

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:
KEN TWITCHELL

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DOCKET NO. 88-53

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 28, 1988, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Ken Twitchell ("Grievant"). The grievance alleged that the State of Vermont, Department of Social Welfare ("Employer") violated Article 15 of the collective bargaining agreement between the State and VSEA, effective for the period July 1, 1986 to June 30, 1988 ("Contract") by giving Grievant an adverse performance evaluation; specifically that: 1) Grievant was not warned during the warning period of performance deficiencies; and 2) the rating was incorrect.

A hearing was held before Board members Charles McHugh, Chairman; Catherine Frank and Dinah Yessne on January 19, 1989, in the Labor Relations Board hearing room in Montpelier. Michael Seibert, Assistant Attorney General, represented the Employer. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. At the hearing, Grievant withdrew the claim that the Contract was violated because the rating was incorrect.

Briefs were filed by the parties. Board Member Yessne did not participate in the decision.

FINDINGS OF FACT

1. Article 15 of the Contract is entitled Performance Evaluations. Article 15, Section 4, provides in pertinent part:

During the rating year, the immediate supervisor shall call the employee's attention to work deficiencies which may adversely affect a rating, and, where appropriate, to possible areas of improvement.

2. At all times relevant, Grievant was a Social Welfare Program Consultant (Pay Grade 22) for the Employer. A Social Welfare Program Consultant performs technical, analytical and consulting work involving the planning, development and continuing review of one or more Social Welfare programs. Grievant was assigned to be program consultant for the Aid to Needy Families with Children ("ANFC") program. Generally, Grievant was the person responsible for ensuring that the Employer's ANFC regulations were consistent with Federal ANFC regulations. He drafted corrective action plans to correct errors in regulations to ensure they conformed to Federal regulations. He provided support to Social Welfare trainers and answered questions of Social Welfare field staff. He drafted correspondence for the Department of Social Welfare Commissioner concerning the ANFC program (Grievant's Exhibit 2).

3. Grievant has been employed as a Social Welfare program consultant since 1978. Between 1978 and June 1985, Grievant always received overall annual performance ratings of "3" (i.e. "consistently meets job requirements/standards"), and at least "3" ratings in all individual rating factors. During the rating period June 11, 1985 to June 10, 1986, Grievant received an overall rating of "3", but received "2" ratings (i.e. "inconsistently meets job requirements/standards") in six individual rating factors. During the

rating period June 11, 1986 to June 10, 1987, Grievant did not receive a performance evaluation, which, under the Contract, meant that Grievant was granted a presumptive "3" rating (Grievant's Exhibits 1 and 10).

4. On July 8, 1988, Grievant received a performance evaluation from his supervisor, Sandra Dooley, Director of Planning and Evaluation for the Employer. The performance evaluation covered the period June 11, 1987 to June 10, 1988. In the evaluation, Grievant received an overall performance rating of "2" and "2" ratings in eight of the 12 individual rating factors (State's Exhibit 24).

5. Dooley and Grievant had monthly meetings during the rating period. During those meetings, Dooley expressed concerns to Grievant with respect to aspects of his performance.

6. Grievant received a "2" rating in the individual rating factor of "Job Knowledge and Skills." Dooley made the following comments on the performance evaluation with respect to this factor:

Ken has been the Social Welfare Program Consultant for the ANFC program for 10 years. However, it is only in carrying out routine and narrowly-focused assignments that he is able to utilize consistently and accurately the knowledge of the ANFC program that he has acquired during this period. He is frequently unable to apply effectively his program knowledge and analytic skills to non-routine or more complex assignments. An example is his still unfinished assignment of answering a series of questions that field staff articulated during ANFC training sessions held last winter (State's Exhibit 24, pages 1 and 3).

7. Dooley expressed concern to Grievant during the rating period, through monthly meetings and written comments and instructions, that Grievant was unable to apply his ANFC program knowledge to complete complex assignments. Dooley pointed out to Grievant his deficiency in not seeing inconsistencies between Federal

and State ANFC policies and informed him of his incorrect interpretation of ANFC policies and procedures. Dooley specifically expressed her concern to Grievant that he was not able to answer correctly and promptly a series of questions that field staff articulated during ANFC training sessions (State's Exhibits 6, 10, 11 and 18).

8. Grievant received a "2" rating in the individual rating factor of "Quality of Work". Dooley made the following comments on the performance evaluation with respect to this factor:

More often than not, Ken's work products do not meet the quality standards necessary for satisfactory performance in this position. It is often necessary for me to re-write and/or heavily edit major portions of work products that are Ken's responsibility and which he needs to be able to produce with minimal supervision if he is to perform satisfactorily in this position.

An example of this is his work on revising the income section of the ANFC policy manual. His repeated efforts to produce an acceptable product have not yielded a satisfactory result. It should be noted that this assignment does not involve the incorporation of any new policy into the income section; it consists solely of taking a generally poorly written and poorly organized section of policy, which should be quite familiar to Ken, and rewriting it such that it is clear, precise, accurate and logically presented (State's Exhibit 24, pages 1 and 3).

9. Dooley indicated to Grievant during the rating period, through monthly meetings and written comments and instructions, that the quality of Grievant's work was not adequate. She expressed concern that his work did not show greater improvement. At times, she was critical of his written work being incomplete, incorrect or confusing. During monthly meetings, Dooley specifically informed Grievant that his work product on the income section of the ANFC policy manual was incorrect and incomplete (State's Exhibits 6, 7, 8, 9, 10, 11, 13 and 18).

10. Grievant received a "3" rating in the individual rating factor of "Work Habits". Dooley made the following comments on the performance evaluation with respect to this factor:

Ken's work habits are one of his stronger points. However, his diligence and industry appear to deteriorate when he is not under the pressure of deadlines imposed by others or when I am on vacation. For example, I expected Bulletin 88-15P to be on my desk when I returned from vacation in April because it had to be filed by the end of that week. However, it was not ready and the delay almost caused us to miss our filing date (State's Exhibit 24, pages 1 and 3).

11. Grievant was aware that Bulletin 88-15P had to be filed at the end of the week Dooley returned from vacation, but did not have it completed until late Tuesday of that week. His delay left only a few days for his superiors to review the bulletin before it was issued. That week, Dooley told Grievant she did not understand why Grievant had not had it completed by the time she returned from vacation. Dooley communicated to Grievant her dissatisfaction with his delay (State's Exhibits 9 and 13).

12. Grievant received a "3" rating in the individual rating factor of "Attitude, Interest and Initiative". Among the comments made by Dooley on the performance evaluation with respect to this factor was "he does not perform satisfactorily without a lot of supervision - more than should be necessary for an employee who had 10 years of experience in this high-level position" (State's Exhibit 24, pages 1, 3 and 4).

13. Through monthly meetings and written comments and instructions during the rating period, Dooley conveyed to Grievant that he should be able to independently perform his work with less supervision from her (State's Exhibits 6, 7, 8, 10, 11, 14, 16 and 18).

14. Grievant received a "2" rating in the individual rating factor of "Learning Ability". Dooley made the following comments on the performance evaluation with respect to this factor:

The amount of supervision which must be provided so that Ken can incorporate changes into written policy correctly is indicative of an unsatisfactory level of performance on his part. In fact, his need for supervision is so great that it is not unusual for me, due to the pressure of deadlines and the consequences of not having clearly written policy, to do Ken's work rather than ask him to revise his initial effort. An example of this is his first draft of our policy change relative to allowable business expenses for self-employed providers of day care. It was imprecisely written and the need for clearing up the confusion quickly was so great that I made the judgment that we didn't have the time it would take for Ken to re-write it. The consequence was that I re-wrote it. This was not a complicated change. However, it did need to be clearly and accurately articulated (State's Exhibit 24, pages 1 and 4).

15. During the rating period, Dooley indicated to Grievant that his performance with respect to incorporating changes into written policy was unsatisfactory. Dooley specifically conveyed to Grievant her dissatisfaction that the draft he did on the policy change on allowable business expenses for day care providers was unclear (State's Exhibits 6, 7, 16 and 18).

16. Grievant received a "2" rating in the individual rating factor of "Quantity of Work". Dooley made the following comments on the performance evaluation with respect to this factor:

The quantity of Ken's work is usually acceptable when the assignment is relatively routine, precisely defined and narrowly focused. However, many of his assignments (and the ones that are most important) do not meet these criteria. In these instances, Ken usually takes far too long to prepare an acceptable product. In addition, to characterize Ken's work product accurately, it must be acknowledged that what to an outsider might appear to be his work, not infrequently represents, in substantial parts, the work of his supervisor (State's Exhibit 24, pages 1, 4 and 5).

17. At various times during the rating period, Dooley informed Grievant that he was taking too much time to prepare an acceptable work product (State's Exhibits 6 and 7).

18. Grievant received a "2" rating in the individual rating factor of "Work Under Stress". Dooley made the following comments on the performance evaluation with respect to this factor:

Even with substantial supervision, Ken's work product is often unsatisfactory when he is not working under stress and the assignment is non-routine or complex. A heavy workload or tight deadlines serve to exacerbate this problem. Ken maintains self-control and poise when under stress and seeks diligently to produce what has been assigned. Nevertheless, his frequent lack of success in producing an acceptable product too often results in an unsatisfactory level of performance (State's Exhibit 24, pages 1 and 5).

19. Dooley informed Grievant at times during the rating period that he was failing to prepare acceptable work products within established deadlines (State's Exhibits 7, 9 and 13).

20. Grievant received a "2" rating in the individual rating factor of "Technical and Professional Knowledge and Ability". Dooley made the following comments on the performance evaluation with respect to this factor:

Ken's performance leads me to conclude that he does not possess the detailed knowledge of ANFC needed to perform his job satisfactorily. For example, I identified PP & D memos opposite WAM 2245.5 P.1 and WAM 2253.2 P.1 which were contradicted by policy (on the page directly opposite) that had a later date. These were not recent policy changes for which Ken had not had time to remove or amend the inconsistent PP & D memos. In one case the inconsistency had existed for over one year; in the other, for over three years. Eliminating these kinds of discrepancies should be a routine part of Ken's job (State's Exhibit 24, pages 1 and 5).

21. Through monthly meetings and written comments and instructions during the rating period, Dooley expressed concern to

Grievant that he did not possess the detailed knowledge of ANFC needed to perform his job satisfactorily. Dooley specifically told Grievant during the rating period that PP & D memos (i.e. memos which interpret provisions of the policy) which were inconsistent with policy should be removed (State's Exhibits 6, 10, 11, 18 and 21).

22. Grievant received a "2" rating in the individual rating factor of "Planning and Organizing". Dooley made the following comment on the performance evaluation with respect to this factor:

In some instances (usually relating to routine duties) Ken plans and organizes satisfactorily. However, his non-routine or more difficult assignments are frequently the source of crisis situations because of the unacceptable quality of his work product (e.g. filing of Bulletin 88-15P, filing of Bulletin 88-15F with incorrect policy page). Ken needs to be asked to do things that should be an integral part of his job (e.g. updating the Table of Contents pages in the ANFC policy manual). This reflects less than satisfactory planning and organizing skills (State's Exhibit 24, pages 1 and 5).

23. During the rating period, Dooley conveyed to Grievant that his planning and organizing skills were less than satisfactory (State's Exhibits 13 and 21).

24. Grievant received a "2" rating in the individual rating factor of "Effectiveness in Pursuing Tasks and Achieving Results". Dooley made the following comments on the performance evaluation with respect to this factor:

The outcome of the deficiencies cited under quality of work, learning ability, quantity of work, technical or professional knowledge and ability and the amount of supervision Ken needs in carrying out his assignments is that Ken is not consistently effective in pursuing tasks and achieving results. Moreover, to perform satisfactorily in this position, he needs to carry out his responsibilities with more individual initiative and autonomy (State's Exhibit 24, pages 1 and 5).

25. During the rating period, through monthly meetings and written comments and instructions, Dooley conveyed to Grievant that he was not consistently effective in pursuing tasks and achieving results and that he needed to exercise more individual initiative and autonomy (State' Exhibits 6, 7, 8, 9, 10, 11, 13, 14, 16, 18 and 21).

26. On the performance evaluation with respect to summary comments and needed areas of improvements, Dooley reiterated some of the criticisms of Grievant which she had made in the individual rating factors (State's Exhibit 24, pages 6 and 7).

27. On May 6, 1988, more than a month prior to the end of the rating period, Dooley told Grievant that he would receive a less than satisfactory performance rating.

OPINION

At issue is whether the Employer violated the following Contract language:

During the rating year, the immediate supervisor shall call the employee's attention to work deficiencies which may adversely affect a rating, and, where appropriate, to possible areas of improvement.

Under the Contract language, a supervisor is required to give an employee clear indication of dissatisfaction with that employee's performance. Grievance of Smith, 5 VLRB 272, 277 (1982). The Contract provides an employee be told when his/her work behavior or performance is unacceptable so there will be no "surprises" at evaluation time. Grievance of Claude Rathburn, 5 VLRB 286, 293 (1982). The burden is on management to put an employee clearly on notice of deficiencies. Grievance of Calderara, 9 VLRB 211, 221 (1986). Given the difference in perceptions among people, it is

imperative that management indicate its dissatisfaction clearly and unequivocally so misconceptions are eliminated. Id.

Grievant contends that the evidence is insufficient to show that Grievant received clear, unequivocal and timely notice of deficiencies in his work. Grievant submits that his supervisor had a tendency to give "clues" about her unhappiness with Grievant's work, rather than being blunt about it. Grievant also submits that the criticism of some of his work occurred so late in the rating year that it was too late for him to take steps to correct his performance. Grievant further contends that the evidence demonstrates that the supervisor frequently conveyed her expectations at the same time as criticism for her employees' failure to satisfy those expectations, rather than providing clear advance notice of those expectations.

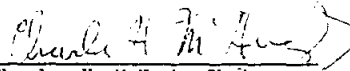
We disagree with Grievant's contentions in all respects. As detailed in our findings of fact, Grievant's supervisor, Sandra Dooley, conveyed to Grievant her dissatisfaction with each aspect of his performance for which Grievant received a less than satisfactory rating or adverse comment on the performance evaluation. We conclude that Dooley met her burden of putting Grievant clearly and unequivocally on notice of work deficiencies in a timely manner. Through her extensive written comments and instructions to Grievant and/or through monthly meetings, Dooley clearly indicated to Grievant during the rating period that she was dissatisfied with Grievant's performance in the areas cited on the performance evaluation. Thus, the Employer did not violate the Contract.

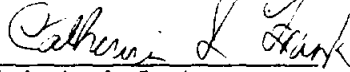
ORDER

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

Dated this 21st day of April, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank