

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:
PAUL MARASCHIELLO

Docket No. 77-14S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a grievance brought by Paul Maraschiello against the State of Vermont. Grievant, while an employee of the Rutland District of the State Department of Social and Rehabilitation Services, was on November 25, 1975 involved in an affray with a fellow employee at the Department's offices. Both men suffered injuries in this affray. There followed an investigation by the Grievant's employers and psychological examination by an expert selected by the State. After receipt of reports of the investigation and examination by Grievant's superior, Grievant was disciplined for his involvement in this incident.

Grievant has requested that a lie detector test be ordered for him to "clear his name", that this Board declare the investigation of his conduct to have been too broad in scope and violative of the Grievant's constitutional rights, that the Board expunge the investigation reports from Grievant's records, and that the Board award damages to the Grievant.

For the reasons hereinafter stated, the Board has ordered that certain written material now in the Grievant's personnel file as a consequence of the investigation be destroyed but has declined to grant the other relief requested by Grievant.

Findings of Fact.

1. On November 25, 1975 Grievant was employed by the Vermont Department of Social and Rehabilitation Services, at the Rutland District Office.

2. On November 25, 1975 Grievant became involved in a dispute with a co-worker over the use by the Grievant of his co-worker's office. This dispute culminated in an affray in which both parties received bodily injury.

3. Following this affray, Grievant left work on November 26, 1975 and remained away through November 28, 1975, all without authority.

4. In a letter to Grievant dated November 28, 1975, Allen R. Ploof, Director of Social Services for the Department of Social and Rehabilitation Services, advised the Grievant that the affray and his subsequent absence from duty without authority was viewed as a serious matter warranting investigation and appropriate discipline. This letter also advised Grievant that he was temporarily relieved from duty, with pay, for the five-day period beginning December 1, 1975, during which time the Grievant was directed not to report to his work office and requiring Grievant to make himself available during normal working hours for contact by the investigator. Grievant was also notified by this letter that his absence from November 26 through November 28 would be considered an absence without leave.

5. On December 5, 1975 J. V. Moeykens, the appointed investigating officer, filed with Mr. Ploof his report of the investigation surrounding the affray of the Grievant and his co-worker. The report included summaries of interviews by the investigator with co-workers of the Grievant, Grievant's wife and acquaintances of the Grievant.

6. By letter to the Grievant dated December 5, 1975, Mr. Ploof notified the Grievant of the Department's discipline against him for his involvement in the affray. This discipline was a formal reprimand, a suspension without pay

for a period of five days from December 8, 1975 through December 12, 1975, and a relief from duty effective December 15, 1975 to permit the Grievant to undergo a psychological evaluation by an expert to be chosen and paid by the State. This letter indicated that further sanctions might be imposed following the results of that psychological evaluation.

7. As directed by Mr. Ploof, the Grievant had a consultation with Dr. Ben Rubenstein, a counselor. By his letter dated December 17, 1975, Dr. Rubenstein provided Mr. Ploof with a written report of his observations, conclusions and recommendations from this counselling session.

8. By letter to the Grievant dated December 22, 1975, Mr. Ploof informed the Grievant of his final decision as to discipline for involvement in the affray: Grievant was directed to return to his assigned duties effective December 29, 1975 but was placed on a six-month warning period during which he was expect to make major and continuing efforts to improve his performance.

9. Grievant completed the warning period to the State's satisfaction and was restored to regular status after a review and evaluation of his performance during the warning period.

10. As a result of the Step III grievance hearing in this matter, the only change in the previously ordered discipline was that Grievant was reimbursed for one and one-half days of lost pay on November 26 and November 27, 1975 and that one and one-half days of sick leave was charged against Grievant's then current accumulation.

11. During the investigation of Grievant's participation in the altercation, Grievant insisted that his co-worker was primarily at fault. He requested an opportunity to take a lie detector test in order to "clear his name" and verify his version of the events.

12. The co-worker involved in the affray with the Grievant was disciplined by a week's suspension without pay for his involvement in this incident.

Conclusions and Opinion.

13. There can be no dispute that the Grievant was involved in a violent altercation with a co-worker in a State office during working hours. Similarly, there can be no doubt that at least part of the responsibility for this altercation must be borne by the Grievant. Therefore, Grievant was subject to appropriate discipline by his superiors. Grievant's suspension from duty, partly without pay, and placement on a warning status cannot be held by this Board to be unreasonable in light of the evidence presented at the hearing. Nor can this Board find, based on that evidence, that the Grievant was discriminated against when the sanctions imposed upon him are compared with the sanctions imposed upon his co-worker involved in this altercation. Although the sanctions imposed were not identical, the investigating report reveals evidence of sufficient differences in the participants' conduct to warrant a differentiation in their sanctions.

14. The Board is troubled by the investigation report of Mr. Moeykens and the psychological counselling report of Dr. Rubenstein. The need for an investigation and psychological report was clear and the Board makes no exception to the fact that the investigation and counselling sessions took place. Nor can the Board find that the investigation exceeded the appropriate and proper scope.

This Board accepts as a general proposition that:

In the absence of statutory directions as to the manner in which an investigation shall be conducted by an administrative agency or official, the form of the investigation depends on the nature of the question to be determined and the data on which such a determination can reasonably and fairly be based. 73 C.J.S., Public Administrative Bodies and Procedure, Sec. 82, p. 406.

15. The far reaching scope of Mr. Moeykens investigation was apparently intended to uncover whether the altercation during business hours was reflective

of a broader pattern of aberrant or violent behavior on the part of the Grievant in his non-working life. The investigation may also have been designed to determine whether there was any evidence that the Grievant was suffering from unusual strains and pressures in his personal life which might have contributed to the violence on November 25, 1975. Neither area of inquiry is clearly inappropriate on the evidence. Similarly, the psychological evaluation for an expert opinion on the underlying reasons for the altercation on November 25, 1975 seems appropriate. The evidence does not justify any criticism of the State for its concern and caution, particularly in light of the fact that the use of violence as it happened on November 25, 1975 is a serious matter, and its seriousness is magnified by the fact that the Grievant in his work necessarily is placed in contact with co-workers and the public on a regular basis and often in stressful situations.

16. The State's refusal to order or use a lie detector test was within the investigating authorities' proper discretion under the general authority cited above in paragraph 14.

17. The Board is, however, concerned that much information of dubious relevance and reliability has been made a part of the Grievant's personnel file. While the investigation of all possible leads may have been proper, the perpetuation in writing of every unfavorable comment made about the Grievant during the course of the investigation is not defensible. There are numerous instances in the reports where speculative, unsubstantiated or hearsay remarks about the Grievant are memorialized. The Board believes that the inclusion of this material in a report which is a part of the Grievant's permanent personnel record is inappropriate and unfair.

18. The Board believes that the expungement from the Grievant's personnel records of the offending material is an adequate and complete remedy to the Grievant in facts of this case.

Order.

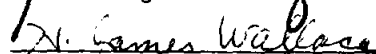
Within fifteen (15) days from the date of this Order becomes final, the State shall cause to be delivered to the Clerk of this Board all copies in its possession or control of the Moeykens report dated December 5, 1975 (with all attachments thereto), all copies in its possession or control of Dr. Rubenstein's report to Mr. Ploof dated December 17, 1975, and all copies in its possession or control of Mr. Ploof's letter to the Grievant dated December 22, 1975. Upon receipt of these papers, the Clerk of this Board shall destroy all copies of the Moeykens and Rubenstein reports referenced above, including attachments thereto. All copies of the Ploof letter to Maraschiello dated December 22, 1975 shall have its second paragraph made illegible and copies of the letter as so modified shall be returned by the Clerk to the forwarding State agency, and all unmodified copies shall be destroyed. Copies of all such papers in this Board's file shall be destroyed or modified in the same manner.

DATED at the City of Montpelier, County of Washington and State of Vermont this 19th day of December, 1978.

VERMONT LABOR RELATIONS BOARD


William Kemsley


John S. Burgess


H. James Wallace