

## **Number 10.1 - CLASSIFICATION GRIEVANCE**

**Effective Date:** March 1, 1996

**Applicable To:** All classified employees with the Executive Branch of the State of Vermont.

**Issued By:** Department of Personnel

**Approved By:** William H. Sorrell, Secretary of Administration

### **PURPOSE AND POLICY STATEMENT**

It is the policy of the State of Vermont to ensure that employees have access to a thorough and complete review of their position's classification. An employee who feels that his or her position has been improperly classified may file a grievance as provided for in the current Agreements between the State of Vermont and the Vermont State Employees' Association, Inc. (VSEA).

The purpose of this policy is to define the specific procedures of the classification grievance process.

### **DEFINITIONS**

**CLASSIFICATION GRIEVANCE** - a dispute over whether an employee's position, or the positions of a group of employees, is correctly allocated to a class, and/or the class is correctly assigned to pay grade.

**DESIGNEE** - the person assigned by the Commissioner of Personnel to act on his or her behalf to review the grievance, conduct any requested formal grievance meeting, and recommend a decision.

### **GENERAL PROCEDURES**

The Classification Review and Grievance Article of the current contract outlines the procedures for filing a classification grievance. A classification grievance may be filed only if the position submitted for review was not changed to a higher pay grade.

Employees may file a classification grievance only after they complete the classification review process and receive a determination from the Department of Personnel (See Number 6.2, Classification Review). If the Department of Personnel does not issue a written notice of its decision within sixty (60) days for a single position, or within ninety (90) days for a multiple position class, employees may resubmit their classification request in the form of a classification grievance directly to the Commissioner of Personnel.

## **PROCEDURES FOR FILING A CLASSIFICATION GRIEVANCE**

A classification grievance must be filed within thirty (30) calendar days of the employees' receipt of the classification review decision. However, if an employee had an informal meeting with the Department of Personnel (See Number 6.2, Classification Review), then the grievance must be filed within fifteen (15) calendar days after the informal meeting. A letter from the Classification Unit indicates the outcome of the informal meeting and is used as the basis for determining the deadline for filing subsequent appeals.

Employees who fail to file within such time limits lose their rights to pursue a classification grievance. A classification grievance may be filed unless the classification review has resulted in a higher pay grade.

Written grievances must be filed in duplicate with the Department of Personnel, 110 State Street, Drawer 20, Montpelier, VT 05620-3001, and include the seven (7) items required by the contract as follows:

- Name and home address of the employee submitting the grievance.
- Position number, class title, and pay grade of the position under appeal, and the department/division/section in which the position is located.
- A brief statement that describes the reason for the original request for review, outlines the State's response to the request, and explains the rationale for the grievance. It should also contain a statement specifying the change in duties critical to the classification of the position sufficient to produce a reallocation to class or reassignment to pay grade.
- A written summary of any other reasons why the position is allocated to the wrong class and/or the class is assigned to a wrong pay grade.
- The remedial action being requested, including the title and pay grade which the grievant believes should apply.
- Copies of all materials submitted in the initial request for classification review, plus the decision (*Employee Notice*) from the Department of Personnel.
- An indication whether the grievant wishes to have a grievance meeting with the Personnel Commissioner (or the designated representative).

Copies of the above information must be submitted to the employee's appointing authority when the grievance is filed with the Department of Personnel.

The Classification Unit will review the grievance for compliance with the filing requirements and will notify the employee if any additional information is needed. The employee will be given ten (10) workdays to complete the filing.

If an employee requests a grievance meeting, it will be held within fifteen (15) workdays after the receipt of the grievance by the Department of Personnel. A written decision shall be issued within fifteen (15) workdays of such meeting. If no meeting is requested, a written decision shall be issued within thirty (30) workdays of receipt of the grievance.

These time frames, for holding a meeting and/or issuing a decision, may be extended by the mutual consent of the grievant and the Commissioner of Personnel (or designee).

The Commissioner of Personnel (or designee) may request additional information from the grievant and/or the Classification Unit, and may impose deadlines for its submission. The deadlines for holding a meeting and/or issuing a decision will be extended to allow for the submission of this information.

The employee filing a grievance must establish that the classification decision was "clearly erroneous" under the standards provided by the point factor analysis system used by the Department of Personnel.

The Classification Unit usually will provide the Commissioner's designee with copies of all documents relevant to the grievance meeting, including a prepared response to the submitted grievance. Any material provided to the designee in advance of the meeting will also be given to the grievant and/or his or her representative.

After the grievance meeting, the Commissioner's designee recommends whether the grievance demonstrated that the classification decision was "clearly erroneous". The Commissioner of Personnel notifies the employee of the final decision within the specified time frames (unless the time frames are extended by mutual consent).

### **APPEAL TO THE VERMONT LABOR RELATIONS BOARD (VLRB)**

An employee who is aggrieved by a classification grievance decision of the Commissioner of Personnel may have that decision reviewed by the VLRB. Unless appeals to the VLRB are filed within thirty (30) calendar days of receipt of the Commissioner's decision, the right to appeal is waived.

The VLRB only considers whether the grievance decision was "arbitrary and capricious" in applying the Willis Position Evaluation System to the facts established by the entire record. The VLRB is not permitted to conduct a '*de novo*' hearing nor is it permitted to substitute its own judgement regarding the proper classification or assignment of positions to a pay grade. The VLRB bases its decision on the record used in the grievance meeting. If the VLRB determines that the decision was arbitrary and capricious, it is required to state the reasons for that finding and remand the matter to the Commissioner of Personnel who shall take appropriate action and address those aspects of the original decision that the VLRB found to be arbitrary and capricious.

The parties waive judicial review by the Vermont Supreme Court of any ruling of the VLRB that the decision by the Commissioner of Personnel was, or was not, arbitrary and capricious. If the Commissioner of Personnel, upon remand, fails to address aspects of a classification decision which the VLRB has determined to be arbitrary and capricious, the sole avenue of relief for an employee shall be to petition the VLRB for

enforcement of its order in the Superior Court, in accordance with Board rules and the Rules of Civil Procedure.

### **IMPACT OF DECISIONS AND SETTLEMENTS**

A classification decision shall not constitute a binding precedent regarding the internal comparability of a position that was reviewed or grieved to positions not subject to the original classification review and grievance. Nothing herein shall prevent the settlement of a classification grievance at any point in the process.