

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
MILDRED ROCK)	DOCKET NO. 88-33

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 8, 1988, the Vermont State Employees Association ("VSEA") filed a grievance on behalf of Mildred Rock ("Grievant"). The grievance alleged that the State of Vermont ("Employer") violated Articles 6 and 19 of the collective bargaining agreement between the Employer and VSEA for the Non-Management Unit, effective for the period July 1, 1986 to June 30, 1988 ("1986-88 Contract"), by failing to provide adequate notice to Grievant to allow her and VSEA to make an informed decision concerning whether to file a classification grievance.

On July 22, 1988, the Employer filed an Answer and a Motion to Dismiss and/or For Summary Judgment. On September 15, 1988, the Labor Relations Board denied the Employer's motion.

A hearing was held on October 27, 1988, before Board Members Charles McHugh, Chairman; Catherine Frank and Dinah Yessne. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. Michael Seibert, Assistant Attorney General, represented the Employer. At the hearing, the parties waived the filing of briefs.

Subsequent to the hearing, on November 4, 1988, the Employer filed a Motion for Relief from an Order and to Reopen the Record. The Employer requested relief from the Board Order at the October 27

hearing denying the Employer request that the Board continue the hearing to another day to allow the Employer to call a witness in rebuttal of the testimony of Thomas Whitney, VSEA Executive Director.

FINDINGS OF FACT

1. The collective bargaining agreement between VSEA and the Employer for the Non-Management Unit which preceded the 1986-88 Contract did not provide employees with a right to request a classification review, and did not require written notice to be provided to affected employees of a Department of Personnel determination on a management-initiated classification review request (Grievant's Exhibit 1).

2. In negotiations for the 1986-88 Contract, VSEA, among other changes proposed concerning classification issues, sought contractual provisions that employees be permitted to initiate classification review requests and that the Department of Personnel be required to provide employees with written notice of a determination on a classification review request prior to the filing of a classification grievance. These changes were agreed to by the Employer. VSEA understood written notice to mean that the Department of Personnel would be required to inform employees of the rationale for a classification determination. However, we conclude by a preponderance of the evidence that the Employer did not agree with this understanding.

3. The 1986-88 Contract provides in pertinent part:

ARTICLE 6

EXCHANGE OF INFORMATION

... 5. In addition to the information which the State has specifically agreed to provide VSEA under this Article, the State will also provide such additional information as is reasonably necessary to serve the needs of the VSEA as exclusive bargaining agent and which is neither confidential nor privileged under law. Access to such additional information shall not be unreasonably denied. Failure to provide information as required under this Article may be grieved through the grievance procedure to the Vermont Labor Relations Board...

ARTICLE 19

CLASSIFICATION REVIEW AND CLASSIFICATION GRIEVANCE

Section 1. Definitions

a. Classification Review is defined as the process whereby either employees or management may initiate a review by the Personnel Department to determine whether an individual position, or any group of positions, is incorrectly classified and/or incorrectly assigned to pay grade.

b. Classification Grievance is defined as a dispute over whether the position of an individual employee, or the positions of a group of employees, is incorrectly classified and/or assigned to pay grade.

Section 2. Management Rights

Nothing herein shall be construed in a manner which prevents or interferes with management's unilateral authority to reallocate a position into a new or existing class; to assign a class into a different pay grade...

Section 3. Procedure for Review of Classification

... b. Employee requests for classification review shall be made on a form provided by the Commissioner of Personnel. Each form shall be fully completed by the employee. The employee's supervisor shall review the completed form within 10 workdays and submit written comments as appropriate. The Request for Review form shall then be submitted to the employee's appointing authority, who shall review it for accuracy, comment as deemed appropriate, and forward the original to the Department of Personnel within five workdays. A completed position description form (PER 10 or other form approved by Commissioner of Personnel) shall also accompany the Request for Review.

c. Within a reasonable period of time (normally 60 days for a single position and 90 days for a multiple position class), the Department of Personnel will review and respond to requests for review. In its discretion the department may conduct job audits, as necessary. The department will issue a written notice.

Section 4. Classification Grievance

... c. A classification grievance shall be filed within 30 days of receipt of the classification review determination of the Department of Personnel to the employee(s), or the right to pursue a grievance hereunder shall be deemed waived.

d. A grievance as defined in this article shall be filed in writing with the Personnel Department (110 State Street, Montpelier, 05602), and shall minimally include the following (original and four copies):

1. name of employee submitting grievance;
2. position number, class title, and pay grade of the position under appeal, plus the department/division/section in which located;
3. when appropriate, the time period during which alleged changes in duties critical to classification of the position for purposes of the grievance occurred;
4. specific remedial action requested;
5. copies of all material submitted in the initial request for classification review, including the position description form and the written determination of the Personnel Department.

(Grievant's Exhibit 2)

4. By memorandum dated March 23, 1988, Grievant, who was then a Clerk B, pay grade 9, with the Agency of Transportation, submitted a request for classification review. Her request included, as required by the Contract, a request for review form, and a job description form. Grievant sought an upgrade from Clerk B, pay grade 9, to Clerk C, pay grade 13 (Grievant's Exhibit 3).

5. By memorandum dated May 9, 1988, from the Department of Personnel, Grievant was notified that the Department of Personnel, following its review of her position, had determined that her position was a Clerk A, pay grade 6, position rather than either Clerk B (pay

grade 9), or Clerk C (pay grade 13). Grievant was notified that "the rating for this class is as follows:

B1X - 61 B2D - 10 A1N - 10 L1A - 0 = Total 81 - Pay Grade 6"

(Grievant's Exhibit 4)

6. The letters and numbers in the rating provided to Grievant in the May 9, 1988, memorandum represent a comprehensive breakdown of the points granted for each category in the point factor system used by the Department of Personnel in making classification decisions. The rating "B1X - 61" relates to the evaluation of the "knowledge and skills" needed to perform Grievant's position. The rating "B2D - 10" relates to the evaluation of the "mental demands" which apply to the position of Grievant. The rating "A1N - 10" represents the evaluation of the "accountability" applicable to Grievant's position. The final designation, "L1A - 0" relates to the "working conditions" applicable to the position of Grievant. The total of "81" is the sum total of the points given for the various categories noted above. "Pay Grade 6" is the appropriate pay grade designation under the point factor system when the sum total of points is 81. A person can ascertain what each number and letter within each category represents with respect to evaluation of the position by referring to the explanatory charts contained in the document, "Position Measurement - Norman D. Willis and Associates", which is used for classification determinations.

7. On May 20, 1988, Gail Rushford, a VSEA Field Representative, wrote to Claude Magnant, Director of Personnel Operations, and requested that she be provided with "a full explanation of the (Department of Personnel) analyst's reasons for this decision and the

basis for the classification rating" so that she could "properly assess this case and advise Mrs. Rock regarding a grievance" (Grievant's Exhibit 5).

8. By memorandum of May 23, 1988, Magnant responded. The memorandum provided in pertinent part:

If what you desire at this point is the type of analysis which we prepare for appealed positions, I then have a priority judgment to make in terms of Analyst time. My feeling is that we have a great obligation to prepare necessary materials for the nearly 50 grievances we already have which are as yet unassigned to a panel.

At this juncture, Mildred Rock, with your assistance, should be able to assess why, in her opinion, her position does or does not belong in the Clerk A class. What does she do with reasonable frequency that is a higher level duty than those typical of the Clerk A class? What does one have to know to do the job? What directions, guidelines and procedures are there to follow? What kind of judgments and decisions must she make? To what extent is the work reviewed by someone else?

If Rock does decide to file a grievance, there will come a time when we will need to prepare material for the grievance panel's consideration. A copy of that material will be forwarded to Rock or her agent well before panel consideration of the case, and a response to that material can be made as appropriate.

There is no way, without additional staff, that we can write formal, detailed analysis reports for every classification decision we make. I am already concerned (although not surprised) by the speed of response which results from current procedures. Adding one more step to that process can only further slow our response time.

(Grievant's Exhibit 6)

OPINION

At issue is whether the Employer violated Articles 6 and 19 of the 1986-88 Contract by failing to provide adequate notice to Grievant to allow her and VSEA to make an informed decision concerning whether to file a classification grievance.

Grievant contends that Articles 6 and 19 of the Contract, when read together, require the Department of Personnel, following a classification review requested by an employee, to provide the employee and VSEA with sufficiently detailed information, including an explanation of the Department's reasoning, to allow the employee and VSEA to make an informed decision whether to file a classification grievance.

Article 6 provides that "in addition to the information which the State has specifically agreed to provide the VSEA under this Article, the State will also provide such additional information as is reasonably necessary to serve the needs of the VSEA as exclusive bargaining agent". Article 19 specifies that the Department of Personnel must, following its review of an employee's classification review request, provide the employee with "written notice" of its decision. Article 19 also includes among the information which an employee must submit with a classification grievance "the written determination of the Personnel Department".

The task before us is one of contract construction. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacy, 138 Vt. 68, 71 (1980). We will not read terms into a contract, unless they arise by necessary implication. Id. It is our duty to interpret the provisions of a disputed contract, not remake it, or ignore it. In re Grievance of VSEA on Behalf of Certain "Phase Down" Employees, 139 Vt. 63, 65 (1980). In carrying out this task, we are guided by the rule of construction that a contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. Id.

In applying these rules of construction to the provisions of Article 19, we are not persuaded that the Department of Personnel was required to provide an explanation of its reasoning upon informing Grievant of the classification determination on the review request. The common meaning of "notice" and "determination" do not mandate such a detailed reasoning. "Notice" is defined as a "formal written announcement". (The American Heritage Dictionary of the English Language, New College Ed., Houghton Mifflin Co., 1979). "Determination" is defined as "the act of settling a dispute, suit or other question by an authoritative decision or pronouncement". Id. Neither definition implies an explanation of the decision-maker's reasoning. Further, the evidence does not indicate that during negotiations the Employer agreed that the Contract language required an explanation of the decision-maker's reasoning.

Moreover, where the parties intended elsewhere in the Contract that notice be accompanied by reasons, they specifically so provided. Article 19, Section 6, provides that when the Commissioner of Personnel issues a "Notice of Final Action" concerning a classification grievance, "to the extent that the action taken by the Commissioner differs in either class title or pay grade from the recommendation of the classification board, the Commissioner shall provide written reasons for his/her decision". Article 17 of the Contract, concerning disciplinary actions, provides that suspended employees shall receive a "(n)otice of suspension, with specific reasons for the action" and, with respect to discharged employees, provides that "(i)n the dismissal notice, the appointing authority shall state the reasons for dismissal". We conclude that the fact the

parties did not expressly provide for reasons accompanying notice for classification review request decisions while they did expressly require reasons accompanying notice elsewhere in the Contract indicates the parties did not intend to require the Department of Personnel to explain its reasoning when issuing notices of determination on classification review requests. In re Grievance of VSEA on Behalf of Certain "Phase Down" Employees, supra, at 65 (1980). Grievance of Allen, 5 VLRB 411, 416-417 (1982).

We turn to discussing whether the content of the notice provided was sufficient for VSEA pursuant to Article 6 of the Contract. We conclude that the Department of Personnel did not violate its contractual responsibility pursuant to Article 6 to "provide such additional information as is reasonably necessary to serve the needs of the VSEA as exclusive bargaining agent". Sufficient information was contained in the notice, with respect to letters and numbers representing a comprehensive breakdown of the points granted for each category in the point factor system used by the Department of Personnel in making classification decisions, so that VSEA could make an informed decision whether to file a classification grievance and, thus, served VSEA's needs as exclusive bargaining agent. VSEA, as exclusive bargaining representative, can be expected to be trained in and understand what the letters and numbers represent. While the notice provided clearly could be better and, we believe, should as a courtesy be written in language which an employee could understand - rather than code - the current language is sufficient under the agreed-to bargain of the parties. Better requirements of notice could be set forth in the negotiated Contract.

Given our decision, it is unnecessary to rule on the Employer's Motion for Relief from an Order and to Reopen the Record.

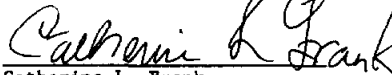
ORDER

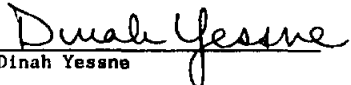
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Mildred Rock is DISMISSED.

Dated this 27th day of December, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


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