

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 03-2
THOMAS REVENE)	

MEMORANDUM AND ORDER

The State of Vermont Department of Public Safety (“Employer”) has filed a motion to reconsider the December 16, 2004, majority decision in this matter. 27 VLRB 282. Upon review and consideration of the motion, we deny it. Most of the issues raised by the Employer in the reconsideration motion were addressed when we issued our decision in this case, and will not be further discussed here. There is one issue raised by the Employer for which more extensive discussion is appropriate. The Employer contends that, if the Board majority concludes that Appellant should be reinstated, Appellant’s back pay award should be reduced by the several months delay caused by the Vermont State Employees’ Association (“VSEA”) and Appellant securing alternative counsel to VSEA to represent Appellant.

The Vermont Supreme Court has held that, if the Board finds lack of just cause for dismissal, the proper remedy generally is reinstatement with back pay and other emoluments from the date of the improper discharge less sums of money earned or that without excuse should have been earned from that date. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). In calculating a back pay award, the monetary compensation awarded shall correspond to specific monetary losses suffered; the award should be the amount necessary to make the employee "whole". Grievance of Goddard, 4 VLRB 189, at 190-191 (1981). c.f., Kelley v. Day Care Center, 141 Vt. 608, 615-616 (1982). To make employees whole is to place them in the position they would have been in had they

not been improperly dismissed. Grievance of Lilly, 23 VLRB 129, 137 (2000); *Affirmed*, 173 Vt. 591, 593 (2002). Grievance of Benoir, 8 VLRB 165, 168 (1985).

Given these precedents, we conclude that it would be inappropriate to reduce Appellant's back pay award due to the delay in securing alternative counsel unless the Employer objected at the time to the potential increase in its liability caused by the delay. If such an objection was made, VSEA and Appellant would have notice of Employer concerns with the delay, and the parties could attempt to agree on potential back pay consequences due to the delay. Failing agreement, the Board would resolve the matter.

If we were to reduce Appellant's back pay award absent a timely objection by the Employer, Appellant would be made less than whole for a reason the Employer easily could have, but did not, inform him was an issue. We decline to do so. Since the Employer failed to object at the time to the delay in securing alternative counsel, we will not reduce Appellant's back pay award due to this delay.

Based on the foregoing reasons, it is ordered that the motion to reconsider is denied. The parties shall submit to the Labor Relations Board by March 3, 2005, a proposed order indicating the specific amount of back pay and other benefits due Appellant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board.

Dated this 15th day of February, 2005, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Carroll P. Comstock

John J. Zampieri