services Coordinator
If all (sic) classes are created during the life of the agreement, or existing classes are modified to different titles, the assignment to rate category will be most closely associated with the existing categories.

7. CASEWORK & FIELD SUPERVISION

Effective with the beginning of the last fiscal quarter of this agreement, those classes who by virtue of the nature of their job duties and/or class specification, are subject to assignment, or reassignment, (on a temporary or permanent basis) to work in a Correctional facility, shall be eligible as follows:

Casework Supervisor in Field Units: Such special overtime rate of \$25/hr. shall be earned by successfully completing (as determined by the individual's standard performance evaluation) Department of Corrections' provided and/or approved in-service education/training. The Department shall provide or approve 10 hours of such training per calendar quarter which shall be scheduled outside of normally scheduled working hours and outside of any other normally required overtime that may be required of employees in the listed classes. The Department may test employees with regard to the success of the training and individual failure to demonstrate achievement of

performance objectives may adversely affect eligibility for the compensation and the employee's performance evaluation (State's Exhibit 8).

21. In response to emergency situations in the 1970's and 1980's, the Department reassigned field personnel to work in makeshift emergency facilities. The Department created such facilities to accommodate nuclear power protesters in the 1970's and abortion protesters in the 1980's; it temporarily assigned both facility and field personnel to work in these emergency makeshift facilities. It is likely that these two situations have been the only two times in recent memory that field personnel have been temporarily assigned to work in a facility.

22. Grievant Roger Brown has worked for the Department for approximately 27 years. In December 1989, Brown was promoted to the position of casework supervisor - probation and parole. As a casework supervisor, Brown started participating in the supervisors' competency supplement under the terms of the 1992 - 1994 Supervisory Unit Contract. He attended training sessions and received the supplement during the last quarter of the fiscal year ending June 30, 1994 (Grievants' Exhibit 10).

23. During 1994, the Department reorganized its field delivery service. It divided new and former responsibilities of the probation and patrol offices into two discrete units: correctional center service centers ("CCSC") and court and reparative service units ("CRSU").

24. Generally, CCSC employees deal with so-called "high level" probation cases. They are involved in counseling offenders who have engaged in behaviors such as violence, drug and alcohol abuse and sex offenses. CCSC

employees also deal with offenders who are given pre-approved furloughs, as well as post incarceration offenders. CCSC employees are supervised by casework supervisors - probation and parole, also referred to as CCSC casework supervisors.

25. CRSU employees are primarily involved in informing the trial court of various options it has when it sentences offenders. Unit employees also inform the court of other Department services available for offenders and are involved in pre-sentence investigations. CO3's in the CRSU's supervise offenders sentenced to community restitution programs, as well as offenders placed in administrative programs. Court and reparative coordinators bring Vermont citizens together to work with offenders.

26. In the Fall of 1994, Department management requested that the Department of Personnel reclassify those casework supervisors - probation and parole who were assigned to supervise the newly created CRSU employees. The PER-10 submitted by Department management requested that the position be upgraded from a Pay Grade 22 to a Pay Grade 23 and that the position be called court and reparative services supervisor ("CRSS") (State's Exhibit 4; Grievant's Exhibits 4, 5).

27. In describing the CRSS's duties, Department management stated on the PER-10 that the employee "(p)lans, supervises, and reviews the work of correctional services specialists, correctional officers, volunteers and aides in a facility or field unit" (State's Exhibit 4).

28. On or about March 10, 1995, the classification section agreed with management's request. The section reallocated the position and assigned the newly

created court and reparative services supervisor position to Pay Grade 23 (State's Exhibit 4; Grievants' Exhibits 4, 5).

29. The Department's subsequent job description for court and reparative services supervisor stated "(s)ome danger of assault may be present in dealings with offenders". All Grievants are CRSS's (State's Exhibit 1).

30. CRSS's do not work inside the facility and did not work inside the facility in their former field position of casework supervisor - probation and parole. They may occasionally meet with reparative boards inside correctional facilities.

31. At the present time, the CCSC caseload is heavy. The Department may occasionally reassign facility personnel to these centers. CCSC personnel, including the casework supervisors, have not been reassigned to correctional facilities.

32. Management could reassign CCSC casework supervisors. However, it would be unlikely. A possible scenario where this could happen would be the legislature approving a capital request to add or expand existing facilities to accommodate 300 additional beds, a resultant reduction in CCSC caseload, and a shortage of facility personnel.

33. Management could reassign CRSS's to work in a facility, but this would be unlikely. A possible scenario where this could happen would be a complete restructuring of the Department's delivery system, with the CRSU's placed within correctional facilities.

34. From the final quarter of Fiscal Year 1994 (i.e., April 1, 1994 - June 30, 1994) until the Fall of 1996, Grievants' supervisor, Northeast Regional Director

Peter Comart, budgeted money for Grievants' competency supplement in his quarterly budget requests and Grievants received such supplements during these quarters.

35. Director of Correctional Services Richard Turner discovered for the first time during a budget review in the Fall of 1996 that CRSS's were receiving the competency supplement. He informed Comart that they were not eligible to receive such supplement because they were not subject to assignment to a facility on a temporary or permanent basis.

36. On October 22, 1996, Comart sent a message via electronic mail to Grievants Brown, Hanafin, Hawksworth and Moroch which stated in pertinent part:

During the 1st quarter Review we talked to Dick and Dave about stipend. Sue Blair had it confirmed by State Personnel (we've asked that this be double and triple-checked), Court and Reparative Services Supervisors, and Court and Reparative Services Coordinators are NOT eligible for stipend.

...

(Grievants' Exhibit 7).

37. Grievants have not received a competency supplement since October 22, 1996. Grievant Brown has attended approximately 30 hours of training during work hours and has received his regular hourly pay rate while attending such training.

OPINION

At issue is whether the Employer violated Article 24 of the Contract in denying Grievants' eligibility for the corrections supervisors' competency stipend. The Board will not read terms into a contract unless they arise by necessary

implication. In re Stacey, 138 Vt. 68, 71 (1980). The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts, not to make or remake them for the parties, or ignore their provisions. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

Article 24 identifies the employees eligible to participate in the competency supplement, the appropriate rate of pay and the procedures eligible employees are required to follow to receive this stipend. All eligible employees, except casework supervisors in field units, are specifically identified in Section 6. Section 7 makes eligible for the stipend "those classes who by virtue of the nature of their job duties and/or class specifications, are subject to assignment or reassignment, (on a temporary or permanent basis) to work in a Correctional facility". "Casework Supervisor in Field Units" is the only eligible class listed in Section 7.

Grievants are not eligible for this supplement since they are not casework supervisors in field units who are subject to such assignment or reassignment. Grievants participated in the stipend in their former positions of casework supervisors - probation and parole. After the Department reorganized and established court and reparative service units, Department management requested that Grievants' positions as supervisors of the employees in these units be reclassified to more accurately reflect Grievants' duties and responsibilities. As a result, Grievants were

no longer casework supervisors - probation and parole. They were reclassified to a newly created court and reparative services supervisor position and received an upgrade from a Pay Grade 22 to a Pay Grade 23, resulting in an increase in pay.

Grievants' duties as court and reparative services supervisors do not subject them to assignment or reassignment to work in a correctional facility. Grievants supervise employees whose primary function is to inform the trial court of various options it has in sentencing offenders. Unit employees also supervise offenders who are serving sentences other than incarceration and meet with citizens who work with offenders. It would take a complete and highly unlikely restructuring of the Department's service delivery system - placing the CRSU's within facility walls - for Grievants to be subject to assignment or reassignment in a correctional facility. We conclude under the terms of Article 24, Section 7, that Grievants are ineligible for the competency supplement.

This case is before us after Department management mistakenly continued to allow Grievants to participate in the stipend for five or six quarters after their position was reclassified and upgraded following the Department reorganization. Regardless of mistakes made, it is clear that Grievants' current job duties as court and reparative services supervisors do not meet the standards of Article 24, Section 7, and are not entitled to the stipend. A mistaken application by the employer of a provision of a contract does not justify granting employees rights to which they are not entitled by a correct application of the contract. Grievance of Cronan, 6 VLRB 347, 355 (1983); *Reversed on other grounds*, 151 Vt. 576 (1989). Grievance of VSEA (Re: Compensatory Time Credit), 11 VLRB 300, 306 (1988).

Grievants also rely on the provision of Article 24, Section 6, which states that if classes "are created during the life of the agreement, or if existing classes are modified to different titles, the assignment to rate category will be most closely associated with the existing categories" to support their claim that they are eligible for the stipend. This language is subject to the threshold issue of participation; it reaches only the issue of rate category for classes that do participate. It does not apply to Grievants because they are not eligible for the stipend under the standards of Section 7 of Article 24. Contract provisions must be viewed in their entirety and read together. Stacey, 138 Vt. at 72. In reading Sections 6 and 7 of Article 24 together, we conclude that Grievants are not entitled to the stipend.

We note that, although Grievants are not eligible for the stipend in their reclassified positions, Grievants did realize an economic benefit from the reclassification due to the upgrade of their position. Finally, we grant Grievant's Motion to Amend adding William Eck and Thomas Freeman as Grievants. Given our ultimate conclusion denying this grievance, however, it is not necessary to address the Employer's contention that any relief awarded to Eck and Freeman should be limited to the filing date of the Motion to Amend.

ORDER

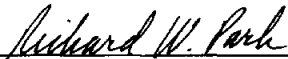
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

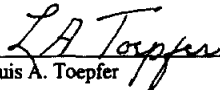
1. Grievants' Motion to Amend to add William Eck and Thomas Freeman as Grievants is GRANTED; and


2. The Grievance of Roger Brown, Vince Hanafin, Maggie Hawksworth, Grace Moroch, William Eck and Thomas Freeman is DISMISSED.

Dated this 26th day of June, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Richard W. Park, Acting Chairperson


Louis A. Toepfer


Leslie G. Seaver