

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 05-17
VALINDA SILESKE)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 16, 2005, Valinda Sileski ("Grievant") filed a grievance with the Labor Relations Board contesting her dismissal from the State Department of Public Safety ("Employer"). Grievant alleges that the Employer, in dismissing her, violated Articles 5, 14, 17, 31 and 65 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association for the Non-Management Unit, effective for the period July 1, 2003 – June 30, 2005("Contract").

Hearings were held in the Labor Relations Board hearing room in Montpelier on December 8 and 16, 2005, before Board Members Richard Park, Acting Chairperson; Carroll Comstock and John Zampieri. Grievant represented herself. Assistant Attorney General Julio Thompson represented the Employer. The Employer and Grievant filed post-hearing briefs on January 9 and 13, 2006, respectively.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE 5

NO DISCRIMINATION OR HARASSMENT; and AFFIRMATIVE ACTION

1. In order to achieve work relationships among employees, supervisors and managers at every level which are free of any form of discrimination, neither party shall discriminate against, intimidate, nor harass any employee because of . . . disability, . . . filing a complaint or grievance, or any other factor for which discrimination is prohibited by law. . .
...

ARTICLE 14

DISCIPLINARY ACTION

1. No permanent or limited status employee covered by this Agreement shall be disciplined without just cause. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:

...

- a. act promptly to impose discipline . . . within a reasonable time of the offense;

...

- c. impose a procedure of progressive discipline . . .

- d. In misconduct cases, the order of progressive discipline shall be:

- (1) oral reprimand;
- (2) written reprimand;
- (3) suspension without pay;
- (4) dismissal.

...

- f. The parties agree that there are appropriate cases that may warrant the State:

- (1) bypassing progressive discipline . . .

...

3. . . . the appointing authority . . . may dismiss an employee immediately without 2 weeks' notice or 2 weeks pay in lieu of notice for any of the following reasons:

...

- c. refusal to obey lawful and reasonable orders given by supervisors;

...

- e. conduct which places in jeopardy the life or health of a co-worker or of a person under the employee's care.

...

10. In any misconduct case involving a suspension or dismissal, should the Vermont Labor Relations Board find just cause for discipline, but determine that the penalty was unreasonable, the Vermont Labor Relations Board shall have the authority to impose a lesser form of discipline.

...

ARTICLE 17

AGENCY, DEPARTMENT AND INSTITUTION WORK RULES

1. ESTABLISHMENT OF RULES

- (a) Each agency, department or institution shall put into writing those rules of conduct and procedure it deems necessary for its efficient operation. . .

- (b) . . . (W)ork rules shall not be in conflict with existing law, contract provisions, or with the Rules and Regulations for Personnel Administration.

...

3. REASONABLENESS AND APPLICATION OF RULES

(a) An employee or the VSEA may grieve the reasonableness of any rule promulgated under this Article and, further, may grieve any action taken against an employee based upon any such rule. In either case, the grievance may include a claim that the rule is unreasonable in its application to the employee or group of employees so aggrieved. The time limits for any claim that the rule is inherently unreasonable shall run from the date the rule becomes effective.

...

ARTICLE 24 OVERTIME

1. INTRODUCTION

...

c. It is understood and agreed that determining the need for overtime work, scheduling the hours overtime shall be worked, and requiring overtime work are exclusive employer's rights.

2. DISTRIBUTION OF OVERTIME

...

c. With written request and 24 hours' notice, an employee shall be excluded from further consideration for overtime. Such request may be canceled by the employee and may also be revoked by a supervisor under emergency circumstances, unless a medical exemption has been granted.

...

ARTICLE 65 WHISTLE BLOWER

1. A "WHISTLEBLOWER" is defined as a person covered by this Agreement who makes public allegations of inefficiency or impropriety in government. No provision of this Agreement shall be deemed to interfere with such an employee in the exercise of his or her constitutional rights of free speech, and such person shall not be discriminated against in his/her employment with regard thereto.

...

APPENDIX D CLERK DISPATCHER

...

6. Short notice overtime opportunities, created by the absence of a Clerk Dispatcher, shall be offered first to on-shift classified employees and then to off-shift classified employees. Short notice overtime opportunity is defined as a Dispatcher's absence from work for which less than twenty-four hours prior notice is given. The Department shall not be required to accept on-shift or off-

shift classified employee volunteers for short-notice overtime opportunities if such work would result in an employee working more than 16 hours in a workday. The Department will try to limit holdover overtime work to four hours, but may assign an employee to work up to 8 hours.

...

(State's Exhibit 1)

2. State Personnel Policies and Procedures provide in pertinent part as

follows:

...

Number 2.3

...

3.01 Employee Conduct: Every employee shall fulfill to the best of his ability the duties and responsibilities of his position. In his official activities, the classified employee shall pursue the common good and shall uphold the public interest, as opposed to personal or group interest.

...

Number 5.6

...

REQUIRED CONDUCT

1. It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position. The employee shall pursue the common good in their official activities, and shall uphold the public interest, as opposed to personal or group interests.

...

3. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont . . .

...

Number 17.0

...

EMPLOYEE COOPERATION WITH EMPLOYMENT INVESTIGATIONS

State employees have an obligation to cooperate with their employer regarding employment investigations. It is part of the responsibility of an employee to answer truthfully and fully the work-related inquiries of the State. Refusing to answer, answering incompletely, or answering untruthfully, questions relating to work is a misconduct offense for which an employee may be disciplined up to and including dismissal.

...

(State's Exhibit 2, p. 17, 50 and 56)

3. At all times relevant, the Employer had Communications Center Work Rules, a copy of which was provided to Grievant on December 19, 2002, which provided in pertinent part:

A.1.0.1 MISSION STATEMENT

...

Our Values: Respect, Teamwork, Pride, Dedication/Commitment, Integrity, Honesty/Confidentiality, Professionalism

...

A.3.0.2 CONFLICTS OF INTEREST/NON-FRATERNIZATION

...

Emergency Communications staff are subject to additional policies in order to protect responder safety at all times – lives literally depend on employees' abilities to work effectively as a team. Emergency Communications Dispatchers must perform their duties based at all times on their best professional judgment, unencumbered by personal conflicts or allegiances that might consciously or unconsciously affect their performance.

...

A.3.0.3 TEAMWORK

In an effort to meet the stated goals of the Communications Centers, all employees shall coordinate with and assist other employees in their work.

..

...

A.3.0.4. CHAIN OF COMMAND

The established chain of command . . . should be followed when dealing with work related issues. Employees should bring problems and concerns to the attention of their immediate supervisor. If the issue cannot be resolved, or if the employee is uncomfortable dealing with an immediate supervisor, the employee is allowed to refer the issue to the next level of authority.

(State's Exhibit 3, p. 65, 68 and 69)

4. Grievant worked as a Clerk Dispatcher for the Vermont State Police from 1995 until her dismissal on May 19, 2005. From 1995 until 2003, Grievant worked at the St. Johnsbury barracks. In 2003, the Employer implemented a state-wide consolidation of dispatching. This resulted in Grievant's transfer to Derby, where dispatching services

were provided for the entire Northeast Kingdom. The location where dispatching services are provided is known as a Public Safety Answering Point (“PSAP”). The events that gave rise to this grievance occurred while Grievant was working at the Derby PSAP.

5. Grievant received only a few performance evaluations during her tenure as a Clerk Dispatcher. On these occasions, she received an overall rating of “satisfactory”. Grievant was not disciplined during her employment prior to being dismissed.

6. In 2002, Grievant applied for a promotion to a dispatch supervisor position. Jane Berry, another Clerk Dispatcher, was selected for the position. Grievant filed a grievance over not receiving the promotion. Her grievance was denied by the Labor Relations Board. Grievance of Sileski, 25 VLRB 285 (2003).

7. In 2004, Berry was promoted to the position of PSAP Administrator. In this position, she supervised several first-level supervisors who directly supervised Derby PSAP dispatchers, including Grievant. The first-level supervisors’ responsibilities include scheduling dispatcher hours.

8. The Derby PSAP contains four dispatcher workstations, known as “pods”, which cover different areas of the Northeast Kingdom. One pod covers the St. Johnsbury area, a second pod covers the Derby area, a third pod covers the Bradford area, and a fourth pod handles “911” calls. When the fourth pod is unstaffed, 911 calls are assigned to the Bradford pod. On December 4, 2004, the Bradford pod handled 911 calls.

9. The Derby PSAP has three shifts: a) first shift from 7 a.m. to 3 p.m., b) second shift from 3 p.m. to 11 p.m., and c) third shift from 11 p.m. to 7 a.m. Generally, the second shift is the busiest shift. The second shift generally is busier on Saturdays than

weekdays. If snow is affecting road conditions during a shift, the shift generally is busier than otherwise.

10. Each shift is staffed with at least three dispatchers. Running an entire shift with only two dispatchers is considered unsafe as two dispatchers cannot handle the workload. On occasion, the Derby PSAP has operated between 3 a.m. and 5 a.m. with only two dispatchers on duty. During this period, State Troopers are not performing patrol duties and two dispatchers have provided adequate coverage for this period. The Derby PSAP has not operated a shift in its entirety with only two dispatchers on duty.

11. In late December 2003, Grievant was diagnosed with breast cancer. She took medical leave to undergo radiation therapy. She returned to work in February 2004. She regularly volunteered to work overtime from the time of her return until late August 2004.

12. On August 24, 2004, Grievant sent a letter to Berry which provided: "In respect to VSEA Article 24, I wish to be excluded from further consideration for overtime, effective with a 24 hour written notice". Shortly thereafter, Berry informed the Derby PSAP supervisors they were not to schedule overtime for Grievant (State's Exhibit 4).

13. Grievant submitted Step II grievance on September 2, 2004, based on being denied time off on Labor Day weekend when she could not find someone to replace her. Grievant alleged that she was being retaliated against due to her August 24, 2004, request to be excluded from further consideration for overtime (Grievant's Exhibit 29).

14. Grievant submitted a Step II grievance on October 29, 2004. She alleged that Berry retaliated and discriminated against her by denying her request to attend a training session on November 3, 2004 (Grievant's Exhibit 30).

15. On December 2, 2004, Captain Robillard handed Grievant a letter dated November 22, 2004. The letter provided:

This letter is to confirm that I have made a supervisory referral to the Employee Assistance Program (EAP) for you due to concerns expressed by coworkers for your well-being, in particular your possible recurrence(sic) of cancer, and your absences from work. I have observed that employee concern for you is impacting the workplace.

Though seeking assistance from EAP is voluntary, you are strongly encouraged to follow up on this referral. Please contact Dennis Casey at 748-3868 to schedule an appointment. Your meetings with the EAP provider are strictly confidential, and the content of those meetings will not be shared with anyone. You will be asked by Mr. Casey to sign a release of information allowing him to contact me to confirm that you have kept appointments only. That is the only information he will divulge. If you sign the release of information, you will be allowed reasonable release time up to one and half hours during regular working hours to participate in this referral, up to five sessions.

I strongly urge you to follow up on this referral, Valinda. If you have any questions, don't hesitate to see me.
(Grievant's Exhibit 33)

16. On the morning of December 4, 2004, Jennifer Gibney, one of the first-line supervisors in the Derby PSAP, was off-duty but was "on-call" to deal with any matters that needed to be addressed by a supervisor. She was at home preparing a belated Thanksgiving dinner for her family. At approximately 11:30 a.m., Gibney received a voicemail message from dispatcher Julie Jacobs. Jacobs, who was scheduled to work the Bradford/911 pod on second shift that day, reported that her husband's grandmother had died that morning. Jacobs indicated that she would not be able to work that day and the

following day because she needed to care for her children while her husband tended to funeral arrangements (State's Exhibit 5, p. 90-91).

17. Upon receipt of the voice-mail message from Jacobs, Gibney immediately called the Derby PSAP to see if any of the dispatchers currently working on the first shift would be able to cover the first half of Jacobs' shift that day. She spoke first to dispatcher Janine LaMarche. LaMarche told Gibney that she was too tired to cover the first half of the shift. She said she had been awake since 3 a.m. because she had volunteered to come into work two hours early at 5 a.m. (State's Exhibit 5, p. 90).

18. Gibney then spoke to dispatcher Heather Myers. Myers told Gibney that she was not up to working the extra four hours because she had worked 12 hours the previous day. Myers also told Gibney that she had scheduled dinner plans that she had canceled in the past due to work coverage. Gibney then asked Myers if she would work part of Jacobs' shift on the following day. Myers agreed to work four hours of the shift. Myers frequently volunteered to work overtime (State's Exhibit 5, p.90).

19. The other two dispatchers on duty that morning were Kristal Davis and Grievant. Davis was not a viable option because she was a trainee and not yet qualified to work a pod on her own. Gibney did not speak to Grievant at that time because she knew that Grievant had asked to be excluded from overtime (State's Exhibit 14).

20. Gibney then called other dispatchers from a list of remaining PSAP dispatchers to see if they were available to cover the shift vacancy that afternoon. One dispatcher told Gibney that she already had provided five hours of coverage for Jacobs the previous day on her day off. Gibney called five other dispatchers and received no response. She left messages for them but they did not call her back in time to cover that

afternoon's shift vacancy. Gibney did receive confirmation from one of the dispatchers scheduled to begin work 11 p.m. that evening that he was able to come in early and cover the last four hours of Jacobs's shift that day, 7 p.m. to 11 p.m. (State's Exhibit 5, p.90-91).

21. Shortly after 1 p.m., Gibney again spoke to LaMarche. LaMarche indicated that she did not want to work an additional four hours that day because of continuing back problems and being worn down from the amount of overtime that she had been working lately (State's Exhibit 5, p. 91).

22. As a result of her efforts, Gibney was able to fill the last four hours of Jacobs's shift on December 4, and all 8 hours of her shift on December 5. She was unable to fill the first four hours of Jacobs's shift for December 4, from 3 p.m. to 7 p.m. At approximately 1:15 p.m. on December 4, Gibney called PSAP Administrator Berry at her home. She explained the situation and indicated that she had run out of options for covering the first half of Jacobs's vacant shift that day. After listening to all the steps Gibney had taken, and all the dispatchers she had contacted and left messages for, Berry decided that the only option for coverage was to assign Grievant to stay an extra four hours from 3 p.m. to 7 p.m. Berry told Gibney to call Grievant and tell her that she was assigned to work the four extra hours (State's Exhibit 5, p.87).

23. Gibney made a telephone call to Grievant at approximately 1:25 p.m. on December 4, and the following conversation ensued:

Grievant:	May I help you?
Gibney:	Hi Valinda.
Grievant:	Hello.
Gibney:	It's Jen. I hate to bother you with this, but I have called everybody on the list and nobody has gotten back to me or they have said no,

and Jane said that I would have to call you in to stay for four hours and then Josh is going to be coming in at 7:00 tonight. But –

Grievant: So you're telling me that you're commanding me to stay?

Gibney: Well, I am not commanding you, I guess there is the on call -- the call-in list?

Grievant: Right.

Gibney: And I have been called in before and Jean Beaulieu has been called in before, and I guess that's what it is.

Grievant: But I've already done my letter for no overtime.

Gibney: I guess it is not a regular overtime – it's in an emergency. There is a call-in list.

Grievant: Well then –

Gibney: I mean, if you want to speak to Jane that's fine. I mean you can call her and hash it out, you know, that's fine. But I've called everybody. I even called Denise, I've called Sarah, who – they don't even really work anymore and they haven't been getting back to me either.

Grievant: Well, I'm not staying.

Gibney: Okay, well I'll just call Jane and tell her that then. I don't know who is going to stay then.

Grievant: Okay.

Gibney: All right?

Grievant: Thank you.

Gibney: Thank you. Bye.

(State's Exhibit 5, p. 87 and 91; State's Exhibit 6; State's Exhibit 7, p. 97- 98)

24. Immediately after this conversation, Gibney telephoned Berry and informed her that Grievant had refused to cover the shift vacancy. Berry replied that she would call Grievant herself.

25. Berry made a telephone call to Grievant at approximately 1:29 p.m. on December 4, and the following conversation ensued:

Grievant: May I help you?

Berry: Hi, this is Jane. I'm calling to let you know you are being assigned to stay for four hours tonight.

Grievant: Okay that's fine. If you want to command me, I'll want it in writing when I get back, though.

Berry: Okay.

After a brief pause during which neither Berry nor Grievant spoke, Berry hung up the telephone and disconnected the call. Berry then contacted Gibney and informed her that Grievant had agreed to work first half of the vacant shift that afternoon (State's Exhibit 5, p. 87; State's Exhibit 6; State's Exhibit 7, p. 99).

26. Grievant's husband, Paul Sileski, telephoned Grievant at work prior to 3 p.m. on December 4. Grievant informed her husband: "either I quit or I get commanded to stay today. And I really would rather quit". Grievant further stated: "I can't stand it here anymore." Grievant asked her husband to come pick her up now because she was not staying at work (State's Exhibit 6; State's Exhibit 7, p. 100)

27. Grievant then called Sergeant Larry Smith and asked him if he could find a box for her to put her personal belongings in because she was leaving. In a subsequent telephone conversation with a Vermont Department of Fish and Wildlife Lieutenant Ken Denton, Grievant told him that she was "quitting" (State's Exhibit 6; State's Exhibit 7, p. 101-104).

28. Grievant paged Captain Real Robillard, Commander of the Derby Barracks. Robillard returned the page at approximately 2 p.m. Grievant had a telephone conversation with him in which the following exchange occurred:

Grievant: I just wanted to let you know that Jane couldn't find anybody to work today, so she's commanded me to stay and I'm not staying because of the letter I had wrote and she never commands anyone else to stay and so --

Robillard: Valinda, Valinda, if you are ordered to stay --

Grievant: What's that?

Robillard: -- if you are ordered to stay Valinda, you don't have a choice.

Grievant: Right, I know that but I am not staying which I guess means that I am being fired.

Robillard: I'm not sure what is going to happen, Valinda, but it is going to be an issue.

Grievant: Right, I know that.

Robillard: Okay, Okay. All right, have you told Jane?
Grievant: No, she hung up on me.
Robillard: Okay, all right. Put me through to -- who is the supervisor on duty?
...
(State's Exhibit 6; State's Exhibit 7, p. 105-06)

29. After concluding her conversation with Robillard, Grievant began packing her personal belongings. She told dispatcher Myers that she had "had it with this place" or words to that effect.

30. After his conversation with Grievant, Robillard called Berry from his cell phone to inform her that Grievant had refused to provide emergency coverage. When Berry did not answer the telephone, Robillard left her a message on her answering machine. Berry did not reach Robillard upon returning his message until after 3 p.m.

31. Sometime in the early afternoon, a heavy, wet snow began to fall in the Derby area. It continued snowing into the evening hours.

32. Shortly before 3 p.m., second shift supervisor Jean Janci arrived at the Derby PSAP. Earlier that afternoon, Gibney had informed Janci that Grievant had been assigned to work the first half of Jacobs' shift. Upon arriving at the Derby PSAP, Janci learned from dispatcher LaMarche that Grievant was refusing to stay over. Janci asked Grievant if she leaving after Berry ordered her to stay over. Grievant confirmed that she was leaving (State's Exhibit 5, p.92).

33. At or shortly before 3 p.m., dispatcher Myers informed Janci that she would try to stay and cover the vacant pod until 6 p.m. Janci accepted Myers' offer. At about the same time, Grievant left the PSAP, taking her personal belongings with her. At that point, while Myers would be covering the first three hours of the shift vacancy, there was no coverage for the Bradford/911 pod between 6 and 7 p.m. Shortly after Grievant

left the premises, dispatcher Jeff Mayo agreed to come into work at 6 p.m. and cover the remainder of the vacant shift (State's Exhibit 5, p. 92-93).

34. Berry was asked to conduct an investigation of Grievant's actions on December 4. Berry requested and obtained written statements from employees other than Grievant who had witnessed events that day, and obtained copies of telephone calls involving Grievant that were recorded by the Derby PSAP network that day. She also prepared a summary of events. She submitted her investigation report on or about December 13, 2004 (State's Exhibit 5).

35. Grievant submitted a Step II grievance on December 13, 2004, contending that Berry and Robillard retaliated against her, and discriminated against her, by commanding her to stay and work overtime on December 4. In the grievance, Grievant also requested clarification of the meaning of the letter she received from Robillard on December 2 (Grievant's Exhibit 31).

36. The Step II grievance was denied. Grievant did not file a Step III grievance.

37. Mary Puro, Paralegal and Investigator for the Department of Human Resources, conducted an investigative interview with Grievant on January 6, 2006, as part of the Employer's investigation of Grievant's actions on December 4. During the interview, the following exchanges occurred between Puro and Grievant:

...
Puro: . . . How do you understand this, like under emergency circumstances? What's an emergency circumstance to you? Say being down to two dispatchers, would that be an emergency circumstance? It's actually not defined, but . . .
Grievant: I mean, yeah, this place has to be covered with at least three dispatchers, yes.
...

Grievant: . . . Jane came after me . . .

Puro: Jane Berry?

Grievant: . . . yes, for using too much sick leave, so she said. . . I grieved it based on the fact that it was discrimination because I went through everybody else's and Jean Beaulieu had more sick time than I did, and they were also, with her days off . . .

Puro: Now, how did you get access to somebody else's sick time usage?

Grievant: Because its all right there. It's right there in the file where we put all of our stuff. It's just the time sheets are all right there. They post our things on the bulletin board.

Puro: Like how many hours you've got for sick usage and how many comp time . . .

Grievant: Yeah, yeah.

Puro: . . . and personal time?

Grievant: Yeah, they post all that. How much we make, and everything, on the bulletin board.

. . .

Grievant: . . . Jane did a thing with everybody else, and like I said, Jean Beaulieu had more sick time than I did. Katrina had more sick time than I did and not a little more, a lot more.

Puro: So, you mean they used more sick time?

Grievant: Yeah, yeah, and Kathy McCarg had two days less than me, and hers were also coinciding with her days off.

Puro: Okay, now how does that affect you don't want to work overtime?

Grievant: Well, what it is, they didn't speak to any of them about that or anything like that.

. . .

Grievant: . . . Jane . . . allows them to do the shift swap and so on and so forth and so, to me, that was a lot of discrimination, retaliation in there.

Puro: By people swapping shifts?

Grievant: Well, by – because she never allowed me to.

Puro: Okay. Did you ask to (inaudible)

Grievant: Oh, yes, definitely.

Puro: And she said no?

Grievant: Yes, yes, and I had witnesses to that.

. . .

Puro: . . . as far as the pod thing goes, it sounds like the pods overlap all the time. It's the bodies you need in there, not the pod coverage.

Grievant: No, the pods don't overlap like that . . . When somebody comes in, like somebody comes in to relieve a person, they go find out what the pod assign is and they go and relieve that person. If somebody's late, the person that that's at that pod, stays late.

Puro: Okay.

Grievant: You know, and that is the way it's, all would be when you stayed over because somebody couldn't come in for their shift, it's the person whose pod they're covering is who stays, and that wasn't my pod. My pod was covered.

...

Puro: So that leaves – with you leaving at that time, that leaves two trained dispatchers in that dispatch center. Okay, do you think two people in dispatch center is enough to safely run the dispatch center?

Grievant: I don't know, it works for them at night. They run it with two.

Puro: From three to five, though.

Grievant: From, no, they've had times where they run the whole shift with just two dispatchers and anything can happen on nights just as well as it can happen on days.

Puro: Because my understanding is that common practice . . . is that on occasion, three to five, only has two dispatchers.

Grievant: Yes, that's true, too, but they have run whole shifts with two dispatchers before.

Puro: And how many times has that happened?

Grievant: I don't know. I work nights.

Puro: Yeah, and how do you know that happens?

Grievant: Because I come in and relieve them. There's only two people there, and I've asked them, and I've told them, I wouldn't work here without three people on midnight shift because of the way the consolidation was supposed to work in the first place.

...

Grievant: . . . I know state police have been trying to get me to quit for four years now.

Puro: But you thought when you left you were fired?

Grievant: No, I didn't think I was fired because I specifically asked Robillard and he specifically told me that I was not fired. So, no, I did not think I was fired.

Puro: He told you, you would not be fired for leaving?

Grievant: That's correct, that's correct, and that's all on tape.

...

Grievant: . . . I told Captain Robillard also and what I told him was I would assume, because he's like you have to stay and I said, "Well, I'm not staying, therefore I'm assuming I'm being fired", and he said "No, you're not."

Puro: Okay. Didn't you pack your desk up?

Grievant: I packed up all my personal items, yes.

Puro: Okay, why did you do that?

Grievant: Because I thought they were going to fire me.

Puro: Okay, and so you think that they would perceive this as a serious enough offense to immediately fire you?

Grievant: No, I think that Jane Berry, Captain Robillard have been after me for a very long time and I think that whatever little itty bitty thing that they could possibly get on me, they will take, and they will take it and run with it.

Puro: Okay, so you think this is an itty bitty thing?

Grievant: No, I think that – no, I don't say it's an itty bitty thing. I'm, I'm simply saying that she didn't have the right to command me to stay, that I shouldn't have been the one that was commanded to stay.

...

Puro: . . . I don't think I have any more questions or anything, do you have any statements or questions?

Grievant: No, just that the only reason I didn't stay had nothing to do with the other dispatchers, had nothing to do with the job. It had to do with Jane Berry retaliating against me again and that is the way I felt.

...

(State's Exhibit 9, p. 142, 143, 150, 152, 159, 160, 161, 162, 166, 186, 187, 194, 195)

38. Contrary to Grievant's statement to Puro that she was never allowed to swap shifts, Grievant was allowed to swap shifts with dispatcher LaMarche in December 2004. Contrary to Grievant's statement to Puro that dispatchers are not required to stay over past their regularly scheduled shift if their replacement for the particular pod they were working on was coming into work, dispatchers routinely were assigned overtime to work other pods to meet coverage needs. Contrary to Grievant's statement to Puro that employee leave balances and salaries were posted at the Derby Barracks, this information had never been posted at the Derby Barracks during the time Grievant was working there.

39. In January 2005, Captain Robillard was transferred to Department of Public Safety headquarters in Waterbury. Captain Walt Goodell was assigned to succeed him as Commander of the Derby Barracks. Captain Goodell had worked with Grievant in the past and had not had any problems or conflicts with her.

40. In April 2005, Captain Goodell reviewed the investigation report and materials on Grievant. He sent Grievant a Loudermill letter dated April 29, 2005. The letter provided in pertinent part:

The Department of Public Safety is contemplating your dismissal from the position of Emergency Communications Dispatcher. . .

Your dismissal is contemplated for the following reasons. . .

1. Insubordination and refusal to obey a lawful and reasonable order to stay and cover a four hour shift on December 4, 2004, in violation of Article 24 of the Collective Bargaining Agreement, State Personnel Policies and Procedures Nos. 2.3 and 5.6 and VSP Communications Centers Work Rules . . .

On December 4, 2004, your supervisor and PSAP Administrator Jane Berry gave you a direct order to remain at the Derby Public Safety Answering Point (PSAP) to cover a four hour shift from 1500 to 1900 hours because a fellow dispatcher was not able to report to duty, leaving the PSAP with only two dispatchers on duty. Two dispatchers on duty would have compromised the safety and security of both on-duty troopers and the public. The threat to trooper and public safety was further compromised by weather conditions as it was snowing that day and the time period involved was a dark Saturday afternoon and early evening.

. . .

You submitted a letter to be excused from regularly scheduled overtime on August 26, 2004, per the terms of the Contract, Article 24 Section 2(c). Supervisors made every effort to secure shift coverage for 1500 to 1900 hours on December 4, 2004, and Jane Berry had no choice but to order you to remain to cover the first four hours of the second shift. During your investigative interview . . . (y)ou acknowledged that only having two dispatchers would be an emergency circumstance that would, under the contract/policies/directives, enable your supervisors to order you to remain on duty. Your refusal to comply with the directives of your supervisor to remain at the Derby PSAP to cover the four hour shift was not only in violation of Article 24, Section 2(c) of the Contract but also the VSP Communications Centers Work Rules. During your investigative interview on January 6th, you made the following statement: . . . “the only reason I didn’t stay had nothing to do with the other dispatchers, it had nothing to do with the job. It had to do with Jane Berry retaliating against me and that is the way I felt.”

This statement, taken in context with the rest of the investigative interview, is evidence that your perceived conflict with your supervisor was the only reason you disobeyed her direct order to work overtime.

. . .

. . .(Y)ou abandoned your post on December 4, 2004, thereby creating a situation that caused your co-workers a significant amount of stress and inconvenience. . .

You placed your personal feelings about Jane Berry over the safety concerns of your co-workers, your supervisors, your trooper commander, the troopers that were on duty and the safety of the general public.

In addition, you knew that your refusal to stay over was seriously insubordinate because the evidence shows that on the afternoon and evening of December 4th, you fully expected to be dismissed for abandoning your post. . .

2. Lying to Captain Robillard on December 4, 2004:

During your December 4 telephone conversation with Captain Robillard, he asked it(sic) you had informed PSAP Administrator Jane Berry that you did not intend to work overtime that afternoon. You replied, "No, she hung up on me."

That was a lie. . . The import of your statement to Captain Robillard was that Ms. Berry hung up on you before you had an opportunity to inform her of your intent not to stay over. The transcript, as well as the audiotape itself, makes quite clear that this was not true. You did have an opportunity to tell Ms. Berry of your plans, but did not do so. In addition, there is no evidence that Ms. Berry "hung up" on you.

Your deception appears to have been designed not only to conceal or mitigate your insubordination, but also to undermine Ms. Berry's standing with her supervisor. Such actions are inexcusable and appear inconsistent with continued employment with this department.

3. Conduct which places in jeopardy the life and health of a co-worker or a person under the employee's care.

Emergency Communications Center Dispatchers function as the life line for the public, State troopers and other community first responders. . . By abandoning your post, you created a situation that compromised the safety of the general public as well as the troopers and first responders in the field. Such actions are inexcusable and appear inconsistent with continued employment with this department.

4. Lying during your investigative interview with Mary Puro on January 6, 2005, in violation of State of Vermont Personnel Policy and Procedure No. 17 Employment Related Investigations.

...

. . . During your interview you made the following false statements:

1)

Puro: Now, how did you get access to somebody else's sick time usage?

Sileski: Because its all right there. It's right there in the file where we put all of our stuff. It's just the time sheets are all right there. They post our things on the bulletin board.

Puro: Like how many hours you've got for sick usage and how many comp time . . .

Sileski: Yeah, yeah.

Puro: . . . and personnel time?

Sileski: Yeah, they post all that. How much we make, and everything, on the bulletin board.

. . .

Sileski: . . . Jane did a thing with everybody else, and like I said, Jean Beaulieu had more sick time than I did, Katrina had more sick time than I did and not a little more, a lot more

Puro: So, you mean they used more sick time?

Sileski: Yeah, yeah, and Kathy McCarg had two days less than me, and hers were also coinciding with her days off.

Puro: Okay, now how does that affect you don't want to work overtime?

Sileski: Well, what it is, they didn't speak to any of them about that or anything like that.

. . .

Individual employee leave balances and salaries are not publicly posted on the bulletin board at the Derby PSAP, nor would it be appropriate to do so and it was a lie when you said that this information is posted. Upcoming shift vacancies and leave requests are posted so that other dispatchers may volunteer for scheduled overtime assignments. You were attempting to justify your refusal to stay over by apparently accusing some of your coworkers of abusing sick leave.

. . .

2) . . .

Sileski: . . . Jane . . . allows them to do the shift swap and so on and so forth and so, to me, that was a lot of discrimination, retaliation in there.

Puro: By people swapping shifts?

Sileski: Well, by – because she never allowed me to.

Puro: Okay. Did you ask to (inaudible)

Sileski: Oh, yes, definitely.

Puro: And she said no?

Sileski: Yes, yes, and I had witnesses to that.

. . .

These statements are false. At no time have any of your supervisors or coworkers discriminated or retaliated against you by denying you the ability to ask for and receive permission to swap a shift assignment. In fact, in December 2004, you and Janine Lamarche submitted a swap request form that was

approved. Informal and unauthorized swapping of post assignments during any given shift is not allowed and all dispatchers who have engaged in this behavior, including you, have been directed to cease doing so.

3)

Puro: . . . as far as the pod thing goes, it sounds like the pods overlap all the time. It's the bodies you need in there, not the pod coverage.

Sileski: No, the pods don't overlap like that . . . When somebody comes in, like somebody comes in to relieve a person, they go find out what the pod assign is and they go and relieve that person. If somebody's late, the person that that's at that pod, stays late.

Puro: Okay.

Sileski: You know, and that is the way it's, all would be when you stayed over because somebody couldn't come in for their shift, it's the person whose pod they're covering is who stays, and that wasn't my pod. My pod was covered.

These statements are false. If a dispatcher is going to stay over, or come in early, to cover four hours of another dispatcher's shift, they physically move to the pod that the missing dispatcher was assigned to. Many times they work eight hours at one console and then pack up and go to another console for four hours. You were attempting to justify the abandonment of your post by falsely stating that you would normally not have been commanded to stay over because the dispatcher that was assigned to take over your pod that day was coming in.

4)

Puro: So that leaves – with you leaving at that time, that leaves two trained dispatchers in that dispatch center. Okay, do you think two people in dispatch center is enough to safely run the dispatch center?

Sileski: I don't know, it works for them at night. They run it with two.

Puro: From three to five [a.m.], though.

Sileski: From, no, they've had times where they run the whole shift with just two dispatchers and anything can happen on nights just as well as it can happen on days.

Puro: Because my understanding is that common practice . . . is that on occasion, three to five, only has two dispatchers.

Sileski: Yes, that's true, too, but they have run whole shifts with two dispatchers before.

. . .

Puro: . . . and how do you know that happens?

Sileski: Because I come in to relieve them. There's only two people there, and I've asked them, and I've told them, I wouldn't work here without three people on midnight shift because of the way the consolidation was supposed to work in the first place.

There has never been a time when an entire third shift of the Derby PSAP was run with only two dispatchers and you were again attempting to mitigate your misconduct by making false statements about shift assignments.

- 5) When describing to the investigator your telephone conversation with Captain Robillard, you stated: “. . . what I told him was I would assume because he’s like you have to stay and I said ‘Well, I’m not staying, therefore I’m assuming I’m being fired,’ and he said, ‘No, you’re not.’”

That was a lie. Captain Robillard never told you that you were not going to be fired for abandoning your post on December 4th. You repeated this lie two additional times later in the investigative interview:

Puro: But you thought when you left you were fired?
Sileski: No, I didn’t think I was fired because I specifically asked Robillard and he specifically told me that I was not fired. So, no, I did not think I was fired.
Puro: He told you, you would not be fired for leaving?
Sileski: That’s correct, that’s correct, and that’s all on tape.

. . .

- 6)
Puro: Okay, so you think this is an itty bitty thing?
Sileski: No, I think that – no, I don’t say its an itty bitty thing. I’m, I’m simply saying that she didn’t have the right to command me to stay, that I shouldn’t have been the one that was commanded to stay.

The statement is false, and you knew it. The PSAP Administrator has the authority and responsibility to command a dispatcher to stay over when there is an emergency need, as there was on December 4, 2004. . .

You abandoned your post on a Saturday night in December, endangering the safety of the public and State troopers and first responders in the field. You also allowed your obvious personal animus towards your supervisor to affect your judgment and decisions at work. You lied to Captain Robillard and to the investigator assigned to this matter. Your behavior and attitude would seem to be inconsistent with the mission, goals and responsibilities of an Emergency Communication Dispatcher. It appears that your conduct is sufficiently egregious that it provides the Department with just cause for bypassing progressive discipline and for your dismissal for gross misconduct.

You must notify me . . . whether you wish to respond to the above allegations. . .

(State’s Exhibit 10)

41. Grievant responded to this letter in a letter dated May 4, 2005, to Captain Goodell. The letter provided in part:

Consider this my response to your investigation, which has apparently turned out to be none other than a “witch hunt”, that has been on-going for quite some time.

First off, let it be known, I love my job, and I am an excellent dispatcher, and I should not be expected to work for an organization that is deceitful, corrupt and for some reason, feels they are above the law. I also, should not be expected to “obey” an order that is given, based on, continuous, on-going retaliation and discrimination. You could have commanded anyone else that had been “asked”, and refused to come in and/or stay, verses(sic) commanding (myself) the one person who had not only made herself “legally” ineligible for overtime, according to the VSEA contract, BUT, had been given an administrative letter on 11/22/04, from Captain Robillard, stating how “concerned my co-workers” were with my health, and well-being. I also was never “asked” to stay, as were the others. Although, Captain Robillard was never able to explain the letter, when requested to do so, it is apparent there was a hidden reason behind the letter, in itself, say nothing about the very content of the letter. Seems to me, that both Captain Robillard and Jane Berry were retaliating against me, specifically attempting to get me to quit, and/or find a reason to fire me. . . (I)t certainly makes no sense, for me to have been given that letter, and for them to then, turn around and command me to stay, over all others, knowing I did not want too(sic), from a previous grievance I submitted. This, without a doubt, deliberately created extreme stress, which directly reflects on my health and well being. Fact is Jane was upset over the results of the grievance. And, now, I understand why Captain Robillard handled the grievance as nonchalant as he did. He had other plans, to include the administrative letter I speak of, deliberately trying to affect my employment.

...

Jane Berry was upset with the fact I had submitted the letter, dated August 26, 2004, making myself ineligible for overtime, and retaliated against me in several ways because of it, commanding me to stay, ultimately being one of them.

... Jane and her supervisors have all ganged up on me, retaliated and discriminated against me. . .

If, in fact, I am being dismissed for misconduct, and or supposedly lying, I will expect that most of your organization will also be dismissed for conduct much worse, and certainly for lying, once the counter investigation has been completed.

...

I really don’t think it is in my best interest to discuss with you at this time the discrepancies in your report and in your witnesses(sic) statements, although there are many, and provable, or at the very least discreditable. . .

There was no questions that was(sic) I was commanded to stay, and refused to do so. The question remains, was Jane Berry's request reasonable and legal? I say, it was not. She simply commanded me to stay in order to retaliate against me for refusing to do overtime in the first place, and previous issues that SHE had with me, not that I had with her, as you try to imply. I should NOT have been the one commanded to stay . . .

You can twist the facts all you want, and you can theorize all you want, the fact remains I did NOT abandoned(sic) my post, as so accused, and I resent the fact you state I did. I did not, and my pod was covered! Never, have I EVER, put a trooper or a citizen in danger, whatsoever, and I consider that slanderous. Especially considering you are basing my gross misconduct on a HYPOTHETICAL SITUATION!

. . .

Let's not forget that no matter what, this entire incident could have been prevented if Jane Berry followed the VSEA contract, to begin with, or came into work herself. A grandparent-in-law is NOT listed for short notice time off, therefore when coverage could not be found, the time off should have been denied. Plain and simple. . .

As far a Jane hanging up on me, . . . I was NOT finished talking to her, and she disconnected, without advising she was going to, by hanging up the phone. I asked for her to put in writing that she was commanding me to stay, that did not mean I was staying. . .

(State's Exhibit 11)

42. Captain Goodell determined that Grievant had committed the misconduct detailed in the Loudermill letter. He determined that Grievant's misconduct was serious, and concluded that it was appropriate to dismiss her. He determined that her actions on December 4 constituted an inexcusable compromise of public safety. He found it significant that Grievant had refused to comply with orders, was repeatedly dishonest during the investigative interview with Puro, and refused to accept responsibility for her actions. He was not confident that she would not engage in similar misconduct in the future, and concluded that she was a poor candidate for rehabilitation.

43. Captain Goodell sent Grievant a letter dated May 19, 2005, informing her that she was dismissed. He stated that the reasons for the dismissal “are those listed in my letter of April 29, 2005” (State’s Exhibit 13).

OPINION

We first address Grievant’s contention that the Employer violated Article 5 of the Contract by dismissing her as a result of discrimination and retaliation against her due to her grievance activities. In cases where employees claim the employer took action against them for engaging in protected activities, the Board employs the analysis used by the United States Supreme Court in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977): once the employee has demonstrated his or her conduct was protected, she or he must then show the conduct was a motivating factor in the decision to take action against him or her. Then the burden shifts to the employer to show by a preponderance of the evidence it would have taken the same action even in the absence of the protected conduct. Grievance of Sypher, 5 VLRB 102 (1982). Grievance of Roy, 6 VLRB 63 (1983). Grievance of Cronin, 6 VLRB 37 (1983). Grievance of Danforth, 22 VLRB 220 (1999).

Grievant engaged in the protected conduct of grievance activities. Grievant must demonstrate that this protected conduct was a motivating factor in the Employer’s decision to dismiss her. The factors the Board reviews in determining whether protected conduct constituted a motivating factor in an employer's adverse action against an employee are: 1) whether the employer knew of the protected activities, 2) whether a climate of coercion existed, 3) whether the timing of the action was suspect, 4) whether

the employer gave protected activity as a reason for the decision, 5) whether the employer interrogated the employee about protected activity, 6) whether the employer discriminated between employees engaged in protected activities and employees not so engaged, and 7) whether the employer warned the employee not to engage in such activity. Ohland v. Dubay, 133 Vt. 300, 302-303 (1975). Horn of the Moon Workers Union v. Horn of the Moon Cafe, 12 VLRB 110, 126-27 (1988).

Although the dismissal occurred following the filing of several grievances by Grievant, Grievant has not demonstrated that her grievance activities constituted a motivating factor in the dismissal decision. The Employer knew of Grievant's protected grievance activities. However, Grievant has not demonstrated that this knowledge resulted in the protected conduct motivating the Employer's decision to dismiss her. Knowledge alone is not sufficient to demonstrate protected conduct motivated an adverse action. Grievant has not demonstrated that any of the other factors discussed above providing evidence of animus for protected conduct existed here. Instead, we are persuaded that the Employer was motivated entirely by a belief in the seriousness of Grievant's misconduct. Thus, we dismiss Grievant's claims of discrimination and retaliation based on her grievance activities.

We next address Grievant's contention that the Employer violated Article 5 of the Contract and disability discrimination statutes by discriminating against Grievant based on a disability. Grievant contends that the letter Captain Robillard gave her on December 2, 2004, demonstrated an intent to discriminate against her because she had cancer. Grievant has not demonstrated that her cancer played any role in the Employer's decision to dismiss her. Thus, we dismiss Grievant's claim of discrimination based on a disability.

Grievant also alleged in her grievance that the Employer violated Article 65 of the Contract in dismissing her. Article 65 provides that employees shall not be discriminated against due to making public allegations of inefficiency or impropriety in government. Once again, we conclude that Grievant has not demonstrated that such discrimination was a motivating factor in the dismissal decision.

We next address Grievant's contention made in her grievance that the Employer violated the requirement of Article 14 of the Contract that "the State will act promptly to impose . . . discipline within a reasonable time of the offense." Grievant has not demonstrated that she was prejudiced by the timing of disciplinary action. Absent demonstrated prejudice, we are not prepared to conclude that the time it took the Employer to impose disciplinary action against Grievant affected the validity of the ultimate decision to dismiss her.

Grievant further contends that the Employer violated Article 14 of the Contract by dismissing her without just cause and not applying discipline with a view toward uniformity and consistency. The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). There are two requisite elements which establish just cause for dismissal: 1) it is reasonable to discharge an employee because of certain conduct, and 2) the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge. Id. In re Grievance of Yashko, 138 Vt. 364 (1980).

The burden of proof on all issues of fact required to establish just cause is on the employer, and that burden must be met by a preponderance of the evidence. Colleran and Britt, 6 VLRB 235, 265 (1983). Once the underlying facts have been proven, we must

determine whether the discipline imposed by the employer is reasonable given the proven facts. Id. at 266.

The Employer has made numerous charges against Grievant, as detailed in Finding of Fact No. 40. The Employer first charges Grievant with insubordination and refusal to obey a lawful and reasonable order to stay and cover a four-hour shift on December 4, 2004, in violation of the Contract, personnel policies and work rules. The Employer has established this charge. Grievant disobeyed an order by her supervisor to work overtime that day so that sufficient dispatchers would be on duty.

This order was lawful and reasonable, even though Grievant had requested that she be excluded from consideration for overtime pursuant to Article 24 of the Contract. Article 24 provides that such a request may be revoked by a supervisor “under emergency circumstances”. An “emergency” is a “situation or occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate attention”. Grievance of Roessner, 12 VLRB 266, 272 (1989). Grievance of Bagley, 19 VLRB 280, 288 (1996). The circumstances existing at the Derby PSAP on December 4 met this definition. Diligent attempts were made to find dispatchers other than Grievant to fill a sudden and unexpected hole in necessary dispatcher coverage. Grievant was ordered to work overtime only when no other dispatcher could reasonably be found to provide coverage and immediate attention was required to ensure that important public safety needs were met. Grievant’s failure to follow such a lawful and reasonable order in an emergency situation constituted a classic case of insubordination.

The Employer next charges Grievant with lying to Captain Robillard on December 4 by telling him that PSAP Administrator Jane Berry hung up on her, thereby

preventing her from informing Berry that she did not intend to stay over and work overtime that day. The Employer has established this charge. During the telephone conversation between Berry and Grievant, Grievant had the opportunity to tell Berry that she was not staying over. She failed to do so, and Berry did not hang up on her.

The Employer also charges Grievant with engaging in conduct on December 4 which placed in jeopardy the life and health of co-workers or persons under her care. The Employer has established this charge. By failing to stay over on December 4 and abandoning her post at a time when she was responsible for providing coverage, Grievant compromised the safety of troopers and the public.

The final charge made by the Employer against Grievant involves several counts of lying during her investigative interview with Mary Puro on January 6, 2005. The Employer has established the bulk of these charges. Contrary to Grievant's statement to Puro that she was never allowed to swap shifts, Grievant was allowed to swap shifts with another dispatcher in December 2004. Contrary to Grievant's statement to Puro that dispatchers are not required to stay over past their regularly scheduled shift if their replacement for the particular pod they were working was coming into work, dispatchers routinely were assigned overtime to work other pods to meet coverage needs.

Contrary to Grievant's statement to Puro that employee leave balances and salaries were posted at the Derby Barracks, this information had never been posted at the Derby Barracks during the time Grievant was working there. Contrary to Grievant's statement to Puro that entire shifts were run at the Derby PSAP with only two dispatchers, there has never been a time that entire shifts were only run with two dispatchers. Contrary to her statement to Puro that Captain Robillard told her that she was

not being fired for refusing to stay over on December 4, Captain Robillard told Grievant no such thing.

The Employer has failed to establish one of the counts of Grievant lying to Puro in the January 6 investigative interview. The Employer contends that Grievant made a false statement by indicating to Puro that Berry did not have the right to command her to stay on December 4. Such a statement by Grievant is more in the way of a legal claim than a false statement of fact, and we are not inclined to view it as lying.

Most of the charges against Grievant having been proven, we look to the factors articulated in Colleran and Britt, 6 VLRB at 268-69, to determine whether the proven charges justify dismissal. The pertinent factors here are: 1) the nature and seriousness of the offenses and their relation to Grievant's duties and position, 2) the effect of the offenses upon supervisors' confidence in Grievant's ability to perform assigned duties, 3) the clarity with which Grievant was on notice of the prohibited conduct, 4) Grievant's past work record, 5) Grievant's past disciplinary record, 6) the consistency of the penalty with those imposed on other employees for similar offenses, 7) mitigating circumstances surrounding the offenses, 8) the potential for Grievant's rehabilitation, and 9) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future.

Grievant's offenses were very serious. Grievant's failure to follow a lawful and reasonable order of her supervisor in an emergency situation constituted a classic case of insubordination that compromised important public safety needs and demonstrated disregard of her co-workers. In so doing, she violated the trust placed in her to carry out her vital duties in support of law enforcement efforts. Grievant substantially exacerbated her already serious misconduct by lying to Captain Robillard and then engaging in

repeated dishonesty during the Employer's investigation of the charges against her.

Grievance of Westbrook, 25 VLRB 232, 251 (2002). Grievance of Pretty, 22 VLRB 260 (1999). Grievance of Johnson, 9 VLRB 94 (1986). *Affirmed*, Sup. Ct. Docket No. 86-300 (December 20, 1989).

These actions of Grievant obviously had an adverse effect on supervisors' confidence in Grievant's ability to perform her assigned duties. She had fair notice, express and implied, that her insubordination, failure to perform assigned duties and repeated dishonesty would result in disciplinary action. Grievant's satisfactory work record and lack of previous discipline over nearly ten years operate in her favor, but these factors are substantially outweighed by the seriousness and frequency of her offenses. We cannot conclude that the Employer imposed inconsistent discipline compared to other employees given the lack of evidence of similar misconduct engaged in by other employees.

We have considered mitigating circumstances surrounding Grievant's offenses but they do not assist Grievant's cause. Grievant had obvious tensions with her superiors, particularly Jane Berry. Grievant portrays such tensions as a result of an ongoing pattern of discrimination, harassment and retaliation against her. We do not believe the evidence supports such a conclusion. Instead, we view Grievant's animus against Berry and other superiors as coloring her actions to the extent that she inappropriately engaged in the serious misconduct demonstrated here. She failed to accept her superiors' legitimate efforts to supervise her in the proper exercise of her responsibilities.

Grievant has not demonstrated a potential for rehabilitation. Her disregard of supervisory authority, repeated dishonesty, and an ongoing failure to take personal

responsibility for her deficiencies understandably have resulted in lack of supervisory confidence that her misconduct in this case will not be repeated.

We conclude that the Employer acted reasonably by bypassing progressive discipline and determining there was no alternative sanction to dismissal that would be effective. In sum, just cause existed for Grievant's dismissal.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of Valinda Sileski is dismissed.

Dated this ____ day of March, 2006, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Acting Chairperson

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