

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)
THE VERMONT STATE EMPLOYEES' ASSOCIATION,)
on behalf of all Non-State Police employees of)
the Vermont Department of Public Safety, per-) DOCKET NO. 78-85S
taining to certain expense reimbursement)
policies, pursuant to Department of Personnel)
Rules and Regulations, 1.01, 3.03, and 20 V.S.A.)
§1861, along with Non-Management Contract,)
Article XII, Section 2, para. (b).)

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On July 3, 1978 the Vermont State Employees' Association, (hereinafter "VSEA") filed a grievance with the Board on behalf of all non-state police employees of the Vermont Department of Public Safety (hereinafter sometimes referred to as "Department"). The grievance alleged discrimination on the part of the Commissioner of the Department in implementing a policy which authorized reimbursement for meal expenses for uniformed employees but not for non-uniformed employees. The State of Vermont (hereinafter "State") filed its answer on July 24, 1978.

A hearing on the matter was held before the Board on November 30, 1978. All members of the Board were present. The VSEA was represented by Alan S. Rome, Esquire and the State was represented by Louis P. Peck, Chief Assistant Attorney General. The VSEA submitted request for findings and memorandum of law on December 7, 1978 and the State submitted its requests and memorandum on December 20, 1978.

FINDINGS OF FACT

1. The Department of Public Safety is comprised of uniformed employees who are members of the State Police force and non-uniformed employees. Prior to the summer of 1977 it was the policy of the Department to reimburse members of the State Police force for noontime meal expenses during travel away from their official station.

2. There are certain non-uniformed employees of the Department of Public Safety who customarily accompany the State Police as part of the crime scene search team when investigations are made at the scene of a crime. Prior to 1977 these employees were not reimbursed for their meal expenses when they traveled with the State Police to conduct such investigations.

3. In the summer of 1977 the Commissioner of Public Safety, William Baumann, issued a new policy to the effect that non-uniformed employees of the Department would be reimbursed for their meal expenses as well as uniformed members of the Department.

4. When Finance Commissioner MacPherson refused to issue payment for expense reimbursement to the non-uniformed employees, Commissioner Baumann requested an Attorney General's opinion.

5. Attorney General's Opinion 6-78 concluded that the Commissioner of Public Safety was empowered by statute to reimburse non-uniformed as well as uniformed employees for the Department for meal expenses (Grievant's #1).

6. All employees of the Department of Public Safety were reimbursed for their noon meals when traveling away from the official stations through April 5, 1978.

7. On April 26, 1978 the new Commissioner of Public Safety, Francis E. Lynch, issued a departmental memorandum stating:

"it shall be the policy of this department that reimbursement for meals, lodging and travel will be processed on the basis of .. Bulletin 3.4 (as amended), for all Public Safety non-State Police personnel." (Grievant's #3)

8. Bulletin 3.4 as amended from the Secretary of Administration limits reimbursement of classified employees for noontime meals to occasions when an employee is instructed by his superior to attend "an agenda/prearranged/programmed meeting not requiring an overnight stay" (Grievant's 4).

9. As a result of the new policy when non-uniformed employees traveled with uniformed State Police to conduct on the scene crime investigations, the non-uniformed employees are not reimbursed for noontime meal expenses while uniformed State Police are.

OPINION

This case presents a question of law. The grievants maintain that the effect of the new policy is discriminatory because non-reimbursement of certain Department employees for their noontime meal expenses is based solely on whether or not they wear uniforms. The State, on the other hand, maintains that the new policy is, if anything, less discriminatory than the old policy when viewed from the prospective of all State employees in the classified system.

Under 32 V.S.A. §1261(a) no administrative official or employee other than the Governor can be reimbursed for "meals taken during travel not requiring an overnight stay away from home except when instructed by superior to attend a meeting when necessary for the business of the State..." Bulletin 3.4

(referred to in Finding 8. above) was promulgated by the Secretary of Administration pursuant to 32 V.S.A. §1261(b) which authorizes the Secretary to prescribe regulations which limit personal expenses and which will be applicable to all categories of State employees. Thus, with the exception of certain meetings not material here, no employee in State government is reimbursed for lunch expenses during travel not requiring an overnight stay.

The only exception to this general rule for classified employees is the Department of Public Safety. 32 V.S.A. §1261(c) states:

"Nothing in this section shall be taken to limit the authority of the commissioner of public safety to approve reimbursement for personal expenses in accordance with section 1881 of Title 20."

20 V.S.A. §1881 relating to lodging and subsistence expenses for members of the Public Safety Department states in pertinent part:

"Allowance for lodging and subsistence while away from his official station may be paid to a member under such terms and conditions as the commissioner may prescribe."
[emphasis added]

20 V.S.A. §1881 unambiguously gives the Commissioner of Public Safety the authority to reimburse members or employees of the Department for lodging and subsistence expenses, but does not require him to do so for all or any of its members. The use of the permissive word "may" in the statutory language indicates that any reimbursement for lodging and subsistence is within the scope of the Commissioner's discretion.

There appears to be ample statutory authority to exempt the Public Safety Department from overall requirements of 32 V.S.A. §1261(a) and (b), but if not we believe that the uniformed members

of the Public Safety Department are a sufficiently well defined category to be treated differently from other classified employees. The non-uniformed members of the Department, on the other hand, perform similar duties to other classified employees in other departments of State government, and accepting grievant's position would create an unjustifiable disparity between a small group of civilian employees in the Public Safety Department and the great majority of classified State employees.

Since we believe that the classification selected by the Commissioner is reasonable and authorized by statute, the grievance is dismissed.

(continued ORDER)

ORDER

For the reasons given above, the grievance is hereby ORDERED dismissed and it is DISMISSED.

Dated this 27th day of January, 1979 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

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

Robert G. Brown
Robert G. Brown