

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

JAMES GIFFIN

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DOCKET NO. 86-69

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 James Giffin ("Grievant"). The grievance alleged that the State of Vermont, Department of Mental Health ("Employer") violated Article 49 of the contract between the State and VSEA for the Non-Management Unit, effective for the period July 1, 1984 to June 30, 1986 ("1984-86 Contract"), by refusing to grant Grievant an 8 percent promotional pay increase, retroactive to December 1984, to which he was entitled by virtue of a promotion from a Pay Scale 17 to a Pay Scale 18 position.

A hearing was held before Board Members Charles H. McHugh, Chairman; William G. Kemsley, Sr.; and Louis A. Toepfer on June 18, 1987. Assistant Attorney General Michael Seibert represented the Employer. VSEA Staff Attorney Michael Zimmerman represented Grievant.

Briefs were filed by Grievant and the Employer on June 25, 1987.

FINDINGS OF FACT

1. Grievant has been continuously employed by the Department of Mental Health as a classified employee since 1980. For the period from June 1980 until December 1984, Grievant was a Mental Health Community Program Specialist, Pay Scale 17.

2. In December 1984, Grievant's duties changed, and he assumed financial responsibility for the Division of Mental Health, one of two divisions within the Department of Mental Health.

3. At the time Grievant's duties changed, the State was in the midst of the "Willis Study", a comprehensive review of all classified positions in State service.

4. In January, 1985, the Employer sent a position description form for Grievant's position to the State Department of Personnel, for use in the Willis Study.

5. In May, 1985, the Employer submitted a request to the Department of Personnel, parallel to but separate from the Willis Study, for the upward reallocation of Grievant's position from Pay Scale 17 to Pay Scale 18.

6. Pursuant to that request, Richard Boulanger, a Personnel job analyst in the classification unit of the Department of Personnel, conducted a "desk audit" to determine whether the change in Grievant's duties warranted any change in Grievant's job title or pay scale classification. As part of his desk audit, Boulanger interviewed Grievant to determine his duties, and applied the so-called "Hay Point Analysis" to Grievant's duties.

7. By June 5, 1985, Boulanger had completed his review of Grievant's position, and had concluded that, notwithstanding the changes in Grievant's duties, his position should not be upgraded to a Pay Scale 18. On June 5, 1985, Boulanger prepared a report of personnel action concerning Grievant's position, which provided as follows:

Within the class Mental Health Community Programs Consultant, ...PS-17 ...Associated class: General (is) created. ...This notice will have no effect upon the salary or status of the incumbent.

That notice reflected the final decision resulting from the "desk audit" (Grievant's Exhibit 7).

8. Boulanger sent the report of personnel action to the personnel officer for the Employer, Susan Ocker. Ocker received the form on June 11, 1985. Grievant was not sent a copy of the report and did not see the report until one month before the Board hearing herein.

9. Grievant was sent a Personnel Action form at some point in June or early July concerning the action, which indicated that Grievant's position title had been changed from Mental Health Community Programs Specialist, Pay Scale 17, to Mental Health Community Programs Consultant: General, Pay Scale 17. It also contained the following language in the block entitled "Action Requested:" "Change of title only" (Grievant's Exhibit 6, Page 2).

10. On July 5, 1985, Ocker sent Grievant a note, which provided as follows:

Jim: This is not the final version according to Richard Boulanger at State Personnel. Sue O.

Attached to her note was a revised class specification sent to her by Boulanger after the desk audit was performed (Grievant's Exhibit 6, Page 1).

11. After receiving the personnel action form and the note with attached class specification, Grievant believed that Boulanger would not complete the desk audit and that the personnel action form was something to "tide him over" until the Willis Study was completed.

12. At some point, apparently shortly thereafter, Grievant telephoned Boulanger and discussed with him the potential effect of the Willis Study on the classification of his job. Boulanger did not discuss with Grievant the desk audit he did on Grievant's position. Boulanger did not indicate to Grievant that the results of the Willis Study would be retroactively applied to his position.

13. As of the summer of 1985, the State and VSEA had not reached any agreement concerning how the Willis Study was going to be implemented and whether classification decisions made as a result of the study would be retroactive. No representative of the State or VSEA informed Grievant that the Willis Study decision would be applied retroactively to him.

14. Beginning in June, 1985, the Department of Personnel decided to do no further desk audits of positions until the Willis Study was completed.

15. In its analysis of positions in State government, the Willis Study used the Norman Willis Points System, which system employs different criteria than the Hays Point System used by Boulanger in the desk audit he did of Grievant's position.

16. By letter of December 18, 1985, the Department of Personnel informed Grievant that, as a result of the Willis Study, his position was appropriately included in the class Accountant B. This corresponded to Pay Scale 16, one pay scale lower than Grievant's existing Pay Scale 17 (Grievant's Exhibit 8).

17. By letter of January 15, 1986, Grievant requested review of the initial Willis Study decision and requested that his position be assigned to a higher pay scale (Grievant's Exhibit 9).

18. On September 2, 1986, Scott Cameron, Commissioner of Personnel, informed Grievant that, as a result of his appeal, Willis had recommended that his position be placed in the class Accountant C, Pay Scale 21. Cameron informed Grievant that "(t)his does not represent an upgrade from the present pay scale of your position" (Grievant's Exhibit 11).

19. In the contract in effect from July 1, 1986, to June 30, 1988, VSEA and the State agreed that positions were not upgraded as a result of the Willis Study unless they were assigned to a pay grade at least five levels higher than the pay scale to which the position was formerly assigned. The State and VSEA also agreed in the contract that, even in the event of an upgrade under Willis, such upgrade had no retroactive effect (Grievant's Exhibit 1, Page 18).

20. Under the pre-Willis classification plan, Accountant C was a Pay Scale 18 position.

21. The 1984-86 Contract provided, in pertinent part, as follows:

ARTICLE 19 CLASSIFICATION GRIEVANCES

SECTION 1

A classification grievance is defined as a dispute over whether the position of an individual employee or the positions of a group of employees should be reallocated from one class to another existing class upward at the employee's request or downward at the request of management...

SECTION 2

A grievant seeking to be reallocated to a higher class or to avoid being reallocated downward shall submit to his appointing authority (or his designee) supporting written information and arguments. The grievance with required documentation will be forwarded by the appointing authority to the Vermont Department of Personnel within five workdays of receipt. The Personnel Department will review the

grievance, conduct a job audit, and make its determination normally within one month for a single position. Multiple positions will normally require more than one month.

SECTION 3.

An employee aggrieved by the decision of the Personnel Department may appeal to the Classification Panel to be established by the parties.

The grievance will be waived unless filed within 30 days after receipt of the Personnel Department's decision.

ARTICLE 50 SALARIES AND WAGES

... 9. Rate After Promotion

Upon promotion from one position to another, a permanent status... employee will receive a salary increase in accordance with the following:

One pay scale... 8 percent...or to the end-of-probation rate of the new pay scale, whichever is greater, subject to the maximum of that pay scale...

(Grievant's Exhibit 1, Pages 11 and 12)

OPINION

At issue is whether Grievant is entitled to an 8 percent promotional pay increase under Article 50 of the 1984-86 Contract.

Grievant's theory for claiming entitlement to the increase is as follows: In December of 1984, when Grievant's duties changed, the Contract provided that in the event of a one-pay-scale promotion, an employee was entitled to a raise of 8 percent. Had Grievant been properly informed of the results of Richard Boulanger's desk audit (and disabused of the notion that the Department of Personnel, in essence, was deferring to the Willis Study), he could have filed a timely classification grievance, and, had the ultimate outcome been the same as the Willis Study result (i.e., a determination that

Grievant was an Accountant C), then Grievant would have been entitled to an 8 percent pay increase by virtue of his promotion from Pay Scale 17 to Pay Scale 18, since Accountant C was a Pay Scale 18 position in the pre-Willis Study classification plan.

A necessary linchpin of Grievant's theory for his grievance to be sustained is for the Board to conclude that Grievant did not have sufficient notice of the results of Boulanger's desk audit in June 1985 to file a timely classification grievance.

We conclude that he did have sufficient notice. The personnel action form sent to Grievant in June or July 1985, indicating that Grievant's position title had been changed and that the action taken was a change of title only, was sufficient on its face to notify Grievant that the Department of Personnel, through Boulanger's desk audit, had denied the request of Grievant's employer for an upward reallocation of his position. By that time, Grievant was aware his employer had submitted such a request and had been interviewed by Boulanger as part of the audit. We have concluded by a preponderance of the evidence that Grievant was not otherwise misled that the Department of Personnel had not made a final decision on the reallocation. Under the circumstances, the personnel action form provided sufficient notice to Grievant that the Department of Personnel had determined his position should not be reallocated upward.

His failure to grieve that decision within 30 days after receipt of the personnel action form meant he waived his right to grieve the decision pursuant to Article 19, Section 3 of the 1984-86 Contract. Given his waiver, his claim in this grievance that he was entitled to

a promotional pay increase by virtue of his change of duties in December is clearly untimely. Accordingly, his grievance must be dismissed.

After the conclusion of the hearing, Grievant requested that the Board reopen the record to accept into evidence two class specifications for the class Accountant C. Given our decision herein, the two documents are irrelevant and we need not rule on their admissibility.

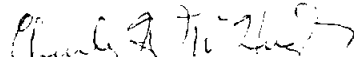
ORDER

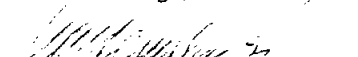
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

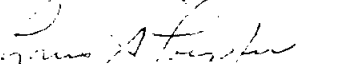
The Grievance of James Giffin is DISMISSED.

Dated this 17th day of September, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


William G. Kemsley, Sr.


Louis A. Toepfer