

VERMONT LABOR RELATIONS BOARD

| | | |
|---------------------------------|---|-----------------|
| IN RE: |) | |
| |) | |
| GRIEVANCE OF ROBERT P. D'ORAZIO |) | DOCKET NO. 80-6 |
| |) | |
| v. |) | |
| |) | |
| STATE OF VERMONT |) | |

FINDINGS OF FACT, OPINION, AND ORDER

Statement of the Case.

This matter is a grievance filed on behalf of Robert P. D'Orazio, a member of the non-management unit of State employees. The grievance was filed January 15, 1980, and the State filed its answer on February 1, 1980.

Hearings were held before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown on May 2, 1980. In these proceedings, grievant has been represented by John C. FitzPatrick, Esq., and the State by Bennett E. Greene, Esq., Assistant Attorney General.

Grievant claims that the State did not properly determine his salary level when he was rehired by the State in October, 1979 after termination from his previous State employment as a part of a reduction in force in October, 1977. Grievant claims that at the time of his rehiring, he was entitled under the collective bargaining agreement to receive a six percent salary increase over his previous pay level because of the enactment of Public Act 222 (1977 Adj. Session). The State disputes grievant's claim.

For the reasons stated below, the Board has determined this matter in grievant's favor.

FINDINGS OF FACT

Based on a stipulation of the parties, the Board finds the following facts:

1. That the pertinent collective bargaining agreements in this grievance are the following:

(a) Agreement between the State of Vermont and the Vermont State Employees' Associations for the Non-Management Unit, effective July 5, 1976, through June 30, 1979.

(b) Agreement between the State of Vermont and the Vermont State Employees' Association, Inc. for the Non-Management Unit, Supervisory Unit, State Police Unit and Liquor Store Unit, effective July 1, 1979, through June 30, 1981.

2. These collective bargaining agreements have been filed with the Board and the Board takes official notice of their contents.

3. This matter is properly before the Board pursuant to the grievance provisions of the aforementioned agreements.

4. On or about October 31, 1977, Robert P. D'Orazio, the grievant, was a permanent employee and the subject of a reduction in force from his then position with the Governor's Commission on the Administration of Justice.

5. The position held by the grievant, Robert P. D'Orazio, with the Governor's Commission on the Administration of Justice was a pay scale twenty (20) position within the plan of compensation of the State of Vermont.

6. On or about October 1, 1979, and pursuant to certain re-employment rights set forth in the applicable collective bargaining agreements, the

grievant, Robert P. D'Orazio was re-employed by the State of Vermont in the Department of Corrections as an Agency Automated Systems Specialist.

7. Robert P. D'Orazio, the grievant, was awarded a salary of \$378.50 per week, or \$19,682.00 annually, which amounts to a 5.5% increase over his salary as of October 31, 1977, the effective date of his reduction in force.

8. The position now held by grievant with the Department of Corrections is a pay scale sixteen (16) position within the plan of compensation of the State of Vermont.

9. The 1979-81 collective bargaining agreement provides among other things in ARTICLE XXXIV, Section A, subsection 2, for an increase of 5.5% of all employees in pay scales one (1) through thirty (30).

10. That Public Act 222 of the 1977 Adjourned Session provided among other things for an adjustment of 6% in salaries for certain State employees. The salary adjustments contemplated by Act 222 were effective July 2, 1978.

11. On July 2, 1978, the grievant was not employed by the State of Vermont but did have certain RIF rights more particularly set forth in the collective bargaining agreements.

OPINION

The question presented by this grievance is whether the grievant is entitled to the 6% salary increase given classified employees by Section 1(b) of Public Act 222 (1977 Adj. Session). Grievant claims that he is entitled to this increase by ARTICLE XXXI, Section 11, of the 1976-79 collective bargaining agreement, and ARTICLE XLV, Section 10, of the 1979-81 collective bargaining agreement. Both provisions are the same:

A former permanent employee who is re-employed in accordance with [mandatory re-employment rights for RIFed employees] shall be paid at the rate in the pay scale he received in the previous position plus any increase he would have received had he been employed because of adjustment to the pay scale or compensation plan, provided however that his salary does not exceed the maximum of the pay scale to which he is re-employed.

The State disputes grievant's entitlement to the salary increase arguing that the 6% increase provided in Section 1(b) of that Act 222 is not an increase in the pay scale or the compensation plan, but rather is an economic increase and, therefore, outside the collective bargaining agreement's provisions for automatic pay raise. Further, the State argues grievant does not qualify for the increase provided in Section 1(b) of Act 222 because he was not employed by the State as of July 2, 1978, the Act's effective date, and lacked six months' continuous service both on July 2, 1978, and on October 1, 1979, the date of his rehiring.

No issue was raised that the pay increase sought by grievant would exceed the maximum of the pay scale to which grievant was re-employed. The issues to be determined in this matter, therefore, are:

1. Was six months' continuous service required for an employee to be entitled to Act 222, Section 1(b), pay raise?
2. Was employment on July 1 or July 2, 1978, required for an employee to receive the pay raise provided for in Section 1(b) of Act 222?
3. Was Section 1(b) of Act 222 an increase in the State's "plan of compensation?"

The Board has considered some of these issues in In Re: Grievance of William O. Graves v. State of Vermont, 2 VLRB 236 (1979). The Board decided in Graves that neither six months' continuous service nor employment on July 2 of 1978 was a prerequisite to the increase under Section 1(b) of

Act 222, and that pay raise under Section 1(b) was an increase in the "compensation plan." We follow Graves on each of these issues in the instant matter.

The remaining issue in the case, therefore, is whether the entitlement to the 6% increase under Section 1(b) is mandatory, as grievant urges, or whether it is discretionary, as was decided in Graves. On this issue, Graves must be distinguished from the instant matter. The employee in Graves had resigned from State service. That employee's entitlement to the pay raise was determined under the State's Rules and Regulations for Personnel Administration, the terms of which the Board held in Graves made the increase discretionary with the employer. The employee in this case did not resign, rather he was the subject of a reduction in force, and, therefore, was entitled to the benefits of the reduction in force provisions of the applicable collective bargaining agreements.

The collective bargaining agreement provisions applicable here are different from the Rules and Regulations on which the Graves decision is based. The contract requires that a re-hired, RIFed employee "shall" be paid at his previous pay scale plus any increase he would have received had he been employed because of adjustments to the pay scale or compensation plan. Unlike the Rules and Regulations, the collective bargaining agreement provision is mandatory. Accordingly, we hold that the grievant was entitled at the time of his re-hiring to receive the 6% salary increase provided for by Section 1(b) of Act 222.

ORDER

For the foregoing reasons, it is ORDERED: That the State of Vermont comply with the provisions of the collective bargaining agreement by

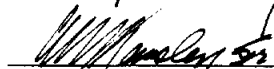
granting to the grievant, Robert P. D'Orazio, a 6% pay increase as required by Section 1(b) of Act 222 (1977 Adj. Session). This pay increase shall be granted retroactive to October 1, 1979, the date of grievant's rehiring by the State.

DATED at the City of Montpelier, County of Washington, and State of Vermont this 15th day of July, 1980.


VERMONT LABOR RELATIONS BOARD



Kimberly B. Cheney, Chairman



William G. Kemsley, Sr.



Robert H. Brown