

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

JAMES BELLINO

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DOCKET NO. 88-6

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 5, 1988, the Vermont State Employees' Association ("VSEA") submitted a grievance on behalf of James Bellino ("Grievant"). The grievance alleged that the State of Vermont, Office of Alcohol and Drug Abuse ("Employer") violated Article 48 of the collective bargaining agreement between the State and the VSEA for the Supervisory Unit, effective for the period July 1, 1986 - June 30, 1988 ("Contract") by not granting Grievant a retroactive 8 percent pay increase.

A hearing was held on April 7, 1988, before Board Members Dinah Yessne, Acting Chair; William G. Kemsley, Sr. and Catherine L. Frank. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. Michael Seibert, Assistant Attorney General, represented the Employer.

The parties filed Memoranda of Law on April 14, 1988.

FINDINGS OF FACT

1. At all times relevant, the Contract provided in pertinent part as follows:

ARTICLE 17

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 3. Procedure for Review of Classification

a. The classification review procedure outlined herein shall become effective on January 1, 1987. There shall be a moratorium on employee initiated classification review and classification grievances until that date.

... d. Effective January 1, 1987, any employees who believe that they are incorrectly classified and/or assigned to pay grade may initiate a request for classification review in accordance with this article.

e. In the event that corrective action results from either classification review or a classification grievance, any pay adjustment shall not be retroactive earlier than the date of filing of the request for classification review. In the event that a grievance arises based on a claim that the employee was not correctly recognized upon implementation of the Willis system, and the grievance is subsequently granted, remedial action shall be based upon the contractual formula for implementing Willis reclassification decisions.

Section 4. Classification Grievance

a. Classification grievances may be filed after January 1, 1987, in accordance with this article.

... Section 8. Exclusive Remedy

The grievance and appeal procedures provided herein for classification disputes shall be the exclusive procedures for seeking review of the classification status of a position or positions.

ARTICLE 48

SALARIES AND WAGES

... 4. Effective December 28, 1986, and pursuant to statutory authority, the commissioner of Personnel will adopt a new classification plan. The parties also agree to adopt a system of compensation consisting of 28 pay grades. At that time the Commissioner shall allocate all positions in the classified service into a class, and assign all classes to pay grades in the new system. In doing so, the Commissioner shall implement the final recommendations of Norman D. Willis and Associates. Prior

to implementation the Commissioner retains and may exercise the statutory authority to correct errors found after review of the final Willis recommendations, and to recognize changes in jobs which have occurred since the initial position evaluations by Willis and Associates were performed.

5. Effective December 28 1986, the State shall begin to implement a new Step Pay Plan, as referenced herein, by slotting those employees in positions "upgraded" (see definition to follow) in the concurrent re-classification initiative (see Section 4, above), onto the first step in their new pay grade which would allow them to realize a pay increase. Any permanent status employee below Step 2 (i.e., the new end of probation rate) will be moved to Step 2 of their new pay grade, regardless of whether or not their position was upgraded. Employees whose positions were not upgraded, and whose salaries are equal to, or above, the rate established for Step 2 of their appropriate pay grade, will be slotted onto the Step Pay Plan on July 12, 1987, in accordance with this Article.

For the purposes of this Article, an "upgrade" means assignment of a position to a pay grade at least (5) levels higher than the pay scale to which the position was formerly assigned.

... 8. Rate After Promotion

Upon promotion from one position to another, a permanent status or limited status employee will receive a salary increase in accordance with the following:

a. For the period beginning July 1, 1986, and ending December 27, 1986, the following rates upon promotion will apply:

One pay scale ..... 8%;

Two, three or four pay scales..... 9%;

Five or more pay scales..... 10%;

or to the end-of-probation rate of the new pay scale, whichever is greater, subject to the maximum of that pay scale. No increase will be granted upon completion of the promotional probational period.

b. Beginning December 28, 1986, and until July 12, 1987, the rates and rules expressed in subsection 8a above shall continue to apply (substituting "pay grade" for "pay scale") only to those employees who were not "upgraded" and consequently "slotted", in accordance with the provisions of Section 5, herein.

c. After December 28, 1986, those employees who have been slotted into the new Step Pay Plan (i.e., by virtue of the transition mechanisms outlined herein, or new hires who have

achieved permanent status), will, upon promotion from a position to another position in a higher pay grade, or upon reallocation or reassignment of a position to a higher pay grade, receive a salary increase by being slotted onto that step of the new pay grade which would reflect an increase of at least eight percent (8%) over the salary rate prior to promotion (i.e., eight percent is the lowest amount an employee will receive, and the maximum amount would be governed according to placement on a step which might be higher than, but nearest to, the 8% minimum specified).

... 12. During fiscal year 1988 those "upgraded" (as defined herein) on December 28, 1986, shall, at the beginning of the first full bi-weekly payroll period following the anniversary date of the end of their original probation, advance to the next higher step in their pay grade, provided that the employee remains in the upgraded position.

... 15. Implementation of the compensation plans specified herein shall be in accordance with procedures developed by the Secretary of Administration subject to this collective bargaining agreement and shall not be subject to the provisions of Chapter 25 of Title 3. VSEA retains the right to grieve any violation of this Agreement resulting from such implementation or procedures.

2. At all times relevant, Grievant has been employed by the Employer. Until December 12, 1986, Grievant's position title was CRASH Program Rehabilitative Services Chief, and his pay scale was 18 (Grievant's Exhibit 2, Pages 1-2).

3. In December, 1986, the Employer made a request to the Department of Personnel to restructure Grievant's position due to additional duties he had assumed, perform a classification review of the position and retitle the position as Substance Abuse Intervention Chief.

4. At that time, positions were still being reviewed by the Department of Personnel Classification Unit under the Hay Point System. The Classification Unit was in the process of transferring over to use of the Willis Classification system pursuant to Article 48, Section 4, of the Contract, but the Willis system would not be effective until December 28, 1986. While the Willis system was not

yet effective, the Classification Unit at that time prospectively was evaluating where reviewed positions would be placed under the Willis system.

5. The Hay Point system and the Willis classification system employ different rating factors in evaluating the classification of positions and differ in substance.

6. Effective December 12, the Department of Personnel adopted a position description for the newly structured position occupied by Grievant. The position was retitled Substance Abuse Intervention Chief and was assigned to Pay Scale 18. Prospectively, the position was assigned to Pay Grade 22 under the Willis system. (State's Exhibit 1, Grievant's Exhibit 2, Page 3).

7. Grievant received no change in pay rate at that time because the change was lateral, not upward.

8. Grievant did not agree with the pay scale assignment because, although he had increased responsibilities, he was on the same pay scale. Grievant went to the Employer Personnel officer, Sharon Wilson, and asked her what he had to do to grieve. Wilson informed him that there was a moratorium on classification grievances pursuant to the Contract and that he would have to wait to grieve.

9. Effective December 28, 1986, the Willis Classification Plan went into effect. Pursuant to such plan, Grievant's position was assigned to Pay Grade 22. Under Article 48 of the contract, only employees in positions "upgraded" received pay increases effective December 28, 1986; an "upgrade" meant assignment of a position to a pay grade at least five levels higher than the pay scale to which the position was formerly assigned. Since Grievant's position was

assigned to a pay grade only four levels higher than the formerly-assigned pay scale, Grievant was not considered upgraded and did not receive a pay increase effective December 28, 1986.

10. The Contract's moratorium on classification reviews and classification grievances ended three days later, on January 1, 1987.

11. On March 9, 1987, Grievant requested a classification review of the Department of Personnel on the grounds that his position was incorrectly assigned to pay grade 22 and that it should, instead, be assigned to pay grade 23. On the classification review form, Grievant stated:

This is not a request for a review due to changes since the last review. This is rather an appeal of the pay grade assigned as a result of that review on December 12, 1986. (Grievant's Exhibit 3, Page 6).

12. After review and evaluation of the position under the Willis Classification System, based upon material submitted with the review request plus a job audit, the Department of Personnel determined that the position should be assigned to Pay Grade 23. On June 26, 1987, the Department of Personnel notified Grievant that his position would be assigned to Pay Grade 23, effective December 28, 1986 (Grievant's Exhibit 5).

13. As a result, Grievant's position was upgraded, and Grievant's salary was increased from \$12.83 to \$13.12, effective December 28, 1986 due to "slotting" the position under the Contract. "Slotting" was a process where, moving from the old pay system to the new pay system under the Contract, an upgraded employee was put into the first step on the new plan that represented an increase.

14. Due to this upgrade, rather than a promotion, Grievant received a salary increase slightly higher than 2% effective December 28, 1986, rather than a 8 percent increase.

15. At the time the Department of Personnel made the above determination, the position was not re-evaluated under the Hay Point system. Subsequently, however, Claude Magnant, Director of Personnel Operations, re-evaluated the position under the Hay Point system. Magnant determined that the position should be assigned to Pay Scale 18 under that system; the same determination that had been made in December 1986.

#### OPINION

At issue is whether Grievant is entitled to an 8 percent promotional pay increase under Article 48 of the Contract.

Grievant's theory for claiming entitlement to the increase is as follows: Since the contract provides that promotions of one pay scale result in 8% pay increases, and since Grievant's duties substantially changed on December 12, 1986, and since the ultimate result of Grievant's classification review request was the Department of Personnel's concurrence with Grievant's assertion that his position had been erroneously assigned to a lower pay grade, that concurrence means that, effective December 12, 1987, his position should have been assigned to higher pay scale and he should have received an 8% pay increase by virtue of his promotion.

We disagree that Grievant is entitled to a promotional pay increase. It is true, as Grievant asserts, that the Department of Personnel ultimately concluded that Grievant's position should be pay

grade 23, rather than pay grade 22, as the Department had originally determined, under the Willis system. However, that fact does not lead us to the conclusion that Grievant requests we make; that his position also should have been pay scale 19 rather than pay scale 18 in December, 1986, under the Hay Point system, resulting in an 8% promotional pay increase.

First, no conclusion reached under the Willis system can be automatically transferred to the Hay system. The two classifications systems employ different rating factors in evaluating positions and differ in substance. Obviously, different results can be reached with the different systems.

Second, the provisions of the Contract resulted in employees in Grievant's circumstances being left with no right of appeal concerning the original pay scale assignment under the then-applicable Hay system. At the time of the December 1986 pay scale assignment, a moratorium existed on employee-initiated classification review and classification grievance under the Contract. Once the moratorium was lifted, the new Willis classification system was in effect. It is evident by a review of the pertinent provisions of Article 17 and 48 of the Contract in their entirety (i.e., see finding of fact #1) that any classification review and grievances which would occur at that point would be based on the Willis system, and not the previously-applicable Hay system. Grievant's redress was limited to appealing whether the pay scale assigned to his position was correct under the Willis System; which appeal he successfully pursued. However, he had no right of appeal under the Contract regarding the classification decision under the Hay system. Unfortunately for Grievant, a success-



fully-pursued upgrade under the Willis system netted him a substantially lower pay increase than would have a successful appeal of the classification action under the Hay system.

While this result, in our judgment, does not appear to be completely fair to Grievant, any apparent inequity results from the negotiated provisions of the Contract relating to the implementation of a new classification plan and new pay plan in State government. The parties evidently agreed that the benefits of smooth implementation of these plans outweighed any harm that may occur to employees who may have been improperly classified during the moratorium period on classification reviews and grievances. If that is unfair, it is nonetheless the agreed-to bargain.

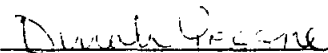
ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

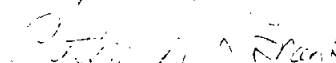
The Grievance of James Bellino is DISMISSED.

Dated the 20<sup>th</sup> day of May, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Dinah Yessne, Acting Chair

  
William G. Kemsley, Sr.

  
Catherine L. Frank