

Vermont Labor Relations Board

GRIEVANCE OF	}	
	}	
DONALD L. McMAHON and	}	DOCKET # 77-28S
	}	
VERMONT STATE EMPLOYEES'	}	
ASSOCIATION, INC.	}	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

The above captioned matter came on for hearing before the Vermont Labor Relations Board in Montpelier, Vermont on the 2nd day of December, 1977 after numerous postponements at the request of the parties. Notice of hearing was mailed to the parties on 3 November 1977. Requests for Findings of Fact were filed by both parties, and a Memoranda of Law filed by the State on 15 December 1977 and by the Grievant on 22 December 1977. The Grievant was present in person and represented by his attorney, Alan S. Rome, Esquire, and the State was represented by the Honorable Jeffrey L. Amestoy, Assistant Attorney General. The parties filed a Stipulation dated 1 December 1977 concerning differences in salary ranges and other financial information.

Discussion of the Evidence.

Janice Reed, Administrative Secretary of the Department of Social and Rehabilitative Services, Disabilities Programs, introduced an organizational chart which she said was accurate. There was some question as to which organizational chart was current and up to date, which had

some bearing on the merits of the case since there was a dispute as to whether the Grievant was in effect supervising other persons or not. She testified that Grievant's Exhibit "F" for identification was current and State's Exhibit "7" was not. The Grievant himself testified, stating that he was a Quality Assurance Specialist for the Human Services Division, and had been since 1974, at Pay Scale 14. He pointed out that his supervisor had recommended that his position be upgraded, and had so testified before a Congressional Committee in Washington. Claude Magnant, Director of Personnel Operations, testified, and said that his office had reviewed the position of Quality Assurance Specialists, and although he saw certain factors which might have indicated a higher level, related the position to other similar positions in State government, and felt that it should not be upgraded. He felt that the job is not supervisory in any normal sense, and that there is no inconsistency with approximately 14 similar positions in State government.

Findings of Fact.

1. Grievant has been employed as a Quality Assurance Specialist, Pay Scale 14, by the State of Vermont, Agency of Human Services, Department of Social and Rehabilitative Services since 1974.

2. The Board takes judicial notice of the Non-Management Agreement between Vermont State Employees' Association, Inc. and the State of Vermont, and particularly the provisions covering the filing of grievances; the Board finds in this grievance was timely filed.

3. The difference between the Grievant's Salary at PS 14 during the 48 week period between 29 July 1976 and 3 July 1977 (\$235.50 and \$245.00) and the requested salary increase is \$456.00; the difference between the Grievant's actual salary for the 20 week period between 3

July 1977 and 28 December 1977 (\$274.50 and \$285.50) and the requested additional salary amounts to \$220.00; the differential between the proposed overtime and the actual overtime (\$724.24 and \$609.15) is \$115.09; making in all a total differential of \$791.09.

4. The duties of a Quality Assurance Specialist (See Grievant's Exhibit "A") included the following, at all times material hereto: The review of cases and work accomplished by the Disability Claims Specialist, a review of medical documentation supporting such claims and vocational information supporting such claims; responsibility for "write-backs" with physicians and other providers in connection with disability claims; acting as a resource for claims of a complex nature, because of the Grievant's experience; responsibility for formal reports to the Unit and Area Supervisors; acting as witness in various legal proceedings; the accomplishment and transmittal of monthly and quarterly reports to various federal agencies; responsibility for special study reports to the same agencies.

5. The Personnel Officer of the Department of Social and Rehabilitation Services, Leon Marasco, requested the Department of Personnel, Claude Magnant, on 29 July 1976 to perform a "desk audit", of Position RH-138, Quality Assurance Specialist.

6. The Board is unable to determine which organizational chart is more nearly correct, as shown in State's Exhibit #7 or Grievant's Exhibit #F.

7. A classification analyst was assigned to perform the audit of Grievant's position by the Department of Personnel, which audit was performed in September of 1976, interviews being conducted with the Grievant, with Earl Thomas, Supervisor of the Disability Determination

Services Unit, and other employees within the Division serving in comparable positions.

8. The Personnel Department made a determination that the Grievant was properly assigned to PS 14 as a Quality Assurance Specialist (State's Exhibit #8 dated 21 September 1976).

9. The Grievant filed an appeal or request with the Advisory Classification Committee, a review committee composed of Personnel Officers from several departments, in this case Ernest Broe, Department of Taxes, Elizabeth Hotchkiss, Department of Social Welfare, and William Day, Department of Transportation.

10. The Advisory Classification Committee, in a non-binding decision, upheld the Department of Personnel classification determination.

11. The Quality Assurance Program is one hundred percent federally funded, as it is in all 50 states of the United States of America.

12. The federal government issues guidelines for the management and everyday operation of the Quality Assurance Program, HEW Administrative Bulletin #107 (Grievant's Exhibit #H). This bulletin contains the following language in Paragraph B. 2., viz.:

"Quality Assurance Personnel should be experienced, knowledgeable, and placed in a higher salary classification than the examiners whose work they will be reviewing."

13. The State of Vermont conducted a Public Administration Service Survey (PAS Study) of the classified service of the State of Vermont, which study recommended an upgrading of Grievant's position, but has not been accepted by the State of Vermont.

14. Grievant's Supervisor, Earl Thomas, recommended to the House Committee on Ways and Means as follows:

"When completed, the QA Specialist was on the same level as one-half of the adjudication staff and is today, even though he is reviewing their work. Why did this happen? Sad but true, the mere mention of Federal requirements or recommendations carries little weight with most State components..."

15. The Department of Personnel conducted the classification audit and issued its notice of classification within approximately six weeks of the Grievant's request, but no request for a hearing was made until after the Board had communicated with the parties on 3 November 1977.

16. The transcript of the testimony and exhibits shall constitute a part of this record.

Opinion.

At the time of the hearing on the merits the parties framed an issue for the Board as follows: Should the Grievant be at Pay Scale 16 or, as presently, at Pay Scale 14? The Board was asked to consider this Pay Scale situation under the provisions of Personnel Regulations 3.03, concerning equitable classification. A secondary issue is the question whether the Federal regulations have any bearing on personnel classifications of State employees in view of the fact that the Department is financed entirely by Federal funds and supervised in certain respects by the Department of Health, Education and Welfare.

Classification is a statutory responsibility of the Vermont Department of Personnel. 3 V.S.A., § 310. It is not entirely clear whether there is a right to bargain on these issues in the collective bargaining procedure, but this is not an issue in this case. The State has referred to the State Classification Plan, Section 5, but neither the Personnel Rules nor the Classification Plan were introduced into evidence. The State has argued that the Grievant has not really shown a genuine grievance under the provisions of 3 V.S.A., §902 (14). Regardless of

that, the Board is of the opinion that is not constituted as a super classification review board. The Board has consistently declined to overturn decisions of elective or appointive officers unless there is a showing of "...illegality, abuse of managerial and discretionary duties, rights and powers, or that the action taken was arbitrary and capricious." Grievance of Roger R. Mitchell, Docket #70-2. In addition to illegality, arbitrariness and capriciousness, the Board might add the word "unreasonableness". Obviously, maliciousness, while there is no suggestion in this case, is also a factor. See Cooper, State Administrative Law, Volume 2, pp. 762-3 (1965). Under these standards, the Board must conclude that the Grievant, Mr. McMahon, has not been treated with discrimination, maliciousness, unreasonableness, capriciousness or arbitrariness by the Department of Personnel or by the Review Board, acting in its advisory role.

It is clear that the Grievant has a great deal of experience and know-how in his field of expertise, as a Quality Assurance Specialist. While not acting in a formal supervisory role, he is doing work a notch or two above that of his colleagues, primarily because everyone in the department seems to turn to him for advice and for assistance. We cannot, of course, include anything in this order other than simply a ruling on the issues presented, except of an advisory nature. It is suggested, however, that Grievant should be employed in a more responsible position at a higher rate of pay. We further suggest that the Classification Review Board be expanded so as to include at least two non-Personnel Officer members. One member acting on each case could be a peer of the Grievant, for example. Furthermore, persons in middle

management roles other than Personnel Officers might be included in the review procedure. The presence of only Personnel Officers, presumably responsible to and subservient to the Department of Personnel, gives the appearance of "stacking the deck" in favor of the previous decision of the Department of Personnel. We see no evidence that this was the fact in the instant case, but appearances of fairness are just as important to employee morale as the actual fact of fairness.

ORDER.

In accordance with the findings and opinion expressed above, the grievance ought to be, and it hereby is, DISMISSED.

Dated at Burlington, Vermont this 7th day of April, A.D. 1978.

VERMONT LABOR RELATIONS BOARD

By

John S. Burgess
JOHN S. BURGESS, CHAIRMAN

William G. Kemsley Sr.
WILLIAM G. KEMSLEY, SR.

Robert H. Brown
ROBERT H. BROWN

*Settled
A. J. [unclear] 10/31/75*