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Job Evaluation

Some Counselors Are More Equal Than Others

What kind of funny farm are they running here anyway? We all hold the same job title and job specifications. We're all basically social workers and yet, just because we work within different departments in state government, they want to pay us different wages. It doesn't make sense. Either treat the jobs equally or change the job titles, but don't insult our intelligence!

Rose Paddock was hopping mad! As a part of her studies toward a master's of public administration, Rose had recently completed an introductory course in human resources management that included an overview of job evaluation principles and practices in public-sector organizations. Rose understood that position classifiers traditionally tried to apply such principles as "classify the position, not the person" and "like positions grouped in the same classification." Yet Rose, a career state employee, was surprised to learn how frequently the objective "theory" that she learned in textbooks was not practiced by her employer, the State of New Mexico. The same job title that Rose held, Employment Counselor, had been reclassified upward in the state's Department of Labor, but the same job title and position in the state's Department of Human Services had been denied reclassification and was kept in the same classification range. Both positions had the same job duties, responsibilities, and qualifications.

How could the same job title and job specifications for employment counselor be classified differently by an employer, simply because the employees worked in two different state departments? It reminded Rose of the classic line from George Orwell's futuristic *Animal Farm*, wherein "some animals were more equal than others." Nor was Rose the only employment counselor in the Human Services Department (HSD) who was agitated and demanded a reassessment of classification. So, quite naturally, Rose and her coworkers decided to talk to their union about the way they were being treated.

THE UNION'S POSITION

The union was only too willing to take up a cause it believed had been created by the state. Rose and her thirty-five coworkers, who were employment counselors within the HSD's Income Support Division (ISD), were represented by the American Federation of State, County, and Municipal Employees (AFSCME), Local #2839. The employment counselor's job included occupational counseling of welfare clients who are searching for work. This position was classified as a grade 18 and involved job duties and responsibilities very similar to those of an employment counselor (EC) in the State Department of Labor (DOL). In November 2002, following a job evaluation study by the State Personnel Office, the ECs in DOL were reclassified upward to a grade 19, which has a grade cap of \$15.20 per hour, compared to a cap of \$13.40 per hour for grade 18.

By contrast, in January 2001, a reclassification study was initiated for ECs in the HSD, but it was subsequently denied by the State Department of Finance and Administration (DFA) because of insufficient funds within the HSD budget. The union contended that the state's failure to automatically upgrade ECs at the HSD following the DOL upgrade was discriminatory because of agency affiliation and a violation of Articles 8 and 12 of the Collective Bargaining Agreement (CBA) (see below). The union argued that the employer is the state, not the HSD, and therefore must treat all employees with the same job title equally. If correct, the validity of the reclassification study conducted on employment counselors in the Department of Labor would apply to all ECs throughout state government, regardless of department and alleged budgetary constraints. The union contended that "discrimination" by departmental affiliation is no less discriminatory than that stemming from racial, ethnic, religious, or gender bias. Many ECs in HSD believed an underlying reason for refusal by the state to reclassify their positions was the predominance of male ECs in the DOL and the majority of female ECs in the HSD.

THE DEPARTMENT'S POSITION

The Human Services Department's position is that, despite the fact that it had attempted to reclassify its ECs in 2001, it was nonetheless bound by certain procedures set forth by the State Personnel Board and controlling legislation that must be followed as agreed to in Articles 14 and 25 of the CBA (see below). Although the ECs' reclassification in the DOL was successful, the HSD was prohibited from upgrading its ECs in 2001 by the DFA because of inadequate funds in the HSD budget. The department also asserted that neither the union nor the ECs ever grieved their reclassification denial in 2001; nor did they initiate a request for reclassification in 2004. Finally, management asserted that the union and the ECs in the HSD had no standing to claim discrimination because they never "went through the appropriate channels" to request a job evaluation study in 2004.

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This action provoked the HSD to file a class Human Services ECs, though these employment the union's initial grievance the following sections.

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THE INTERACTION

Both union and management argued that the other side had violated the CBA. Specifically, the union charged that management's violation occurred in November of 2003 when, in upgrading the position of employment counselor, the State Personnel Office (SPO) failed to include ECs within the Human Services Department in the pay increase retroactive to January 2003. The union wanted no less a remedy than reclassification and complete retroactive pay.

In January 2001, the Human Services Department initiated a classification study for its employment counselor positions; this was the first in a series of steps that the SPO required to conduct a job evaluation study. As part of this study, questionnaires were circulated among incumbent employees and their supervisors in which they were asked questions regarding job duties, responsibilities, and tasks, as well as incumbent knowledge, skills, and abilities. In a few instances, the job evaluators also conducted "desk audits." The second stage of the mandated reclassification process required that the state's Department of Finance and Administration (DFA) review the department's budget and determine if sufficient funds are allocated to cover the requested reclassification upgrades. In October 2002, the reclassification upgrades for ECs were denied because of a lack of funds in the HSD budget, even though the point-factor analysis of job duties and responsibilities merited upward reclassification. The reclassification study was consequently tabled, and the ECs in the HSD did not file a grievance on appeal.

Concurrently in late 2002, the State Department of Labor (DOL) initiated a classification study for its employment counselors, and on November 16, 2002, the State Personnel Board (SPB) conditionally approved the reclassification, contingent on DFA certification of funds. In January 2004, the DFA determined that sufficient money for reclassification was available in the DOL budget, and its employment counselors were subsequently reclassified upward to a grade 19 and retroactive pay to January 2003.

This action provoked Rose Paddock and her mostly female coworkers in the HSD to file a class action grievance in April 2004, to protest the fact that Human Services ECs were not reclassified and given retroactive pay, even though these employees had never requested a new job evaluation study. In the union's initial grievance and in management's written response, both cited the following sections of the CBA as relevant:

Article 8-New or Altered Classifications

The Employer may establish new job classifications, or abolish, merge, or change existing job classifications of employees covered by this Agreement in accordance with the Personnel Act (Section 10-9-1, et seq. New Mexico Statutes, Annotated 1978). At the time of such action, the Employer shall identify the employees covered by this Agreement to be included in any new or altered job classification and shall identify the old job classification(s), if any, which in whole or in part are being replaced. Unless it is supervisory, confidential, or managerial, as defined in Public Employees

Bargaining Act (PEBA) Section 4, any new or altered job classification that, in whole or part, replaces a job classification already represented by a signatory Union, shall be included in a bargaining unit of the signatory Unions.

Article 12-Nondiscrimination

With respect to the terms and conditions of employment, the parties shall not discriminate against any employee covered by this Agreement on the grounds of non-merit factors except as otherwise specifically provided for in this Agreement.

Grievances filed under this Article shall specify in writing the non-merit factor(s) upon which the alleged discrimination has been based and the manner in which the alleged discrimination occurred.

Article 14-Grievance and Arbitration Procedure

A. Grievances must be initiated by speaking with the immediate supervisor promptly, but within seven (7) calendar days, after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged grievance. Employees are encouraged to discuss and attempt to resolve any problem with their immediate supervisor before filing a formal grievance under the procedures established below.

B. Matters previously subject to review by the State Personnel Board shall not be subject to arbitration. However, these matters may be grieved up to and including Step 4 of the Grievance and Arbitration procedure set out in this Article.

Article 25-Job Classification

Section Two-Requesting Reclassification

Any employee covered by this Agreement who believes that her or his actual job position in the classified service is not assigned to the class that best represents the duties assigned by the Employer may initiate a request for a new position classification assignment through procedures established by the SPB and the Department of Finance and Administration. If the employee's position is subsequently assigned to a different job classification and the employee meets the minimum qualifications for that position, the employee shall be paid the appropriate salary for the new job classification as provided by SPB rules.

Both parties selected an arbitrator to hear their positions and render a final and binding award. The arbitrator has discretion to rule in favor of either party or craft his or her own decision, but must stay within the language of the Collective Bargaining Agreement. When CBA language is unclear or ambiguous, it is the arbitrator's task to apply appropriate interpretation to the articles cited as having been violated. However, the arbitrator cannot modify state law that takes precedence over the CBA.

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