

## Vermont Labor Relations Board

GRIEVANCE OF

HAROLD W. BOBAR

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DOCKET #77-555

### FINDINGS OF FACT, OPINION AND ORDER

#### Statement of the Case.

This is a Step IV grievance filed by Harold W. Bobar and Vermont State Employees' Association, Inc. on 13 June 1977. The State's Answer was filed 1 July 1977. Notice of hearing was mailed on 11 August 1977 and the hearing held in the Governor's Conference Room, Montpelier, Vermont on 26 August 1977, Commissioners Burgess and Kemsley being present, and Commissioner Wallace being absent. The evidence was extremely lengthy, and was not completed on the first day, so that notice of a continuation of the hearing was mailed 6 September 1977 and the hearing itself held 14 October 1977 in the Department of Labor and Industry Conference Room, Montpelier, Vermont, after another postponement made at the request of both parties. The evidence was not completed on the second day of hearing, and the hearing was continued until 21 October 1977 in the Aldermanic Chambers, Rutland, Vermont. The parties agreed that there was no need to hold the final day's hearing, and it was cancelled. Requests for Findings of Fact were filed by both parties. The grievant was present at the first hearing, but not present at the second hearing. He was represented throughout by Alan S. Rome, Esquire, and the State was represented throughout by the Honorable Paul F. Hudson,

Assistant Attorney General.

Findings of Fact.

1. The grievant, Harold W. Bobar, was an employee of the State of Vermont, Vermont State Hospital, as a Building Custodian A. He had been so employed for approximately ten and one-half years.

2. The grievant is a member of the Vermont State Employees' Association, Inc., and the Board takes judicial notice of the Non-Management Agreement between the State of Vermont and the Vermont State Employees' Association, Inc. for the period in question.

3. Prior to coming to work for the Vermont State Hospital, the grievant was a custodian in the State Administration Building, Montpelier, Vermont for several years.

4. As a Building Custodian A, the grievant performs manual work of ordinary difficulty and responsibility involving the custodial care of an institutional building, to wit, Vermont State Hospital. This work is performed under supervision, and includes scrubbing, mopping, waxing and polishing, dusting, washing of walls, windows and woodwork, cleaning of washrooms, sweeping and cleaning of walks, mowing of lawns, trimming of hedges, raking leaves, shoveling snow, vacuuming and sweeping rugs and carpets and other similar activities. No experience is required and an eighth grade education is sufficient (Defendant's Ex. 1). There is also a more specific job description which is contained in Defendant's Ex. 2.

5. The grievant received a performance evaluation rating for the period 1 July 1975 to 30 June 1976, an annual rating. It was signed by Roland A. Morse, his Supervisor, and contains the following language:

"Needs to up-grade efficiency and productivity and take more interest in doing things better. Could achieve a No. 4 rating on these if he applied himself more... Has improved a lot during last few months, but is still not consistent... Good basic job knowledge and skills."

He was given an overall No. 3 rating, inconsistently meets job standards and requirements. (Grievant's Ex. A).

6. As a result of the rating described in Grievant's Ex. A, the grievant received a letter informing him that he would be re-evaluated again in another six months (Grievant's Ex. B). That rating (Grievant's Ex. C) again gave him an evaluation of "inconsistently meets job requirements/standards."

7. Because of the poor evaluation as shown in Grievant's C, the grievant received a letter of warning dated 19 November 1976, putting him under a warning period for six months (Grievant's Ex. D).

8. The grievant was rated for the period 20 November 1976 to 29 May 1977, and again received an evaluation of "Inconsistently meets job requirements/standards". This evaluation report contains the following language:

"Does not get out required amount of work without constant supervision. Is not a dependable worker without supervision. Does not do his fair share of work. Does not put forth any special or unusual effort. Does not make any decisions at all when supervisor is not available. Does not cope with all situations which require physical effort and stamina. Does not show any interest in doing things better. ... In spite of having been placed in a six months warning period his attitude has not changed."

9. As a result of the final performance evaluation, on 23 May 1977, grievant was given a letter of termination dismissing him from employment at the Vermont State Hospital as a Building Custodian A effective 31 May 1977, at the end of his work shift. He was to receive two weeks of pay in lieu of a two week notice. The letter of termination informed

the grievant of his right to appeal at the Step IV level to the "State Employees Labor Relations Board", and was signed by James M. Hunt, Hospital Executive.

10. The grievant was informed in writing at the time of his performance evaluations as to what it was that he was doing wrong and what was expected of him. He also received additional counseling from supervisory personnel, and had a supervisor assigned to him for a period for purposes of observation and instruction. He was informed consistently of the necessity for an improvement in his performance.

11. Grievant has the skills and knowledge required to do the job. In fact, he developed the classification description for the position (MH 1019) together with supervisory personnel (Defendant's Ex. 2).

11. Grievant received frequent counseling from Mrs. Dodgen, Executive Housekeeper, and was offered counseling by Mr. Hunt, Hospital Executive.

12. In general the quality of the grievant's work was very good, although he did spend a certain amount of time gossiping and talking in the corridors. There was some question as to whether or not he had been given an assignment impossible of completion, but steps were taken to assist him on those occasions.

13. It was suggested that the grievant transfer to a bus driver position, at a higher pay grade, for which he was qualified, and which seemed more suitable to grievant's inclinations and state of health. This suggestion was refused by the grievant.

14. Although the grievant did not enjoy the best of health, and was taking medication from time to time, it was not felt that it affected his ability to perform the work given him.

15. The grievant has never been suspended or reprimanded during

his decade of service with the State of Vermont.

16. The Board finds that the quality of work performed by the grievant was at least adequate, but the quantity of work performed, initiative shown, and general cooperation with supervisory staff did not meet the general standards required of the job.

17. The Board finds that the grievant was given ample warning that his conduct would constitute grounds for dismissal, if not improved. The Board further finds that the work performance of the grievant did not show any degree of improvement after these warnings.

18. The Board finds that the grievant was discharged with just cause, within the meaning of the Non-Management Agreement.

19. The transcript and exhibits are made a part of these findings for purposes of appeal.

Discussion of the Evidence.

There were a number of witnesses on both sides, and witnesses who appeared to be neither on one side nor the other. Fellow workers expressed satisfaction with the quality of grievant's work, but agreed that he did not carry his fair share of the load. Supervisors spoke of their efforts to rehabilitate grievant and testified that they followed appropriate procedures laid down in guidelines furnished by the State Department of Personnel. The evaluations were personally discussed with the grievant and notes taken of a number of other discussions with him and advice given (Defendant's Ex. 3).

Opinion.

Under the provisions of 3 V.S.A., §902 (14) the Board must look to the Collective Bargaining Agreement, the Non-Management Agreement between the State and the Vermont State Employees' Association, Inc.

There is no question here but that the letter of dismissal does indeed comply with the Agreement itself. The issue remains, however, as to whether or not the grievant was discharged for "just cause" within the meaning of the Agreement. The criteria which the Board has examined to determine whether just cause was present is twofold, first, whether it is reasonable to discharge the grievant because of his failure to improve the quantity of his work product, and secondly, whether the employee had fair notice that such conduct would be grounds for discharge. Carter v. United States, 407 F. 2d, 1238, 1244 (B.C. Cir. 1968). See also In Re Grievance of Albert Brooks, 135 Vt. \_\_\_\_ (1977); Smith v. Highway Board, 117 Vt. 343, 348, 91 A. 2d 805, 808 (1952). In the case before us, not only should the grievant have known that a continued failure to improve his performance might result in dismissal, but he was specifically told that it would, and went through two periods of warning with this notice in mind. The evidence is unequivocal that he knew that a failure to improve his performance would result in termination. The question is somewhat closer, however, as to whether the grievant's actual conduct could reasonably be considered a cause for discharge. We hold that although it is clear that he did good work, and took pride in his work, his effort and productivity were below par. He needed constant supervision to prod him to perform a standard day's work. While there is some evidence that physical disability may have been partially responsible for his sub-par performance, this is by no means clear. In balance, the Board must find that the job of Custodian B was not of such a complex or onerous nature that the grievant could not have improved his performance during the period of time provided, which he did not. We therefore find

that the grievant was discharged for just cause.

ORDER.


Because of the findings of fact, conclusions and opinions expressed above, it is hereby ORDERED that the grievance be, and it hereby is, DISMISSED.

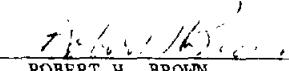
Dated at Burlington, Vermont this 7th day of April, A.D. 1978.

VERMONT LABOR RELATIONS BOARD

By

  
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JOHN S. BURGESS, CHAIRMAN

  
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WILLIAM G. KEMSLEY, SR.

  
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ROBERT H. BROWN