

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

VERMONT STATE EMPLOYEES ASSOCIATION
on behalf of:

MARY SHATTUCK, NAOMI DECKER and
KATHRYN MASON

Docket No. 77-33S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a grievance brought by certain employees of the Vermont Department of Motor Vehicles and their union in which Grievants claim that their positions are improperly classified. Grievants Naomi Decker and Kathryn Mason were, at all times relevant to this grievance, employed as Motor Vehicle Data Processing Systems Technicians A, both classified at pay scale 10. The position of Grievant Decker is designated MV-183, and the position of Grievant Mason is MV-182. (The Grievant Mary Shattuck was employed in a different position but she has withdrawn from this grievance.) Grievants Decker and Mason requested that the Board reclassify their positions to level 12 and award payment of back wages.

For the reasons stated below, the Board has dismissed the grievances in this matter.

Findings of Fact.

1. At the time of hearing, Grievants were employed as Motor Vehicle Data Processing Systems Technicians A by the Vermont Department of Motor Vehicles.

This grievance appeals a Notice of Action of the Department of Personnel dated October 12, 1976 which classified the Grievants at pay scale 10.

2. Grievants allege a violation of Personnel Rule 3.03 Discrimination which states, in pertinent part, that "Discrimination against any person in connection with . . . personnel action because of race, national origin, or any other non-merit factor or political or religious opinions or affiliations is prohibited"

3. Grievants further allege a violation of Personnel Rule 5.05 Continuing Review which states "The Director shall maintain a continuing review of the classified positions in the state for the purpose of adjusting the allocation of positions in which duties have materially changed or which appear to be improperly allocated."

4. In 1974, Roy Williams of the Information Management Division of the Department of Motor Vehicles, in conjunction with the Department of Personnel, established three positions within the Division. These three positions were Clerk C positions (pay scale 8) and included the positions designated MV-182 and MV-183.

5. Grievant Decker filled position MV-183 in August, 1974.

6. At the time of hiring for the position, the Grievant was told by Mr. Williams that after one year the Clerk C position (pay scale 8) would be reclassified as a Data Processing Quality Control Clerk (pay scale 11).

7. Mr. Williams did not have the authority to make such a reclassification and misapplied the representation of the Department of Personnel of September 16, 1974 which stated the Clerk C positions would be reviewed in 1975 to see if the positions had evolved to the Quality Control level.

8. In 1975, the Department of Personnel did in fact review the classification of the Clerk C position.

9. As a result of that review, the Clerk C position was upgraded to the position of Data Processing Quality Control Clerk A (pay scale 9).

10. The Notice of Action was issued on March 10, 1976 and was made retro-active to October 6, 1975.

11. The Notice of Action was preceded by a thorough review of class specifications, a desk audit, and other procedures normal to a classification review by the Department of Personnel.

12. In April, 1976, Claude Magnant as Chief of Position Analysis and Classification for the Department of Personnel independently reviewed the classification of the subject positions at the request of William Conway of the Department of Motor Vehicles.

13. As part of his review, Mr. Magnant had an extensive discussion with Mr. Williams, reviewed the previous classification studies of the positions, reviewed pertinent class specifications and job descriptions and prepared Hay ratings of the positions. Mr. Magnant concluded that the action of Department of Personnel upgrading the position of Clerk C (pay scale 8) to Data Processing Quality Control Clerk A (pay scale 9) was proper.

14. In July, 1976, Mr. Magnant received notice that Naomi Decker was alleging that her classification as a Data Processing Quality Control Clerk A (pay scale 9) was improper.

15. In reviewing the audit/classification action of March, 1976 once again, Mr. Magnant met with Mr. Williams and Mr. Hicks, Business Manager of the Department of Motor Vehicles, on August 3, 1976.

16. At the August 3, 1976 meeting at which Ms. Fay Cliche, classification analyst for the Department of Personnel was also present, Mr. Williams presented to the Department of Personnel new job descriptions of the subject dated June 29, 1976.

17. The new job descriptions dated June 29, 1976 and presented to the Department of Personnel August 3, 1976 led the Department of Personnel to again audit the subject positions.

18. Job audits were performed on August 6 and 9 with Ms. Cliche interviewing the incumbents. Again, usual Department of Personnel classification procedures were followed including interviews and review of descriptions.

19. As a result of this review, the Department of Personnel again upgraded the position; this time from Data Processing Quality Control Clerk A (pay scale 9) to Motor Vehicle Data Processing Systems Technician A (pay scale 10).

20. Following the preliminary decision to upgrade the subject positions, Mr. Magnant again met with Motor Vehicle data processing staff.

21. Following expressions by the Department of Motor Vehicle data processing that they believed the subject positions should be classified Data Processing Quality Control Clerks (pay scale 11), Mr. Magnant met with experts in the data processing area including Mr. Gerry Gingras and Mr. Willie Nelson of the State Informations System (SIS).

22. SIS, which has two of the three Data Processing Quality Control Clerk positions in state government, provided information which distinguished the position of Quality Control Clerks within SIS from the Grievants' positions in Department of Motor Vehicle in terms of autonomy, breadth of job, independence of action, and number of computer programs handled.

23. In November, 1976, the Advisory Classification Committee held a hearing on the classification of the subject positions and upheld the classifications concluding that the staff of the Department of Personnel had done "an extremely thorough job in reviewing these positions".

24. In January, 1977, Mr. Magnant in preparation for a Step III hearing on the classifications met with Mr. Robert Shambo, systems analyst for SIS assigned

to Motor Vehicles to discuss the positions. Mr. Magnant concluded that Mr. Shambo felt that the positions, if anything, were overclassified at pay scale 10 and were more appropriately a pay scale 9.

25. Mr. Donald K. Landergren, Chief of Information Systems Development of SIS, testified that the functions of the Data Processing Quality Control Clerks (pay scale 11) within the SIS were substantively different from the functions which the Grievants perform.

26. Mr. Landergren stated that the positions of Quality Control Clerk within SIS have more responsibility and autonomy than that of Grievants' position; that they handle all programs for the State of Vermont inclusive of the Department of Motor Vehicle computer programs; that technical assistance is frequently provided to data processing of Department of Motor Vehicle, and that in the area of computer programming the position of Quality Control Clerk is the most responsible in state government.

27. No evidence was introduced to support the Grievants' allegation that the subject personnel action was discriminatory.

Conclusions.

28. It has long been the position of this Board that a state employee who challenges the classification of his job position must establish by a preponderance of the evidence that he is entitled to the relief sought. This Board will not substitute its judgment in classification matters for that of the agencies charged with responsibility for job classifications without a demonstration of illegality, abuse of managerial and discretionary duties, rights and powers, or that action taken was arbitrary, capricious or discriminatory. See Grievance of Crete and Beaumont, Docket No. 77-27S and authorities cited therein.) The Board's holdings in this regard have been affirmed by the Vermont Supreme

Court. See In Re Grievance of Donald L. McMahon and Vermont State Employees Association, 136 Vt. _____ (1978).

29. In McMahon, the Court held that classification of state personnel is a statutory function conferred upon the Personnel Board by 3 V.S.A. Chapter 13 and there is no authority in the legislative scheme for reclassification by the Labor Relations Board. The Court concluded that this Court's jurisdiction in reclassification matters extended only to reclassification matters which constitute "grievances" within the specific meaning of 3 V.S.A. § 926; that is, where the classification matter involves the dissatisfaction with the aspects of working conditions under a collective bargaining agreement or the discriminatory application of a rule or regulation.

30. The thrust of the Grievants' allegations in this matter are consistent with the Board's role in classification as defined by a Vermont Supreme Court in McMahon. The proof offered by the Grievants at hearing, however, failed to sustain these allegations by a preponderance of the evidence. The proof developed at the hearing was appropriate in a reclassification hearing, but in McMahon the Court held that a request to reclassify a job grade does not fall within this Board's jurisdiction. Accordingly, this grievance must fail because the Grievants have failed to carry their burden of proof.

Order.

This grievance is dismissed.

DATED at the City of Montpelier, County of Washington and State of Vermont this 19th day of December, 1978.

VERMONT LABOR RELATIONS BOARD

By John S. Briggs
By William J. [unclear]
By James Wallace