

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF)	
)	DOCKET NO. 99-39
GARY CRONIN)	
)	
GRIEVANCE OF:)	
)	DOCKET NO. 99-40
BURTON BOLTON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 17, 1999, Burton Bolton (“Grievant Bolton”) filed a grievance against the State of Vermont, Agency of Human Services, Department of Corrections (“Employer”). A grievance also was filed on behalf of Gary Cronin (“Grievant Cronin”, and with Grievant Bolton collectively referred to as “Grievants”) against the Employer on June 17, 1999. Grievants allege that the Employer violated Article 28 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees’ Association, Inc. (“VSEA”) for the Corrections Bargaining Unit, effective for the period July 1, 1997 to June 30, 1999 (“Contract”). Specifically, Grievants allege that the Employer failed to maintain staffing levels at the Southeast State Correctional Facility and this resulted in a failure to provide overtime opportunities, in violation of Article 28 of the Contract.

On January 6, 2000, a hearing was held in the Vermont Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Carroll Comstock and Edward Zuccaro. Assistant Attorney General William Reynolds represented the Employer. Cronin represented himself and Bolton before the Board. The

parties agreed that both grievances would be consolidated for hearing. The parties filed post hearing briefs on January 24, 2000.

FINDINGS OF FACT

1. Article 28 of the Contract states in pertinent part:

1. **INTRODUCTION**

- (a) The State and the VSEA agree that overtime work for all employees is to be held to a minimum consistent with efficient and sound management of State government.

- (b) Each appointing authority shall schedule and assign regular work in a manner which will minimize the need for overtime work, and shall require compliance with reasonable standards of performance before requiring employees to work overtime.

- (c) It is understood and agreed that determining the need for overtime work, scheduling the hours overtime shall be worked, and requiring overtime work are exclusively employer's rights.

2. **DISTRIBUTION**

- (a) Appointing authorities shall make a reasonable effort to distribute overtime as equitably as possible among classified employees . . .

- (b) Overtime shall be assigned whenever practicable to volunteers . . .

- . . .

2. Cronin works third shift as a Correctional Officer I ("CO I") at the Southeast State Correctional facility ("SESCF"), a minimum security facility. Bolton works as a CO I at SESCOF (State Exhibits 7, 8).

3. SESCOF is the only minimum security correctional facility in Vermont and accepts inmates exclusively from other State correctional facilities who have demonstrated good behavior. Inmates live in a campus style environment in dormitories and move about the campus in relative freedom. There is no overcrowding at SESCOF because it never accepts more than 100 inmates. There are no detention cells at SESCOF; the superintendent has discretion to move any inmate who causes disciplinary problems to another facility.

4. Approximately 35 employees work at SESCOF, including 22 correctional officers. Second shift (2:00 p.m. – 10:00 p.m.) is the busiest shift. First shift (6:00 a.m. – 2:00 p.m.) also tends to be a busy shift. Third shift (10:00 p.m. – 6:00 a.m.) is the quietest shift. First shift generally is staffed with six officers, second shift with seven officers and third shift with four or five officers.

5. SESCOF has the lowest incidence of major disciplinary infractions of all the correctional facilities in the State. During the 23 year tenure of SESCOF Superintendent Thomas Coxon, no officer has taken sick leave or been on workers' compensation due to an injury caused by an inmate (State Exhibits 10, 11).

6. Post vacancies occur when officers call in sick or take leave time. If an officer calls in sick, the shift supervisor, often with the input of the superintendent, decides whether to fill the officer's position. Occasionally the shift supervisor and the superintendent decide to leave posts unfilled. At other times a decision is made to fill the post vacancy with a volunteer.

7. During the past two years, there have been two escapes and two assaults between inmates. There was no evidence that such incidents occurred because SESCOF was operating with a reduced staff.

8. During the past two years, Grievants have volunteered to work overtime and have been granted that opportunity. For fiscal years 1998 and 1999, Grievants worked more overtime than the statewide average for correctional officers. Grievant Cronin's total overtime compensation for these two fiscal years exceeded \$7,000 and Grievant Bolton's exceeded \$16,000 (State Exhibits 7, 8).

9. Grievant Cronin did not see or sign this grievance before it was filed with the Board. He did not authorize anyone to file this grievance for him.

OPINION

At issue is whether Grievants established their allegation that the Employer violated Article 28 of the Contract because the SESCO failed to maintain staffing levels and failed to provide Grievants with overtime opportunities. Article 28 provides that the State and the VSEA agree that overtime work “is to be held to a minimum consistent with the efficient and sound management of State government”, and the Employer “shall schedule and assign regular work in a manner which will minimize the need for overtime work”. Section 1(a) and (b). Article 28 also states that “determining the need for overtime work, scheduling the hours overtime shall be worked, and requiring overtime work are exclusively employer’s rights”. Section 1(c).

In interpreting the provisions of collective bargaining agreements in resolving grievances, we follow the rules of contract construction developed by the Vermont Supreme Court. A contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. In re Grievance of VSEA on Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980). The contract provisions must be viewed in their entirety and read together. In re Stacey, 138 Vt. 68, 72 (1980).

A contract will be interpreted by the common meaning of its words where the language is clear. Id. at 71. If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Swett v. Vermont State Colleges, 141 Vt. 275 (1982).

Applying these standards to this case, we conclude that the Employer did not act contrary to the clear and unambiguous provisions of Article 28. The Employer is obliged to hold overtime to a minimum, consistent with efficient and sound management, and has the exclusive authority to determine whether or not to schedule overtime. The evidence indicated that the Employer acted consistent with these provisions.

Grievants alleged at hearing and in their post hearing brief that the Employer's actions in leaving posts vacant caused an unsafe working environment. There was no evidence to support this claim. No officer has taken sick leave or been on workers' compensation due to an injury caused by an inmate. No escapes or inmate assaults can be attributed to the Employer operating with a reduced staff and unfilled posts. We also note that Grievants' claim that the Employer failed to provide them with overtime opportunities is undercut by the evidence that they have had ample opportunities to work overtime and their overtime hours for fiscal years 1998 and 1999 exceeded the statewide average for correctional officers.

In closing, we find troubling Grievant Cronin's testimony that he had not seen, signed or authorized the grievance filed in this matter. Although there has been no motion to dismiss the grievance based on such testimony, and we have decided the grievance on the merits as filed, we would be remiss if we did not indicate our unease at such representations of procedural irregularities.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievances of Gary Cronin and Burton Bolton are DISMISSED.

Dated this ____ day of March, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Acting Chair

Carroll P. Comstock

Richard W. Park