STATE OF WISCONSIN STATE PERSONNEL BOARD

OFFICIAL

GARLAND SPRATZ, et al.,

Appellants,

v.

ZEL RICE, Secretary,
Department of Transportation,

Respondent.

Case No. 76-216

OPINION AND ORDER

Before: DEWITT, Chairperson, HESSERT, MORGAN, and WARREN, Board Members.

NATURE OF THE CASE

This is a group grievance before the board at the fourth step pursuant to Section 16.05(7), stats. Appellants object to the determination of their salary for work performed July 5, 1976, a legal holiday.

FINDINGS OF FACT

The appellants are all state patrol sergeants and exempt employes with regard to the requirements of premium pay for overtime.[1] They all were required to work on July 5, 1976, a legal holiday, a day on which they normally would have been scheduled to work. In each case, their time was computed by the respondent's payroll clerk by not computing the hours worked on July 5th as straight time but by computing it as holiday time. This was then converted to straight time by multiplying it by 1.5 (e.g., 8 x 1.5 = 12 hours straight or non-holiday time). In effect, this figure less 8 hours was then added to the 80 hours used as a basis for "regular hours" for the bi-weekly pay period in question. Another way of looking at this is to add the converted time

[1] Their status as exempt employes is at issue in another proceeding. That issue was not raised in this case, and this finding should not be construed as precedent for or as a waiver of rights regarding other proceedings.

(e.g., 12 hours) to the 80 hours in the pay period less 8 hours, or 72 hours. Their salary was then determined by taking the bi-weekly regular pay, dividing by 80 to determine an hourly figure,[2] and adding on a sum for the number of hours over 80. (Night pay differential, not in issue here, was then added to determine gross pay.)

For example, in the case of Sergeant Lovas, his bi-weekly base salary was $523.68. Dividing that by 80 results in an hourly figure of $6.546. On July 5th he worked 13 hours. This times 1.5 is 19.5 hours, which comes out to 11.5 after subtracting 8. Thus Sergeant Lovas' base pay was augmented by 11.5 x $6.546, or $75.28, resulting in a gross pay, before night differential, of $598.96. The other appellants' salary was computed in a similar manner, as is reflected in the exhibits.

CONCLUSIONS OF LAW

The appellants contend that pursuant to Section 16.30(4)(b), stats., they are entitled to reimbursement at their regular base salary plus an additional sum amounting to the number of hours worked July 5th multiplied by 1½ times their hourly pay rate. Using Sergeant Lovas as an example again, he claims $523.68 (bi-weekly base salary) plus 13 hours (work performed July 5th) times $9.819 (1½ times his regular hourly pay rate of $6.546) or $129.65, for a total of $651.33, as opposed to the actual pay he received of $598.96.

Section 16.30(4)(b), stats., provides:

> "Compensatory time off or payment, either of which shall be at the rate of time and one-half, shall be granted to state employes for work performed on the holidays enumerated in par.(a) 1 to 6, 8 and 9."

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[2]Appellants are not paid on an hourly basis as such.

As exempt employes, the appellants are not paid on an hourly basis, are not required to be paid the premium rate for hours worked in excess of 40 hours per week, but are paid on a "salary basis," receiving:

> ". . . full salary for any week in which work is performed without regard to the actual number of days or hours worked, as long as the employe is ready, willing, and able to perform work . . ." Transportation Administrative Manual (TAM) 404-2, p.1.

We conclude that the respondent did not err in computing appellants' salaries as he did. The appellants' desired formula would amount to an effective pay rate of 2½ times their regular pay for the holiday in question. Without regard to hours in excess or less than 40 per week (with certain exceptions not particularly relevant to this issue) the appellants are entitled to a fixed bi-weekly salary. Holiday pay at "time and one-half" must be computed based on the theory that the "time" is encompassed by that base salary. This may be illustrated by an example.

The appellants were scheduled to work on July 5, 1976, a Monday. Had they been employed on an hourly basis, they would have been entitled to be paid 1½ times their hourly rate for their work on that date. For example, if their hourly rate were $4.00, each would have been entitled to $48.00 rather than $32.00 for his work on that day. For the bi-weekly pay period, each would have been entitled to $336.00 rather than $320.00 for the period. If they were paid on a $320.00 salaried basis rather than on an hourly basis, each would have been entitled to the $320.00 base salary plus the equivalent of an additional day's salary at time and one-half, or $48.00, for a total of $368.00, according to their theory.

We note in passing that the issues are clouded over by the fact that the "District Bi-weekly Payroll Time Record" form MVD-4043 (1-75), which is used for timekeeping and salary computation, is designed for use with hourly employes and is an apparent source of confusion in cases such as this.

An issue was raised for the first time at the hearing concerning the subject matter jurisdiction of this board. Respondent suggests that in its payroll computations it only performed ministerial functions and followed policy established by the director. Accordingly, he argues the appellants' complaint concerning their salary for July 5, 1976, should have been appealed directly to the board as an appeal from an action or decision of the director pursuant to Section 16.05(1)(f), stats.

We disagree with this approach. The operative acts determinative of the amount of salary that would be processed by the department of administration were performed within the department of transportation in its calculation of number of hours which the appellants were entitled to be paid for the pay period. That the department may have been following policies determined by the director does not require the conclusion that the transaction is an action or decision of the director for appeal purposes.

The respondent also suggested at the hearing that the grievance does not fall within the category of matters appealable to the fourth step (hearing before the board). We also disagree with this contention. Although the departmental grievance procedure was not made a part of the record, we take official notice of the uniform grievance procedure established by the director pursuant to Section Pers 25.01, W.A.C., with which the respondent's policy must be consistent. This provides that an employe may appeal to the personnel board grievances:

> ". . . alleging that the agency has violated, through incorrect interpretation or unfair application:
>
> > 1)a rule of the Director, State Bureau of Personnel or a Civil Service Statute (Section 16.01-16.38, Wis. Stats.). . ."

In this case, the appellants clearly alleged a violation of Section 16.30(4)(b), stats.

For these reasons, we conclude that there is subject matter jurisdiction.

ORDER

It is hereby ordered that the disposition of this grievance by the respondent is affirmed and this appeal is dismissed.

Dated April 25, 1977. STATE PERSONNEL BOARD

Laurene DeWitt, Chairperson