

STATE OF VERMONT
LABOR RELATIONS BOARD

GRIEVANCE OF:

ROBERT L. HATFIELD

Docket No. 77-298

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter is a grievance pursuant to 3 V.S.A. § 926 by Robert L. Hatfield and employee of the State of Vermont, alleging that his annual performance evaluation for the period July 1, 1975, through June 30, 1976, should be raised in certain particulars. The hearing on this matter was held on October 14, 1977. At the hearing the grievant was represented by Alan S. Rome, Esq. and the State of Vermont was represented by Jeffrey Anastoy, Esq.

For the reasons stated below, the Board has decided to dismiss the grievance.

Findings of Fact.

1. The grievant, Robert L. Hatfield, is a member of the management unit of the Vermont State Employees Association, Inc. He is employed by the State of Vermont Department of Social Welfare as IM District Director A SW-259.

2. On October 14, 1976, the grievant received his annual performance evaluation for the period July 1, 1975, through June 30, 1976. Grievant's overall performance evaluation was Level 3, "consistently meets job requirements/standards". The ratings in Section A.3, B.2 and B.3 of grievant's evaluation were level 2, "inconsistently meets job requirements/standards".

3. Grievant's evaluations for the years ending 1975 and 1976 were introduced into evidence. Grievant's over-all rating for the year ending 1977 did not change from the prior two years. However, grievant was down-rated from a level 4 to a level 2 in the areas of work habits, planning and organizing, and developing and motivating subordinates.

4. Although grievant objected to his down-grading in the areas mentioned above, no evidence was introduced tending to prove to the Board that the evaluation of his work in these areas was improper.

Opinion and Conclusions.

5. Grievant relies on two grounds to support his contention that his performance evaluation should not stand: first, that as a matter of fact he was improperly evaluated in the areas at issue; and second, that grievant was not provided with adequate notice during the evaluation period of his substandard performance.

6. The Board is unable to concur with either of these grounds because the grievant has failed to prove either to the Board's satisfaction.

7. The grievant failed to introduce any substantial evidence at the hearing on this matter that the evaluation of his performance in the contested areas was not correct. Without such evidence, the Board obviously cannot concur with the first ground suggested by the grievant.

8. Similarly, the Board is unable to concur with the second ground proposed by the grievant because of a failure of proof. Grievant's contention that he was entitled to prior notice relies upon State personnel Rule 13.014 which, grievant contends, establishes his right to a pre-evaluation review. But State Personnel Rule 13.014 was not placed into evidence and, therefore, cannot be considered by the Board in this matter.

9. Grievant further contends that a prior decision of the Vermont State Employees Labor Relations Board (Grievance of Wheelock, Docket No. 74-21) establishes the entitlement of supervisory employees to a warning prior to downgrading of performance evaluations. The Board, after a review of its decision in Wheelock, does not concur.

10. In Wheelock, the Board notes that the overall rating, not merely some components, was down-rated. In addition, the Vermont State Employees Labor Relations Board did not rest its decision in Wheelock solely on the failure of the grievant's supervisor to warn of a downgrading during the evaluation period. The decision was also based on an admission by the supervisor of the grievant in that case that the published rating was unfair. Moreover, the contract between the State of Vermont and the management unit of the Vermont State Employees Association does not require prior notice and discussion before downgrading. The Board finds that this omission is significant in light of the inclusion of a requirement for such notice and discussion in Article 39 of the Non-Management Contract. Accordingly, the Board feels that Wheelock's rationale should be limited to the facts of that case.

11. In this matter, the Board concludes that supervisory personnel are not entitled as a matter of right to a pre-evaluation warning that ratings may be downgraded in certain areas.

ORDER.

For the foregoing reasons, it is hereby ORDERED that the grievance in this matter be dismissed.

DATED this 30th day of June, 1978.

VERMONT LABOR RELATIONS BOARD

John S. Burgess
John S. Burgess, Chairman

Robert Brown
Robert Brown

William Kinsley
William Kinsley