

VERMONT LABOR RELATIONS BOARD

PERSONNEL DESIGNATION OF:)	
)	DOCKET NO. 82-35
PAULINE DUBUQUE)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 7, 1982, the Vermont State Employees' Association ("VSEA") filed a personnel designation dispute with the Vermont Labor Relations Board on behalf of itself and Pauline Dubuque, contending the designation of Dubuque as a non-management employee by the Department of Personnel should be changed to provide she is, and has been since November 8, 1981, a supervisory employee.

On July 27, 1982, the State filed an Answer and a Motion to Dismiss the dispute on the ground that it was filed out of time. On January 19, 1983, VSEA filed a Memorandum in opposition to State's Motion to Dismiss.

Hearings were held before the full Board on January 20, 1983, and March 10, 1983. Michael R. Zimmerman, VSEA Staff Attorney, represented VSEA and Dubuque. The State was represented by Assistant Attorney General Scott Cameron.

At the January 10, 1983, hearing, the parties stipulated the Board would not consider in this case the position held by Marilyn Bagielto, who was selected to fill a permanent position in the Vital Records Unit on approximately July 1, 1982 (after the dispute here was filed with the Board). Accordingly, the Board has not considered any testimony regarding that position in determining whether Dubuque is a supervisor.

VSEA filed Requested Findings of Fact and Memoranda of Law on April 12, 1983. The State filed no briefs.

FINDINGS OF FACT

1. At all times relevant herein, Pauline Dubuque has worked in the Public Health Statistics Division of the Department of Health. That division is headed by a Director of Public Health Statistics, who reports directly to the Commissioner of the Department of Health. At all times relevant herein, the Director of Public Health Statistics was Mary Anne Freedman, whose position is designated as "managerial" under 3 VSA §902(18). (Disputant's Exhibit 2, Disputant's Exhibit 4).

2. In January of 1982, the Health Statistics Division underwent a reorganization and, as a result, Dubuque, who was a Typist C at the time, assumed additional duties (Disputant's Exhibit 3).

3. By "Report of Personnel Action", dated March 30, 1982, Claude Magnant, Director of Personnel Operations, Department of Personnel, reported to Jean Gobbi, of the Department of Health Personnel Office, that, effective November 8, 1981, Dubuque's position was reallocated upward from Typist C (Pay Scale 8) to Administrative Assistant A (Pay Scale 11)(Disputant's Exhibit 1). By personnel action, submitted on April 5, 1982, Dubuque's position was, in accordance with Magnant's report, reallocated upward effective November 8, 1981. Both documents indicated that Dubuque's new position would be designated non-management (as her Typist C position had been)(Disputant's Exhibit 5).

4. The determination that Dubuque was properly designated a non-management employee was made by Magnant. In his determination, Magnant disregarded the Board's decision in Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60 (1982) and Department of Public Safety Personnel Designation Disputes, 5 VLRB 141 (1982), and applied a higher standard than used by the Board to determine whether Dubuque was a supervisor.

5. On April 6, 1982, Dubuque received the March 30, 1982, "Report of Personnel Action", and from it became aware her position had been designated as Non-Management (Disputant's Exhibit 5, page 1; Disputant's Exhibit 6).

6. The Division of Public Health Statistics is divided into three units, as follows:

A) Data Processing Unit - This unit is comprised of eight positions, headed by a Data Processing Chief, Bob Ciechanowicz. Ciechanowicz reports directly to Freedman, and is designated as a supervisory employee.

B) Statistics Unit - This unit is comprised of five positions, headed by a Senior Research and Statistics Analyst, David Jillson. Jillson reports directly to Freedman, and is designated as a supervisory employee.

C) Vital Records Unit - At all times relevant, this unit consisted of three full-time positions and was headed by Dubuque. Dubuque is the only unit head in the Public Health Statistics Division who is not designated as supervisory (Disputant's Exhibit 4).

7. Vital records are certificates or reports of birth, death, spontaneous fetal death, induced termination of pregnancy, marriage and

divorce. The Vital Records Unit is responsible for the registration of current certification, data preparation, field program activities, the custodianship of the records, the legal aspects of registration, and the supervision of vital registration (Disputant's Exhibit 2).

8. At all times relevant, there were two full-time permanent status employees in the Vital Records Unit besides Dubuque, a Vital Records Specialist and a Typist C.

9. Generally, Freedman does not closely supervise Dubuque's work. She sees Dubuque only about once a week. Many of the functions of the Vital Records Unit are statutorily set, and are routine. However, Freedman relies on Dubuque to use her judgment to ensure the unit functions properly and the day-to-day work of the Vital Records Unit is accomplished. It is Dubuque's responsibility to make some procedural decisions to enforce the statutes (eg. processing records and requests timely and efficiently). In so doing, she directs the work of the Vital Records Specialist and Typist C.

10. Dubuque writes the performance evaluations of employees in the Vital Records Unit, and signs those evaluations as those employees' rating official. Freedman signs the performance evaluations as the rating official's immediate supervisor.

11. Recently, Dubuque recommended to Freedman that two employees in the Vital Records Unit be placed in warning periods. Based upon Dubuque's recommendation, Freedman recommended to the Acting Commissioner of Health, Dr. Roberta Coffin, that those employees be placed in warning periods. As a result, those employees were placed in warning periods.

The letter announcing that action was signed by Coffin, and the performance evaluations supporting that action were prepared and signed by Dubuque, as rating official, and signed by Freedman, as the rating official's immediate supervisor.

12. Other than recommending the imposition of the warning period, Dubuque has not imposed discipline on the employees of the Vital Records Unit.

13. Dubuque approves leave requests submitted by the employees in the Vital Records Unit. She also approves or disapproves employees' "flex time" schedules. Freedman is not involved in these decisions.

14. Dubuque has established a number of policies for the Vital Records Unit since becoming its head, including:

A) instituting a policy requiring that requests for information concerning birth certificates be in writing, and that a fee of \$2.00 be charged for each request. Previously such requests were handled by phone, taking up an inordinate amount of employees' time;

B) instituting a cross-training program for the unit so that each employee of the unit be able to perform the duties of every other employee in the unit in order to cover for employees when they were absent;

C) developing a set of instructions so that employees will know when to make inquiry of doctors when the cause of death listed on a new death certificate is inadequate;

D) instituting a policy of stamping the word "deceased" on the face of sold copies of birth certificates of decedents because

Vermont law allows anyone to purchase any birth certificate and because birth certificates of deceased persons have increasingly been used in various criminal schemes.

15. Dubuque has directed employees in the Vital Records Unit in the implementation of these policy changes.

16. Included among Dubuque's duties are training town clerks who act as local registrars, training and assisting hospital record keepers and funeral directors, and representing the Vital Records Unit at various civic functions. These duties require Dubuque to travel out of the office. In 1982, she was out of the office on field visits 35 1/4 days.

17. Since becoming head of the Vital Records Unit, Dubuque has attended two training sessions for supervisors, one workshop in October, 1982, entitled "Supervision in State Government" and the other in January, 1983, entitled "Comprehensive Supervision Workshop" (Disputant's Exhibit 9).

18. Dubuque coordinates with the Data Processing Unit to ensure a smooth work flow between the Vital Records Unit and the Data Processing Unit.

OPINION

Motion to Dismiss

The State contends this designation dispute should be dismissed on the grounds that it was filed out of time. Dubuque was notified her position was Non-Management on April 6, 1982, and filed her designation dispute on June 7, 1982. The State contends this is untimely because it was filed outside the Board's 30-day limit for filing such disputes.

Contrary to the State's claim, neither the governing statute, the State Employee Labor Relations Act, nor the Board have established time limits for filing of designation disputes. Taking into consideration all the circumstances, including the absence of established time limits, we conclude the dispute was filed within a reasonable time.

Merits

At issue is whether Pauline Dubuque, Administrative Assistant A in the Vital Records Unit of the Health Department's Division of Public Health Statistics, is a supervisory employee.

"Supervisory employee" is defined in 3 VSA §902(16) as:

an individual finally determined by the Board as having authority in the interest of the employer to hire, transfer, suspend, layoff, 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 exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

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" over at least two employees. Health Department Personnel Designation Dispute, 5 VLRB 245 (1982). Department of Public Safety Personnel Designation Disputes, 5 VLRB 141 (1982). Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60 (1982). cf. Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980)

Although this is a close issue, we believe Dubuque is a supervisory employee in that she has responsibility to direct and effectively recommend disciplinary action against two employees in the Vital Records Unit, a Vital Records Specialist and a Typist C, and the exercise of such authority requires independent judgment.

With regard to directing the employees, there is some question as to how much independent judgment Dubuque exercises since many of the functions of the Vital Records Unit are statutorily set and are routine. However, we are convinced she exercises some independent judgment since her supervisor, Division Director Mary Anne Freedman, leaves the day-to-day work of the unit to Dubuque's supervision and relies on her to use her judgment to ensure the unit functions properly. In this regard, Dubuque is responsible for ensuring requests and records are processed quickly and efficiently. She has used her judgment to establish a number of policies for the unit since becoming its head, and has directed unit employees in the implementation of these policy changes. Other indications that she responsibly directs these employees is that she conducts their performance evaluations and approves their leave requests and "flex-time" schedules.

Dubuque's effective authority to recommend disciplinary action against employees is demonstrated by her recent recommendation to Freedman that two employees in the unit be placed in warning periods and those employees were ultimately placed in warning periods by the Commissioner of Health. Placing employees in a warning period is a disciplinary action because such action may be the first step in the ultimate dismissal

of an employee for performance reasons and dismissal for performance reasons is a form of discipline. In re Grievance of Muzzy, 141 Vt. 463 (1982).

A final issue before us is the effective date of Dubuque's status as a supervisory employee. We believe it appropriate to make her a supervisor as of the date she filed her designation dispute with the Board, June 7, 1982.

ORDER

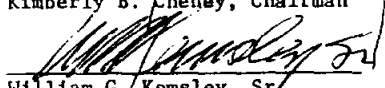
Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED:

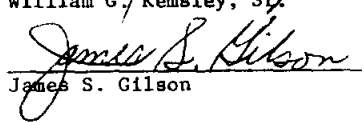
The designation of the Commissioner of Personnel in the Department of Health, making Pauline Dubuque, Administrative Assistant A in the Vital Records Unit, Division of Public Health Statistics, a Non-Management employee is REVERSED. Dubuque is a supervisory employee as defined in 3 VSA §902(16), and shall become a member of the Supervisory Unit, effective June 7, 1982. She shall receive all wages, including pay increases and other benefits she would have been entitled to receive had she been a supervisor from June 7, 1982, to the present. The parties shall, within 10 days of the date of this order, attempt to determine the monies owed Dubuque and submit a stipulation to the Board indicating monies owed her. Such stipulation will be incorporated into a final order of the Board. Failing agreement on the amount of monies due Dubuque, a hearing will be scheduled before the Board.

Dated this 9th day of June, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson

VERMONT LABOR RELATIONS BOARD

PERSONNEL DESIGNATION OF:

PAULINE DUBUQUE

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DOCKET NO. 82-35

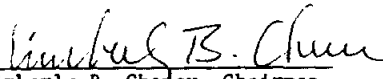
ORDER

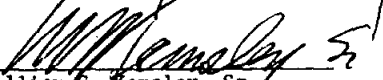
Based on the findings of fact and for the reasons given in the June 9, 1983, Findings of Fact, Opinion and Order, and based on a June 22, 1983, stipulation of the parties as to the monies owed Pauline Dubuque, it is hereby ORDERED:

1. The designation of the Commissioner of Personnel in the Department of Health, making Pauline Dubuque, Administrative Assistant A in the Vital Records Unit, Division of Public Health Statistics, a Non-Management employee is REVERSED. Dubuque is a supervisory employee as defined in 3 VSA §902(16), and shall become a member of the Supervisory Unit, effective June 7, 1982; and
2. The State of Vermont shall pay to Grievant \$500.00, which sum represents the amount Dubuque was entitled to but did not receive as a supervisory employee for the period from July 4, 1982 to June 17, 1983; and
3. Dubuque's hourly rate of pay shall be \$7.34 as of the pay period beginning June 19, 1983.

Dated this 30th day of June, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson

VERMONT LABOR RELATIONS BOARD

IN RE: DESIGNATION OF POSITION }
OF PAULINE DUBUQUE }

Docket No. 82-35

AMENDED ORDER

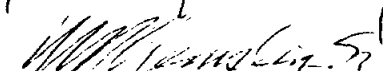
The parties hereto having submitted a stipulation for amended Order,
IT IS ORDERED THAT:

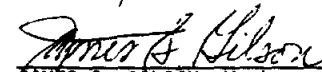
1. The Order dated June 30, 1983, shall be, and hereby is, amended by adding the following:
 4. The State of Vermont shall forthwith credit DUBUQUE with one (1) day of personal leave for fiscal year 1983. Notwithstanding the provisions of Article 3, Section 6 of the Supervisory Unit Agreement between the State of Vermont and the Vermont State Employees' Association, Inc., effective July 1, 1982, such personal leave day may be taken at a time mutually agreed upon by the employee and her supervisor or appointing authority up until June 30, 1984. At that time, if the personal leave day has not been used, the provisions of Article 3, Section 9 of the Supervisory Unit Agreement (referenced above) shall apply as if the personal leave day were accrued for fiscal year 1984.

Dated this 15th day of December, 1983, at Montpelier,
Vermont.

VERMONT LABOR RELATIONS BOARD


KIMBERLY B. CHONEY, Chairman


WILLIAM G. KEMSLEY, Sr., Member


JAMES S. GILSON, Member