

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE EMPLOYEES')	
ASSOCIATION, LT. CLAYON)	DOCKET NO. 99-31
PERKINS, LT. ROBERT WHITE, LT.)	
MYLES HEFFERNAN, LT. BRUCE)	
LANG, LT. WILLIAM PETTINGILL)	
AND LT. TIMOTHY BOMBARDIER)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 30, 1999, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of itself and Lt. Clayton Perkins, Lt. James Dimmick, Lt. Bruce Lang, Lt. Michael Jennings, Lt. Myles Heffernan, Lt. William Pettengill, Lt. William O'Leary, Lt. Glenn Cutting, Lt. Robert White, Sr., and Lt. James Baker ("Grievants"). Therein, Grievants alleged that the Vermont Department of Public Safety ("Employer") violated Articles 22 and 31 of the collective bargaining agreement between the State of Vermont and VSEA for the Supervisory Unit, effective July 1, 1997 – June 30, 1999 ("Contract") by denying Grievants standby pay for time they were on standby duty during off-duty hours.

On January 13, 2000, Grievants Lt. James Dimmick, Lt. Michael Jennings, Lt. William O'Leary, Lt. James Baker, and Lt. Glenn Cutting withdrew as grievants. On January 20, 2000, Lt. Timothy Bombardier was added as a grievant.

On January 20, 2000, a hearing was held before Labor Relations Board Members Catherine Frank, Chairperson; Carroll Comstock and Edward Zuccaro in the Board hearing room in Montpelier. Assistant Attorney General William Reynolds represented

the Employer. VSEA Deputy Legal Counsel Mark Heyman represented Grievants. The parties filed post-hearing briefs on February 4, 2000.

FINDINGS OF FACT

1. Article 31 of the Contract provides in pertinent part as follows:

...

2. STANDBY

“Standby” is defined as a requirement that an employee, during off-duty hours, be reachable by phone or “beeper” within one (1) hour of being called, and report for duty where needed within one (1) hour of being reached, OR normal commuting time between the employee’s home of record and duty station, which ever is greater. “Standby” duty is paid at one-fifth (1/5) the regular hourly rate for each hour of such duty (rounded to the nearest whole cent) . . .

3. AVAILABLE

(a) “Available” is defined as a requirement that an employee, during off-duty hours, leave word at home or with the employer where the employee may be reached. Such employee is not subject to any other restriction specified under Sections 1 or 2 and is neither “on call” nor on “standby” and shall not receive additional compensation therefore.

(b) Any employee who is requested by the State to be on Available Status shall not be restricted in his/her movements within any geographic radius of his/her workplace, nor suffer any other restriction beyond leaving word at home or with the employer where s/he may be reached.

...

4. GENERAL PROVISIONS

...

(c) Standby and/or pager pay in cash or compensatory time off under this Article shall not exceed \$3,500 (or equivalent in compensatory time off) per fiscal year (beginning with the first payroll period of the fiscal year), per employee. The Commissioner of Personnel, on request of the appointing authority, may grant a complete or limited waiver of this \$3,500 effective 7/1/92 standby pay and/or time off limit. The Commissioner of Personnel shall not unreasonably deny such waivers . . .

2. Article 22 of the Contract provides in pertinent part as follows:

...

6. OVERTIME For Lieutenants and Captains:

...

(d) . . . Telephone or pager availability and telephone contact shall not be considered as time worked.

...

11. DUTY WEEK PAY

A Captain or Lieutenant who serves as a troop duty officer, or a Captain who serves as headquarters' or zone duty officer shall receive extra pay for each such week of immediate availability as follows:

Captains \$200 per week

Lieutenants \$150 per week

...

3. The Vermont State Police Code of Conduct provides in pertinent part:

...

Section III, Article II

...

12.0 OFF DUTY RESPONSIBILITIES

12.1 Members are subject to being called to duty at all times. A member has both the authority and responsibility to take all necessary action with regard to serious matters brought to his/her attention while off duty. Whenever off duty, a member must leave notice with his/her Commanding Officer of where and how he/she may reasonably be reached, unless this requirement is waived by the Commanding Officer. A member shall immediately notify the Commissioner of any change in his/her permanent address or telephone number.

(State's Exhibit 7)

4. The Grievants are all Detective Lieutenants in the Vermont State Police Bureau of Criminal Investigation ("BCI").

5. BCI is responsible for investigating all homicides, unattended deaths (either natural, accidental or suicide), attended deaths and arsons in Vermont. In addition, BCI assists the State Police Uniform Division in major cases such as kidnapping, frauds, aggravated assaults, sexual assaults and multiple burglaries (Grievant's Exhibit 2).

6. Lieutenants in BCI and the Uniform Division have different chains of command and supervisory responsibilities. BCI Detective Sergeants are responsible for responding to, and investigating, cases within a specified geographic area. They normally work a day shift, 8:00 a.m. to 5:00 p.m., including weekends. They are supervised by BCI Detective Lieutenants who work a 8:00 a.m. – 5:00 p.m shift, Monday through Friday.

BCI Detective Lieutenants are responsible for assigning investigations to and supervising the work of Detective Sergeants. In the Uniform Division, Troopers and Corporals report directly to Sergeants (patrol commanders), who in turn report directly to Lieutenants (station commanders).

7. Clayton Perkins served as a BCI Detective Lieutenant at the Williston Barracks from January 1997 until his retirement in December 1999. Robert White has been a BCI Detective Lieutenant at the St. Albans Barracks since January 1997.

8. On December 31, 1996, prior to beginning their assignments as BCI Detective Lieutenants, Perkins and White met with Captain Kerry Sleeper, the Chief Criminal Investigator for the BCI who was to be their immediate supervisor. Sleeper told White and Perkins that, as BCI Detective Lieutenants, they were “on call seven days a week, twenty-four hours a day” or words to that effect. Sleeper told them that they needed to challenge Detective Sergeants under their command with respect to handling crime scenes. Sleeper told Perkins and White that they were accountable for everything that happened under their command, and that their accessibility to their staff was the key to accountability. Sleeper told Perkins and White that they were expected to go to crime scenes if necessary to offer guidance and support to personnel under their command (Grievant’s Exhibit 4, 5).

9. During the time he was BCI Detective Lieutenant, Perkins was paged or called by a dispatcher if an incident within BCI’s domain occurred while Perkins was off duty. Perkins would then immediately call a Detective Sergeant to have the Sergeant go to the scene and investigate the incident. Sometimes, Perkins went to the scene himself. If he did not go to the scene, he would be available by telephone. Sometimes, Perkins

would receive 4-5 calls on a particular incident. Then, Perkins would call the Captain to let him know of developments. Typically, Perkins received calls or pages on incidents a couple of evenings a week. On weekends, he received 4 – 5 calls or pages on average.

10. Perkins spent some of his off duty hours engaging in such activities as going out to dinner with his wife, staying with his wife at a bed and breakfast, and engaging in sporting activities. During these times, Perkins carried his pager with him and responded quickly to any pages. Perkins was never prevented from engaging in these activities, although at times these activities were interrupted by calls or pages on incidents within BCI's domain. If Perkins went out of state for the weekend or was otherwise out of pager range such as at his mother's home in Rutland, he typically left a number where he could be reached.

11. During the morning of March 7, 1997, Perkins called Sleeper to advise him that he was to have visitors over the weekend, and asked if Sleeper or someone else could cover calls for him as he would not be available. Sleeper told Perkins that he would help out with calls. Later that afternoon, Sleeper called Perkins and told him to keep his pager on in case a homicide occurred over the weekend. Sleeper told Perkins that he would not page him unless something like a homicide occurred. Perkins responded with words to the effect of "I am not going to be married to that pager". Perkins told Sleeper that he would leave his answering machine on, and that he may not be able to be reached. Sleeper told Perkins that this was unsatisfactory (Grievant's Exhibit 3, 4).

12. On March 12, 1997, Sleeper met with Perkins to discuss what he viewed as incidents of unsatisfactory performance by Perkins. One of the incidents of unsatisfactory performance cited by Sleeper during the meeting was the exchange the

previous weekend between Sleeper and Perkins concerning the availability of Perkins to respond to off-duty calls or pages. Shortly thereafter, Perkins was given an unsatisfactory performance evaluation and placed in a prescriptive period of remediation. One of the bases for this was the exchange between Perkins and Sleeper on March 7 (Grievant's Exhibits 3, 4).

13. Other than Perkins, no other BCI Detective Lieutenant has received negative feedback regarding their availability while off duty. There have been no other instances where BCI Detective Lieutenants have not met the expectations of the Chief Criminal Investigator concerning their off duty availability and response time.

14. White understood from the meeting with Captain Sleeper that, if he was not out of state while off duty, he was expected to be reachable and able to respond quickly to any pages or calls he receives on incidents within BCI's domain. White has carried his pager with him at all times to respond to any incidents. Upon receiving a call or page, White has responded immediately. He first decides which Detective Sergeant to assign to the case to investigate. He also decides whether he has to personally go to the scene. If White does not go to the scene, White has the investigator call him once the investigator arrives at the scene. White requests that the investigator describe the scene to him in detail, and "challenges" the investigator to ensure that all bases are covered at the scene. Once White has a clear idea of what has occurred, he notifies the BCI Captain or Criminal Division Major of the incident.

15. White has not been prevented from engaging in off-duty activities as a result of carrying his pager. His off duty activities have been interrupted, and interfered with, due to responding to incidents within BCI's domain.

16. On occasions where White has been off duty and has gone to the scene of an incident or the St. Albans Barracks, he has received overtime compensation. He has not received compensation if his activities in responding to off duty incidents are limited to telephone conversations.

17. Ronald DeVincenzi replaced Sleeper as Chief Criminal Investigator of the BCI in early 1998. DeVincenzi has never told BCI Lieutenants that they are required to carry pagers. DeVincenzi views pagers as a convenience for all parties. He has not told the Lieutenants as a matter of routine that they are not to travel out of state or must otherwise restrict their travel in their off duty hours. One Lieutenant has a camp in Maine and goes there frequently on summer weekends. DeVincenzi does not have a problem with this because DeVincenzi is aware that the Lieutenant is at his camp. Another Lieutenant spends a significant amount of time hunting on weekends. DeVincenzi knows when the Lieutenant is hunting, and does not attempt to reach him during this time. On a typical July weekend, 2-3 Lieutenants are out of state. They notify DeVincenzi that they will be out of state. If a major event happens in the Lieutenants' area of responsibility over the weekend, DeVincenzi will find someone else to take the Lieutenants' place to handle the situation or he will handle it. Unless Lieutenants tell DeVincenzi that they are unavailable, he expects them to be reachable during off-duty hours and to respond to incidents.

18. BCI Detective Lieutenants are required to inform Captain DeVincenzi by Friday of each week where they will be and how they may be reached during the weekend. They notify DeVincenzi if they will not be reachable and therefore unable to respond to incidents within BCI's domain while off duty. If they are not reachable and

therefore unable to respond, there must be someone who is reachable to make determinations as to which Detective Sergeant to assign to a case and other command decisions. Generally, either the Lieutenants' supervisors have agreed to cover their areas or senior Detective Sergeants have been designated to take responsibility. BCI Lieutenants have not been told by their superiors that they cannot leave the state for the weekend without permission. Even if they are on approved leave or are out of state for the weekend, some BCI Lieutenants provide telephone numbers where they can be reached.

19. On Friday, September 24, 1999, Detective Lieutenant Bruce Lang sent DeVincenzi an e-mail message that provided in pertinent part: "Weekend of 9/25/99. Sgt. Bachand has BCI duty. Sgt. Wilder has Fire duty. I will be hunting both days and home at night, sorry no pager during the day!" DeVincenzi did not respond to Lang's e-mail, and did not give him any negative feedback for it (State's Exhibit 12).

20. Most of the calls BCI receives involve major crimes. BCI solves more than 90 percent of these cases. The quick response time by BCI is a major factor in the high success rate.

21. On January 18, 1999, Perkins submitted a time report for the pay period January 3, 1999, to January 16, 1999, indicating that he had been on standby status for five hours each night, 5:00 p.m. – 10:00 p.m., during the period, and 24 hours on each weekend day during the pay period. In reviewing the time report, DeVincenzi crossed out the standby hours, thereby denying Perkins standby compensation for the off-duty hours indicated (Grievant's Exhibit 6).

22. The VSEA filed a grievance at Steps II and III of the grievance procedure over the denial of standby pay on behalf of “VSEA, Clayton Perkins, and any and all similarly affected Lieutenants and Captains”. The grievance mentioned only the denial of standby pay for Perkins for the January 3 – January 16, 1999, pay period; no other employees or denials of standby pay were mentioned.

23. Subsequent to the Step II grievance hearing in this matter, Lieutenant Colonel John Sinclair, Director of the Vermont State Police, sent a memorandum to all Captains and Lieutenants on March 10, 1999. The memorandum provided:

At a recent Step II Grievance hearing, the Union through its representative, Richard Lednicky asked for a clarification regarding the status of Lieutenants and Captains during off duty hours. He alleged that several of the Command Staff, due to pagers being issued to all Lieutenants and Captains, were now uncertain of their status and believed that management required the pager to be worn at all times during off duty hours.

All Lieutenants and Captains during off duty hours are considered to be on available status, as defined by Article 31 of the Supervisory Bargaining Unit Contract.

The only exceptions to this are if:

1. The Lieutenant or Captain is assigned as Duty Week zone duty officer.
2. Your immediate supervisor changes your designation from available status to “standby” status. The supervisor will inform you of the exact number of hours such status is necessary and will approve standby pay reimbursement for that specific period of time.

I am not aware of any communications from Headquarters put out by past directors or Division Commanders that suggests or implies differently. The Department Rules and Regulations, Section III, Chapter 2, Article II, Part C – 12.1, clearly defines off duty time and the employees responsibilities under this section.

As most of you know, the Department upgraded and increased the number of pagers available to members. The pagers were issued to all managers in order for our personnel to communicate more effectively among our stations and relieve some of the burden from the dispatching staff.

It was never the Departments intent to mandate that employees wear the pager at all times. In fact, if any of you wish, you may turn your pager back in to supply. The assignment of pagers is purely voluntary with no mandates provided.

(State's Exhibit 3)

24. After receiving this memorandum, none of the BCI Detective Lieutenants turned in their pagers.

25. Major Nicholas Ruggerio is the Criminal Division Commander. He is the immediate supervisor of the Chief Criminal Investigator. Ruggerio understands that, during off duty hours, BCI Lieutenants are not required to respond to calls concerning major crimes. He understands that the zone duty officers provided for in Article 22, Section 11, of the Contract (see Finding of Fact No. 2) are required to respond to such incidents. There are two zone duty officers at all times. One zone duty officer is responsible for the northern part of the State, and the other zone duty officer is responsible for the southern part of the State. However, in practice, BCI Detective Lieutenants and the BCI Captain, not zone duty officers, typically respond to calls concerning major crimes.

OPINION

Grievants contend that the Employer violated Article 31 of the Contract by failing to provide BCI Lieutenants with standby pay during off-duty hours. Before deciding the merits of this issue, we need to rule on a motion for partial summary judgment made by the Employer. At the beginning of the January 20 hearing in this matter, the Employer moved to limit any relief in this case to Grievant Clayton Perkins because Lieutenant Perkins was the only individual named in the earlier steps of the grievance procedure prior to the grievance being filed with the Board. As a result, the Employer contends

neither the Employer nor hearing officers at earlier steps were given sufficient notice or information to make a fair determination with respect to other individuals.

Grievants contend that the Employer had sufficient notice because the grievance was filed at earlier steps on behalf of Perkins and “any and all similarly affected” individuals. Grievants also maintain that the motion was untimely filed and any decision by the Board necessarily will affect all BCI Lieutenants prospectively.

Upon review of the Grievance Procedure article of the Contract and the state of the evidence before us, we grant the Employer’s motion. Article 15, Section 1, of the Contract, in referring to methods to settle grievances, provides that “(i)t is expected that employees and supervisors will make a sincere effort to reconcile their differences as quickly as possible at the lowest possible organization level.” Article 15, Section 2, requires that a “grievance shall contain . . . (t)he full name and address of the party or parties submitting the grievance”. These contract provisions reflect a recognition that the goal of resolving grievances at the lowest possible level is best served when individual grievants are identified and the facts relative to their particular situations are examined at the outset of the grievance process.

Moreover, the only evidence before us of a BCI Lieutenant requesting, and being denied standby pay, is the claim of Perkins for one pay period, January 3 – January 16, 1999. It is inappropriate to grant a remedy to employees with respect to compensation due them if they have not claimed entitlement to it by requesting such compensation from the Employer. Accordingly, we limit any relief in this case to Grievant Clayton Perkins. In so ruling, we note that we have examined the evidence relating to other employees in

reaching our decision on the merits. This is because such examination is necessary to seek to understand the expectations existing in BCI relative to off duty hours.

In deciding the merits, it is necessary to closely examine the distinctions Article 31 of the Contract makes between “standby” and “available” status with respect to compensation, ability to be reached and reporting for duty. An employee on standby status during off-duty hours is compensated at one-fifth the regular hourly rate for each hour of such duty. An employee on available status during off-duty hours receives no additional compensation for such status.

Following from these differences in compensation are different levels of expectations under the Contract provisions concerning ability to be able to reach employees and reporting for duty. An employee on standby status must be “reachable by phone or ‘beeper’ within one hour of being called.” On the other hand, an employee on available status is only required to “leave word at home or with the employer where the employee may be reached”, and “is not subject to any other restrictions specified” for employees on “standby” status. Since the employee on available status must only leave word where he or she may be reached and is not required to actually be reachable by phone or beeper in any specified time, a necessary inference to be drawn from the Contract is that there is no absolute requirement that employees on available status make themselves able to be contacted. Grievance of Vermont State Employees Association (Re: Refusal to Pay Standby Pay), 15 VLRB71, 84-85 (1992); *Affirmed*, 162 Vt. 277 (1994).

Similarly, there is a significant distinction between each status with respect to expectations on reporting for duty. An employee on standby status is required to report

for duty where needed within one hour of being reached, or the normal commuting time between the employee's home and the office, whichever is greater. If an available employee is reached, the employer may require such employee to report for duty in appropriate situations and within a reasonable timeframe under the circumstances, while ensuring that such employees are not subject to the specified restrictions for employees on standby status. Grievance of VSEA, supra, 15 VLRB at 85-86.

In examining the expectations on Perkins during the pay period he sought and was denied standby pay, January 3 – 16, 1999, we ultimately conclude that he was on standby status during off-duty hours. The reason for this conclusion is the expectations placed on him by his immediate supervisor Captain Sleeper. Additionally, the evidence does not indicate that these expectations were refuted by Captain Sleeper's successor, Captain DeVincenzi, or any other superiors prior to the pay period in question. When Perkins assumed the BCI Lieutenant position, Sleeper told him and BCI Lieutenant Robert White that they were "on call seven days a week, twenty-four hours a day" or words to that effect. Sleeper specified that they needed to challenge Detective Sergeants under their command with respect to handling crime scenes, and that they were expected to go to crime scenes if necessary to offer guidance and support to personnel under their command. He further told them that they were accountable for everything that happened under their command, and that their accessibility to their staff was the key to accountability.

Sleeper's expectations resulted in Perkins essentially being required to be reachable and to be able to report to duty within the standards for standby status. It was necessary for Perkins to be reachable by phone or pager within less time than the standby

status requirement of one hour of being called to meet Sleeper's expectations. The nature of BCI's work, responding to major crimes, requires an immediate response. When Perkins was off duty, the BCI response did not occur until he set it in motion by calling a Detective Sergeant to have the Sergeant go to the scene and investigate the incident. His pivotal role in ensuring that BCI responded quickly made it necessary for him to be reached in less time than an hour.

It also is evident that Sleeper expected Perkins to be able to report to the crime scene quickly if necessary. Sleeper's emphasis on accountability and accessibility; particularly his "seven days a week, twenty-hours a day" statement; lead Perkins reasonably to believe that he needed to be able to report to a crime scene if necessary within the timeframe established for standby status in the Contract.

Sleeper's expectations were reinforced by the incident in which Perkins expressed reluctance to carry his pager one weekend when he had visitors. Sleeper made it clear to Perkins that his off-duty availability was unsatisfactory as a result of this incident, and used the incident as one basis for an unsatisfactory performance evaluation he gave Perkins. This sent a clear message to Perkins that he needed to be reachable, and able to respond, quickly to any off-duty incident within BCI's domain.

We recognize that Sleeper was no longer Perkins' supervisor at the time he made his request in January 1999 for standby pay. Sleeper had been replaced a year earlier by Robert DeVinzenzi as Chief Criminal Investigator. However, this does not change our conclusion that Perkins was entitled to standby pay for the January 3 – 16, 1999, pay period, even though the evidence indicates DeVincenzi's expectations of off-duty BCI lieutenants were not as high as those of Sleeper. This is because there is no evidence that

DeVincenzi articulated his views on off-duty availability to BCI Lieutenants by January 1999. Under these circumstances, it was logical for Perkins to conclude that Sleeper's expectations were still in effect.

We do not find the requirements of the Code of Conduct to alter our conclusion. The Code provides that "(w)henever off duty, a member must leave notice with his/her Commanding Officer of where and how he/she may reasonably be reached, unless this requirement is waived by the Commanding Officer." This language is similar to the standards for "available" status in Article 31 of the Contract, and does not aid a conclusion whether BCI Lieutenants actually were in a greater than available status. Further, Code of Conduct provisions do not supercede the requirements of the Contract relating to employee compensation.

Our conclusion that Perkins was entitled to standby pay for the January 3 – 16, 1999, pay period does not mean that we believe that off-duty BCI Lieutenants continue to be in standby status. The March 10, 1999, memorandum that State Police Director John Sinclair sent to all Captains and Lieutenants expressly stated that "(a)ll Lieutenants and Captains during off duty hours are considered to be on available status, as defined by Article 31 of the Supervisory Bargaining Unit Contract." He sent this memorandum to all Captains and Lieutenants. After receiving this memorandum, BCI Lieutenants could no longer reasonably conclude that they were expected to be on standby status.

This does not mean that confusion and uncertainty have been completely dispelled. Despite the clear statement in the memorandum that BCI Lieutenants are considered to be on available status, Captain DeVincenzi continues to expect BCI Lieutenants to be reachable during off-duty hours and to respond to incidents in a timely

fashion unless they have informed him that they will be unable to be reached. As indicated earlier, given the nature of BCI work, the officer in charge needs to be reached quickly, and respond quickly, for BCI to have an adequate response to situations. This requirement exceeds the standard for available status that an employee “leave word at home or with the employer where the employee may be reached”.

This does not mean, however, that BCI Lieutenants are on standby status in their off-duty hours. In order to be on standby status as defined in Article 31 of the Contract, there must be a “requirement” by the Employer that they be reachable by telephone or beeper, and able to report for duty, within a specified time period. At the hearing in this matter, DeVincenzi made it clear that he does not have a problem with Lieutenants’ unavailability during off-duty hours as long as they notify him in advance that they will not be able to be reached because of traveling out of state or engaging in activities which preclude them from carrying their pager or be reachable by telephone. As a result, it is evident that DeVincenzi’s expectations for BCI Lieutenants’ off-duty behavior exceed that for available status. However, his expectations do not rise to the level of requiring Lieutenants to be on standby status under the Contract. Lieutenants are not held to the standards of standby status if they can opt out of off-duty responsibilities by notifying their supervisor that they will not be able to be reached.

Another indication that confusion and uncertainty still exist is the understanding of Major Nicholas Ruggerio, Criminal Division Commander, that, during off duty hours, BCI Lieutenants are not required to respond to calls concerning major crimes. He understands that the zone duty officers provided for in Article 22, Section 11, of the Contract are required to respond to such incidents. This understanding, however, is

contrary to the practice of BCI Detective Lieutenants and the BCI Captain, not zone duty officers, typically responding to calls concerning major crimes.

In sum, there appear to be three levels of expectations. Those set forth in Lieutenant Colonel Sinclair's March 10, 1999, memorandum clearly provide that BCI Lieutenants are on available status as defined by the Contract. Those of Major Ruggerio place the responsibility on zone duty officers, not BCI Lieutenants, to respond to off-duty incidents. Those of Captain DeVincenzi are that BCI Lieutenants be reachable during off-duty hours and respond to incidents in a timely fashion unless they have informed him that they will be unable to be reached. This places BCI Lieutenants in a "Catch 22" of varying expectations. There clearly is a tension between the limited requirements of available status and the ability of BCI Lieutenants and Sergeants to respond to and resolve crimes quickly and effectively.

A major problem permeating this case is the lack of clear, consistent communication by the Employer as to what is required of BCI Lieutenants during their off-duty hours. It is incumbent on the Employer to dispel the confusion and uncertainty that continue to exist by stating their expectations clearly to BCI Lieutenants of their status during off-duty hours. If the Employer clearly sets forth expectations, and the expectations do not rise to the level of standby status, the Employer cannot be held responsible for violating provisions of the Contract relating to standby status even if BCI Lieutenants make themselves reachable, and respond, as if they were on standby status. This is because standby status would be self-imposed by employees, rather than a requirement imposed by management. Grievance of VSEA, supra, 15 VLRB at 90-91.

In sum, we conclude that an appropriate remedy in this case is to award Perkins standby pay only for the January 3 – 16, 1999 pay period that he requested standby compensation, but not for any subsequent period.

ORDER

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

1. The Grievance of Lt. Robert White, Lt. Myles Heffernan, Lt. Bruce Lang, Lt. William Pettingill, and Lt. Timothy Bombardier is DISMISSED;
2. The Grievance of the Vermont State Employees' Association and Lt. Clayton Perkins is SUSTAINED to the extent that Perkins is entitled to standby pay, plus interest, for all hours of the January 3 – 16, 1999, pay period in which he indicated that he was on standby status; and is DISMISSED in all other respects.
3. The interest due Perkins on back pay shall be computed on gross pay and shall be at the rate of 12 percent per annum, and shall run from the date the paycheck for the January 3 – 16, 1999, pay period was due Perkins, and ending on the date he actually receives such back pay.

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

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

Edward R. Zuccaro