

**VERMONT LABOR RELATIONS BOARD**

GRIEVANCE OF:	)	
	)	DOCKET NO. 00-13
JEFFREY VIGNEAU	)	

**FINDINGS OF FACT, OPINION AND ORDER**

**Statement of Case**

On March 30, 2000, the Vermont State Employees' Association, Inc. ("VSEA") filed a grievance on behalf of Jeffrey Vigneau ("Grievant") against the State of Vermont, Department of Tourism and Marketing ("Employer"). Grievant alleges that the Employer violated Article 56 of the collective bargaining agreement between the State of Vermont and VSEA for the Non-Management Unit, effective for the period July 1, 1999 to June 30, 2001 ("Contract") by its failure to clean and maintain the uniform he is expected to wear as a Travel Representative I.

On October 12, 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 John Zampieri. VSEA General Counsel David Stewart and VSEA Deputy Legal Counsel Michael Casey represented Grievant. Assistant Attorney General William Reynolds represented the Employer. Both parties filed post-hearing briefs on November 13, 2000.

**FINDINGS OF FACT**

1. Article 56 of the Contract states in pertinent part:

**ARTICLE 56  
UNIFORMS**

**1. UNIFORMS**

- (a) Uniform policies in effect prior to the effective date of the Agreement shall remain unchanged unless modified in accordance with this Article.

(b) Any uniform policies initiated by management after the effective date of the Agreement shall provide the employee with:

- (1) The uniform itself or an allowance sufficient to cover the initial purchase of the uniform(s), and
- (2) Any necessary cleaning and maintenance.

...

(d) For purposes of this Article, "uniform" is defined as "dress of a distinctive specific design or fashion worn by a particular group of employees and serving as a means of identification".

...

2. The Vermont Agency of Transportation ("AOT") staffed and maintained the State's rest areas until approximately 1993 when the Department of Tourism and Marketing took over that responsibility. Six of the rest areas are designated as official Vermont "welcome centers".

3. AOT provided all rest area and welcome center employees with work clothes consisting of green "Dickie" pants, orange tee shirts and orange jackets. There were no patches or insignias on the shirts. After 1993, the uniform remained the same, except for the addition of a patch or insignia on the shirts. Employees cleaned and maintained their own uniforms.

4. In 1994, the Employer changed the philosophy with respect to welcome center employees, requiring them to present a more professional image. The Employer issued employees golf or polo shirts with a logo or insignia on them. Employees also were asked to wear khaki pants. They were allowed to purchase their own khaki pants and were reimbursed for their expenses.

5. On or about July 22, 1994, the Director of the Vermont Information Services Division of the Employer, Dick Foster, sent a memorandum to employees informing them that they were expected to wear their new uniforms at all times. Foster

also told employees that "dirty and unkempt uniforms will not be tolerated" and that employees were "expected to show-up for work in a clean and presentable fashion". Although Foster announced his expectations that employees wear their new uniforms all the times, not all facilities adhered to this requirement (State Exhibit 1).

6. On or about August 1, 1994, VSEA Field Representative Andrew Kwass sent a letter to Foster which stated in pertinent part:

...  
Please be advised that Article 60, 2(b) requires management to provide the employee with cleaning and maintenance for the required uniform.

Please let me know how the Department intends to provide for the cleaning and maintenance of the new uniforms ... (State Exhibit 2)

7. No subsequent grievance was filed regarding this issue until the present grievance.

8. Grievant started working as a Travel Representative I at the Guilford Welcome Center, located near Brattleboro, Vermont, in 1995, and has remained as a Travel Representative I since then. His general duties include greeting the public, cleaning the inside and outside of the center, removing trash, and restocking and ordering brochures. Grievant received State issued polo shirts and purchased khaki pants when he started working. Until November 1999, Grievant generally did not wear these clothes, although he occasionally wore the polo shirt.

9. In June 1999, Travel Representative III Cathy Dowd started working in the Guilford Welcome Center and became Grievant's supervisor. The Department was preparing to open a new welcome center five miles north of the Guilford center, the Southeast Welcome Center. The Guilford center was approximately 32 years old and had

a failing septic system and no air conditioning. Dowd did not enforce the uniform requirement at the Guilford center because the building lacked air conditioning.

10. During this same time period, the Department decided to enhance the "hospitality look" at the welcome centers by adding blue oxford shirts, blue blazers and Vermont insignia neckties as part of the uniform. Employees were told that they would be reimbursed for any dry cleaning expenses of their blazers and neckties.

11. Dowd was enthusiastic about the new welcome center. Prior to the official opening, which occurred on October 29, 1999, Dowd kept reminding staff to purchase their oxford shirts and khaki pants. She also warned staff that the uniform requirement would be enforced once the new welcome center opened.

12. During the summer of 1999, Grievant purchased additional pairs of khaki pants and shirts and received his blazer and necktie.

13. Presently the employees at the Southeast Welcome Center have purchased or received a blazer, a necktie, five pairs of khaki pants and five blue oxford shirts. They are expected to wear their blazers and neckties most of the time, although Dowd also allows employees to wear the State-issued polo shirts. All employees, including Grievant, have been washing and maintaining their shirts and khaki pants.

14. Thomas Ball is the Director of Human Resources for the Department of Personnel. He has been a negotiations representative for the State since the late 1970's. The negotiation of Article 56 predates his employment with the Employer. It is Ball's understanding that "necessary cleaning and maintaining" does not pertain to "wash and wear" type of clothing.

15. The Employer provides similar "wash and wear" type clothing to other State employees, such as certain employees at the Department of Labor and Industry and employees who work at the Lottery Commission. These employees wash and maintain their own clothing. The Employer provides pants, shirts and jackets to liquor warehouse employees and the Employer cleans these uniforms.

#### MAJORITY OPINION

The issue before the Board is whether the Employer is obligated to clean and maintain the uniform Grievant is required to wear as a Travel Representative I at the Southeastern Vermont Welcome Center, including his khaki pants, polo shirts and oxford shirts. Grievant contends that the Contract unambiguously establishes such a requirement. The Employer contends that it is not required to clean and maintain "wash and wear" uniforms and that the contractual language is sufficiently ambiguous so as to require the examination of the past practice and bargaining history in order to determine the intent of the parties.

A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). 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). The Board will not read terms into a contract unless they arise by necessary implication. In re Stacey, 138 Vt. at 71. 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).

However, resort to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language is appropriate if sufficient ambiguity exists in the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Where the disputed language is sufficiently ambiguous, it is the duty of judicial or quasi-judicial bodies to construe a contract so as to ascertain the true intention of the parties. Grievance of Gorruso, 150 Vt. 139, 143 (1988). In such circumstances, it is appropriate to look to the extrinsic evidence of past practice and bargaining history to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract. Grievance of Majors, 11 VLRB 30, 35 (1988).

Applying these standards to this case, we conclude that Article 56 is clear and unambiguous. It plainly and expressly requires the Employer to provide employees who are required to wear uniforms with "any necessary cleaning and maintenance". It is undisputed that Grievant is required to wear a uniform consisting in part of khaki pants, a polo shirt or an oxford shirt. Accordingly, the Employer is required to clean and maintain these articles of clothing. If we were to rule otherwise, we would be reading terms into a contract and remaking the parties' Contract.

The Employer contends that insertion of the word "necessary" provides that it is only required to clean and maintain the portion of his uniform that requires dry cleaning, and not so called "wash and wear" clothing. We are not persuaded by the Employer's argument, and conclude that "necessary cleaning and maintaining" cannot reasonably be read to mean only dry cleaning.

The Employer also contends that the insertion of the word "necessary" in the phrase "necessary cleaning and maintaining" makes the contractual language sufficiently ambiguous to look at past practice and bargaining history. Having already decided that Article 56 is clear and unambiguous, we are not persuaded by the Employer's contention. However, even if we were to look at bargaining history and past practice, it would not affect the result. The evidence on bargaining history is not helpful. The only evidence we have on bargaining history is the testimony of the Employer's bargaining representative. The negotiation of the applicable language of the contract predates his employment and he was only able to testify as to his own understanding of what the article meant. We also conclude that past practices are of no persuasive value because past practices are confusing and conflicting. The limited evidence on past practices in State government is that the State cleans and maintains the uniforms of some employees, such as liquor warehouse workers, and does not clean and maintain other employee uniforms, such as certain employees in the Department of Labor and Industry.

In sum, we conclude that Article 56 requires the Employer to clean and maintain the entire uniform that Grievant is required to wear as a Travel Representative I. In deciding a proper remedy in this case, we note that Grievant, without stated objection, is being reimbursed by the Employer for the dry cleaning expenses of his blazer and necktie. A common sense approach to cleaning and maintaining Grievant's entire uniform, including his khaki pants, polo shirts and oxford shirts, could include reimbursing him for his expenses in cleaning and maintaining this clothing. We recognize that this decision creates an imperfect result, but any problems created can only be remedied by the parties through collective bargaining negotiations.

### DISSENTING OPINION

I respectfully dissent from my colleagues' opinion. I believe that "any necessary cleaning and maintaining" means that the Employer is only required to clean and maintain uniforms which require special cleaning, such as dry cleaning. It does not require the Employer to clean and maintain uniforms which employees can clean and maintain themselves.

/s/ John J. Zampieri

John J. Zampieri

### ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Jeffery Vigneau is SUSTAINED; and the Employer is required to clean and maintain the entire uniform that Grievant is required to wear as a Travel Representative I.

Dated this \_\_\_\_ day of December, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Acting Chairperson

/s/ Carroll P. Comstock

Carroll P. Comstock