

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 97- 33
JOHN RANDALL	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 9, 1997, the Vermont State Employees' Association, Inc. ("VSEA") filed a grievance on behalf of John Randall ("Grievant") against the State of Vermont ("State"), alleging that the State had violated the collective bargaining agreement between the State and the Non-Management Bargaining Unit, effective for the period July 1, 1996 to June 30, 1997 ("Contract"), and the State's Personnel Policies and Procedures. Specifically, Grievant alleged that the State violated Article 47 of the Contract and Sections 6 and 12 of the Personnel Policies and Procedures in that Grievant's salary increase upon promotion to a Pay Grade 20 position in the Office of Child Support should have been based upon Pay Grade 18, instead of Pay Grade 17, because he had been performing all the duties of a Pay Grade 18 position at the Department of Employment and Training for at least 18 months preceding his promotion.

A hearing was held on October 30, 1997, in the Vermont Labor Relations Board hearing room in Montpelier before Board Members Catherine L. Frank, Chairperson; Leslie G. Seaver and John J. Zampieri. Assistant Attorney General David Herlihy represented the State. VSEA Associate Legal Counsel Mark Heyman represented Grievant. The parties filed partial stipulated findings of fact on October 23, 1997, and post hearing briefs on November 20, 1997.

## FINDINGS OF FACT

1. Grievant began work at the Department of Employment and Training ("DET") in December 1991 as an Interviewer in a DET field office in Burlington. He later worked as a Client Services Specialist in this same office. Grievant's duties in these positions required that he interview individuals who had become unemployed and assist them in filing an unemployment compensation claim with the Department. During all relevant times, Grievant worked in the Unemployment Insurance Division of DET, which is under the supervision of Tom Douse, Programs Director.

2. Until 1996, the DET Unemployment Compensation Claims Adjudicators and DET Fact Finders were two separate positions responsible for processing contested unemployment compensation claims filed with the Department. After an individual filed a claim, a Fact Finder gathered the pertinent information from the claimant, the former employer and other interested parties and forwarded such information to a Claims Adjudicator assigned to the claim. A Claims Adjudicator analyzed the information gathered by a Fact Finder and determined whether the claimant was eligible to receive unemployment compensation benefits from the Department. Claims Adjudicators arrived at a determination of eligibility by applying the gathered facts to established law and Department policies; they set forth this conclusion in a quasi-legal written determination. Prior to 1988, all DET Claims Adjudicators and Fact Finders were in the 14 DET field offices around the State.

3. Sometime in 1988, DET reorganized and centralized the

Unemployment Compensation Claims Adjudicator positions, transferring such positions to its Montpelier central office. Fact Finders remained in the 14 field offices. In September 1993, DET made another organizational change and transferred all Fact Finder positions to its Montpelier office.

4. In October 1993, Grievant applied for and accepted a lateral transfer to Montpelier as a Fact Finder. Grievant worked as a Fact Finder for approximately six weeks, after which time he accepted a position as Unemployment Compensation Claims Adjudicator, Pay Grade 17.

5. Grievant continued to perform fact finding duties for approximately three months after he became a Claims Adjudicator because his vacated position was not immediately filled.

6. During all relevant time periods, Lorraine Malgeri supervised the Unemployment Compensation Claims Adjudicators. After the Department moved the Fact Finder positions to the Montpelier home office, Malgeri hired a supervisor to directly supervise employees in the Fact Finder positions.

7. Most of the Fact Finders hired after Fact Finders were moved to the Montpelier office were inexperienced. The Claims Adjudicators initially often complained that the information the Fact Finders gathered was insufficient to render a determination. DET policy did not permit the Claims Adjudicators to directly contact claimants, employers or interested parties. Instead, Claims adjudicators were required to bring their concerns to Malgeri. Malgeri generally reviewed these concerns with the Fact Finders' supervisor, and if she or the supervisor believed that more information was needed, Malgeri either gave the adjudicator permission to

contact the parties directly, or she assigned such work to the Fact Finder. Malgeri frequently assigned the Fact Finder the additional work as a training tool. Adjudicators expressed fewer concerns as the Fact Finders gained more experience. Only on a few occasions did Malgeri authorize Grievant and the other Claims Adjudicators to gather additional information themselves.

8. Initially, Grievant was unaware that it was DET policy to first ask permission before directly contacting parties and he often sought additional information from the interested parties before rendering his determination. As soon as Grievant learned that he needed permission before making such contacts, he went through the proper channels.

9. Sometime during 1994, Grievant became a VSEA Council Representative and started receiving several telephone calls each day related to these duties. The clerks in Grievant's division complained to Malgeri that they were being required to field and reroute too many calls to Grievant which were related to his VSEA duties. Grievant agreed to have his telephone modified so callers could reach him directly without going through a clerk.

10. Grievant regularly received calls from the public, claimants, employers and DET field offices after he acquired a direct telephone line. Grievant was knowledgeable about many DET procedures because he had worked in various positions in the Department. He often offered advice or engaged in some fact finding as a result of his modified direct telephone line. Although Grievant fielded many calls, he did not have authorization to engage in fact finding in any case he was adjudicating unless he went through the above-referenced procedures. If he engaged

in fact finding, such fact finding was unauthorized without going through the proper procedures.

11. In July 1996, DET reorganized its claims processing procedure again and combined the position of Fact Finder and Claims Adjudicator. Employees in the new position of Claims Adjudicator processed each assigned case from beginning to end, gathering the pertinent facts and adjudicating the claim. The four Fact Finders and three Claims Adjudicators each became a Claims Adjudicator. Grievant had already performed the duties of a Fact Finder and did not need to be trained to perform this work. The former Fact Finders needed to be trained for these adjudication duties (Grievant's Exhibit 2; State's Exhibit 1).

12. On or about October 13, 1996, DET management requested a reclassification of the Claims Adjudicator position because of the additional fact finding duties. The classification request stated in pertinent part:

In July 1996 an administrative decision was made to combine the fact finding position with the adjudication position. This will enable the incumbent to handle a claim from beginning to end and will cut down on the time spent on each claim, as the person who is doing the fact finding will have all the information needed to make the proper determination. As well as adjudicating the claim, the adjudicator now routinely gathers the pertinent facts for the interested parties upon which his/her determination will be based. This has resulted in a substantial increase in public contact (i.e., with claimants and employers, their representatives, attorneys, etc.) (State's Exhibit 1).

13. In October 1996, Grievant applied for and was selected for a position as a Paralegal Technician II with the Office of Child Support. The Paralegal Technician II position is at Pay Grade 20. His promotion was effective October 27, 1996.

14. On December 18, 1996, the Department of Personnel reassigned the Claims Adjudicator position from Pay Grade 17 to Pay Grade 18. The effective date of the reassignment was October 13, 1996. The employee notification form was accompanied by a memorandum which summarized the classification analysis. The summary stated: "[t]he addition of fact finding responsibilities and the enhanced Freedom to Take Action permitted to the positions produces an increase in the Accountability rating to produce a pay grade 18" (Joint Exhibit 1).

15. When Grievant became a Paralegal Technician II, the reassignment of the Unemployment Compensation Claims Adjudicator position had not occurred so the pay rate was calculated without consideration of whether the reassignment affected the pay rate. His promotional pay rate was calculated in accordance with the Salary and Wages provision of the collective bargaining agreement (Article 47 of the 1996-1997 Contract, Article 45 of the present Contract). His rate of pay at Pay Grade 17, Step 6, was \$12.26 per hour. When promoted to Pay Grade 20, his former rate was increased by 8 percent (\$.98), and the resulting figure slotted into the next higher step on the pay chart, resulting in Pay Grade 20, Step 4, or \$13.55 per hour. The increase was 8 percent because he was promoted three pay grades. For a promotion of one or two pay grades, the increase is 5 percent.

16. On January 5, 1997, a personnel action was completed to pay Grievant the difference between Pay Grade 17 and Pay Grade 18 for the period between the effective date of the reassignment of the Unemployment Compensation Claims Adjudicator position (October 13) and the last day he was in that position (October 26). If he had remained an Unemployment Compensation Claims Adjudicator, his

salary would have been increased 5 percent and slotted into the next higher step at Pay Grade 18, which would have been \$12.98 per hour. Thus, the January personnel action gave him a retroactive payment of \$57.60 (80 hours during the period October 13 to October 26 x .72 cents per hour differential).

17. The State's policy on pay adjustments resulting from classification review (Policy 6.2) provides that pay adjustments affect only employees holding the reclassified position at the time that the notice of action is issued. The only exception to this policy is for employees who were in the position at the time of the effective date and remain classified employees. Grievant received the retroactive payment because he qualified for that exception (Joint Exhibit 2).

18. Policy 6.2 also provides that employees assigned to a higher pay grade as the result of a classification review must serve a promotional probation. If it is determined that the employee was performing the duties that result in the higher classification for a period of 18 months or longer, the requirement for promotional probation is waived.

19. The Department of Personnel and DET determined that Grievant had not been performing all the duties that resulted in the upward reassignment. Thus, with regard to his status at the time of the promotion to Paralegal Technician, he was considered to have been in Pay Grade 18, but in a promotional probation status. The promotional probationary status was important because Policy 12.0 provides:

"Promotional Probationary Periods for Salary computation: Employees may not receive two (2) promotional increases within the same six (6) month period. For this reason, an employee is required to serve a "promotional probationary period" after receiving a promotional increase by: appointment to a new job; reallocation; or reassignment to a higher pay grade. Employees

who are promoted within the six (6) month promotional probationary period, will have their new salary computed based on the result of the normal promotional increase applied to their most recent salary in the last position they completed any required probationary period, not based upon their present salary. However, in no circumstances may an employee's new salary be lower than their most recent one. Employees who do promote during their six (6) month promotional probationary period will have their salary computed based upon the rate it was in the last position in which they completed any required probationary period. This computation will not result in a loss of pay to the employee, but may not result in as large a salary increase as the most recent promotion." (Joint Exhibit 3)

20. Article 47, Section 10 of the 1996-1997 Contract also provides:

The salary upon which any increase resulting from promotion, upward reallocation, or upward reassignment is computed for a given employee, is that employee's most recent salary in the last position in which any required probationary period was completed, plus any subsequent general salary adjustment, except that no employee will be reduced as a result of this provision.

An employee except an employee on original probation who, while serving in a promotional probationary period, is promoted, upwardly reallocated or upwardly reassigned shall be placed on the step in the new pay grade that is:

- (a) next above the employee's current rate of pay; or
- (b) the result of the normal promotional increase based on the employee's most recent salary in the last position at which he or she completed any required probationary period, plus any subsequent salary adjustment;
- (c) whichever is greater between a & b above.

21. On March 10, 1997, the VSEA filed a Step III Grievance with the Department of Personnel on behalf of Grievant. A hearing was held on March 31, 1997. On April 16, 1997, the Department of Personnel denied the grievance in a letter that stated that Grievant's salary increase was properly calculated (Grievant's Exhibits 4, 5).



### OPINION

The parties agree that the single issue that must be determined is whether Grievant had performed all the duties that resulted in the pay grade 18 assignment of the Unemployment Compensation Claims Adjudicator position for 18 months or more prior to his promotion. If he had been performing all the duties, the parties agree that the requirement for promotional probationary period should have been waived by the Department of Personnel when Grievant was promoted to the Paralegal Technician II position. If he had not been performing all the duties of the reassigned position, or if he had been performing all the duties for less than 18 months, the parties agree that Grievant was properly considered to be in a promotional probationary period and his promotional salary as a Paralegal Technician II was properly calculated.

Grievant alleges that the State violated the Wages and Salary provisions of the Contract, and Sections 6.2 and 12 of the State's Personnel Policies and Procedures, by not waiving a promotional probationary period, and not calculating his promotional salary increase after his promotion to Paralegal Technician II from Pay Grade 18 instead of a Pay Grade 17. Grievant bases this contention on his claim that he had been regularly performing the duties of an Unemployment Compensation Claims Adjudicator, Pay Grade 18, for at least 18 months at the time he accepted the promotion. The State contends to the contrary that Grievant had not been performing at the level of the Pay Grade 18 Claims Adjudicator position until the Department of Employment and Training created the new position of Claims Adjudicator which combined fact finding and adjudicator duties shortly before Grievant accepted his

promotion.

We conclude that Grievant did not regularly perform the duties that resulted in the Pay Grade 18 assignment of the Unemployment Compensation Claims Adjudicator position for 18 months or more prior to his promotion. Grievant, and other claims adjudicators, performed some fact finding duties and had some public contact prior to July 1996 when the Department reorganized, eliminated the separate fact finder position, and assigned all fact finding duties to adjudicators. The performance of this duty, however, generally was limited to a few occasions when adjudicators were granted permission to engage in further fact finding on one of their cases because the information gathered by fact finders was insufficient.

As a result of Grievant's direct telephone line and his knowledge of claims processing, Grievant may have performed more fact finding and had more public contact than the other adjudicators, but such activities were limited. Grievant did not regularly perform fact finding functions on his own cases. He and other adjudicators did not do so until after the July 1996 reorganization, which for the first time resulted in Grievant and other adjudicators regularly performing the duties that resulted in the Pay Grade 18 assignment. Thus, the State was not required to waive Grievant's promotional probationary period, and properly calculated Grievant's rate of pay after his promotion.


**ORDER**

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of John Randall is DISMISSED.

Dated this 30<sup>th</sup> day of January, 1998 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Catherine L. Frank, Chairperson

  
Leslie G. Seaver

  
John J. Zampieri