

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 80-42
VERMONT STATE EMPLOYEES')	
ASSOCIATION, INC.)	RE: Reclassified Day Care
)	Employees

MEMORANDUM AND ORDER GRANTING
STATE'S MOTION TO DISMISS

On April 28, 1980, the Vermont State Employees' Association (hereinafter "VSEA"), through its attorney Michael Zimmerman, filed a grievance with the Vermont Labor Relations Board. The grievance was submitted on behalf of employees of the State of Vermont, Department of Social and Rehabilitation Services; specifically those persons (hereinafter "employees") who were reclassified, effective August 6, 1979, to Day Care Eligibility Specialist (pay scale 10), and who had been employed by the Department as Human Service Aides (pay scale 7) during the period November 1, 1977, to August 6, 1979.

The grievance claims that the employees were denied their lawful rights, between November 1, 1977, and August 6, 1979, to have their positions classified based on job evaluations using current job descriptions. The remedy requested was for the reclassifications to be made retroactive to November 1, 1977, with appropriate salary adjustments to all occupants of the positions.

On May 19, 1980, Assistant Attorney General Bennett Greene filed an answer for the State. The State moved that the grievance be dismissed on the ground that it was not a grievance, by the definition of "grievance" in the Agreement between the parties.

Article XVI of the Agreement states:

"grievance" is an employee's, group of employees', or the employees' collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under a collective bargaining agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors.

The State sought dismissal of the grievance because the VSEA alleged neither a violation of the contract nor discriminatory application of a rule or regulation; and thus the purported "grievance" was not a grievance.

The Board held a hearing on this matter January 22, 1981, at the Board hearing room in Montpelier. Board members Kimberly B. Cheney and William G. Kemsley, Sr., were present. Grievant was represented by Michael Zimmerman. Bennett Greene represented the State.

During the course of the proceeding, the State made a motion to dismiss the grievance. After discussion with counsel for Grievant and review of proofs offered, we found no grievable condition existed. We grant the State's motion to dismiss the case for the following reasons:

1) The remedy sought by Grievant, that employees be paid at pay scale 10 for services they rendered from November 1, 1977, to August 6, 1979, is expressly prohibited by Article XVI, Section 8, Agreement, which states:

In appropriate cases, the time limits for filing and processing a grievance may be waived in order to permit retroactive pay to correct a long-standing injustice, provided in no case shall the retroactive pay pre-date the effective date of this Agreement.

The effective date of the Agreement was July 1, 1979, thus, the remedy sought is inappropriate. Retroactive pay cannot extend further back than July 1, 1979.

2) More importantly, the "grievance" submitted does not constitute a grievance by definition. In Grievance of McMahon, 136 Vt. 512, 513 (1978), the Vermont Supreme Court ruled that a proper "classification" grievance is one in which a "claim of improper or unfair classification" is made. Discriminatory or arbitrary treatment must be alleged. Nowhere in the grievance before us is discriminatory or arbitrary treatment against the employees claimed. The grievance before us claims that the employees were denied their lawful rights to have their positions reclassified. Such a claim does not fall within the statutory definition of a grievance. As our Supreme Court held in McMahon, supra

"A request to reclassify a job grade does not fall within the statutory definition of a grievance and is, therefore, not within the jurisdiction of the Labor Relations Board."

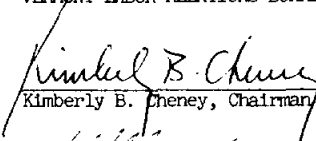
There being no offer made by Grievant of discriminatory application of a rule or regulation or violation of contract, the purported "grievance" does not, by definition, constitute a grievance.

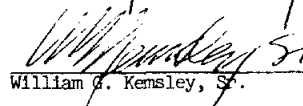
ORDER

For the foregoing reasons, it is hereby ORDERED that the grievance of Vermont State Employees' Association, Inc. be DISMISSED.

Dated this 29th day of January, 1981.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.