

Vermont Labor Relations Board

GRIEVANCE OF:]
] Docket # 77-41S
RAYMOND HENDRICKSON]

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This grievance was brought by Vermont State Employees' Association, Inc. on 22 March 1977 on behalf of Raymond Hendrickson, a member of the Management Unit. The State's Answer was filed 12 April 1977, and the first hearing on the merits held 22 April 1977 in the Highway Board Room, Montpelier, Vermont. Alan S. Rome, Esquire appeared on behalf of the grievant and The Honorable Jeffrey Amestoy, Assistant Attorney General, appeared for the State. A continued hearing was held on 26 April 1977, and a further final hearing on the merits was held 3 June 1977, consisting primarily of the additional testimony given by Mr. Richardson. The Board had the assistance of transcripts of the testimony both of Mr. Hendrickson and Mr. Richardson.

Findings of Fact.

1. Raymond Hendrickson (hereinafter referred to as the Grievant), was employed as a Motor Vehicle Services Director with the Vermont Department of Motor Vehicles at the time this grievance arose in March, 1977.

2. The Grievant had worked for the Vermont Department of Motor Vehicles since 1968.

3. The Vermont State Employees' Association is the duly certified collective bargaining representative of the Management Unit and has entered into a collective bargaining agreement with the State of Vermont. A copy of that contract has been filed with this Board as required by statute, and is made a part of this record by judicial notice, although not a formal exhibit.

4. The Grievant is a member of the management bargaining unit.

5. By letter dated March 7, 1977, William H. Conway, Acting Commissioner for the Department of Motor Vehicles, dismissed the Grievant from his position.

6. The notice of dismissal dated March 7, 1977 contains the following language:

"On Friday, March 4, 1977 at 4:15 p.m. I learned, through the Director of Driver Improvement, that there was a rumor in the Education Department that the Department of Motor Vehicles had lost \$25,000. In checking on this I learned that the deposit of February 28 had a discrepancy of \$25,000 of which you had been informed by the bank on March 1.

"You had previously been instructed to notify me whenever there was a discrepancy in the deposit that could not be immediately resolved. In this instance, neither I, nor Mr. Williams, your immediate supervisor, had been informed of the nature or extent of the problem four days later. In fact, I would not yet know except through accident and the concern of another member of the department's management team.

"I understand that you mentioned to Mr. Williams on Thursday, March 3, 1977, that you could not meet with him because you were working out a difference in the deposits. I am sure you will agree that this casual statement was in no way

indicative of the seriousness of the problem, nor did it constitute adequate notice to your supervisor that the problem existed. Further on Tuesday, March 1, 1977, you left your work station early, even though you knew of this problem and had failed to resolve it at that time.

"In the past few months you have demonstrated an apparent inability to plan and monitor the workflow of your division as well as devise, implement and communicate a set of operating procedures for your division.

"Serious errors of judgment and gross neglect of duty cannot be tolerated. I have no alternative but to dismiss you from your position as Director of Vehicle Services effective immediately, March 7, 1977. You have the right to appeal my decision in accordance with the provisions of Article XIII of the Management Unit Contract and the rules of the State Labor Relations Board. I shall be available to discuss this matter with you if you wish to do so." (Gr. Ex. "J")

7. Raymond Richardson, Field Representative for the Vermont State Employees' Association, Inc. tried to meet with Acting Commissioner Conway to discuss the dismissal within 48 hours of the notice; however, the Commissioner did not meet with him within the two-day time limit.

8. The notice of dismissal did not advise the Grievant of his right to speak to the appointing authority within two days from receipt of the notice.

9. The notice of dismissal did not advise the Grievant of the time limits within which he might take an appeal to this Board.

10. 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 XIII of the collective bargaining agreement provides that an employee may be dismissed for "just cause". The contract does not define "just cause". "Just cause" is a term of art and the Board must assume that the parties intended it to have the same meaning as defined by laws of other jurisdictions and by various arbitrators.

The collective bargaining agreement requires that the notice of dismissal be in writing. The State complied with that requirement and the requirement that it state the reasons for the dismissal. The collective bargaining agreement further provides

"it must also inform the employee that he is entitled to discuss the circumstances surrounding his dismissal with the appointing authority ... provided the employee request to do so within two days from receipt of the notice."

The letter of dismissal states only that "I shall be available to discuss this matter with you if you wish to do so." It clearly does not conform with the collective bargaining agreement.

The collective bargaining agreement requires that

"the written notice must tell the employee of his right to appeal his dismissal to the State Employees Labor Relations Board as well as inform him of the time limit within which he must bring this appeal."

The letter from Acting Commissioner Conway advised the Grievant that he could appeal his decision to the State

Labor Relations Board. However, the letter contains no reference to a time limit.

The notice of dismissal is clearly defective and does not comply with the collective bargaining agreement by which the parties are bound. It is not necessary to cite numerous cases to support the proposition that the parties are bound by a contract.

The reference to the "State Employees Labor Relations Board" in the collective bargaining agreement is not an error but refers to the predecessor to this Board. This Board was created by the Legislature and assumed all duties of the prior State Employees Labor Relations Board on July 1, 1976.

The next problem is the fashioning of an appropriate remedy. The State was apprised of the defective notice of dismissal on or about March 22, 1977, when it received the grievance. At that time, the State chose to stand on its letter of March 7th rather than issue another letter with a later effective dismissal date. Dismissal is the most severe form of discipline and places a stigma on the employee's work record. Therefore, it is extremely important that any dismissal be administered in accord with the collective bargaining agreement. The dismissal was, in effect void and in fairness to the employee and also as a warning to the State, the Board believes that the Grievant should be

reinstated in his position and be made whole from any loss of income, fringe benefits or other benefits which he may have suffered as the result of the wrongful dismissal.

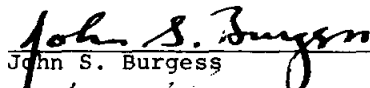

In making this decision, the Board is not ruling upon the merits of whether "just cause" existed for the dismissal. The opinions of Board Members Kemsley and Wallace attached hereto, partly in concurrence and in dissent reflect the issues which will have to be resolved by this Board if this case should be remanded or come before it again on the merits.

Order.

NOW, THEREFORE, it is hereby ordered that the grievance of Raymond Hendrickson be granted and that he be reinstated to his prior position with full back pay, interest, and all other direct or indirect benefits which he may have been entitled to under the collective bargaining agreement.

Dated this 15th day of July, 1977.

VERMONT LABOR RELATIONS BOARD


John S. Burgess

William G. Kemsley

Concurring Opinion.

After hearing the evidence I believe that this case should have been decided on the merits and the Grievant should have been reinstated to his former position at his former pay scale. My decision would be based upon the following reasons:

1. I do not believe that the Grievant wilfully and knowingly refused to comply with the instruction and guidelines put down by Acting Commissioner Conway.

2. The evidence admitted by the STATE (Exhibits 1, 2, 3, 4, 7 and 8) indicate that Acting Commissioner Conway had issued instructions and guidelines to the Grievant; however, instead of giving the memoranda to the Grievant, five of them were addressed to the file and only one was addressed to the Grievant. If a serious effort was being made to assist the Grievant to improve his effectiveness, the memoranda should have been given to him so that there would be absolutely no question as to what he was to do and when.


3. The State has not followed its policy of progressive discipline as set forth in Grievant's O. (Employee Discipline--A Guide for Supervisors, published by the State Department of Personnel.) This Guide sets forth five categories of discipline and order of suggested usage, the final one of which is dismissal. Steps 2, 3 and 4 were skipped and the pre-emptory dismissal of an employee who loyally and

faithfully served the State for nine years is far too great a penalty.

4. The fact that Acting Commissioner Conway would not meet within 48 hours following the Grievant's dismissal and the practice of addressing memoranda to the file regarding orders supposedly given to the Grievant are indications that the Acting Commissioner was determined to get rid of the Grievant rather to assist him to become a more valuable asset to the State of Vermont.

Therefore, I find that "just cause" was lacking and that the Grievant was improperly discharged.

Dated this 15th day of July, 1977.



William G. Kemsley

Dissenting Opinion.

I must respectfully dissent from the opinion of my colleagues. The Grievant was verbally advised by Acting Commissioner Conway of the time limits and that he should contact him within two days if he desired to discuss the matter. Acting Commissioner Conway would have met with the Grievant within two days. Representatives of the VSEA and State officials met on March 10, 1977, to discuss the case but could not reach agreement. The Grievant was not present. I do not agree with Findings of Fact numbered 7, 8 and 9. The notice of dismissal was not defective. Even if the notice may have been technically deficient, the Grievant was a high level supervisor and knew his rights and the remedies available to him. I do not think he was prejudiced by any of the defects of which he complains and, therefore, would not hold that the notice was defective.

On the merits, I feel that the Grievant should have been dismissed because the Grievant was discharged for "just cause". The Grievant was advised many times by his supervisor over a period of five months that there was a problem and that the departmental workload was seriously behind schedule. The Grievant provided inadequate and incomplete plans to correct the problem. The memoranda regarding his performance addressed to the file were in accord with standard operating procedure for the State of Vermont and were

discussed with the Grievant before being placed in the file. According to my notes, Grievant's O was never admitted into evidence and, therefore, it should be disregarded.

The Grievant was guilty of an unacceptable degree of insubordination. He did not follow specific instructions to advise Acting Commissioner Conway of any discrepancy in cash or checks that could not be immediately resolved. In fact, the Grievant, by his own admission, admits he did not willingly accept Mr. Williams as his assigned supervisor. (The Grievant thought he should have gotten the job.) The evidence clearly indicates a continuing lack of communication and cooperation from Mr. Hendrickson to Mr. Williams and from Hendrickson to Deputy Commissioner and later Acting Commissioner Conway before Williams was appointed his supervisor.

I regret having to come to this conclusion as I think that part of the Grievant's lack of attention to instructions was attributable to a change in the organizational set up from Commissioner Malloy (to whom he reported directly) to Deputy Commissioner and later Acting Commissioner Conway and subsequently to Mr. Williams. However, the possible affect of this change in the Grievant's supervision cannot be allowed to carry much weight in this case. The Grievant should have recognized the change at once and extended full cooperation forthwith. We are not dealing with a clerk in the lower levels

of responsibility. The Grievant's job called for supervisory responsibility and was paid on that basis. Therefore, I believe that the grievance should be dismissed.

Dated this 21st day of July, 1977.

H. James Wallace
H. James Wallace
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