

* * * * *
 *
 PAUL BORRMANN, *
 *
 Appellant *
 *
 v. *
 *
 SECRETARY, Dept. of Local Affairs *
 & Development, *
 *
 Respondent. *
 *
 Case No. 76-235 *
 *
 * * * * *

OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF CASE

This is an appeal of a grievance at the fourth step pursuant to §16.05(7), stats. In an interim opinion and order dated April 25, 1977, the board denied Respondent's motion to dismiss for lack of jurisdiction over the subject matter.

FINDINGS OF FACT

At all relevant times the Appellant was employed as a Housing Program Consultant in the Division of Housing, Department of Local Affairs and Development. William Bechtel was the Respondent Secretary of the department. The letter of reprimand which is the basis for this grievance arose out the disapproval of a grant request for the Madison Tenant Union (MTU) for the printing of a handbook on tenants' rights.

The grant request was initiated by Appellant and approved by Appellant's immediate supervisor, Robert Koch, Chief of the housing service section. See Respondent's Exhibit 1, a memo from Borrmann to Koch dated September 17, 1976. Sometime after the date of this memo, Mr. Bechtel verbally gave preliminary approval to the proposal. Sometime around October 18, 1977, Mr. Bechtel had

before him the actual contract for the grant request and the necessary form for final approval or disapproval. See Respondent's Exhibit 2. Mr. Bechtel as Secretary had the final authority to approve or disapprove the grant and to sign or not sign the contract. At this time he reviewed in detail the handbook, Repondent's Exhibit 6. He also had noted the comment of the Division of Administrative Services on the contract/grant approval request form, the first page of Respondent's Exhibit 2: "Doesn't appear to 'strengthen housing programs' or 'increase the availability of housing' as required by 20.545(2)(b)." He then wrote "disapproved" on the forms and returned them to Mr. Koch.

On October 20, 1977, Mr. Koch and Mr. Bechtel met and discussed the MTU grant. Mr. Bechtel expressed concern over inadequate control over the grant. Mr. Koch replied that the agency had editorial control over the manual. Mr. Bechtel said that this was the not in the contract and Mr. Koch said that this could be changed. However, Mr. Bechtel expressed the view that it would be inappropriate and outside its statutory guidelines for the agency to fund an organization like the MTU with its goals. The agency could not encourage private development of apartments on the one hand and socialistic control of private property on the other. He felt that the central facet espoused by the MTU was the acquisition of landlord property or power by tenants. He cited several instances of material in the manual as unprofessional, inappropriate, radical, and not something that should be funded by a state agency. He also felt that negotiations over the language of the manual would undoubtedly be controversial and fruitless.

Following this meeting the Appellant wrote and delivered to Mr. Bechtel a memo dated October 21, 1976, Respondent's Exhibit 3. Subsequently, Mr. Bechtel caused to be prepared a letter of reprimand to Appellant dated October 26, 1976, Respondent's Exhibit 5. This reprimand was in response to the language used by Appellant in his October 21, 1976, memo to Mr. Bechtel. Mr. Bechtel also caused the Appellant to be dissassociated from further work on the housing grant fund because he felt that the October 21st memo evinced a lack of needed objectivity in the grant review process. This move was opposed by Mr. Koch, at least in part because in his judgment it would impair the efficiency of his unit.

CONCLUSIONS OF LAW

It should be emphasized that the questions presented for the board by this appeal do not include the merits of the Secretary's decision to disapprove the MTU grant request. What is at issue is the reponse made by the Secretary to the Appellant's October 21st memo.

The Board agrees with the characterization of the language used in the memo contained in the letter of reprimand and that it justified a reprimand, see Respondent's Exhibit 5:

"In this memo you used some very caustic and personally provocative language in describing your impression of the Secretary's motives and job performance. Such inflamamatory language has no place in the reasoned discussion of public issues. While it is within your rights to raise the issues contained in the memo, to do so in such a disparaging manner is entirely impolite and uncalled for, and furthermore does not improve the climate for rational discussion of disagreements."

Appellant has argued that the October 21st memo must be reviewed against the background of (1) deviations from normal procedures in the Secretary's review of the MTU grant request; (2) that the MTU grant request

was not outside the statutory authority of the agency:

"First, what was the normal procedure for review and approval of grant requests, and what procedures were followed in the MTU case? If Bechtel did not follow normal procedures and then accused his subordinates wrongfully of not following normal, proper procedures, then a reaction from a subordinate might be expected. Second, was the MTU request clearly "outside the statutory authority of this agency?' If such a statement is absured a reaction might again be expected." Appellant's posthearing argument, pps. 4-5.

The Appellant argues that the Secretary received the material on the MTU grant on September 30th and normally would have received it and returned it with his decision "as soon as possible", presumably prior to October 5th. He also argues that normally the substantive review of and decision on grants occurred prior to the formal contract ratification, and in this case would have occurred on October 5th when the proposal was initially approved.

It is unnecessary to reach findings and conclusions regarding these points because even if the "normal" procedure was as alleged by Appellant and even if the MTU grant were concluded to be within the statutory authority of the agency this would not constitute mitigating circumstances or other circumstances which would justify the personally abusive language of the October 21st memo or render the Respondent's response improper.

With respect to the reassignment of Appellant's duties, while the Board might question the appropriateness of this action in response to an isolated act by the Appellant, it is not the province of the Board to substitute its judgment for that of the appointing authority's with regard to a decision of this kind. The Appellant has not alleged that the reassignment forced him to perform duties outside his civil service classification. As was noted in the interim opinion and order the Board's jurisdiction over this appeal was

Borrmann v. DLAD
Case No. 76-235
Page Five

based on the Appellant's allegation the Respondent's actions were illegal and an abuse of discretion. The Respondent clearly had the legal authority to order the change in duties. It is concluded that the Appellant did not discharge his burden of proving that this action constituted an abuse of discretion.


The Appellant argues that the acts of the Respondent violated his First Amendment rights in that they were punishment for his belief in socialism as expressed in his October 21st memo. The Appellant failed to sustain his burden of proof with respect to this issue. There was no direct evidence of this and the Respondent's response to the memo is not inherently inconsistent with a response to the personally abusive language in the memo.

ORDER

The Respondent's decisions and actions reviewed on this appeal are sustained and this appeal is dismissed.

Dated: 2-20, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson