

Vermont Labor Relations Board

GRIEVANCE OF]
]
ETHEL P. BOWER, JOSEPH GAINZA,] DOCKET # 77-5S
]
CAROL LaBRECQUE and DORIAN MAZUR]

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter became before the Board on the grievance of Ethel P. Bower, Joseph Gainza, Carol LaBrecque and Dorian M. Mazur dated 3 September 1976 and filed 8 September 1976. The State's Answer was dated 10 September 1976 and filed on 17 September of the same year. The hearing was scheduled for 4 February 1977, but postponed until 4 March 1977. Memoranda of Law were filed by both parties and Requests for Findings of Fact were filed by both parties. The grievants were represented by Alan S. Rome, Esquire, General Counsel for Vermont State Employees' Association, Inc., and the State was represented by the Honorable Jeffrey L. Amestoy, Assistant Attorney General. Mr. Parker Brown, Labor Relations Specialist with the Department of Personnel, also appeared for the State.

Issue.

The parties agreed that the issue to be considered by the Board in which the testimony was to be directed was whether or not the grievants were promoted in accordance with Personnel Rule 6.071 or under the "automatic reallocation" provisions of the Guidelines of 1974-76.

Discussion of Evidence and Credibility of Witnesses.

There was very little difference between the testimony of the wit-

nesses for grievants and the witnesses for the State. Miss LaBrecque had been an employee of the Department of Social and Rehabilitative Services at Brandon Training School since February of 1973. The various pay figures were somewhat confusing because of pay actions at different periods of time. Ethel Bower was also an employee of the same department, and had been since July of 1974. Her situation was distinguished by the fact that she had been a trainee at first rather than a regular employee. Joseph Gainza was in virtually the identical situation with Ms. Bower. Dorian Masur had also been a trainee. The State's evidence, through Parker Brown, drew a distinction between "promotion" and "reallocation". He pointed out that positions are reallocated but people are promoted. Promotion is essentially an upward move to another position. He noted that the position of Social Worker Trainee had been abolished when the position of Social Worker Associate was created, and this was a reallocation situation rather than promotion situation.

Findings of Fact.

The Vermont State Employees' Association is the duly certified collective bargaining representative for the Non-Management Bargaining Unit of the Vermont state employees, including those in the Department of Social and Rehabilitative Services.

2. Grievants Ethel P. Bower, Joseph Gainza and Dorian Mazur were employed as Adjudication Specialist Trainees, Pay Scale 10, and were all three reallocated upon completion of their training period to the position of Adjudication Specialist, Pay Scale 13.

3. Grievant Carol LaBrecque was a Social Worker Associate, Pay Scale 10, until she was reallocated to the position of Social Worker, Pay Scale 13.

4. The purpose of the creation of training positions or positions

under the classified system is to enable individuals who do not have all the minimum qualifications for a position to obtain those qualifications through on-the-job training; the program is designed to create career opportunities within the classified system.

5. It is the normal practice of the Department of Personnel to authorize the automatic reallocation of an employee to the full level position upon the successful completion of the training period by such an employee.

6. During all times material there were training classes and positions for both Social Worker and Adjudication Specialist; these positions called for a Pay Scale of 10; the full level positions called for a Pay Scale of 13.

7. The matter of the shift from one class of employment to another which is defined as "reallocation" appears in the Agreement between the Vermont State Employees' Association, Non-Management Unit, and the State for the period 5 July 1976-30 June 1979, on Page VI.

8. "Reallocation" and "promotions" are distinguishable, promotions being the result of an employee's upward move to another position, often through some form of testing or other competitive procedure.

9. None of the grievants were involved in any competitive procedure.

10. No indications appeared in the Personnel Records of any of the grievants to show that they had been moved or promoted from a letter or numbered designation to a different position with a different letter or number designation when they were reallocated to Social Worker and Adjudication Specialists respectively.

11. Pay raises were awarded each of the grievants at the successful

completion of their six month probationary periods. Pay raises were awarded to each grievant upon the successful completion of their traineeship periods, in each case the pay being raised to Pay Scale 13. Although the new agreement between the Non-Management Unit and the State became effective 4 July 1976 (State's Exhibit A, Page 2, Paragraph III (B) (4)), which altered the manner in which a reallocated employee was to be compensated, the Department of Personnel applied the provisions of the new agreement to employees, including the grievants, who had been automatically reallocated at a prior date.

12. Prior to 16 July 1976, no salary increase was greater than five percent above the minimum of the new Pay Scale.

13. The performance of all four grievants was completely satisfactory.

14. The exhibits and transcript are made a part of these findings for purposes of review by the Supreme Court.

Conclusions of Law and Opinion.

The apparent attempt by the State to create career opportunities within the classified system of service must not be distorted by confusion between promotions, for merit or otherwise, and automatic re-allocation as the result of completion of a probationary period or a traineeship period. The purpose of such a system is to permit on-the-job training for persons whose level of skills is below the minimum qualifications for the position being trained for. As soon as those skills have been acquired, whether at the end of a formal training period or otherwise, the individual is automatically reallocated to the position for which he was training. All of these grievants were clearly trainees for the full level position. There are other examples in State

service, such as Public Health Nurse Trainee, Social Worker Trainee, Right-of-Way Agent A and so on. This reallocation is defined in the agreement between the State and the Non-Management Unit.

It appears that the grievants were all compensated in accordance with the guidelines agreed to by the State and by the Non-Management Unit Bargaining Agent, VSEA. The automatic reallocation provisions are as follows:

"Upon automatic reallocation from a trainee ... to the full level of a class ... an employee shall receive an increase of four percent or to the minimum of the higher pay scale, whichever is greater." (State's Exhibit A).

These provisions were apparently applied to each of the grievants, even though they had gone into effect after the automatic reallocation of the grievants in this case. The only criticism of the practice here was that careless personnel work was in evidence. This was most strongly in evidence through poor lines of communication between the State and each of the employees involved, as well as department heads. The Board does not intend to criticize the Department of Personnel, but rather the lines of communication established with personnel officers in the other agencies. Certainly it appears quite evident that the employees and their supervisors were under the impression that each one of the grievants was entitled to a promotion rather than the benefit of the automatic reallocation position. In the future, it is hoped that measures will be taken to secure reasonable opportunities for understanding of all personnel and pay changes which go into effect.

ORDER.

NOW, THEREFORE, it is hereby ORDERED that the grievance be, and it hereby is, DISMISSED. It is requested that a personal explanation be given to each of the grievants so that full understanding of the personnel

action taken which resulted in this grievance is afforded.

Commissioner Robert H. Brown did not participate in this decision.

Dated at Rutland, Vermont this 13th day of January, 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