

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

OLIN C. BROOKS

Docket No. 78-53S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This is a grievance brought by Olin C. Brooks, a meat inspector employed by the State of Vermont, Department of Agriculture, protesting the Grievant's dismissal from State service effective November 18, 1977.

Grievant contends that he was dismissed without just cause as required by Article XI of the applicable collective bargaining agreement. The State contends that the required just cause was provided by the Grievant's failure to obtain or use an adequate working knowledge of technical language required for his position.

For the reasons stated below, this grievance is dismissed by the Board.

Findings of Fact.

1. At all times relevant to this grievance, Grievant was employed as a meat inspector with the Department of Agriculture, State of Vermont.

2. The specifications for the position of meat inspector define the job as including "inspection work of more than ordinary technical difficulty and responsibility involving the sanitary requirements of the meat inspection act". The job specifications also require an "ability to establish and maintain effective working relationships with associates, meat processors, retailers and the public."

3. Each animal slaughtered must receive an ante-mortem and post-mortem inspection. In post-mortem inspection, lymph nodes of the slaughtered animal must be incised to inspect for signs of disease. A knowledge of the lymphatic system of animals which are slaughtered for human consumption is essential to an initial determination of whether the animal is fit for further processing. Each of the meat inspectors, including Grievant, within the Meat Inspection Service has knowledge of the lymphatic system of slaughtered animals including the technical names.

4. Veterinarians in the Inspection Service of the Department of Agriculture rely on the ability of meat inspectors to communicate orally and in writing the problems which arise in the post-mortem inspection of slaughtered animals. These veterinarians, because of their work load, cannot always arrive at a slaughter house on the same day a meat inspector retains a carcass as potentially unfit for human consumption. In such cases, the veterinarian must rely on the report of the meat inspector to inform him of the areas of concern.

5. Meat inspectors also have the responsibility for "compliance and evaluation" inspections of retail establishments which sell meat. Any violations found during compliance and evaluation inspections are put in written form, a copy of which is left with the retail establishment and a copy of which is sent to the Compliance and Evaluation Officer of the Department of Agriculture. It is important that reports be clearly written so that the retail establishment is on notice of what improvements are expected.

6. Grievant began employment as a meat inspector on October 18, 1976. His performance evaluation during the initial probationary period, which extended from October 18, 1976 to April 18, 1977, was "inconsistently meets job requirements/standards."

7. Grievant's initial probationary period was then extended for 90 days. Grievant's performance rating for the period of the extended probationary period was "unsatisfactory".

8. On July 14, 1977, the Grievant was informed that his employment would be terminated as of August 6, 1977, because of his inability to acquire the knowledge necessary to adequately perform the job of meat inspector.

9. As a result of a Step III hearing of this grievance, the Director of Employee Relations, Mr. Kecskemethy, ordered that Grievant be reinstated in a warning period because of the Department of Agriculture's failure to notify the Grievant of his performance evaluation at the end of his initial probationary period on April 18, 1977. (The performance evaluation was made on April 28, 1977.) Mr. Kecskemethy noted in his Step III decision that the Grievant's completion of original probation was "...by default and as a result of a technical error by the employer, not as the result of acceptable or adequate performance."

10. Mr. Kecskemethy's Step III letter notified Grievant of the consequence of a failure to improve performance by stating:

Because of your unacceptable level of performance as a Meat Inspector through July 28, 1977 you will be reinstated in a warning period. The warning period will run through October 21, 1977.... If your performance continues to be at a level below level #3, disciplinary action up to, and including dismissal may be instituted by the Department of Agriculture.

11. On October 17, 1977, Grievant was notified by the Deputy Commissioner of Agriculture, Allbee, that Grievant's performance during the warning period was "unsatisfactory" and that the Grievant would be dismissed.

12. Grievant's performance evaluation for the warning period stated:

Mr. Brooks is unable to comprehend the academic requirements necessary to fulfill the requirements of meat inspection. He has been unable to apply the regulations and prescribed procedures for determining fitness of slaughtered animals for human consumption. It is apparent that the requirements of this position are too technical for Mr. Brooks.

13. A letter of dismissal dated October 18, 1977, terminating Grievant's employment as of November 4, 1977, was withdrawn by the State as a result of allegations on behalf of the Grievant of procedural errors.

14. A new letter of dismissal was issued dated November 8, 1977, dismissing the Grievant effective November 18, 1977. Grievant received two weeks additional pay and V.S.E.A. stipulated that the newly issued order of dismissal was proper.

15. During the early period of Grievant's employment as a meat inspector, he received extra training. When it became apparent that he was not comprehending the knowledge necessary to his position, Grievant was given additional training including tutoring by a veterinarian. Extraordinary efforts were made by the State to provide training and individual assistance to the Grievant.

Conclusions of Law and Opinion.

16. In this proceeding, the Grievant has the burden of proof to establish by a preponderance of the evidence to prove that he was dismissed without just cause as the Grievant has alleged. The Board finds that the Grievant has failed to bear his burden of proof.

17. The Board is favorably impressed with the extent of the Grievant's working knowledge in the area of his responsibility. The Board does not question that the Grievant had a sufficient working knowledge of the pathology and anatomy essential to his position. On the evidence before it, however, the Board cannot conclude that the Grievant was able to communicate effectively with his associates in the Department of Agriculture or the members of the public with whom he was required to communicate by virtue of his position. Because of the obvious importance of effective communication in a job touching on concerns of public health and safety, the Board finds that the State had just cause to dismiss the Grievant from its service.

18. The Board also concludes that Grievant had adequate advanced warning of his deficiencies and that there are no technical shortcomings in the procedures invoked by the State in connection with the dismissal of the Grievant.

Order.

For the reasons stated above, this grievance is dismissed.

DATED at the City of Montpelier, County of Washington and State of Vermont
this 23rd day of *October*, 1978.

VERMONT LABOR RELATIONS BOARD

John S. Burgess
John S. Burgess
William Kemsley
William Kemsley

*Appeal dismissed
for failure to comply
w/ order dated 12/4/79*