VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 83-19
DAVID WILSON	)	

MEMORANDUM AND ORDER
ON GRIEVANT'S MOTION FOR
RECONSIDERATION

On May 25, 1984, the Vermont Labor Relations Board issued its Findings of Fact, Opinion and Order in this matter, dismissing the grievance of David Wilson ("Grievant"). 7 VLRB 215. On June 4, 1984, the Vermont State Employees' Association on behalf of Grievant, filed a Motion for Reconsideration and supporting memorandum, pursuant to Section 11.1 of the Board's Rules of Practice and VRCP 52.

Grievant's Motion is based on four grounds. Each will be discussed in turn.

First, Grievant contends the Board's ruling that Department Commissioner Paul Philbrook's Step II answer to a grievance filed by Trooper 1st Class Thomas Noble was "irrelevant to the disposition of this matter" is not only unclear, but wrong.

Grievant contends that the language of the Step II decision in the Noble grievance constituted an admission on the part of the State which supports Grievant's position in this matter, insofar as it relates to the posting of monthly work schedules. We decline to change our ruling on the relevancy of the Noble grievance. In reviewing Commissioner Philbrook's deposition taken in this matter and his decision in the Noble grievance, we do not find a clear statement of departmental

policy that once monthly schedules are posted they cannot be changed without the payment of delayed reporting time premium pay. Moreover, the factual circumstances existing in the Noble grievance are sufficiently different to make it irrelevant to this grievance.

Second, Grievant contends the Board's denial of his motion for leave to amend his grievance to raise a past practice issue was erroneous. We disagree. Grievant's Motion sought to amend the grievance to allege that a past practice of the Department prevented a change in the monthly work schedule, once posted, unless the change was made with the concurrence of the affected employees. We find no indication this issue was raised at the earlier steps of the grievance procedure and thus it cannot be raised at the Board level.

It is true, as Grievant contends, that the grievance report by the hearing officer at the Step II level of the grievance procedure, Captain George Patch, states that Grievant had argued "that once his schedule is posted, it should not be changed without additional compensation provided" (Grievant's Exhibit 12, Page 2). However, the proposed amendment to the grievance did not seek to allege that additional compensation should be provided once a posted schedule is changed but that a posted schedule cannot be changed without the concurrence of the affected officers. The language in the report relied on by Grievant is not the same issue which he sought to raise in his proposed amendment. Also, Grievant's argument cited in Captain Patch's report did not state with particular clarity that a past practice issue was being raised with regard to a change in a posted schedule. The argument could be construed as raising a contract interpretation issue and not a past practice issue.

The third ground for objection raised by Grievant is that the Board improperly remade, rather than interpreted, the State Police Unit Agreement and erroneously substituted its judgment for Commissioner Philbrook's. This was done, Grievant maintains, by the Board basing its decision squarely on the so-called "adequate notice" to Grievant of the change to his posted schedule by stating that since Grievant had approximately three weeks' notice of the change to his schedule "there is no inadequate problem present in this case". 7 VLRB at 225.

While we doubt any ambiguity exists in our original decision in this matter, we will state our intentions here. We do not and did not intend to base our decision "squarely" on the adequacy of the notice to Grievant of the change in his posted schedule. Our decision did not depend on the amount of notice to Grievant at all. As we construe the Agreement, the only issue here is whether Grievant's "regular shift" changed; "regular shift" meaning the consecutive days during a weekly period one is assigned to either the day shift, the night shift or the evening shift. Consistent with our decision in Grievance of Schilling, 5 VLRB 74 (1982), Grievant would be entitled to delayed reporting time premium pay only if the uniformity of his/her "regular shift" work schedule was disrupted during a weekly period. Since the change in Grievant's work schedule for the last week in January did not disrupt the uniformity of his work schedule for that week, we denied his claim to delayed reporting time premium pay. We only mentioned the approximate three weeks' notice to Grievant to emphasize that the disruption of an employee's private life, which the language of the Agreement appears designed to prevent, Schilling, supra, at 81, is wholly lacking in this case.

Grievant's final objection to our decision is that the Board erred in rejecting Grievant's invocation of the Board's decision in Grievance of Gray, 6 VLRB 370, 409 (1983). We held that Gray rests on principles of estoppel and reliance, factors not present here. We stand by our original ruling. In Gray, we found the employee was improperly penalized where he obtained approval from his supervisor to swap days off and days worked prior to a training session in order that he would be on duty while traveling to the training session and then subsequently was required to work on two of his days off because of the swap. We determined the employee had a right to act on his supervisor's prior approval in those circumstances. Here, Grievant took no action in reliance on his supervisor's prior approval. The factual circumstances existing in Gray and this case are just not analogous.

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

Grievant's Motion for Reconsideration is DENIED.

Dated this 27th day of June, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson