

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

ANDREW FREDERICK

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DOCKET NO. 86-65

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 8, 1986, the Vermont State Employees Association ("VSEA") filed a grievance on behalf of Andrew Frederick ("Grievant"). The grievance alleged that the State of Vermont, Department of Social Welfare ("Employer") violated Article 15 of the collective bargaining contract between the State and the VSEA, effective for the period July 1, 1984, to June 30, 1986 ("Contract") by giving Grievant an adverse performance evaluation and not warning him during the rating period of performance deficiencies.

A hearing was held before Board Members Louis A. Toepfer, Acting Chairman, William G. Kemsley, Sr., and Catherine L. Frank on May 21, 1987. Assistant Attorney General Michael Seibert represented the Employer. VSEA Staff Attorney Michael Zimmerman represented Grievant. Briefs were due to be filed by May 28, 1987, but both parties elected not to file briefs.

FINDINGS OF FACT

1. At all times relevant herein, Grievant's position title was Child Support Specialist for the State Department of Social Welfare.
2. On April 29, 1986, Grievant received an annual performance evaluation covering the period March 16, 1985 to March 15, 1986. On the evaluation, Grievant received an overall rating of "3" ("consistently meets job requirements/standards") and "3's" in each individual

rating factor. The evaluation was prepared by Allan Merritt, Child Support Field Supervisor, whom was Grievant's supervisor during the rating period. The evaluation, as amended through the grievance procedure, contains the following comments, which are grieved herein:

A. 1. JOB KNOWLEDGE AND SKILLS

Andrew's performance has been satisfactory in this area, but there were times, (i.e., Tax Refund overpayments) he did not follow IV-D policies and procedures.

F. AREAS FOR IMPROVEMENT:

1. Communication skills with coworkers - deciding when use of the MAIL system is appropriate and when one on one discussions are necessary.

2. Andrew needs to insure IV-D policies and procedures are followed and understood in every respect and at all times. (See problems noted in Section A 1.) This may just be a matter of insuring he concentrates on the task at hand. I would like him to come more freely to me, as his supervisor, with any problems which arise. This could help to eliminate a communications gap which has sometimes in the past led to confusion and misunderstandings between us. Andrew should transfer his increased enthusiasm demonstrated in relation to the testing program to normal IV-D duties when he returns to them. To keep up with his coworkers, he will have to be prepared to produce more when he returns, as day to day casework is much faster paced than testing. I encourage him to work on organization and neatness in the work area. (State's Exhibit A).

3. During the rating period, in October, 1985, Merritt spoke to Grievant about the office procedure when he received complaints concerning tax refund overpayments. Grievant had referred a complaint in that area to another employee in the office. Merritt told Grievant that he could have handled the complaint himself if he had thought through the process and followed office procedures.

4. During July or August of 1985, Merritt spoke to Grievant about communicating with an account clerk, located on another floor in the building in which Grievant worked, by use of the office computer. The

account clerk had complained to Merritt that Grievant had asked her a series of questions, one at a time on the computer, which could have been asked all at once in person. Merritt told Grievant that it would be better for him to communicate face to face in such situations.

5. In February, 1986, Grievant and Merritt had a lengthy discussion concerning communications among them and their respective responsibilities.

6. Article 15 of the Contract, entitled "Performance Evaluation," provides in pertinent part as follows:

...4. The immediate supervisor shall discuss the rating with the employee, calling attention to particular areas of performance and, when necessary, pointing out specific ways in which performance may be improved. During the rating year, the immediate supervisor shall call the employee's attention to work deficiencies which may adversely affect a rating, and, where appropriate, to possible areas of improvement.

...6. A "3", "4", or "5" overall performance evaluation ("Consistently meets job requirements/standards", "Frequently exceeds job requirements/standards", "Consistently and substantially exceeds job requirements/standards") shall be grievable up to, but not beyond, Sept III of the grievance procedure, provided, however, that adverse comments and any subfactor ratings of less than "3" on any evaluation are fully grievable. The Vermont Labor Relations Board shall not have the authority to change any numerical rating, but may remand the rating to the employer for reconsideration consistent with the VLRB ruling on the merits. (Grievant's Exhibit 1).

OPINION

Grievant contends that various comments contained on his annual performance evaluation (see Finding of Fact #2) violated Article 15 of the Contract in that they were adverse comments and constituted purported work deficiencies not called to Grievant's attention during the rating period.

Under the applicable contract language, any work deficiencies noted on an annual performance adversely affect a rating since their

presence could conceivably hinder an employee's opportunities for promotion, transfer or employment outside State government. Grievance of Rathburn, 5 VLRB 286, 292 (1982). Grievance of Ewell, 5 VLRB 166 (1982).

We conclude that the comments grieved are not adverse. In all instances, the comments made were more in the line of offering constructive suggestions to improve already satisfactory performance than pointing out work deficiencies. For us to decide these comments are adverse may inhibit supervisors from providing positive, constructive feedback to employees on how they may improve their performance. We believe the Contract language was not intended to provide such a result.

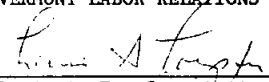
ORDER

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

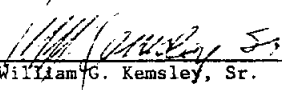
The Grievance of Andrew Frederick is DISMISSED.

Dated the 15th day of June, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Louis A. Toepfer, Acting Chairman



William G. Kemsley, Sr.

Catherine L. Frank