

GRIEVANCE OF:)
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LYNN REL YEA) DOCKET NO. 97-55

regional supervisor position in Burlington to a project manager position in Waterbury was disciplinary in nature in violation of Article 14 of the Contract; and 2) that the Employer failed to give good faith consideration to seniority when the decision was made to transfer Grievant more than 15 miles from her work station in Burlington in violation of Article 20, section 3(d) of the Contract. As a remedy, Grievant requests that she be returned to her regional supervisor position in Burlington and that she be reimbursed for mileage expenses incurred as a result of her involuntary transfer to Waterbury.

FINDINGS OF FACT

1. Article 14 of the Contract provides in pertinent part as follows:

ARTICLE 14 - DISCIPLINARY ACTION

1. No permanent or limited status employee covered by this Agreement shall be disciplined without just cause.

...

2. Article 20, Section 3, of the Contract provides in pertinent part as

follows:

ARTICLE 20 - EMPLOYEE WORKWEEK/WORK LOCATION/WORK SHIFT

3. SELECTION FOR ASSIGNMENT TO A NEW SHIFT/NEW WORKWEEK/NEW GEOGRAPHIC AREA

...

- d. The State will give good faith consideration to seniority as a significant element in the reassignment of an employee from one building to another for more than 15 miles within a geographic area.

3. The Definitions section of the Contract defines "geographic area" as "the area within a 35-mile radius of an employee's regular duty station".

4. Article 59 of the Contract states in pertinent part as follows;

ARTICLE 59 - MILEAGE REIMBURSEMENT

1. For authorized automobile mileage actually and necessarily traveled in the performance of official duties, a State employee shall be reimbursed at the rate established by the GSA . . .

5. Grievant began work for the State of Vermont in 1984 with the Department of Social and Rehabilitative Services; she later moved to the Department of Social Welfare. During all times relevant to this grievance, Grievant worked for the Office of Child Support ("OCS") of the Department of Social Welfare. She became a regional supervisor in 1987, and became the regional supervisor for the northwest region in 1990.

6. During all times relevant, the OCS northwest region was one of five OCS geographic areas and consisted of the four counties of Chittenden, Grand Isle, Franklin and Addison. The northwest regional office is located in Burlington.

7. As the OCS regional supervisor in Burlington, Grievant supervised 14 employees, including child support specialists, paralegals and clerical staff. The Burlington OCS was responsible for the highest regional caseload in the State during Grievant's tenure as its regional supervisor from 1990 to 1997.

8. From 1990 until December 1996, Grievant's immediate supervisor was Carol Butterfield. Butterfield prepared Grievant's annual performance evaluations from March 1991 through March 1996, and consistently gave Grievant the highest possible rating of "outstanding". Child Support Administrator Karen Alderman became Grievant's supervisor in December 1996. Grievant was due to receive an annual performance evaluation in March 1997. Alderman did not prepare

an evaluation of Grievant's performance, resulting in Grievant receiving a presumptive "outstanding" rating for the March 1996 - March 1997 period.

9. The OCS administers a program which insures that children receive financial support from absentee parents. The Federal 1996 Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), commonly referred to as the "Welfare Reform Act", provided states with new administrative tools for collecting child support payments and enforcing child support orders. The Welfare Reform Act also mandated that state welfare and child support agencies implement certain changes before October 2000 to remain eligible for Federal funds. In order to implement these new changes, the OCS would be required to prepare advanced planning documents ("APD's"), requests for proposals (RFP's"), and grant applications to the federal government.

10. Jeff Cohen is the Director of the Vermont Office of Child Support. Cohen and his administrative management team, including Alderman and two other child support administrators, identified approximately 30 projects that needed to be completed to bring Vermont into federal compliance by October 2000. Initially, the OCS management team planned to divide the projects among the three administrators and create two temporary "limited-term" support positions. On June 4, 1997, Cohen submitted a request to the Department of Personnel for an Agency Automated Systems Specialist, Pay Grade 21, and an Administrative Assistant B (Grievant's Exhibits 11, 25).

11. Ultimately, Cohen and his management team decided that it would not be feasible to divide the projects among the administrators. Instead, they decided that

they needed a project manager to oversee the completion of the projects. They reviewed the Contract and other considerations, including the amount of time it would take to bring someone from outside the OCS "up to speed". They decided that it would be better to assign a current OCS employee as the project manager. Grievant's name was mentioned in management team discussions as an OCS employee who may be qualified to perform this job. Grievant was the only candidate the team seriously considered.

12. Cohen and the management team determined that Grievant had the necessary skills for the project manager duties because she had significant work experience in the Department of Welfare beyond her work with the OCS, had prepared grant requests, had good writing skills, and had done other special projects for OCS. In addition, Grievant had a Master's Degree in Administration. Grievant's seniority versus other employees was not considered.

13. At some point, Alderman and Cohen reviewed Grievant's resume. Neither Cohen nor Alderman reviewed resumes of any other OCS employees.

14. Grievant has more seniority than at least one OCS employee who had experience in preparing RFP's and ADP's. She also has more seniority than at least one other OCS regional supervisor who had experience in preparing RFP's.

15. On or about June 25, 1997, Alderman and Cohen met Grievant for lunch in Burlington and presented their plan to her. They told her that they wanted her to assume the project manager duties for a few years and that she would be working out of the OCS Waterbury office. They informed her that she would have no supervisory duties while she was working as the project manager, but assured her

that she would not make any less money than she was making as a regional supervisor.

16. Neither Cohen nor Alderman asked Grievant if she had experience in preparing RFP's or ADP's. Grievant had performed special projects for OCS but did not have any experience preparing RFP's or ADP's.

17. Although Cohen and Alderman made it clear to Grievant that she did not have the option of refusing to take over the duties of the project manager position, she told them that she would think about it and get back in touch with them. Grievant considered the proposal, talked it over with her husband and decided that she did not want to do the job. On July 10, 1997, she sent an E-mail message to Cohen and Alderman declining the position in Waterbury, although she agreed to work on special projects from her position in Burlington (Grievant's Exhibit 12).

18. Grievant attended a supervisors' meeting on July 14, 1997, and met with Alderman and Cohen after the meeting to discuss her July 10 E-mail message. Grievant restated her desire to remain working as a regional supervisor in the Burlington office. Cohen informed Grievant that she did not have a choice in the matter, and he knew he could rely on her professionalism in accepting his decision (Grievant's Exhibit 13).

19. Cohen later invited Grievant to speak privately with him in his office. In this private meeting, Cohen told Grievant that he understood that she had applied for other jobs and he had learned through reference inquiries that Grievant was perceived by individuals in the Department of Welfare as being too aggressive. He "coached" Grievant by suggesting a strategy that she could use to overcome this

perception of aggressiveness.

20. Cohen sent Grievant a letter dated July 14, 1997, which provided in pertinent part:

This will confirm what we discussed today, and also on June 25, 1997. Your duties will change to Project Manager, which will include working on APD's, RFP's, policies, procedures and implementation of the projects associated with the new Welfare Reform Act, as well as other projects. We feel that these duties are commensurate with your current classification and pay. This is a temporary assignment and everything except your work station remains the same. Your work station will be changed to Waterbury effective July 28, 1997.

It is anticipated that the oversight and implementation of these projects will take at least a couple of years. During that time, the supervision of the Burlington office will be handled by an interim supervisor so that you may devote your full attention to these new duties.

Lynn, we are looking forward to you lending your unique expertise and experience to these welfare reform projects . . . (Grievant's Exhibit 14)

21. On July 16, 1997, Cohen requested that the Department of Personnel revise his earlier request for two limited service positions and substitute one of his earlier requests with a request for a paralegal position. He stated in his letter to the Department of Personnel that Grievant had agreed to change her work station to Waterbury to devote her full attention to the projects associated with the new Welfare Reform Act and that a paralegal from within the OCS organization would be reallocated on a temporary basis to perform her regional supervisor duties (Grievant's Exhibit 15).

22. Grievant experienced stress reactions of migraine headaches and elevated blood pressure as a result of the decision to transfer her. On July 23, 1997, she had an appointment with her doctor, who requested that she return for further

doctor's visits on July 28 and 29. Grievant informed Cohen and Alderman that she would not be able to report to work in Waterbury on July 28, 1997 (Grievant's Exhibit 17).

23. There were further discussions among Grievant, Cohen and Alderman in which Grievant restated her displeasure about working in Waterbury as a project manager. At some point, Grievant also contacted the VSEA and attended a meeting with Cohen, Alderman, OCS Personnel Officer Laura DeForge and Richard Lednicky, VSEA Field Representative. Cohen did not change his mind and sent Grievant a letter on July 31, 1997, requesting that she report to Waterbury to assume her new duties (Grievant's Exhibit 18).

24. To date, the limited-term position of agency automated systems specialist, Pay Grade 21, which Cohen requested in June 1997, has not been filled (Grievant's Exhibit 25).

25. OCS posted a notice for an interim regional supervisor to replace Grievant sometime during the Summer of 1997. Robert Patton, an OCS paralegal in the Burlington office, was the successful applicant for the job. Patton had worked for the OCS since 1992. After Patton assumed his new duties, Addison County was transferred out of the northwest region and placed under the supervision of the southwest region.

26. Alderman met with Patton shortly after he was promoted to the temporary position. She raised two issues of concern regarding the Burlington office which she directed Patton to address. The Burlington office had the highest number of complaints of any OCS regional office, and Alderman asked him to work on

reducing the number of complaints. Alderman also advised Patton that the Burlington office had a problem with two employees' high expense claims, and she asked Patton to work on this problem.

27. Grievant and many employees formerly under her supervision in the Burlington office were upset that she had been unwillingly transferred to Waterbury and saw it as a disciplinary action for the high number of complaints the office had received. Comments were made in the office that employees needed "to watch their backs". Patton knew that employees were upset about Grievant's transfer to Waterbury and convened the staff for a meeting on September 12, 1997. Among the remarks he made to the staff were as follows:

. . . Let us clear the air. Despite what you may think, I have no direct knowledge that Lynn is being punished. Lynn's expertise was needed in the development of policies related to the new welfare reform . . .

And even if you still believe that [Grievant] is the victim of some diabolical administrative plot, then you need to take a look at yourselves. Because the troubles which have brought the Northwest Region under scrutiny are of our own making. We have 30% of the statewide caseload and 90% of the complaints . . . if in fact this is some kind of punishment, our leader has taken the hit for our mistakes and our arrogance and our greed and our selfishness . . . (Grievant's Exhibit 22).

28. Grievant reported to work in Waterbury in September, 1997. Since that time, she has prepared grant requests, RFP's, and APD's. The Employer authorized and issued a new business card for Grievant which identifies her as a Child Support Project Manager. Grievant has had no supervisory duties since assuming the project manager duties. She remains classified as a regional supervisor, Pay Grade 22. (Grievant's Exhibits 20, 21).

29. The distance between the Burlington work station and the Waterbury

work station is less than 35 miles. Grievant lives in Williston, Vermont, between Burlington and Waterbury.

OPINION

Grievant contends: 1) that her involuntary transfer from her regional supervisor position in Burlington to a project manager position in Waterbury was disciplinary in nature in violation of Article 14 of the Contract; and 2) that the Employer failed to give good faith consideration to seniority when the decision was made to transfer her more than 15 miles from her work station in Burlington in violation of Article 20, section 3(d) of the Contract. As a remedy, Grievant requests that she be returned to her regional supervisor position in Burlington and that she be reimbursed for mileage expenses incurred as a result of her involuntary transfer to Waterbury.

We first address Grievant's contention that her involuntary transfer from her regional supervisor position in Burlington to a project manager position in Waterbury was disciplinary in nature in violation of Article 14 of the Contract. The evidence indicates that the Employer was under pressure to comply with new federal regulations relating to welfare reform and child support; failure to comply with the new federal regulations could result in Vermont becoming ineligible to receive necessary federal funds for these programs. The Director of OCS and the OCS management team did not feel that they had sufficient time to perform the necessary work themselves associated with the new federal regulations or to train a new employee in time to meet impending deadlines. As an alternative, they decided to have one person work on all the special projects and selected Grievant for that task

because they believed that she had the appropriate skills, experience and requisite knowledge of the Department of Welfare system to accomplish the job in a timely manner.

Grievant's perception that her transfer constituted disciplinary action by the Employer based on Grievant's perceived shortcomings in her supervisory position is somewhat understandable under the circumstances. Grievant had indicated that she did not want the new job and protested the transfer, yet ultimately she was told she had no choice in the matter. Her former supervisor expressed concern to Grievant's successor over the complaint rate and travel expenses of two employees during Grievant's tenure as the northwest regional supervisor. Also, the Director of OCS made "coaching" comments to Grievant referencing criticism of her after he notified her of her transfer.

Nonetheless, notwithstanding the involuntary nature of Grievant's transfer and as poorly timed and delivered as the negative comments and critiques of the operation of the Burlington office may have been, we conclude that the Employer did not transfer Grievant for disciplinary reasons based on perceived shortcomings of Grievant. Instead, we believe that the evidence demonstrates that the Employer transferred Grievant to Waterbury into the project manager position in response to federal deadlines created by the passage of the Welfare Reform Act, and based on the belief that Grievant possessed skills suited for the position and the belief that Grievant possessed a breadth of knowledge and experience well suited for the position.

We next address whether the Employer violated Article 20, section 3(d), of

the Contract, which requires that the employer give "good faith consideration to seniority as a significant element in the reassignment of an employee from one building to another for more than 15 miles within a geographic area." This requires that the Employer weigh the respective seniority of employees before making reassignment decisions and keep an open mind until seniority is consciously factored in as a significant element of the ultimate reassignment decision. Grievance of Brimblecomb, 18 VLRB 391, 397 (1995).

Applying these standards to this case, we conclude that the Employer did not consciously factor in seniority when it decided to transfer Grievant to the project manager position in Waterbury. The Employer acknowledged that seniority was not considered because it considered Grievant the only viable choice among OCS employees.

We reject the Employer's argument that Grievant's allegation of violation of this contractual provision is baseless given that the Employer would have reached the same result even if seniority had been considered because Grievant was the only viable candidate for the project manager position. Although there was evidence that Grievant had relevant experience and education for the project manager position, the evidence was insufficient for us to conclude that the Employer reasonably determined that Grievant was the only viable candidate. The circumstances did not warrant a disregard of a requirement specifically and unambiguously set forth in the Contract. Thus, we conclude that the Employer violated Article 20, Section 3(d), by failure to give good faith consideration to seniority as a significant element in the involuntary transfer of Grievant to the project manager position in Waterbury.

Remedy

We turn to deciding an appropriate remedy. Grievant requests that she be returned to her regional supervisor position in Burlington and that she be reimbursed for mileage incurred as a result of her improper transfer.

We decline to grant Grievant's requested remedy that she be returned to her regional supervisor position in Burlington. Such a remedy would go beyond making Grievant whole for the contractual violation. To make Grievant whole is to place her *in the position she would have been in had the contractual violation not occurred.* Grievance of Lowell, 15 VLRB 291, 339-340 (1992). If the contractual violation had not occurred, Grievant would have been in the position of the Employer weighing the respective seniority of Grievant and other OCS employees before making the decision to reassign an employee to the project manager position in Waterbury, but it does not necessarily follow that Grievant would not have been selected for the project manager position.

Instead, we conclude that the appropriate remedy is to declare Grievant's transfer to the position of project manger in Waterbury invalid, and require that the selection process for the position be reopened forthwith. In the selection process, the Employer should not give any consideration to the experience Grievant has gained by performing the job of project manager.

In the meantime, Grievant should remain working in the position of project manager until the Employer completes the selection process. In this regard, it is *pertinent that the Employer is at risk of losing its eligibility for federal funds if the work that Grievant is performing is not accomplished in a timely manner. In the*

event that the Employer selects a candidate other than Grievant for the project manager position, Grievant should be returned to her regional supervisor position in Burlington.

As a further remedy to Grievant for the Employer's contractual violation, we conclude that Grievant should be reimbursed for any excess travel expenses which she has had to incur as a result of the invalid transfer. This means that she should be reimbursed for the difference in mileage, if any, with respect to her commute between her home and the Burlington office, and her commute between her home and the Waterbury office, at the GSA mileage reimbursement rate. She should be reimbursed for any such excess travel expenses from the effective date of her invalid transfer until the effective date an employee assumes the project manager position as a result of the reopened selection process.

ORDER

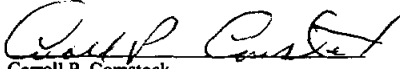
NOW THEREFORE, based on the foregoing findings of fact, and for the foregoing reasons, it is hereby ORDERED:

1. The Grievance of Lynn Relyea is SUSTAINED;
2. The Employer forthwith shall reopen the selection process for the Waterbury project manager position in Waterbury consistent with this opinion; and
3. Grievant shall be reimbursed for any difference in mileage with respect to the commute between her home and the Burlington office, and the commute between her home and the Waterbury office, at the GSA mileage reimbursement rate. She shall be reimbursed for any such travel expenses from the effective date of her invalid transfer until the effective date an employee assumes the project manager position as a result of the reopened selection process.

Dated this 25th day of May, 1998, at Montpelier, Vermont.

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