

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

EDITH BIRCHARD AND THE
VERMONT STATE COLLEGES STAFF
FEDERATION, AFT LOCAL 4023,
AFL-CIO

DOCKET NO. 86-75

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 12, 1986, the Vermont State Colleges Staff Federation, AFT Local 4023, AFL-CIO ("Federation") and Edith Birchard filed a grievance with the Vermont Labor Relations Board. The grievance alleged that the Vermont State Colleges ("Colleges") violated Articles 3 and 27 of the collective bargaining agreement between the Colleges and the Federation, effective July 1, 1985 to June 30, 1987 ("Contract"), by failure to notify the Federation and give them an opportunity to bargain the job content for Edith Birchard and by assigning Birchard data clerk duties, while paying her Secretary I salary.

A hearing was held before Board Members Dinah Yessne, Acting Chairperson; William G. Kemsley, Sr.; and Louis A. Toepfer on June 8, 1987. Attorney Michael Schein represented Grievants. Attorney Nicholas DiGiovanni Jr., represented the Colleges.

Briefs were filed by the parties on June 22, 1987.

FINDINGS OF FACT

1. Article 3 of the Contract provides in pertinent part as follows:

...

2. ...Management rights... include, but only after first giving the Federation notice and the opportunity to

bargain the right:

...

(b) to change job content and classify and reclassify... (Joint Exhibit 1).

2. Article 27 of the Contract provides that the position classification system effective June 11, 1980 shall remain in full force and effect (Joint Exhibit 1). Under that system, the following job classifications with accompanying pertinent information on the applicable job descriptions, exist:

1) Secretary I - Grade 4

DEFINITION: Perform a variety of the more repetitive clerical and secretarial duties in assigned office, following prescribed or well-defined procedures, working under general supervision.

EXAMPLE OF WORK PERFORMED:

Types letters, reports, bulletins vouchers, purchase orders, forms and memoranda from plain copy or rough drafts. Stamps incoming mail and prepares outgoing correspondence and other material for mailing. Cuts and prepares stencils. Acts as a receptionist and directs callers to proper persons. Answers the telephone, takes messages and gives out routine information. Does simple filing and performs other clerical duties. May occasionally take shorthand and transcribe dictation or transcribe material from mechanical recording machines. Related work as required. May be required to direct work-study students.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

...ability to operate common office machines...
(Colleges Exhibit 10).

2) Secretary II - Grade 5

DEFINITION:

Perform a wide variety of clerical and secretarial duties to assist with the maintenance of assigned office functions, following well-defined procedures and under general supervision.

EXAMPLES OF WORK PERFORMED:

Types letters, reports, bulletins, vouchers, purchase orders, payrolls, forms and memoranda from rough copy, frequently requiring independent action on problems encountered. Takes and transcribes shorthand that may require considerable knowledge of technical terminology. Compiles material for replies to correspondence. Answers routine mail giving information not requiring interpretation of policy. Checks and processes vouchers for payment. Maintains files. Performs various bookkeeping or fiscal functions and has responsibility for custody and maintenance of various records such as time under general supervision. May supervise other clerical or student employees. Related work as required

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

Considerable knowledge of office practices, procedures and equipment ...

(Federation Exhibit Q).

3) Data Clerk - Grade 6

DEFINITION

Perform a wide variety of technical and clerical work involving gathering, organizing and processing and storing information, frequently resulting from use of computerized data bases. Elementary data analysis is required. Duties may entail incidental typing or data entry. Works under general supervision.

EXAMPLES OF WORK PERFORMED

Receives information from the Colleges and Office of the Chancellor. Selects, records and checks relevant data and transcribes it onto appropriate forms or records it by code. Organizes numerical or narrative material into a format for immediate analysis or referral to a data processing unit. Determines what information requires further revision, clarification or mathematical manipulation before processing or analyzing. Revises, clarifies and mathematically manipulates information, as appropriate. May prepare visual displays of data, including logging, graphing, charting and summarizing for inclusion in reports. Researches and resolves errors made in coded and computerized data. Answers questions using information from organized data and elementary analysis of material. May supervise and assist in training of temporary or student employees. Performs a variety of clerical duties, such as answering letters and phone calls, preparing form letters and checking information on documents. Related work as required (Federation Exhibit O).

3. Under Article 27, a reclassification panel consisting of four employees picked by the Federation president and four persons from the administration receives requests for position reclassification from employees within the system. The parties provided in the Contract that the joint panel would make recommendations to the chancellor on all requests and he/she would issue a final decision on such requests. The parties provided in Article 27, Section 6 that the chancellor's decision "shall not be subject to the grievance and arbitration provisions of this agreement" (Joint Exhibit 1).

4. Effective January 31, 1983, Edith Birchard was hired as a Secretary I, Grade 4 at Lyndon State College. She was hired to work half-time in the Upward Bound office and half-time in the admissions office. Only Birchard's work in the admissions office is involved in this grievance. Accompanying Birchard's letter of appointment was a job description for her admissions job which provided in pertinent part:

<u>POSITION:</u>	Admissions Secretary (Part-time) Secretary I, Grade 4, Represented Staff
<u>RESPONSIBILITIES:</u>	<u>General:</u> Perform a variety of the more repetitive clerical and secretarial duties in the admissions office, following prescribed or well-defined procedures for working under general supervision of director. <u>Specific:</u> *Typing, filing, copying, answer telephone, handle correspondence, schedule interviews, operate mag card typewriter, deal with student population. *Other work as required by the Director. (Federation Exhibit A)

5. On Birchard's first day of employment, William Laramée, Dean of Student Affairs, informed her that her primary assignment would be

to operate a computer called the VAX system computer. From her date of hire forward, Birchard's job duties consisted of approximately 85 percent data processing functions. She reviews student applications and enters pertinent information from these applications into the computer. She often receives requests for various reports from her supervisors or from faculty members concerning information on applicants (e.g. geographic region, extra-curricular and sports activities) which must be retrieved by her from the VAX system. As part of her duties, Birchard represents the admissions office at the monthly VAX users meeting at the College central office in Waterbury. Birchard is responsible for keeping abreast of developments affecting the VAX system. In addition to her data processing functions, Birchard spends approximately 10 percent of her time processing applications and 5 percent on such duties as answering the telephone, typing, correspondence, recruitment activities and dealing with students, staff and faculty (Federation Exhibit P).

6. Birchard filed no grievance concerning the job content or classification of her position from January 1983 until September 1986. In the week prior to September 15, 1986, Birchard spoke with another VAX user at the Vermont Technical College admissions office, Aline Trask, and learned that she was classified as Grade 6. Birchard then learned for the first time of the existence of the Data Clerk, Grade 6 position.

7. On September 15, 1986, Birchard applied for reclassification pursuant to Article 27 of the Contract, seeking to upgrade and reclassify her position from Secretary I, Grade 4, to Data Clerk, Grade 6. The reclassification panel rejected the request for reclassification to Data Clerk, Grade 6, but it did recommend reclassifying Birchard to

Secretary II, Grade 5. The recommendation for reclassification to Grade 5 applied to her duties in both the Admissions office and the Upward Bound office. Chancellor Charles Bunting approved the panel's recommendation on October 27, and Birchard was notified of the upgrade on November 3, 1986 (Federation Exhibit P, Colleges Exhibits 11 through 13).

8. On September 15, 1986, the same day she applied for reclassification, Birchard and the Federation filed the grievance at issue herein.

9. Had Birchard been originally hired at base pay for a Grade 6 job for the one-half of her time spent in admissions, and at Grade 4 for her Upward Bound job, her salary as of the date of hearing would have been \$12,526.00, subject to a 4 1/2 percent raise July 1, 1987. The lump sum difference between what she would have been paid under these circumstances and what she was paid through June 30, 1987 is \$3,150.00 (Federation Exhibit R).

10. Had Birchard been originally hired at base pay for a Grade 5 for one-half time, and Grade 4 for the other one-half time, her salary as of the date of the hearing would have been \$12,102.00, subject to a 4 1/2 percent increase July 1, 1987. The lump sum difference between what she would have been paid under these circumstances and what she was paid through June 30, 1987 is \$1,295.79 (Federation Exhibit R).

MAJORITY OPINION

Grievants contend that the Colleges violated Articles 3 and 27 of the Contract by 1) failure to notify the Federation and give them an opportunity to bargain the job content of the position now held by Edith Birchard, and 2) assigning Birchard Grade 6 Data Clerk duties, while paying her Grade 4 Secretary I salary.

We conclude we are without jurisdiction over the grievance to the extent that it claims that the Colleges violated the contract by assigning Birchard Grade 6 Data Clerk duties, while hiring her and paying her pursuant to a Grade 4 Secretary I salary, for two reasons. First, in making such a claim, Grievants are essentially appealing the Reclassification Panel's and the Chancellor's determination that Birchard not be reclassified to Grade 6. Such appeals are specifically prohibited by Article 27, Section 6, of the Contract, which provides that the Chancellor's reclassification decision "shall not be subject to the grievance and arbitration provisions of this agreement." An employee who first elects to pursue reclassification through the position reclassification panel route, as Birchard did here, is limited to that outcome. c.f. Grievance of Marcotte, 9 VLRB 143 (1986).

Second, this claim is untimely filed as a personal grievance by Birchard. When Birchard was hired, she was given a job description for a Secretary I, Grade 4. As she testified, however, from her first day on the job in January, 1982, it was clear to her that her primary duties would be data entry. Thus, from that first day forward, Birchard was aware of the discrepancy between her job description and the actual job content. When an employee becomes aware, or reasonably could have been aware, of performing duties different from the stated job duties of the position they occupy, as Grievant became aware here at the inception of her employment, the employee has 30 days under Article 9 of the Contract to grieve that they are performing duties outside of their job classification. Marcotte, supra, at 153-155. This Grievant failed to do. Her failure to timely grieve meant that she was then restricted to pursuing reclassification through the reclassification panel route.

We turn to addressing whether the Colleges violated the Contract by failure to notify the Federation and give the Federation an opportunity to bargain the job content of the position now held by Birchard. Where the job description for a position does not adequately reflect the duties performed by the employee in that position, then the "job content" of that position has been changed, and the Colleges are required under Article 3, Section 2, to give the Federation notice and an opportunity to bargain concerning the change. c.f. Marcotte, supra, at 152. It is evident that the Secretary I, Grade 4, job description does not reflect the duties performed by Birchard since her hire.

The Colleges contend that the Federation's grievance is also untimely since Birchard began performing her current duties in January of 1982, but the Federation filed no grievance until 3 1/2 years later. We disagree.

Article 9 of the Contract provides that "complaints must be registered within 30 calendar days following the time at which the complainant could have been reasonably aware of the existence of the situation created by the College which is the basis for the complaint." Here, the time at which the Federation "could have reasonably been aware" it had not received notice or an opportunity to bargain the content of the position was when Birchard brought it to the Federation's attention on or about September 15, 1986. The grievance herein was filed within 30 days of that date. As the Board stated in Marcotte, supra, at 155:

The language of Article 3, Section 2, places the burden on the Colleges to notify the Federation when a job content change is contemplated. When the Colleges fail to meet their obligation, it is unreasonable to penalize the Federation ... for not earlier grieving a violation of which they were not made aware.

We conclude the Colleges violated Article 3, Section 2 of the Contract by failing to notify the Federation and give it an opportunity to bargain job content changes in the position now occupied by Birchard. We turn to determining what remedy should be applied for this violation.

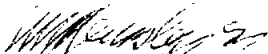
In determining a remedy appropriate to the consequences of the contract violation, there are two interests at issue: 1) "to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party" pursuant to 3 VSA §982(g); and 2) to make whole any individual damaged as a consequence of a party's non-compliance. Vermont State Colleges Faculty Federation and Peck v. Vermont State Colleges, 139 Vt. 329, 334 (1981). Any remedy to be granted dates back to the time the violation began occurring. Marcotte, supra, at 155.

The Federation has been denied its right to negotiate concerning the job content changes of the position now occupied by Birchard. An appropriate remedy to redress this violation is to order the Colleges to bargain the job content of the position so as to create a job title and description which are descriptive of the duties actually performed by Birchard. We note that the position occupied by Birchard has been reclassified to Pay Grade 5 pursuant to Article 27 and there is no appeal from that determination, so long as the duties remain unchanged. Accordingly, the position should remain at Grade 5. However, a job title and job description should be negotiated which comport with the realities of the position Birchard now occupies.

In addition, Birchard should be made whole for the Colleges' violation of Article 3, Section 2. We recognize that back pay is not awarded when a position is routinely reclassified upward pursuant to

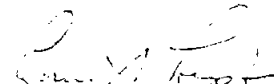
Article 27 and, but for the Colleges' non-compliance, Birchard would not be entitled to a back pay award. However, Birchard was undeniably damaged by the Colleges' non-compliance. Had her position in the Admissions office been properly classified and described at the time she was hired, she would have been hired into that position at base pay for a Grade 5 position. Thus, the Colleges should pay her the lump sum difference (\$1,295.79) between the salary she would have been paid had she been originally hired at base pay for a Grade 5 half-time position in the Admissions office, and Grade 4 for the other one-half time position in the Upward Bound office, and what she was paid through June 30, 1987. The Colleges should also adjust her present salary accordingly. To hold otherwise would be to allow the Colleges to benefit from their failure to meet their contractual duty to provide notice and to bargain. Marcotte, supra, at 155. It would encourage the employer to attempt pay savings in hopes the changes would not be discovered. Marcotte, supra, at 157.


Dinah Yessne, Acting Chairperson


William G. Kemsley, Sr.

DISSENTING OPINION

I dissent from the majority opinion and believe that this grievance should be dismissed. I conclude this grievance is untimely since Birchard began performing the duties which are at issue herein in January of 1982, but no grievance was filed until three and one-half years later. Moreover, even assuming the grievance is timely, the evidence does not indicate that the job content of the position occupied by Birchard significantly changed from that of her predecessor and, thus, the Colleges were under no obligation pursuant to Article 3, Section 2 of the Contract to give the Federation notice and an opportunity to bargain the job content of the position. I would suggest that the Colleges and Federation create a job description for the position occupied by Birchard which more accurately describes the duties she actually performs.



Louis A. Toepfer

ORDER

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

1. The Grievance of Edith Birchard and the Vermont State Colleges Staff Federation, Local 4023, is SUSTAINED to the extent that the Vermont State Colleges violated Article 3, Section 2, of the Contract by failure to notify the Federation and give the Federation an opportunity to bargain the job content for Birchard's position and is DENIED in all other respects;

2. The Colleges shall negotiate with the Federation to create a job title and job description for the position occupied by Birchard which are descriptive of the duties actually performed by her;

3. The Colleges shall pay Birchard \$1,295.79; and

4. The Colleges shall establish Birchard's annual salary at \$12,102.00, subject to a 4 1/2 percent increase July 1, 1987.

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

VERMONT LABOR RELATIONS BOARD

Dinah Yessne
Dinah Yessne, Acting Chairperson

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