

Vermont Labor Relations Board

GRIEVANCE OF:]	
]	DOCKET #77-42S
MICHAEL YASHKO]	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This is a grievance proceeding initiated by Michael Yashko pursuant to 3 V.S.A., Section 926. The grievant, a Sanitarian employed by the State of Vermont Health Department, lived in Bristol, Vermont and was dismissed by his employer, from which dismissal or termination this grievance has been brought under the provisions of the Non-management Agreement, Article XI, and the Rules and Regulations for Personnel Administration, Section 12.05. An answer was filed by the State on 13 April 1977 and a hearing was held in the Highway Board Room, Montpelier, Vermont 6 May 1977. No requests to find were filed by either party, and findings of fact are treated as having been waived. Memoranda of law, however, were filed by both parties. The grievant was represented by Alan S. Rome, Esquire, counsel for Vermont State Employees' Association, Inc., and the State was represented by the Honorable Jeffrey L. Amestoy, Assistant Attorney General. The grievant was present in person, as was Joan Hazlett Bouffard representing the Department of Health.

Discussion of Evidence and Credibility of Witnesses.

In general there was not a great deal of difference between the evidence presented by each side. However, there were a number of conflicts as to dates and especially as to evidence relating to the exact date of termination and as to the right of representation for the grievant at discussions with the Supervisor concerning a warning period and his ultimate termination. There was also conflict in the evidence as to the attitude displayed by the grievant toward attempts to improve his working habits and understanding of the health implications of the rules, regulations and procedures initiated by the Department of Health.

Findings of Fact.

1. At all times material, Vermont State Employees' Association, Inc. was the exclusive bargaining representative for non-management employees in the Health Department. There existed an agreement between the State of Vermont and the Non-management Bargaining Unit covering conditions of employment and related matters, including, inter alia, Article XI, Dismissal.

2. The Rules and Regulations for Personnel Administration issued by the Personnel Department included, inter alia, Rules 12.05, 13.021, 13.027 and 13.028, which appeared to be material and pertinent to the parties hereto, or one of them.

3. The grievance was dated March 25, 1977 and filed March 28, 1977 by Vermont State Employees' Association, Inc.

in behalf of Michael Yashko.

4. The grievant had been employed by the Department of Health, largely in his present capacity as Sanitarian, for ten and one-half years.

5. During fiscal year July 1, 1975 through June 30, 1976, grievant's rating was "consistently meets job requirements" on his Annual Performance Evaluation Report (Grievant's Ex. A). The Supervisor, however, based her evaluation on the short period that she had supervised grievant and indicated that "improvement is expected..." She added, "Since I have only been supervising this employee for the last eight months, I feel I need more time to evaluate his job performance. I feel there is great need for improvement in the areas mentioned. For this reason the rating is given, but improvement is expected by October 1, 1976 for this rating to be maintained."

6. A meeting was scheduled between grievant and his supervisors on 20 October 1976 in order to discuss certain work deficiencies with grievant. The facts surrounding this meeting, and the failure of Vermont State Employees' Association, Inc.'s representative, Beverly Ryan, to be present at that meeting to represent grievant, are surrounded with confusion. We find that the representative was not present, through no fault of grievant, but that the Department of Health expected that the representative would be present until the last minute.

7. A special evaluation and warning period were given to grievant at the meeting of 20 October 1976 (Grievant's Ex. B), written guidelines for improvement of performance

were either given to the grievant at the meeting or within two weeks of the meeting, the evidence being equivocal on this point. The Health Department complained of numerous deficiencies in the inspections conducted by the grievant, although numerically he appeared to have conducted at least an average number of inspections during the work period.

8. The exhibits and the transcripts are made a part of these findings for purposes of review by the Supreme Court.
Conclusions of Law and Opinion.

The rights of the grievant are determined by the Collective Bargaining Agreement between the VSEA and the State of Vermont. Article XI of the Collective Bargaining Agreement provides that an employee may be dismissed for "just cause". The contract does not define "just cause", which is to be considered a term of art and the Board must assume that the parties intended these words to have the same meaning as defined by decisions under the laws of other jurisdictions and decisions of numerous arbitrators who have considered the problem.

The reasons leading up to the discharge of the grievant centered around a long period of service under somewhat lenient, if not slack, supervision. In Mrs. Bouffard, grievant had a very dedicated and industrious new supervisor who was determined that departmental policy be followed to the letter. There seems to have been some slight friction which arose out of the fact that the new supervisor was a female. The failure to report, the possibility of falsified mileage, the taking off of time without permission in order to

attend a wedding, were all compounded by the fact that the VSEA representative, Beverly Ryan, did not appear for the hearing which was afforded to grievant. The consensus given by the witnesses was that this employee was not very self-reliant, but had served faithfully for a great many years. Attempts were being made to create in him a better understanding of the rules and regulations and the various public health standards involved in his inspection work. Also the grievant was being asked to improve his planning of schedules and make more efficient his use of travel. State's Exhibit B).

While there seems to have been adequate warning given to the grievant about the various matters of concern, nevertheless he did not appear to have been performing in a completely unsatisfactory manner. His years of past service do not appear to have been given enough consideration in the abrupt decision to sever him. The State of Vermont has made a considerable investment in the grievant. That investment is lost when an employee leaves the service of the State. Yashko's record of performance, at least quantitatively, was somewhat above the average of his fellow workers in several respects. During the period June 1, 1976 to July 15, 1976 Yashko covered 23.5% of the establishments in his district, whereas the average of all other sanitarians was 15.9%. Similarly, in subsequent periods Yashko's coverages were 14.1%, 12.3%, and 29.1%. His fellow workers managed only 9.0%, 11.6% and 18.1%, respectively. While quantity is not always a substitute for quality, it should be considered.

The evidence indicates that grievant's immediate problem with his supervisor was his inability to keep within the travel budget. The second major problem concerned grievant's understanding of the guidelines under which inspections ought to be made. There seems to be a relationship between the above average coverage afforded by the grievant to the State and the overspending of his travel allowance. Furthermore, it is quite clear that adequate lines of communication were not well established between the grievant and his supervisor. Again, the frequency of communication appears to have been sufficient adequate but grievant does not seem to have properly understood the directives given him. It is quite clear from the evidence of Beverly Ryan that the grievant did not understand these discussions with his supervisor and especially in their relation to his performance evaluations.

The notice of dismissal in the memorandum dated 25 February 1977, and handed to the grievant on 28 February 1977, does not conform with the provisions of the Non-Management Agreement, Article XI. The error was later corrected in a letter dated 9 March 1977 and mailed to the grievant by Certified Mail. Where communications between the supervisor and the employee are deteriorating, counseling is suggested to be a valid remedy through the State Department of Personnel. The discharge of an employee before any attempt has been made at professional counseling appears to be a traumatic and perhaps too drastic step.

ORDER.

NOW, THEREFORE, it is hereby ordered by the Board as follows:

1. That the grievant, Michael Yashko, be reinstated to his former position as Sanitarian for a probationary period of three (3) months, at the current rate of pay and fringe benefits afforded for his job description and classification.

2. That, in recognition of the validity of the principles of step discipline, the grievant shall receive no back pay from the date of discharge to the date of this Order.

3. That during the probationary period of three months, the grievant will be afforded counseling under the supervision of the Vermont Department of Personnel, with especial emphasis on the ability of the grievant to relate adequately to his immediate supervisor and to all members of the supervisory staff of the Vermont Department of Health.

4. All personnel records and notices are to remain in the personnel file of the grievant, and may be considered in future disciplinary action in the event that grievant is unable to improve his performance during the probationary period.

Commissioner Brown took no part in these proceedings or

in this decision.

Dated at Brattleboro, Vermont this 10th day of November,
1977.

*Appeal dismissed
for lack of
jurisdiction*

VERMONT LABOR RELATIONS BOARD

By *John S. Burgess*
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