

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

ALAN D. SOPHRIN and
VIRGINIA M. SOPHRIN

Docket No. 77-9S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a grievance brought by Alan D. Sophrin and Virginia M. Sophrin, husband and wife (the "Grievants"), who object to the procedure used and the results obtained in connection with their performance evaluation for the period June 1, 1975 to June 30, 1976. The Grievants claim that they were erroneously rated at level 3 ("Consistently meets job requirements/standards") and should have been rated at level 4 ("Frequently exceeds job requirements/standards"). Further, the Grievants object to the use during the 1975-1976 rating period of a new form and new rating classifications without prior discussion or bargaining with the union representing the affected employees.

The hearings in this matter were held on February 18, 1977, at which the Grievants were represented by the Vermont State Employee's Association ("Union") and the State was represented by Jeffrey L. Amestoy, Assistant Attorney General.

For the reasons stated below, the Board has ordered the grievance to be dismissed.

Findings of Facts.

1. Grievants are members of the non-management unit of State employees represented by the Union. Grievants were employed as cottage parents at Brandon Training School at all times relevant to this grievance.

2. During the rating period July 1, 1974 to June 30, 1975, Grievants were rated on their performance evaluation report, overall, at level 4 ("fully satisfactory (meets & occasionally exceeds standards)"). During the rating period from June 1, 1975 to June 30, 1976, Grievants, on their performance evaluation form were rated at level 3 ("Consistently meets job requirements/standards").

3. Grievants contend that they should have been rated at level number 4 during the evaluation period June 1, 1975 to June 30, 1976, at which time level 4 indicated "Frequently exceeds job requirements/standards".

4. The State Department of Personnel specified that personal evaluation reports for the period June 1, 1975 to June 30, 1976, must be done on forms which were different than the forms employed for this purpose during prior years. Not only was the layout of these forms different, but the performance criteria for performance at each numbered rating level were changed materially on the 1975-1976 forms from those criteria in prior periods.

5. The State did not bargain collectively with the Union prior to instituting the changes inherent in the 1975-1976 rating forms and categories. The State did, however, through its Department of Personnel, prior to the institution of these changes, conduct numerous discussions with certain of the affected employees and did take into account recommendations from employees during the course of these discussions prior to implementing the new forms and categories.

6. A rating in the 1975-1976 period at level 3 cannot be directly correlated with a level 3 rating in prior years. A rating at level 3 in the 1975-1976 period more closely correlates with a level 4 rating in the prior year than would any other although it is not precisely the same.

7. The same forms and standards applied to the Grievants during the 1975-1976 rating period were used by the State in connection with its evaluation of other employees similarly situated.

Conclusions of Law and Opinion.

8. As held in Grievance of Walter H. Abaire, Docket No. 70-1, and in numerous similar cases decided since that time, "in the absence of a showing of unfairness, prejudice, or improper rating, this board will not substitute its judgment regarding performance evaluation for the judgment of those closest to and most knowledgeable of the situation".

9. The record in this matter is nearly devoid of any evidence pertaining to the considerations employed in connection with the rating of Mrs. Sophrin. Most of the evidence in this matter pertains only to the rating of Mr. Sophrin. Even if the Board considers this evidence to apply with equal weight to both Grievants, however, this Board must conclude that the Grievants have failed to carry their burden of proof to demonstrate the unfairness, prejudice or improper rating.

10. Accordingly, Grievants may prevail only if they have established that they are entitled to relief because the State invoked its new rating forms and standards without prior negotiation with the Union. But the Board is unable to conclude that the State has an obligation to bargain on these matters.

11. The Union's assertion that bargaining must take place with regard to these changes is based on 3 V.S.A. § 904(a) which requires collective bargaining

on all matters relating to the relationship between the State and its employees "except those matters which are prescribed or controlled by statute". The Board believes that the subject matter of this grievance is prescribed or controlled by statute because 3 V.S.A. § 322 provides that service ratings shall be prepared in accordance with the service rating procedures established by the Personnel Board.

12. The forms and procedures used in carrying out the performance evaluation of the Grievants was the procedure mandated by the Personnel Board in accordance with its authority under 3 V.S.A. § 322. This Board cannot vitiate that procedure.

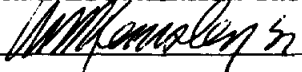
13. The Board does not by this holding mean to discourage bargaining between the parties concerning the subject of performance ratings. Performance evaluations are central to the classified system of State service and have a pervasive influence on the career of each evaluated State employee. Although the specification of procedures is mandated by law to the Personnel Board, this mandate does not preclude the parties from negotiating their recommendations to the Personnel Board.

Order

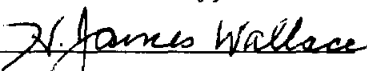
For the reasons stated above, this grievance is DISMISSED.

Dated this 23rd day of October, 1978 at the City of Montpelier,
Vermont.

VERMONT LABOR RELATIONS BOARD



William G. Kemsley, Sr.


H. James Wallace