

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

PATRICIA FAIVRE

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DOCKET NO. 80-43

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On April 28, 1980, (and later amended on October 9, 1980) the Vermont State Employees' Association, Inc., ("VSEA") filed a grievance with the Vermont Labor Relations Board on behalf of Patricia Faivre ("Grievant"). Grievant is a member of the non-management unit and is employed by the State of Vermont Department of Mental Health at Brandon Training School. In the grievance before the Board (Step IV), VSEA alleges that the State, in reclassifying Grievant, discriminatorily applied sections 5.01, 5.03 and 5.05 of the Rules and Regulations for Personnel Administration ("Rules and Regulations") and 3 V.S.A. §310(b) relating to the classification of State employees.

The State filed an answer and motion to dismiss the grievance on May 19, 1980, denying that the facts as alleged constituted a "grievance" as defined in 3 V.S.A. §902(14).

Hearings were held on November 6, and November 20, 1980, in the Board hearing room in Montpelier before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown. At both hearings, the State was represented by Bennett E. Greene, Assistant Attorney General. Counsel for VSEA, Michael R. Zimmerman, represented Grievant.

Attorney Zimmerman filed requests for findings of fact and a memorandum on December 12, 1980. Attorney Greene filed requests for findings and conclusions of law and order only on December 15, 1980. Attorneys Zimmerman and Greene also filed, on December 12, 1980, a stipulation of facts for consideration by the Board in addition to each party's requests for findings.

FINDINGS OF FACT

1. Patricia Paire, Grievant, is a permanent, full-time, classified employee of the State of Vermont. She is currently employed by the Department of Mental Health as a Mental Retardation Nursing Specialist at Brandon Training School in Brandon, Vermont.

2. Grievant's Exhibit #3, the class specification for Mental Retardation Nursing Specialist, accurately reflects Grievant's job responsibilities and duties.

3. A Mental Retardation Nursing Specialist is a pay scale level 12 position.

4. Before assuming her current position as Mental Retardation Specialist, effective July 1, 1979, Grievant held two other positions at Brandon Training School (hereinafter, "Brandon"). Grievant was first employed at Brandon by the Department of Mental Health (the "Department") in February, 1978, as a General Duty Nurse (a pay scale level 10 position) on a part-time basis. From February of 1978 until April, 1979, Grievant's duties required that she check patients for illnesses and injuries, provide medical treatment ordered by a physician, and work with doctors in the clinic. Her duties took her throughout the facility, and from one dormitory to another. Effective May 6, 1979, Grievant was appointed to the position, General Duty Nurse, on a full-time basis.

5. Brandon is a State-provided facility for the institutional care and training of the mentally retarded. The patients (called "residents" by the staff at Brandon) range in age from about 8 years to 80 years. The present resident population is about 315, and the number of staff members is between 550 and 600. The residents at Brandon are housed in 11 dormitories with 10 to 38 residents in each dorm.

6. The staff at Brandon is composed of medical personnel (e.g., doctors, nurses, physical therapists), psychiatric and psychological professional staff, social workers, aides, teachers, and administrators. The emphasis at Brandon is to train the residents, insofar as possible, to be as self-sufficient as possible.

7. Since at least 1976, Brandon has used a treatment program called the "team" concept. A "team" is composed of staff members from different disciplines. A team's purpose is to, through a marriage of the members' disciplines, establish an individualized plan for the treatment and training of residents assigned to the team. Each treatment team is composed of the following members:

(A) Team Leader (now called Residential Living Team Manager): This person is responsible for the total care of a resident and for supervising the other members of his team. The Team Leader is accountable to the Director of Residential Care and Development, who is accountable to the Superintendent of the Facility;

(B) Residential Living Program Coordinator: This member of the team is the second in command. His functions include an annual review of the "habilitation plan" for each resident for which his team is responsible. He is directly accountable to the Team Leader;

(C) Residential Living Supervising Coordinator: This member of the team is charged with supervision of the direct care staff. He is accountable to the Team Manager;

(D) Social Worker;

(E) Nurse Advisor (now called Mental Retardation Nursing Specialist): This member of the team is accountable to the Team Manager. The duties of the Nurse Advisor, in general, include providing medical care to the residents, liaison between the team and the medical staff, participating in the formulation of residents' "habilitation plans", instructing team members and other staff members how to recognize particular health problems, conducting a quarterly review of residents' records to determine whether the correct medication is being administered, daily review of nursing reports, and attendance at regularly scheduled team meetings (State's Exhibit #7, Grievant's Exhibit #6).

8. Since at least 1976, there have been four such treatment teams in existence at Brandon. Until July 1, 1976, (the effective date of the major reclassification and reallocation action of the Department of Personnel at Brandon), only three of the treatment teams (Team I, Team II, Team III) had Nurse Advisor (pay scale 15) positions assigned to them. The fourth team (Team IV) did not have a Nurse Advisor position assigned to it, although it did have a General Duty Nurse (pay scale 10) position assigned to it. Effective July 1, 1979, the Nurse Advisor positions on Teams I, II, and III were abolished and reclassified to the position of Mental Retardation Nursing Specialist (pay scale 12).

9. Prior to April 9, 1979, the occupant of the General Duty Nurse position on Team IV was Mrs. Alice Normandin, who left that position on that date to become a Nurse Advisor on one of the other treatment teams.

10. In late March or early April of 1979, shortly before the departure of Mrs. Normandin from Team IV, the Personnel Office at Brandon advertised the fact that Mrs. Normandin's position on Team IV was vacant (Grievant's Exhibit #4).

11. When Grievant saw the advertisement for Mrs. Normandin's position, she applied for it, and, in early April, 1979, was interviewed for that position by Mr. Avi Freund, Team Leader of Team IV.

12. Prior to the interview, Grievant had discussed the nature of the duties of the position with the incumbent at that time, Mrs. Normandin. As a result, Grievant was of the opinion that even though the position title was General Duty Nurse, the duties performed by Mrs. Normandin appeared to her (Grievant) to be more similar to those of a Nurse Advisor. Grievant relayed to Mr. Freund (Team IV leader) her impressions regarding the duties of General Duty Nurse for Team IV, asserting those duties involved more than those which typify the position of General Duty Nurse. Mr. Freund responded that the Department was contemplating upgrading that position to Nurse Advisor, but that he did not know whether, or when, it would be reclassified.

13. Grievant was selected for the position of General Duty Nurse on Team IV, effective May 6, 1979, (finding #4, infra) and from that time to the present, she has remained the nursing component member of Team IV.

14. By her own admission, Grievant did not fully understand the nature and extent of her duties as full-time General Duty Nurse on Team IV until some time in July, 1979, at which time she assumed her duties fully and completely.

15. The nursing care requirements of residents in each of Treatment Teams I - IV varies in relations to the residents' extent of mental retardation and potential for habilitation.

16. Team I contains mostly Brandon residents who are severely mentally retarded and can not live independently in the community.

17. Team II contains mostly much less severely mentally retarded persons who are being trained for placement in the community.

18. Caring for residents in the Team I group is more difficult than caring for residents in the Team IV group.

19. In general, Teams I, II, and III deal with residents more severely retarded than those assigned to Team IV.

20. While the nature of Grievant's work is generally the same, Grievant's specific duties from May 6, 1979, to present on Team IV as described on State's Exhibit #7 differ from the duties performed by the Nurse Advisors (and later, Mental Retardation Nursing Specialists) on Teams I, II, and III, to the extent that the residents in her charge are less impaired.

21. In general, however, the duties of Grievant and the Nurse Advisors (during May 6, 1979, to the present) are as follows:

(A) to review pertinent records in order to ensure the continuity of medical services rendered to the resident;

(B) to update residents' treatment plans, and to inform other team members, as well as other staff members, of residents' particular medical problems;

(C) to train, and to consult with, staff members in how to carry out certain medical procedures;

(D) to serve as a member of a treatment team by evaluating residents' level of functioning, and by informing team members of residents' individual medical needs; and

(E) to serve as a liaison between a team and those providing medical care.

22. The reallocation (also referred to as reclassification) of Grievant's position from General Duty Nurse (pay scale 10) to Mental Retardation Nurse Specialist (pay scale 12), effective July 1, 1979, was requested by the Department of Mental Health together with requests for the reallocation of about 380 other positions at Brandon.

23. The entire reallocation process of positions at Brandon took several months to complete, beginning approximately in April, 1979, and ending in January, 1980.

24. In July of 1979, Grievant, as part of the reclassification process, was asked by the Personnel Office at Brandon to write a job description for her position. Grievant did so, and on July 24, 1979, submitted a handwritten job description to the Personnel Office at Brandon. That job description was then typed, verbatim, by a secretary in the Personnel Office at Brandon, and, on August 3, 1979, Grievant signed the typed job description (State's Exhibit #7). Item 19 of that job description contains the following entry:

"As of April 30, 1979, as a Nurse I am now performing those duties assigned to a Team Nurse Advisor."

25. Thereafter, the job description which Grievant had signed was submitted for certification by Grievant's immediate supervisor and other officials. The certification on the job description form provides as follows:

"I hereby certify that the answers given by this employee are correct and complete as to the facts within my knowledge except as noted here. Indicate any inaccuracies or statements with which you disagree."

The job description was certified on August 24, 1979, by Avi Freund, Grievant's immediate supervisor, on August 27, 1979, by the department head, and on September 15, 1979, by the Personnel Officer at Brandon. Each of these officials signed the certification without indicating any disagreement with what Grievant had written in the job description, including what she had

written in Item 19. The job description was sent in November of 1979, to the State Department of Personnel.

26. Grievant's former position as General Duty Nurse was upgraded (from Grade 10 to 12) while the other three nursing positions of Nurse Advisor on Teams I, II, and III were downgraded (from Grade 15 to 12) as a result of the reclassification process.

27. All but one of the four nursing positions are currently at or below the maximum rate of pay in pay scale 12. One of the three nurses other than Grievant is above the maximum rate of pay in pay scale 12.

28. The three nurses reallocated downward from pay scale 15 in Teams I, II, and III due to no fault of their own, did not incur a cut in pay, but continued to receive the rate of pay they were receiving just prior to the downward reallocation; and that is the reason why one of those nurses is still paid at a rate higher than the maximum pay scale 12.

29. None of the nurses previously classified as Nurse Advisors incurred a cut in pay in accordance with Rule 6.0741 of the Rules Regulations for Personnel Administration which states:

A permanent status employee with three or more years of continuous State service whose position is reallocated downward through no fault of his own and whose service in the position is at least fully satisfactory, shall not be subject to a reduction in salary.

30. In the event that any of the four nurses vacates her position on any of the four treatment teams, a person newly hired to fill that Mental Retardation Nursing Specialist position would be employed at the entry level for pay scale 12. The right to the higher rates of pay paid currently to Mental Retardation Specialists other than Grievant is personal to the present incumbents only and will not continue as they terminate.

31. According to the testimony of Claude Magnant, the person in charge of the Brandon reallocations and State of Vermont Director of Personnel Operations, the purposes for the maintenance of Rule 6.0741 are as follows:

- (A) to provide substantially equitable treatment for employees, on the grounds that an employee should not be penalized by a cut in pay effected through no fault of his own.
- (B) to encourage supervisors and others in management positions to honestly and accurately provide current job descriptions without fear that doing so would reduce their employees' salaries.
- (C) to encourage employees to cooperate in the re-allocation procedure by providing more accurate information for job descriptions without fear that doing so would reduce their salaries.

32. All of the position reallocations resulting from the reorganization at Brandon, involving the review of about 380 positions, were made effective July 1, 1979; however, the actual determinations for all reallocated positions were made at various times over a period of six or seven months.

33. When the plan for massive reorganization of the Brandon Training School was first presented to Mr. Magnant some time in April of 1979 by representatives of the Department of Mental Health, they determined that it was impossible for all determinations to be made on all the positions simultaneously and agreed that positions would be reviewed and reallocations made, as required, over a period of time.

34. They agreed also, in order to be fair to all employees involved and to avoid discrimination, the effective date of all reallocations resulting from the reorganization would be the same.

35. It was believed by Mr. Magnant and representatives of the Department at that time that determinations regarding some of the positions would be made before July 1, 1979, and that determinations regarding the remaining positions would be made on or after July 1, 1979.

36. Prior to July 1, 1979, an employee would be entitled to a salary rate increase of 5 percent upon upward reallocation of his or her position.

37. On July 1, 1979, and thereafter, pursuant to an agreement between the State and the Vermont State Employees' Association in a side letter now before the Board as Joint Exhibit II attached to the parties' stipulation dated December 11, 1980, an employee would be entitled to a salary rate increase of 8 percent upon upward reallocation of his or her position.

38. An additional reason why Mr. Magnant and the Department representatives decided upon July 1, 1979, as the effective date for all reallocations arising out of the Brandon reallocations was to insure that all affected employees uniformly benefitted from the 8 percent reallocation increase, rather than have some receive only the 5 percent increase as a result of the administrative accident of having their particular positions reallocated prior to July 1, 1979.

39. The information and forms needed by Mr. Magnant to perform the job evaluation for Grievant's position first arrived at Mr. Magnant's office some time in November of 1979, and the evaluation work for her position was completed by the end of December, 1979.

40. Mr. Magnant was then able to determine that Grievant's duties were best described by the newly-developed class Mental Retardation Nursing Specialist, described in Grievant's Exhibit #3.

41. At all times relevant herein, it has been the unwritten policy of the Department of Personnel to make reallocations effective at the beginning of the affected employee's pay period immediately following approval of the reallocation; however, an exception to that policy can be made in the event that an excessive delay in the reallocation is occasioned

by the heavy workload of that Department, in which case the reallocation can be made effective retroactively to a date chosen by the Department.

42. At all times relevant herein, the following sections of the Rules and Regulations for Personnel Administration were in effect:

Section 5.01: "The State Classification Plan shall comprise all of the positions in the State service except those excepted by 3 V.S.A. §306 or any other provision of law. The (Commissioner of Personnel) shall allocate each position to a class, based upon factors as applicable, including the following:

Knowledge and skills required
Responsibility for independent action
Complexity and variety of duties
Responsibility for supervision
Effort and working conditions

The (Commissioner of Personnel) shall administer the State Classification plan so as to meet the needs of changing agency organizations and programs.

Section 5.05: "The (Commissioner of Personnel) shall maintain a continuing review of the classified positions in the state for the purpose of adjusting the allocation of positions in which duties have materially changed or which appear to be improperly allocated."

Section 6.0741: "A permanent status employee with three or more years of continuous State service whose position is reallocated downward through no fault of his own and whose service in the position is at least fully satisfactory shall not be subject to a reduction in salary."

Section 6.08: "Personnel actions affecting pay shall be ... effective as follows:

6.082: Pay increases or decreases ... shall become effective on the first day of the appropriate bi-weekly payroll period."
(Grievant's Exhibit #13)

43. On February 7, 1980, the Vermont State Employees' Association, Inc., as Grievant's representative, filed a Step II grievance with the Commissioner of the Department of Mental Health (Grievant's Exhibit #9). In her grievance, Grievant cited Section 5 of the Rules and Regulations and 3 V.S.A. §310(b) as applicable to this grievance and requested that (1) from May 6, 1979, to July 1, 1979, she be considered to have occupied

a pay scale 15 position, and (2) effective July 1, 1979, her position be reallocated to pay scale 12 position. In essence, Grievant's request was that she be treated as if she had been a Nurse Advisor on Team IV from May 6, 1979, to the completion of her position reclassification.

44. On February 20, 1980, the Vermont State Employees' Association, Inc., received a letter dated February 14, 1980, from the Deputy Commissioner of the Department of Mental Health (Grievant's Exhibit #10). In that letter, the Deputy Commissioner answered the Grievant's Step II grievance by indicating that the relief she requested was beyond the authority of the Department to grant, and suggested that a Step III grievance be filed.

45. On February 25, 1980, the Vermont State Employees' Association, Inc., on behalf of Grievant, filed a Step III grievance with the Commissioner of the Department of Personnel. The grievance cited the same section of the Rules and Regulations and statute and requested the same relief as had been requested in the Step II grievance (Grievant's Exhibit #11).

46. By letter dated March 28, 1980, a representative of the Commissioner of Personnel denied Grievant's Step III grievance on grounds the grievance did not fall within the contractual definition of "grievance" (Grievant's Exhibit #12).

47. Section 2b of Article XVI of the Agreement defines "grievance" as follows:

(A)n employee's, group of employees', or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under a collective bargaining agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors.

48. The following statements were submitted by counsel for the State and Grievant as stipulations of agreement to facts not previously entered into evidence before the Board at the hearings in this case.

(A) That the present contract between the State of Vermont and the Vermont State Employees' Association, Inc., (i.e., the one in effect for the period July 1, 1979 to June 30, 1980) is the first collective bargaining agreement in history of collective bargaining between the State of Vermont and the Association which deals with the probationary step amount and maximum rate of pay scales applicable to bargaining unit employees. Previous to July 1, 1977, wage and salary schedules were bargainable "to the extent they are consistent with rates prevailing in commerce and industry for comparable work within the state." [3 V.S.A. §904(a)(1)]

(B) Mr. Magnant's testimony concerning a 5 percent adjustment to salaries of employees whose positions were reallocated upward prior to the effective date of the present contract was based on a document entitled, "Guidelines for Implementation of the 1978 Economic Increase for Classified and State Police Employees", negotiated between the State and the authorized bargaining agent (Vermont State Employees' Association) as authorized by Section 1(f) of #222 of the Acts of 1977 Adjourned Session entered as Joint Exhibit #1. Section IIC and Item 3 of the referenced attachment is what Mr. Magnant was referring to in his testimony.

(C) Mr. Magnant's testimony concerning an 8 percent adjustment to salaries of employees whose positions were reallocated upward after the effective date of the present contract was based upon an agreement entitled, "Guidelines for Implementation" (Joint Exhibit #II), negotiated between the State and the authorized bargaining agent (Vermont State Employees' Association), as authorized by Article XXXIV Section C, of the Collective Bargaining Agreement which became effective between the State and the authorized bargaining agent on July 1, 1979. Section IV(A)(1)(c) of the Guidelines applies, and is what Mr. Magnant was referring to in his testimony.

(D) On May 15, 1979, Grievant's gross weekly salary was \$183.00.

(E) On November 20, 1980, (the date of the final hearing) Grievant's gross weekly salary was \$235.00.

(F) On January 31, 1980, Grievant received a lump sum payment of \$659.55, which represented the retroactive (to July 1, 1979) adjustment to her salary as a result of her position's reallocation.

(G) Under Public Act Number 222 of the 1977 Adjourned Session of the Vermont Legislature, which became effective on July 2, 1978, the following weekly salary rates were fixed for pay scale 10 and 15 employees:

<u>PAY SCALE</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
10	\$175.00	\$263.00
15	236.50	354.00

(H) Effective July 1, 1979, Article XXXIV of the contract fixed the weekly salary rates for pay scale 10, 12, and 15 employees as follows:

<u>PAY SCALE</u>	<u>END OF PROBATION</u>	<u>MAXIMUM</u>
10	\$195.00	\$277.50
12	218.50	310.00
15	261.50	374.00

49. Title 3 V.S.A. §310(g) effective February 28, 1980, provides:

"The appeal procedures for classification and re-classification of an employee's or employees' positions shall be a subject for collective bargaining and when bargained this aspect of employment may be included as a grievance under section 902(14) of this title."

50. There is no evidence of bargaining history before the Board showing that this item has been subject to bargaining; and in fact, it is not now a part of the Agreements which are in evidence.

51. Article XVI, Section 8, of the current Agreement between the State and VSEA for the Non-Management Unit, effective July 1, 1979 to June 30, 1981 provides:

In appropriate cases, the time limits for filing and processing a grievance may be waived in order to permit retroactive pay to correct a long-standing injustice, provided in no case shall the retroactive pay pre-date the effective date of this agreement.

OPINION

I

STATE'S MOTION TO DISMISS

By its answer, filed on May 19, 1980, the State moved to dismiss the instant grievance on the grounds that Ms. Faivre's complaint did not in fact constitute a grievable matter as defined under 3 V.S.A. §902(14) and therefore the Board had no jurisdiction to hear her claim. That motion was later renewed and amended at the hearings on this matter and in the State's post-hearing brief to include as grounds for dismissing Ms. Faivre's grievance claims that: 1) the grievance was not timely filed at the Step II level; and 2) that she was barred from citing violations of certain sections of the Rules and Regulations in the Step IV grievance (before the Board) that had not been previously mentioned at the Step II or III level.

We consider the procedural issues first. The contract requires that grievances initiated at the Step II level such as this one here be filed "within fifteen workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to his complaint." (Article XVI, Section 4b). The personnel action which effected the reclassification of Grievant's position was submitted on January 14, 1980, (date on Grievant's Exhibit #7), and that action, the Grievant concedes, constitutes the occurrence which resulted in her initial complaint, filed on February 7, 1980, 19 workdays later. Absent any evidence introduced at the hearing as to the exact date Grievant became aware of the final Personnel Department determination of her status, plus the absence of any timeliness argument advanced by the State in either its Step II or Step III answer, we cannot find this appeal dismissable as untimely.

We also reject the State's argument that Grievant may not be allowed at the Step IV level to rely on violations of specific subsections of the Rules and Regulations relating to her claim. In the statement of her claim set forth in her Step II and III grievances, the Grievant simply cited "Section 5" of the Rules as a violation. In doing so, coupled with her statement of facts it is apparent that she alleges the specific sections which comprise Section 5 were being discriminatorily applied in her case. (See Grievant's Exhibits #9 and #11.) At no time in the grievance process did Grievant substantively change or add to the essence of her claim of discrimination under that section of the Rules and Regulations. The State was clearly on notice of the type and extent of her claim from the outset.

We do feel, however, that Grievant should be barred from raising any claim at the Step IV level with the mere citation of "Section 3" (pg. two, Step IV grievance, line 13). Unlike Section 5 which is comprised of several subsections related only to reclassification (the heading of Section 5), Section 3 (entitled "Statement of Policy") includes three subsections which deal with varied and relatively unrelated subjects as follows: 3.01, "employee conduct", 3.02, "political activity", 3.03, "discrimination". The simple citation of "Section 3" without a specific factual or legal statement of the claim here is insufficient and untimely notice to the State of any additional claim under the Rules and Regulations. Not much is required, but some notice must be given.

Finally, we do not find grounds to grant the State's motion to dismiss this grievance for lack of jurisdiction under 3 V.S.A. §926 and §902(14). We feel that under In re Grievance of McMahon, 136 Vt. 512, 513 (1978), this

matter is properly before us as a "claim of improper or unfair classification". We believe our Supreme Court was dispositive of this issue in McMahon, supra, and do not find the legislation amending 3 V.S.A. §310 to add section (g) (finding #49, infra) compels a different conclusion. Grievant's complaint here is distinguishable from that of Grievant McMahon who was appealing the State's denial of a request for reclassification, and not the manner in which one was effected. This grievance alleges facts which constitute a claim of discriminatory application of the Rules and Regulations set forth in Section 5, promulgated to implement the statutory purpose of 3 V.S.A. §310 pertaining to the State's responsibility to adopt a "uniform and equitable plan of classification". As such we believe it states a "grievance", 3 V.S.A. §902, over which we have jurisdiction.

II

MERITS OF CLAIM

Although we find no procedural defect with Grievant's claim, substantively we find it without merit.

In summary, Grievant claims that for a certain period of time, May 6, 1979 through July 1, 1979 during which time she was employed in a pay scale 10 position as a full-time General Duty Nurse at Brandon, she was performing the same duties as three other nursing professionals at Brandon employed as Nurse Advisors, a pay scale 15 position. She asserts that the reclassification effective retroactively to July 1, 1979 of all the aforementioned nursing positions on Brandon's treatment teams to Mental Retardation Nursing Specialist, a pay scale 12 position, is partial yet compelling proof of her claim of equal work, unequal pay.

We do not agree. First of all, the evidence does not convincingly support Grievant's claim that she was either similarly situated or similarly qualified during the period of alleged discrimination. By her own admission,

Grievant was not fully trained and cognizant of her full-time responsibilities on Team IV until approximately July 1, 1979, a date later set, coincidentally, as the effective date of her reclassification. Furthermore, testimony from Grievant and others indicated that the needs of and nursing services rendered to the four groups of Brandon residents varied with the commensurate levels of retardation experienced in each group. In general, it was undisputed that the most severely retarded residents (on Team I) were the most difficult to work with, while Grievant's group of residents (on Team IV) were the most amenable to treatment and, therefore, the easiest to work with.

Second, once the need to reclassify Grievant's position was discovered, she was treated fairly and in the same manner as hundreds of other employees similarly situated at Brandon insofar as all the personnel actions reclassifying the Brandon employees were made effective July 1, 1979. Given the magnitude of this project, we find the State exercised the discretion vested in it reasonably and equitably. The standard of review here in assessing Grievant's charge of discrimination is the same as it was in the Grievance of Richard Friel, 3 VLRB 51 (1980), where the grievant there, as well, did not claim discrimination involving a suspect classification such as race, sex or age, but instead claimed unequal protection under a contractual, or as here, under a regulatory provision. Citing In re: Burcomb, 13 Vt. 225 (1974) and Betts v. Weinberger, 351 F. Supp. 1122 (1975, Vt.), we said there:

the traditional guideline in assessing a charge of this nature is to find apparent discriminatory treatment justifiable if the respondent acted reasonably under the circumstances.

Grievance of Friel, supra at 54

In the cases of Barcomb and Betts cited above, claims of discriminatory treatment under social welfare and unemployment compensation regulations were not sustained where the State's classifications and determinations were reasonable under the facts.

Here too, the personnel departments of the State, Brandon and representatives of the Department of Mental Health acted reasonably, diligently, and in good faith to investigate the needs for particular reclassifications and to implement those determinations as efficiently and equitably as possible. C.f. Grievance of Robert D'Orazio, 1 VLRB 312 (1978), where we held that the State fell "far short" of the following test:

...[D]uring a period of involuntary reorganization, the statutory requirement for maintenance of current [job] descriptions is satisfied when evaluations are completed in the time it would take for competent management acting in good faith to perform the task with reasonable dispatch. Obviously, this standard involves a case by case determination considering all the facts and circumstances of each case.

Grievance of D'Orazio, supra at 318

Finally, we note that the parties have limited the scope of retroactive pay by Article XVI §8 of the Agreement. This Article by itself would bar Grievant's claim.

We note, in closing, that to grant the remedy possible on Grievant's arguments would conceivably require the perpetuation of inequities and not the operation of employer mechanisms meant to remedy retroactively unsuitable classifications.

ORDER

NOW, THEREFORE, based on these findings of fact, and for the foregoing reasons, it is hereby ORDERED that the grievance of PATRICIA FAIVRE be DISMISSED.

Dated this 22nd day of January, 1981, at Montpelier, Vermont.

*Appeal to Sup Ct.
Dismissed pursuant
to Sup 8/21/81*

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley Sr.
William G. Kemsley, Sr.