

VERMONT LABOR RELATIONS BOARD

DESIGNATION DISPUTE (RE:)	
ANGELA WOODBECK, VERMONT)	DOCKET NO. 06-34
AGENCY OF TRANSPORTATION))	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 30, 2006, Angela Woodbeck filed a designation dispute concerning her position as Financial Management Specialist with the Vermont Agency of Transportation. She contends that the designation of her position by the Department of Human Resources as “non-management” should be changed to “supervisory”.

A hearing was held before Board Members Edward Zuccaro, Chairperson; Leonard Berliner and James Dunn on March 8, 2007, in the Labor Relations Board hearing room in Montpelier. Department of Human Resources General Counsel David Herlihy represented the State. Vermont State Employees’ Association (“VSEA”) Staff Attorney Jes Kraus represented Woodbeck. The parties filed post-hearing briefs on March 22, 2007.

FINDINGS OF FACT

1. Angela Woodbeck works as a Financial Management Specialist in the Business Office of the Program Development Division of the Agency of Transportation. The Business Office was reorganized into its existing structure in 2004, at which time the position occupied by Woodbeck was entitled Financial Management Specialist. Woodbeck was designated at that time as a supervisory employee in the Supervisory Bargaining Unit represented by VSEA. Woodbeck performs financial, technical and administrative work involving monitoring budget expenditures and contractor invoices,

financial processing of vendor payments, and procurement of supplies and equipment (Woodbeck Exhibit 5).

2. The Business Office in the Program Development Division has two work groups. Helen Estroff, Business Manager C, manages the Business Office and oversees the two work groups. In addition, there is an Administrative Assistant B and Business Manager A reporting directly to Estroff. One work group, led by Woodbeck as a Financial Management Specialist (Pay Grade 23), monitors contracts, programs, and grants; processes invoices and disburses funds for contractors. Woodbeck has two employees working under her, William Holden and Kathy Touchette, both Contract Specialist II's. The second work group, led by a Contract Specialist III (Pay Grade 21), performs similar functions for contracts with consultants. There are two Contract Specialist II's and an Administrative Assistant B working under the Contract Specialist III. The Contract Specialist III is designated as a supervisory employee (State Exhibit 1, p.11, Woodbeck Exhibit 1, p.13).

3. In 2004, Woodbeck had three Contract Specialist II's working under her. In early 2005, one Contract Specialist II was removed from the work group due to a reduction in force. Since then, Woodbeck has had two employees working under her, Holden and Touchette. There have been no other significant substantive changes to Woodbeck's position since 2004 except that the volume of work performed by her work group has increased. The work group deals with approximately \$81 million in funds annually. Woodbeck disburses funds without approval from superiors (State Exhibit 1, p.6; Woodbeck Exhibit 1, p.7).

4. On June 8, 2006, the Agency of Transportation filed a Request for Classification Review with the Department of Human Resources, seeking an upgrade in Woodbeck's pay grade from 21 to 23. The Agency made no request to change the designation of Woodbeck as a supervisory employee. Woodbeck completed the Request for Classification Review form (State's Exhibit 1).

5. In the Request for Classification Review form, the first thing Woodbeck listed under "Job Duties" was supervision of the two employees in her work group. In indicating "how" she performed this supervision, Woodbeck stated: "Always being available to employees for questions, resolution of issues, et cetera that arise, performance evaluations, monitor and guide daily work activities. Responsibility and accountability resides with this position for all work performed in the work group". A question is asked on the form "Do you supervise?" "Supervise" is defined as "if you direct the work of others where you are held **directly** responsible for assigning work; performance ratings; training; reward and discipline or effectively recommend such action; and other personnel matters" (emphasis in original). Woodbeck responded to this question by listing Touchette and Holden as persons she supervised. In responding to the question "In what way does your supervisor provide you with work assignments and review your work?", Woodbeck stated:

My regular and routine work assignments are delivered to me without review. Special assignments come from my supervisor, although sometimes I am approached directly, for example a request for information required by a Manager based upon a Legislative inquiry, in which case I would make my supervisor aware of the received request. I establish the priorities for myself and my work group. My work receives little if any oversight unless I specifically make a request for a review of the completed task. I am held accountable for my own work as well as the work generated by my staff.

I perform my duties within general guidelines with almost complete independence in determining priority and how to accomplish the tasks (State Exhibit 1, p.2, 5; Woodbeck Exhibit 1, p. 3, 6).

6. Estroff signed the Request for Classification Review form completed by Woodbeck as Woodbeck's supervisor. In commenting on "the accuracy and completeness of the responses" by Woodbeck, Estroff stated: "I feel the employee responses are accurate and complete with nothing noticeably omitted" (State Exhibit 1, p.8; Woodbeck Exhibit 1, p.9).

7. Tammie Lund, Department of Human Resources Classification Analyst, was assigned to work on the classification review of Woodbeck's position. In determining whether Woodbeck's pay grade should be upgraded as requested, Lund worked with a committee consisting of Agency of Transportation employees trained in classification matters. After reviewing the Request for Classification Review, the committee decided initially on June 26, 2006, that Woodbeck's position was properly classified at Pay Grade 21 (State Exhibit 3, Woodbeck Exhibit 2).

8. Lund, without the involvement of the Agency of Transportation classification committee, then reviewed on her own initiative whether Woodbeck should continue to be designated as a supervisory employee. Lund viewed the reduction of employees under Woodbeck from three to two to be a "flag" warranting close review. Without any further investigation or inquiry of Woodbeck or Estroff as to Woodbeck's specific supervisory responsibilities, Lund decided in a June 26, 2006, action that the designation of Woodbeck should be changed from "supervisory" to "non-management" (State Exhibits 2, 3; Woodbeck Exhibit 2)

9. Woodbeck requested an informal meeting in response to the Notice of Action denying the request for a pay upgrade and changing her designation from supervisory to non-management. An informal meeting occurred on July 12, 2006, among Woodbeck, Estroff, Lund and the Agency of Transportation classification committee. Based upon information provided at that meeting, the pay grade of Woodbeck's position was increased from 21 to 23 (State Exhibit 4).

10. There was no substantive discussion at the July 12 meeting on the change of designation of Woodbeck from a supervisory employee to a non-management employee. Instead, Lund requested that Woodbeck and Estroff submit information to her by e-mail concerning whether Woodbeck was a supervisory employee.

11. On July 12, 2006, Woodbeck sent an e-mail message to Estroff on the subject of "supervision". It provided:

Of my two employees one is pretty self sufficient, but the other one requires monitoring due to not being here (late arrivals, sick, appt's). Due to having to implement some "tools" to keep track of one employee I have to enforce these tools on my other employee too to keep things "equal and fair". An example of this is keeping their Outlook calendars updated, meeting with them both daily (this means at least once per day, but typically more than once a day I meet w/them "casually". As is typical with any supervisor I do evaluations and I take them very seriously and put much time and effort into them to give my employees a thorough and complete review. I have a once per week staff meeting with both employees together. Work assignments are given continuously throughout the day every day . . . with appropriate deadlines. Before the deadlines I always check on the progress of any assigned work/projects. I then make sure that all work assigned is done by the deadlines given or find out why it wasn't if that's the case. Even with only 2 employees that means 2 different personalities, 2 sets of emotions, etc., to deal with on a daily basis. (State Exhibit 5, p.21)

12. On July 12, 2006, Estroff forwarded to Lund the above e-mail message from Woodbeck, and also sent Lund her own e-mail message which provided as follows in part with respect to the duties performed by Woodbeck:

As we discussed at the informal meeting today I am sending this email in reference to the removal of supervisory status from Angela Woodbeck's position.

Angela Woodbeck supervises two individuals and if not for a RIF (out of her control) she would still supervise three individuals. The supervision she performs is not sporadic as you can see from her email to me below. While one of her staff is lower maintenance than the other the effect on Angela is insignificant since the expectation is that she treat each with fairness and consistency. I know that in the RFR recently reviewed on one member of Angela's staff a level of independence was correctly reflected BUT due to the issues within this work group the level of supervision required remains high as a result of the need for equal treatment. In Angela's RFR she placed supervision as one of her MAJOR duties, yet another reason I was taken aback by the removal of her status as a supervisor (emphasis in original).

...

(State's Exhibit 5, p.20)

13. By memorandum dated August 1, 2006, Lund informed Woodbeck that her request to be redesignated as a supervisory employee was denied. The concluding paragraph of the memorandum provided:

Given the information provided the supervisory duties are not significant in comparison with the overall duties assigned to this position. To state that they are would imply that the incumbent spends the majority of her time supervising two employees, one of which is "pretty self-sufficient" and that the higher level duties assigned, as detailed above, have less significance or impact on the division or the agency itself if not performed. Thus, supervisory designation is denied (State's Exhibit 6, p.24).

14. In making the decision to re-designate Woodbeck from a supervisory employee to a non-management employee, Lund again did not meet or have telephone discussions with Woodbeck, Woodbeck's superiors or Woodbeck's subordinates to

discuss her supervisory status. Instead, Lund relied exclusively on the information received in the Request for Classification Review and the e-mail submissions from Woodbeck and Estroff for information on the duties performed by Woodbeck.

15. Lund has been involved in many more classification review decisions than bargaining unit designations.

16. Woodbeck recommended the hiring of Holden. Her recommendation was followed and Holden was hired. Woodbeck recommended the transfer of Touchette into her work group. The recommendation was followed and Touchette was transferred into the work group. Woodbeck recommended the hiring of the individual into her work group who was subsequently subject to a reduction in force. The recommendation was followed and the individual was hired. In these situations, Estroff played an advisory role to Woodbeck.

17. The tasks for Woodbeck's work group originate from a variety of sources, including project managers and the director of her division. Estroff assigns work to Woodbeck's work group infrequently.

18. Woodbeck independently handles the assignment of work in her work group. She first reviews the work to assess what skills and knowledge are required. She then assigns the work to either Holden or Touchette depending on who she determines is better suited to the tasks. Although both Holden and Touchette have comparable knowledge and skills, they have different strengths that Woodbeck considers in assigning work. Woodbeck does not receive advice from superiors on the assignment of work. Touchette and Holden turn in their work directly to Woodbeck for review and processing.

19. Woodbeck has a staff meeting with Holden and Touchette once a week. She meets with them informally at least once a day to assign and monitor their work.

20.. Estroff works on a different floor than Woodbeck and her work group. There are work days in which Estroff and Woodbeck do not interact.

21. Woodbeck gave an employee a warning about poor performance. She had several meetings with the employee providing performance feedback. She did not seek Estroff's permission before taking this action. Woodbeck later caused that employee to be placed on administrative leave with pay pending investigation and a determination whether to impose discipline. The employee resigned from employment prior to a decision on discipline being made.

22. Woodbeck completes annual performance evaluations on the employees in her work group. Woodbeck approves employee leave requests and signs their time reports (Woodbeck Exhibits 6, 7).

OPINION

The issue before the Board is whether Angela Woodbeck, Financial Management Specialist with the State Agency of Transportation, is properly designated by the State Department of Human Resources as a non-management employee. Woodbeck disputes the non-management designation and contends that she should be designated as a supervisory employee.

The State Employees Labor Relations Act, 3 V.S.A. Section 901 *et seq.* ("SELRA"), provides that any disputes over the designation of positions shall be decided by the Board. 3 V.S.A. Section 906. If the Board decides that Woodbeck is a supervisor, she will be included in the Supervisory Bargaining Unit represented by VSEA.

Section 902(16) of SELRA defines “supervisory employee” as:

"an individual finally determined by the board as having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment".

Prior to applying this statutory definition to the duties performed by Woodbeck, we first discuss the process employed by the Department of Human Resources in this matter. In circumstances such as this where the Department is contemplating changing the designation of an employee from supervisory to non-management, the Department has the burden of demonstrating that circumstances have changed sufficiently with respect to the duties of the employee to warrant the change. This requires the Department to ensure that each of the statutory criteria for supervisory employee are examined through active questioning with respect to the duties of the involved position.

Here, instead of assuming the burden, the Department analyst first relied on information provided in a classification proceeding to decide on her own initiative that Woodbeck was not a supervisor. When challenged on this action, the analyst then essentially transferred the burden to Woodbeck and Woodbeck’s supervisor. The analyst relied exclusively on written submissions of Woodbeck and her supervisor to determine whether Woodbeck met the criteria for a supervisor. The analyst did not meet or have telephone discussions with Woodbeck, Woodbeck’s superiors or Woodbeck’s subordinates. As a result, there was no examination by the analyst of some of the statutory criteria for supervisory employee and insufficient examination of other criteria.

The process was seriously flawed in relying on the involved employee and her supervisor to develop, without active questioning by the analyst, all of the relevant

information on a matter in which they were untrained. This flawed process not surprisingly led to a flawed result.

We turn to our own application of the statutory criteria to the duties performed by Woodbeck. In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; theoretical or paper power will not make one a supervisor. Nor do rare or infrequent supervisory acts change the status of an employee to a supervisor. Id. at 351.

The existence of actual power, rather than the frequency of its use, determines supervisory status. AFSCME Local 490 and Town of Bennington, 153 Vt. 318 (1989). However infrequently used, the power exercised must be genuine. Id. Also, the Board has discretion to conclude supervisory status does not exist although some technically supervisory duties are performed, if such duties are insignificant in comparison with overall duties. Id.

We first examine whether Woodbeck's responsibilities to assign work to employees and direct them rise to a level sufficient to make her a supervisor. The key determination in such matters is whether the employee is exercising independent judgment, or is simply ensuring that standard operating procedures are followed. If an employee is relaying instructions from a supervisor or ensuring that subordinates adhere to established procedures, the employee is not a supervisor. Local 1201, AFSCME and

City of Rutland, 10 VLRB 141 (1987). City of Winooski and Winooski Police Employees' Association, 9 VLRB 85 (1986).

However, if an employee's duties go beyond simply ensuring established policies and procedures are followed, and require use of independent judgment in directing and assigning employees, then the employee meets the statutory definition of supervisor.

South Burlington Police Officers' Association and City of South Burlington, 11 VLRB 332 (1988). c.f., South Burlington Police Officers' Association and City of South Burlington, 18 VLRB 116 (1995). Exercise of independent judgment in assigning and directing employees must occur on a more than infrequent basis or be significant in comparison with overall duties to make one a supervisor. AFSCME, Local 490 and Town of Bennington, *supra*. Department of Public Safety Personnel Designation Disputes (re: State Police Sergeants), 14 VLRB 176 (1991).

We conclude that Woodbeck meets the statutory definition of supervisory status with respect to assigning and directing employees. Woodbeck independently handles the assignment of work in her work group without receiving input from superiors. She reviews the work to assess what skills and knowledge are required, and then assigns work to the subordinate whom she determines is better suited to the required tasks. She meets with employees regularly to assign and monitor work. These responsibilities indicate that she is exercising independent judgment in assigning and directing employees as a significant part of her duties.

We recognize that Woodbeck currently only supervises two employees, whereas she previously had three subordinate employees. However, this change is not sufficient to demonstrate that she no longer is a supervisory employee. Assigning and directing

responsibilities over two employees is sufficient to result in supervisory status as long as the supervisory responsibilities are significant in comparison with overall duties. United Electrical, Radio and Machine Workers of America and University of Vermont, 20 VLRB 219, 261-62 (1997). Department of Motor Vehicles Designation Dispute (Re: Motor Vehicle Senior Inspection Specialist), 22 VLRB 349, 354-56 (1999). That is the case here.

We next examine whether Woodbeck meets the statutory definition of supervisory employee with respect to hiring employees. In the area of hiring employees, it must be demonstrated that an employee actually has taken the action or effectively recommended the action, on more than a rare or infrequent basis, to warrant a supervisory designation. Colchester Police Officers Association and Town of Colchester, 26 VLRB at 16. Proctor Education Association/Vermont-NEA/NEA and Proctor School Board, 18 VLRB 174, 185 (1995). Local 1369, AFSCME, AFL-CIO and Kellogg-Hubbard Library, 15 VLRB 205, 213 (1992).

We conclude that Woodbeck has met the statutory test of supervisory status with respect to hiring employees. Evidence was presented of two instances of individuals being hired, and one case of an employee being transferred, into Woodbeck's work group. In each of these three cases, Woodbeck recommended the hiring or transfer of specific individuals, and her recommendation was followed. This presents sufficient evidence to indicate that Woodbeck has the authority to effectively recommend the hiring of employees into her work group.

Given that it is only necessary to possess one of the listed powers in the statutory definition, and we have determined that Woodbeck possesses supervisory authority in the

areas of assigning/directing employees and hiring employees, we determine that it is unnecessary to further examine other areas set forth in the definition of supervisory employee. The two areas addressed are where Woodbeck's supervisory responsibilities are most evident. They demonstrate that her supervisory duties are significant in comparison with overall duties. The evidence in other areas is more limited and no purpose is to be served by addressing them.

Finally, we respond to an issue raised by the State in its post-hearing brief. The State contends that any decision by the Board changing Woodbeck's designation to supervisory employee should only be prospective because no evidence that could validly support a supervisory designation was presented at any time before the hearing. We disagree. If we so ruled, we effectively would be rewarding the State for its seriously flawed process in designating Woodbeck as a non-management employee. We decline to create such a result, and conclude that Woodbeck is entitled to be considered a supervisor retroactive to the time the State made the decision to change her designation from a supervisory employee to a non-management employee.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The designation by the Department of Human Resources of Angela Woodbeck, Financial Management Specialist with the Vermont Agency of Transportation, as a non-management employee is reversed;

2. Woodbeck is a supervisory employee as defined in 3 V.S.A. Section 902(16); and
3. Woodbeck shall be considered to be included in the supervisory bargaining unit represented by the Vermont State Employees' Association effective from the date the Department of Human Resources designated her as a non-management employee, and shall be entitled to all rights and benefits resulting from such inclusion.

Dated this ____ day of April, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Leonard J. Berliner

James J. Dunn