

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

RALPH THURBER

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DOCKET NO. 88-26

MEMORANDUM AND ORDER

Majority Opinion

On July 10, 1989, the Vermont State Employees' Association ("VSEA") filed a Motion to Reopen in this matter on behalf of Ralph Thurber ("Grievant"). Grievant requested that the Board reconsider its Findings of Fact, Opinion and Order issued on November 3, 1988, 11 VLRB 312, in light of an April 26, 1989, settlement agreement between the State of Vermont ("State") and the VSEA.

In its decision, the Board upheld the dismissal of Grievant from employment as a security worker for the Vermont Veterans Home. Grievant appealed the Board decision to the Supreme Court. The Motion to reopen was contingent upon remand to the Board from the Supreme Court. The Supreme Court remanded to the Board on July 25, 1989. The State filed a response to the Motion to Reopen on August 25, 1989.

Grievant contends that the April 26 Agreement indicates that the State and the VSEA agree that the Board's authority in disciplinary cases is more expansive than the Board's view of its authority at the time of the Board decision in this case. Grievant submits that, had the Board viewed its authority as set forth in the April 26 Agreement, the Board might well have mitigated his dismissal to a lesser penalty.

The State contends that there is no suggestion in the Board's majority opinion that the Board would have mitigated the dismissal penalty had it viewed its authority in disciplinary cases to be more

expansive. Moreover, the State contends that the April 26 Agreement between the State and VSEA did not contemplate that the Board would reopen and reconsider a case previously decided.

The April 26 Agreement provides in pertinent part:

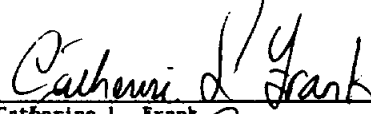
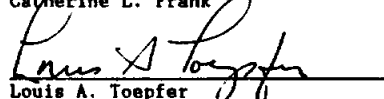
The parties agree as follows:

1. State will withdraw its appeal of VLRB decisions in the Gorruso II and Rutland post assignment cases. The parties agree that neither the VLRB decisions nor any court decision involved in the Gorruso I, Sherman and Rutland post assignment cases should be precedent in any future case under the collective bargaining agreements currently in force. The intention of this language is to restore the status quo before any such decision and not to enlarge nor diminish the rights of the parties under the collective bargaining agreements. The Rutland post assignment issue shall be settled pursuant to Article 2, Section 5.

2. The parties affirm the agreement that, upon a finding the State had just cause for imposing discipline but that the State was unreasonable in the imposition of a suspension or dismissal, the VLRB shall have the authority to impose a lesser form of discipline.

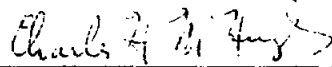
... 4. The parties shall jointly request the VLRB to adopt this settlement agreement under its rulemaking powers or otherwise to agree to adhere to this settlement agreement in its future decisions.

We conclude that, even assuming that the Agreement contemplated the Board reopening and reconsidering a case previously decided, our decision that just cause existed for Grievant's dismissal would be no different as a result of the April 26 Agreement. We believe that the State acted reasonably in dismissing Grievant. Thus, we decline to reopen this case.


Catherine L. Frank

Louis A. Toepfer

Concurring Opinion

Given my colleagues' view that their decision to uphold Grievant's dismissal would not differ in light of the April 26 Agreement, and although I hold to my view that the penalty of dismissal was excessive, I concur with the majority opinion that we should not reopen this case.



Charles H. McHugh, Chairman

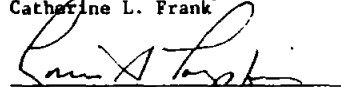
ORDER

Now therefore, based on the foregoing reasons it is hereby ORDERED that Grievant's Motion to Reopen is DENIED.

Dated this 21st day of September, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank


Louis A. Toepfer