

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF: The Vermont State Employees)
Association, Inc., on behalf of Cora)
Campbell, from a decision of the Departments)
of Personnel and Public Safety, pursuant to)
Article XXXIX of the Non-Management Contract,)
and Section 13.016 of the Personnel Rules)
and Regulations.) DOCKET NO. 78-110S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On December 7, 1978 the Vermont State Employees Association (hereinafter "VSEA") filed a grievance on behalf of Cora Campbell, from a Step III decision of the Department of Personnel and Public Safety, pursuant to Article XXXIX of the Non-Management Contract. The State filed an answer to the grievance on December 27, 1978.

On February 1, 1979 a hearing was held on the matter in Montpelier. All members of the Board were present. Grievant was represented by Alan S. Rome, Counsel for VSEA, and the State was represented by Louis P. Peck, Chief Assistant Attorney General.

FINDINGS OF FACT

1. During the times pertinent to this grievance, Cora Campbell worked as a Clerk Dispatcher for the Department of Public Safety at K Troop headquarters in Middlesex. Grievant is a member of the Non-Management Bargaining Unit of the VSEA.
2. On the performance evaluation for the rating year 1977-1978 (7/1/77-6/30/78), grievant was rated an overall "2" out of a possible "5". Because of this particular rating she was placed in a three month warning period. She has since been dismissed from State service.
3. In addition to the "2" overall evaluation on the 1977-78 rating, she was also given "2" under the following subheadings: Job Knowledge and Skills; Quantity of Work; Attitude; Judgment; Work under Stress. (Grievant's #1).
4. The Board takes judicial notice of the Agreement between the Non-Management Bargaining Unit and the State of Vermont, and in particular, Article XXXIX which reads in pertinent part as follows:

"During the rating year, immediate supervisor shall call the employee's attention to work deficiencies which may adversely affect a rating."

5. Grievant testified that, at no time during the rating year, did her immediate supervisor point out the aforementioned deficiencies which ultimately affected her performance evaluation.

6. To the knowledge of grievant, no official warning or reprimands had ever been placed in her personnel file, warning her of her deficiencies during the rating year 1977-78.

7. Sergeant Eugene L. Edwards was grievant's immediate supervisor from December 7, 1977 to June of 1978. He stated that he had verbally informed grievant of her deficiencies on numerous occasions and had also met with grievant to discuss them several times during the months of May and June. He also stated that grievant's response to these discussions was always extremely defensive.

8. In a memo to grievant dated June 1, 1978, Sergeant Edwards indicated to grievant that he was not impressed with the quantity of typing she had been doing. (State's 14).

9. Grievant responded with a memo to Sergeant Edwards stating in part that she did not appreciate his comment as to the insufficiency in the quantity of her typing: "I feel that I am no doubt the dispatcher who does the most typing." (State's 13).

10. During the rating period grievant worked on the night shift. Since Sergeant Edwards worked the day shift he had relatively little contact with her even though he was considered her immediate supervisor. During the first part of the night shift the corporal on duty was considered the shift supervisor for the dispatchers.

11. State Police Corporal Terrance Martin, grievant's shift supervisor for a major portion of the year, discussed with grievant on several occasions at least from January 1978 the nature of requirements and duties of a dispatcher. He met with an uncooperative and hostile attitude. Her performance did not improve, and in fact she indicated she did not intend to upgrade her performance.

12. In a memo to grievant dated June 30, 1978, Corporal Martin criticized the amount of log entries made by grievant during a high speed chase which occurred on June 29, 1978. (State's #4).

13. Grievant responded with a memo addressed to Corporal Martin in which she referred to Corporal Martin's "memo and others" as nothing but "harrassments". Her memo in part states:

"At this point, your memo and others are nothing but HARRASSMENT of an individual... [Emphasis added] standard of performance is equal to any other dispatcher and in some areas, superior and so I will not be upgrading my performance here."

14. Lieutenant Edward R. Fish is the Troop Commander for the K Troop at Middlesex. He described two incidents during May and June of 1978 in which he had brought grievant's deficiencies to her attention. On one occasion in May he spoke to her when he heard a trooper call in twice on the radio with no acknowledgement from grievant who was on duty at the time. She did not answer the radio until the third call and then requested that the trooper repeat his message twice. On the second occasion in June, Lt. Fish had to speak to her when, after requesting that he describe to her the procedure for sending a memo to headquarters three different times, she failed to follow his instructions.

15. On June 30, 1978 Lt. Fish called in to headquarters and grievant failed to answer the phone in an appropriate manner. On this occasion he wrote her a memo on basic answering procedure.

16. Grievant did not respond with a cooperative attitude towards her superiors in the face of discussions or memos concerning her performance as a dispatcher, nor did she indicate any willingness to accept constructive criticism, or even try to improve her performance. She herself made it abundantly clear that any criticism by her superiors would be rejected and she did not intend to make any effort to improve or even to try.

17. During the rating year 1977-78, grievant's immediate supervisor called to her attention work deficiencies which adversely affected her performance evaluation.

OPINION

The issue in this case is whether grievant's immediate supervisor complied with the requirements of Article XXXIX of the Non-Management Unit Contract by giving grievant sufficient notice during the rating year of her work deficiencies which resulted in an adverse performance evaluation.

We consider the evidence of notice to the grievant relating to her work deficiencies as less than overwhelming. Only two memos which contain

specific criticism of grievant's performance were admitted into evidence, one of which was dated June 30, 1978, the last day of the rating year. While there was evidence that meetings had taken place between the grievant and her supervisor during May and June in which grievant's deficiencies were discussed, grievant's supervisor was not able to recall many specific incidents where her deficiencies had been apparent and been called to her attention.

There is a clear conflict in the evidence as to whether Sergeant Edwards discussed her performance with grievant. The Sergeant testified that he did while grievant testified to the contrary. While not free from doubt, we are satisfied that grievant was made aware of her deficiencies and knew, or should have known, her performance was not satisfactory.

While memos or other written documentation would have been helpful in documenting the extent to which grievant had been put on notice, they are not required by the Contract. Furthermore in view of grievant's memos in reply to the two memos which were sent to her pointing out her work deficiencies, it is apparent that additional memos would probably not have been helpful in improving her performance. As she stated in her memo to Corporal Martin, she viewed his memo "and others" as "harrassment" and saw no reason to improve since she viewed her standard of performance as equal to any other dispatcher, if not superior. Her use of the term "harrassment", which indicates a continuing course of conduct, strengthens our conclusion that grievant was aware of her deficiencies and management's attempts to remedy them.

The intent of Article XXXIX is to give employees whose performance is unsatisfactory an opportunity to improve themselves through constructive criticism. In this case, however, rather than serving the purpose for which it was intended, the result of criticizing the grievant appears only to have exacerbated her feeling that she was being harrassed and unfairly treated by her superiors. In our view grievant's own negative attitude towards constructive criticism made it extremely difficult for her supervisors to comply with the spirit of the Contract, and that under the circumstances of this case their efforts to do so satisfied the requirements of Article XXXIX.

ORDER

The grievance of Cora Campbell is hereby ORDERED dismissed and it is DISMISSED.

Dated this 1 day of March, 1979 at Chester, Vermont,
Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley Sr.
William G. Kemsley Sr.

Robert H. Brown
Robert H. Brown

*Request for appeal
denied by SE.
4/15/80*