

VERMONT LABOR RELATIONS BOARD

IN RE:)	
)	
GRIEVANCE OF WILLIAM O. GRAVES)	DOCKET NO. 80-19
)	
v.)	
)	
STATE OF VERMONT)	

FINDINGS OF FACT, OPINION, AND ORDER

Statement of the Case.

The grievance of the Vermont State Employees' Association, Inc., on behalf of William O. Graves, a member of the non-management unit, was filed with the Vermont Labor Relations Board on March 6, 1980. The State filed its answer in this matter with the Board on May 20, 1980.

On May 22, 1980, a hearing was held before Board members William G. Kemsley, Sr., and Robert H. Brown. In these proceedings, the grievant was represented by Michael R. Zimmerman, Esq., counsel for the Vermont State Employees' Association, and the State was represented by Bennett E. Greene, Assistant Attorney General.

FINDINGS OF FACT

The Board finds the following facts:

1. At all times relevant, grievant was a permanent status employee of the State of Vermont, Department of Social and Rehabilitative Services. Grievant's position title was Accountant A at pay grade 12.

2. On October 25, 1979, this Board entered its opinion in In Re Grievance of William O. Graves v. State of Vermont, Docket No. 79-26 S, 2 VLRB 236 (1979), holding that grievant as an employee restored to State

service was not entitled to a 6% pay increase provided in Section 1(b) of Public Act 222 (1979 Adj. Session) as a matter of right but only at the discretion of his appointing authority.

3. Thereafter, grievant and the VSEA requested that the Department of Social and Rehabilitative Services grant grievant the 6% increase in pay which is the subject of this grievance.

4. As a result of this request, the Department of Social and Rehabilitative Services was willing to grant grievant the 6% pay increase, but the Department of Social and Rehabilitative Services was instructed not to do so by the Department of Personnel.

5. In late January or early February of 1980, VSEA requested confirmation from the Department of Personnel that Personnel had determined grievant should not receive the 6% salary increase. By letter dated February 7, 1980, the Commissioner of Personnel informed VSEA that the Personnel Department had adjudged that grievant was not entitled to the 6% salary increase because the grant of an increase was discretionary and that it would not be fair to grant the grievant such an increase while other employees, similarly affected, might not be identified and might not receive a similar benefit.

6. It was the judgment of the Department of Personnel and not the Department of Social and Rehabilitative Services which operated to deny grievant the 6% salary increase which he seeks.

OPINION

This matter is a continuation of the same dispute in In Re Grievance of William O. Graves v. State of Vermont, 2 VLRB 236 (1979). We held in our earlier decision that grievant was not entitled to the pay raise he

seeks as a matter of right but only in the discretion of the "appointing authority." 2 VLRB at 242. Following our opinion in Graves, the grievant sought to have this discretion exercised in his favor. Because of the instructions of the Department of Personnel, grievant did not receive the pay raise despite favorable disposition towards the request by the Department of Social and Rehabilitative Services.

The question to be determined in this matter is whether the Department of Personnel or the Department of Social and Rehabilitative Services is the "appointing authority" in whom the decision-making authority reposes.

The State's Rules and Regulations for Personnel Administration are on file with the Board, and we take official notice of those Rules and Regulations. Under those Rules and Regulations, the appointing authority is defined as the officer, board, commissioner, person, or group of persons authorized by statute or lawfully delegated authority to make appointments. See Rule 2.013. Under this definition, the appointing authority as to the grievant is the Department of Social and Rehabilitative Services, not the Department of Personnel.

We hold, therefore, that the State's own Rules and Regulations for Personnel Administration dispose of the issue in this case. The appointing authority which has authority to determine whether or not grievant should receive the 6% pay increase is the Department of Social and Rehabilitative Services.

Under our holding in Graves, supra, it is the Department of Social and Rehabilitative Services and not the Department of Personnel which, therefore, should determine whether or not in its discretion grievant should be granted the 6% pay increase he seeks.


ORDER

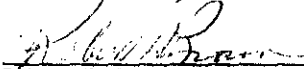
For the foregoing reasons, it is ORDERED: That the Department of Social and Rehabilitative Services determine whether or not grievant should receive the 6% pay increase under Section 1(b) of Public Act 222 (1977 Adj. Session) which he has requested, and that the Department of Personnel not interfere with this exercise of discretion by the appointing authority.

DATED at the City of Montpelier, County of Washington and State of Vermont this 16th day of July, 1980.

VERMONT LABOR RELATIONS BOARD

*Appeal dismissed
by Stip.
2/4/81*


William G. Kemsley, Sr.


Robert H. Brown