VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 90-42
MICHAEL SHERBROOK	)	

MEMORANDUM AND ORDER

On July 11, 1990, Attorney Jan Rickless Paul filed a grievance on behalf of Michael Sherbrook ("Grievant"), a professor at Lyndon State College. Therein, Grievant alleged that the Vermont State Colleges ("Colleges") violated Articles 3, 7, 8, 14 and 24 of the collective bargaining agreement between the Vermont State Colleges and the Vermont State Colleges Faculty Federation ("Contract") through a letter of reprimand issued to Grievant and the procedures followed by the Colleges leading to and following the issuance of that letter. The procedures complained of include the manner in which the Lyndon State College Academic Dean and his associates and subordinates conducted the investigation into the charges, and actions by the College constituting willful interference with the traditional faculty/student relationship.

On July 23, 1990, the Vermont State Colleges filed a Motion to Dismiss, and a supporting memorandum of law. Grievant filed a Memorandum In Opposition to the Motion to Dismiss on August 7, 1990. A hearing on the Colleges' Motion to Dismiss was held on November 1, 1990, in the Labor Relations Board hearing room in Montpelier before Board Members Charles McHugh, Chairman; Louis Toepfer and Leslie Seaver. Attorney Jan Rickless Paul represented Grievant. Attorney Nicholas DiGiovanni, Jr. represented the Colleges.

The Colleges contend that this matter should be dismissed as moot because the letter of reprimand has been removed from Grievant's file and, thus, can play no part in any future action taken against him. Accordingly, the Colleges contend that the underlying dispute has been resolved and there is no remaining actual controversy between the parties warranting the Board hearing this case. The Colleges contend that even if the Board concluded that the letter of reprimand, and the procedures leading up to and following the issuance of the letter, violated the Contract, the most the Board would have ordered as a remedy would be the removal of the letter of reprimand. Since the letter of reprimand has already been rescinded, the Colleges contend that Grievant has been made "whole" and, thus, this case is moot.

Grievant contends that the grievance should not be dismissed because the underlying controversy giving rise to this grievance has not been resolved and, moreover, Grievant has not been made "whole". The underlying controversy has not been resolved, Grievant contends, because, while the letter of reprimand has been rescinded, the Colleges have not admitted to any violations of the Contract concerning the letter of reprimand and procedures leading up to and following the issuance of the letter. Grievant contends that the Board should determine whether any Contract violations occurred because no agreement has been reached by the parties to settle this matter and, if the Board does not hear this grievance, a clear message would be sent to the Colleges that the Contract can be violated as long as no disciplinary action is taken. Grievant contends that he has not been made "whole" because there is more harm to him than just the letter of reprimand. Grievant requests as a remedy that he be

provided with copies of the charging documents concerning the underlying incident leading to the letter of reprimand and that the Colleges pay the legal fees incurred by Grievant in this matter.

We conclude this grievance should be dismissed. As a public administrative body, the Board has only that adjudicatory authority conferred on it by statute. Boynton v. Snelling, 147 Vt. 564, 565 (1987). In grievance proceedings, the Board's jurisdiction is limited by both the definition of the term "grievance" in 3 VSA §902(14), and by the requirement that there be an "actual controversy" between the parties. In re Friel, 141 Vt. 505, 506 (1982). To satisfy the actual controversy requirement, there must be an injury in fact to a protected legal interest or the threat of an injury in fact. Id. Grievance of Boocock, 150 Vt. 422, 425 (1988).

In this case, any injury to Grievant has been remedied by the Colleges rescinding the letter of reprimand. We are without authority to order any further remedy. The Board's authority in grievances contesting disciplinary actions is limited to remedying the improper disciplinary action absent provisions in the collective bargaining agreement providing for further action. In re Grievance of Brooks, 135 Vt. 563, 570 (1977).

The appropriate remedy for an improper disciplinary action is to make the employee "whole"; to make an employee whole is to place the employee in the position he or she would have been in if they had not been improperly disciplined. Grievance of Benoir, 8 VLRB 165, 167-168 (1985). In disciplinary cases, this means rescinding the disciplinary action and awarding back pay and benefits lost due to the disciplinary action. Brooks, supra. When improper written reprimands are

involved, the appropriate remedy is limited to rescinding the letter of reprimand and ordering it removed from the employee's personnel file. Grievance of Roy, 13 VLRB 167, 186 (1990). Grievance of Jamison, 10 VLRB 239, 245 (1987). In this case, the Colleges have rescinded the written reprimand and removed it from Grievant's personnel file. Thus, the most we would have granted as a remedy had we concluded that the letter of reprimand, and/or procedures leading up to and following the reprimand, were improper has been made.

Grievant has requested the additional remedy of being provided with copies of the charging documents concerning the underlying incident leading to the letter of reprimand and being paid by the Colleges the legal fees incurred by Grievant in pursuing this matter. It would not be appropriate to grant such a remedy. A copy of the charging documents would serve no purpose in the context of this grievance since the reprimand based on the underlying incident has been rescinded. Also, for us to award attorney fees would be in excess of our authority under law, which is limited to remedying improper disciplinary actions. Grievance of Warren, 10 VLRB 65, 69 (1987). Brooks, supra.

In sum, there is no remaining injury in fact to Grievant with which we have authority to provide a remedy. Also, there is no threat of an injury in fact since the contested letter of reprimand has been removed from Grievant's personnel file and can play no part in any future action taken against Grievant.

Thus, the "actual controversy" requirement for us to take jurisdiction has not been met. To provide an adequate basis for us to have jurisdiction, a grievance must be more than an argument over contract interpretation. It also must be a request for action which we

have the authority to order. Since that is lacking in this case, we dismiss the grievance.

Now therefore, based on the foregoing reasons, it is hereby ORDERED that the Motion to Dismiss made by the Vermont State Colleges is GRANTED, and the Grievance of Michael Sherbrook is DISMISSED.

Dated this 20th day of December, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Louis A. Toepfer

Leslie G. Seaver