VERMONT LABOR RELATIONS BOARD

APPEAL OF:	)	
	)	DOCKET NO. 06-6
JOEL DAVIDSON	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

At issue is a dispute over back pay and other benefits due Joel Davidson ("Appellant") as a result of his improper dismissal by the State of Vermont Department of Public Safety ("Employer"). On May 4, 2007, the Vermont Labor Relations Board issued Findings of Fact, Opinion and Order, concluding that Appellant was dismissed without just cause. 29 VLRB 105. The Board ordered that Appellant be reinstated with back pay and other benefits. Id. The Board left the case open for the purpose of determining the specific back pay and other benefits due Appellant from the date of his discharge to his reinstatement. Id.

The parties have entered into a partial stipulation concerning back pay and other benefits, but have not reached agreement on certain issues. Specifically, there are the following contested issues: a) whether Appellant adequately attempted to mitigate his damages by searching for other employment; b) how Appellant's annual leave should be handled upon his reinstatement; c) whether Appellant should be credited with personal leave during the period between his dismissal and reinstatement; d) whether Appellant should be reimbursed for an Internal Revenue Service penalty he and his wife incurred for withdrawing monies from his wife's deferred compensation plan; e) the amount of compensation Appellant should receive for gains lost as the result of the Employer's cessation of deferred compensation payments during the period between Appellant's

dismissal and his reinstatement; f) whether Appellant should be compensated for losses on deferred compensation monies he withdrew subsequent to his dismissal: and g) whether Appellant should receive mileage reimbursement for the mileage he traveled to attend depositions and hearings for this case.

An evidentiary hearing was held on the issues in dispute on June 25, 2007, in the Labor Relations Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Joan Wilson and Leonard Berliner. Attorney Susan Edwards represented Appellant. William Reynolds, Assistant Attorney General, and Howard Kalfus, Counsel for the Employer, represented the Employer. The Employer and Appellant filed briefs on the disputed issues on July 16 and 17, 2007, respectively.

FINDINGS OF FACT

1. The parties' stipulated facts and specified agreements as to various back pay issues were entered into the record at the June 25, 2007 hearing, and are incorporated herein by reference.

2. At the time of his dismissal from employment with the Employer on January 17, 2006, Appellant was at pay grade 24, step 12, earning $27.66 per hour (State's Exhibits 9, 26A).

3. Shortly after his dismissal, Appellant contacted the United States Marshal Service. He spoke to Dennis Holman, a recently retired member of the Vermont State Police whom Appellant knew, about possible employment there. Holman told Appellant that all positions were filled. Appellant asked Holman to contact him if there were any future openings.

4. During the period January 17 to August 21, 2006, Appellant submitted one application for employment. Appellant submitted an on-line application for a position to a clearinghouse for a coalition for civilian positions supporting forces in Iraq and Afghanistan. Appellant spoke with Jeff Lusk, a trainer of persons heading to Iraq and Afghanistan, in connection with this application (State's Exhibit 14).

5. On or about April 3, 2006, there was an article in the *Rutland Herald*, a daily newspaper in Rutland, Vermont, on Appellant's appeal to the Labor Relations Board over his dismissal. The article, in reference to the letter of dismissal which Appellant had received, stated in part: "A Jan. 17 letter from Public Safety Commissioner Kerry Sleeper said Davidson was fired for claiming he signed on for duty at the Rutland State Airport on June 30, 2005, before he got there. He is then alleged to have fabricated records and evidence to support his version of events." The article also contained quotes from Appellant commenting on his dismissal. In addition to this article, there was an article on Appellant's dismissal in the *Granville Sentinel*, a newspaper in Granville, New York, where Appellant and his wife own and work on a farm. Appellant's dismissal also was reported on WCAX, a television station based in Burlington, Vermont (Appellant's Exhibit 12).

6. On August 21, 2006, the Employer deposed Appellant in connection with his appeal from his dismissal. During the deposition, Appellant provided the following testimony:

> Q. Since your termination . . . have you been employed? . . .
>
> A. I have just been doing things around the farm. . . I produce hay crop, bale it. We have horses that we train and raise for resale. Like now we've got about, I think, somewhere around 14 horses at the farm.
>
> . . .

Q. Have you pursued any other employment?

A. I have made some inquiries, but in light of the articles in the paper and Channel 3 News and . . . the *Granville Sentinel*, I have not been able to pursue anything, so.

Q. What efforts have you made to find other employment?

A. I have contacted the marshal service in other areas, but at that point once I realized that there wasn't much point to my applying, I just didn't bother.

Q. When did you contact the marshal service?

A. Shortly after I was notified of the termination. . . But after this, clearly there wasn't going to be any getting in, so it's going to be we've got to wait and see what happens.

Q. "After this," you mean after your termination?

A. After this termination and it came out in the headlines in the paper it was not much point in applying to a law enforcement job, was there?

Q. So since your termination have you applied for any positions for employment?

A. I have made contact with people, but basically have decided that it wasn't worth pursuing because of the current situation.

Q. So have you filled out any applications for employment?

A. I haven't filled out any, no.

Q. Have you sent your resume to any employers since your termination?

A. I filled out one on-line resume for one of the positions for the coalition . . . (f)or Iraq and Afghanistan . . .

Q. Would it be fair to say that that's the only employment application you've submitted since your termination?

A. Well, other than verbal contacts, just checking on possibilities, yes.

. . .

Q. How many people have you contacted since your termination about employment?

A. Just probably two.

Q. And who are those two people?

A. Well, I spoke to Jeff Lusk and the other one would be the marshal service. I spoke to Dennis Holman . . .

(State's Exhibit 14)

7. During the period since the August 21, 2006, deposition, Appellant has made various general inquiries about employment with businesses in the Rutland and Granville areas. None of those inquiries have resulted in employment. Appellant also looked into some self-employment possibilities; including building airport hangars, opening an automobile service station, operating a food franchise, and becoming a commercial ferrier.

8. During the period after his August 21, 2006, deposition through December 2006, Appellant submitted written applications for employment with Hubbardton Forge, Telescope Folding Furniture and Manchester Wood Products. Aside from the on-line application for a position in Iraq or Afghanistan, these were the only written employment applications submitted by Appellant from his dismissal until the date of the back pay hearing in this matter. Appellant was not hired by these employers (State's Exhibit 7, p.174).

9. In May 2006, there was a public advertisement of a police sergeant position opening in the Town of Woodstock, Vermont. Traveling time from Appellant's home in Wells, Vermont to Woodstock is approximately one hour and twenty-five minutes. In February 2007, there was a public advertisement for a police officer opening

in Manchester, Vermont. Traveling distance to Manchester from Appellant's home is approximately 37 minutes. In March 2007, a police officer position vacancy occurred in Bristol, Vermont, and was advertised. Traveling time to Bristol from Appellant's home was approximately one and one-half hours. Appellant did not apply for any of these positions (State's Exhibits 2, 4, 5).

10. There were correctional officer positions advertised in January 2007 at State correctional facilities in Springfield and Rutland. Traveling distance to the correctional facility in Rutland from Appellant's home is approximately 42 minutes. Traveling distance from his home to Springfield is approximately one and one-half hours. Appellant had been a correctional officer in the Rutland correctional facility before being hired by the Vermont Department of Public Safety as a trooper in 1988 (State's Exhibits 2, 4, 5).

11. During the period April 2006 to July 2006, there were public advertisements for security guard/officer job openings for three different employers in Rutland. In February 2007, there was public advertisement for security officer openings for another Rutland employer. There also were security guard positions advertised in July 2006 in Killington (approximately one hour traveling time from Appellant's home), and in May 2006 in Stratton (approximate 1 hour and 24 minute traveling time). The advertised starting pay for these positions ranged from $9 – 14.56 per hour. Appellant did not apply for any of these positions (State's Exhibits 2, 3, 4, 5).

12. During the period January to September 2006, there were advertisements for security officer openings with several employers in New York in which the

approximate traveling time from Appellant's home ranged from 37 to 59 minutes. Appellant did not apply for any of these positions (State's Exhibits 19, 21).

13. In July 2006, the Transportation Security Administration advertised for part-time transportation security officers at the Rutland State Airport. The advertised starting pay for the position was $12.72 per hour (State's Exhibits 2, 5).

14. Manfred Wessner, Chief of Police of the Manchester Police Department, stated in a June 18, 2007, letter to Appellant's attorney: "The hiring practice of the Manchester Police Department would preclude hiring any person who has been dismissed from another law enforcement agency or any employment because of an allegation of dishonesty" (Appellant's Exhibit A13).

15. In a June 23, 2007, letter to Appellant, Town of Bristol Police Chief Kevin Gibbs stated: "If an individual applying to the Bristol Police Department, and I'm sure any other police agency, had been terminated for any matters that related to the individual's integrity or reliability we would not likely hire, or consider for hire, that individual. This would be especially true if the individual being considered had been terminated from employment from a police agency" (Appellant's Exhibit A18).

16. David Bovat, Superintendent of the State correctional facility in Rutland, would be concerned about hiring a person as a correctional officer if the person had been fired from another job for dishonesty. If someone was discharged under such circumstances and had an appeal pending before the Labor Relations Board, Superintendent Bovat would consider all the circumstances if the person applied to be hired as a correctional officer, but probably would tell that person to come back once the appeal to the Board was decided.

17. During the period between his dismissal and the back pay hearing in this matter, Appellant did not search the employment listings in the Rutland Herald or any other newspaper. He did not peruse the State website to check for employment opportunities with the State.

18. In November or December 2006, Appellant performed demolition work for an individual who owned a restaurant that had burned down. He earned $672 for this work. This represented the entire wages he earned from the date of his dismissal until the back pay hearing in this matter.

19. Appellant does not possess a bachelor degree.

20. Appellant and his wife incurred a $2,000 penalty from the Internal Revenue Service for making two early withdrawals totaling $20,000 from his wife's deferred compensation account. They made the withdrawals knowing they would incur the penalty.

21. Subsequent to his dismissal, Appellant withdrew $110,000 from the deferred compensation account that he had as part of the State's deferred compensation plan. There was no plan requirement that Appellant had to withdraw funds from the account because he had been dismissed from State employment.

OPINION

The following issues are before us in determining the back pay and benefits to which Appellant is entitled: a) whether Appellant adequately attempted to mitigate his damages by searching for other employment; b) how Appellant's annual leave should be handled upon his reinstatement; c) whether Appellant should be credited with personal leave during the period between his dismissal and reinstatement; d) whether Appellant

should be reimbursed for an Internal Revenue Service penalty he and his wife incurred for withdrawing monies from his wife's deferred compensation plan; e) the amount of compensation Appellant should receive for gains lost as the result of the Employer's cessation of deferred compensation payments during the period between Appellant's dismissal and his reinstatement; f) whether Appellant should be compensated for losses on deferred compensation monies he withdrew subsequent to his dismissal; and g) whether Appellant should receive mileage reimbursement for the mileage he traveled to attend depositions and hearings for this case.

In calculating a back pay award, the monetary compensation awarded shall correspond to specific monetary losses suffered; the award should be limited to 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, Inc., 141 Vt. 608, at 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).

Mitigation of Damages

We address in turn each of the issues raised by the parties to establish the appropriate award to make Appellant whole. We first examine whether Appellant adequately attempted to mitigate his damages by searching for other employment. An employee has a general duty to mitigate damages by making reasonable efforts to find interim work. Lilly, 23 VLRB at 137. Grievance of Hurlburt, 9 VLRB 229, 232 (1986).

While it is the employee's duty to mitigate, where an employer is claiming an employee did not properly attempt to mitigate damages, the burden of proof on that issue

is on the employer. In re Lilly, 173 Vt. at 593. Liability for back pay arises out of the employer's improper action and, accordingly, the employer must establish any claim of lack of mitigation. Lilly, 23 VLRB at 137. Grievance of Merrill, 12 VLRB 222, 226 (1989). The employer may meet the burden of proof by establishing that suitable work existed, and that the employee did not make reasonable efforts to obtain it. Lilly, 173 Vt. at 593.

It is the general rule in back pay cases that an employee must make at least reasonable efforts to find new employment which is substantially equivalent to the position lost and is suitable to a person of his or her background and experience. Lilly, 23 VLRB at 137; 173 Vt. at 593-94. Grievance of Gregoire, 18 VLRB 205, 209 (1995). A wrongfully discharged employee is not held to the highest standard of diligence. Lilly, 173 Vt. at 593-94. The employee need only make a good faith effort to find suitable alternative employment. Id.

An assessment of the reasonableness of a grievant's efforts to mitigate encompasses more than a simple review of the duration of his or her job search. Id. It entails a consideration of such factors as the individual characteristics of the grievant and the job market, as well as the quantity and quality of the particular measures undertaken by the grievant to obtain alternate work. Id. A discharged employee is not entitled to back pay to the extent that he or she fails to remain in the labor market, refuses to accept substantially equivalent employment, fails diligently to search for alternative work, or voluntarily quits alternative employment without good reason. Grievance of Gregoire, 18 VLRB at 205.

The Employer contends that Appellant has forfeited his right to back pay due to his failure to make reasonable efforts to mitigate damages by obtaining suitable employment. The Employer requests that the Board deny Appellant any back pay or, alternatively, reduce Appellant's back pay award by the amount of wages Appellant reasonably could have been expected to earn if he had lowered his sights and obtained gainful employment.

Appellant seeks full back pay, contending that the Employer has failed to prove that there was suitable work available to Appellant during the period he was wrongfully dismissed. Appellant maintains that the Employer has failed to meet its burden to show that any alternative law enforcement employment was available to him during this period, and also has failed to show other suitable alternative employment was available. Appellant also contends that the Employer has failed to show that Appellant did not make reasonable efforts to secure alternative employment.

In determining whether Appellant mitigated his damages, we conclude that the inquiry can be divided into two distinct time periods: 1) the period from his dismissal in January 2006 through the August 21, 2006, deposition taken of him by the Employer; and 2) the period from the deposition until the time of the hearing in this matter. We examine each time period in turn.

During the period from Appellant's dismissal through his deposition, the Employer has demonstrated that Appellant failed to make reasonable efforts to find suitable employment. He contacted just two potential employers soon after his dismissal and, as he indicated in his deposition, he concluded there was not much point in applying for employment so he did not bother to make other such efforts.

Appellant's lack of reasonable efforts to find suitable employment squarely presents the question whether we should adopt an exception to the requirement that an employer needs to demonstrate suitable work existed in cases where the employee did not make reasonable efforts to seek such employment. In Greenway v. Buffalo Hilton Hotel, 143 F.3d 47, 54 (2d Cir.1998), the U. S. Second Circuit Court of Appeals adopted this exception, and stated that the employer should not be saddled by a requirement that it show other suitable employment in fact existed when the employee failed to pursue employment at all.

The Board declined to adopt this exception in the Lilly case, concluding that the employer had not provided policy grounds to adopt such an exception. 23 VLRB at 138. It was not necessary for the Board to reach the question to adopt the Greenway exception in Lilly because the employee actively sought alternative employment and sought assistance in obtaining employment from the State Department of Employment and Training. 23 VLRB 132-33. The circumstances in Lilly were significantly different from the case now before us. Here, starting shortly after his dismissal, Appellant failed to make any efforts to pursue employment at all.

It would be poor public policy to allow an employee to collect back pay during a period when the employee made no effort to mitigate damages by seeking alternative employment and essentially dropped out of the labor market. That is the case here. This case, unlike Lilly, presents the circumstances appropriate to adopt the exception set forth in the Greenway case. Thus, we decline to grant Appellant back pay for the period from his dismissal through his August 21, 2006, deposition due to his failure to make reasonable efforts to seek alternative employment.

A recent case heard by the Board, Grievance of Rosenberger, 29 VLRB 194 (2007), illustrates the appropriateness of adopting such an exception in appropriate cases. That case, like this one, involved a law enforcement officer dismissed from state employment on dishonesty grounds. Unlike Appellant's post-dismissal behavior, in that case the dismissed employee sought and obtained alternative employment in the private security field that substantially mitigated his damages. If that employee had adopted Appellant's approach and not bothered to seek alternative employment due to being dismissed from a law enforcement position on dishonesty grounds, and the Board had sanctioned such an approach, the result would have been failure to mitigate damages that should have been mitigated. We are not inclined to set such a scenario into motion.

We turn to discussing the period from Appellant's August 21, 2006, deposition until the hearing in this matter. We conclude that the Employer has not met its burden of proving that Appellant did not properly mitigate damages for this period. Appellant made various inquiries about employment with businesses, looked into some self-employment possibilities, and submitted written applications for employment. These constituted reasonable efforts to find alternative employment, and we conclude that Appellant's back pay award should not be reduced during this period.

The Employer faults Appellant for not applying for any law enforcement position vacancies during this period. This criticism is unwarranted. It is evident that municipal police departments would not have hired an individual such as Appellant who was dismissed from a police officer position on dishonesty grounds. Also, it is evident that Appellant likely would not have been seriously considered for correctional officer and motor vehicle officer openings given his dismissal from state employment on dishonesty

grounds. The Employer has failed to demonstrate under the circumstances that such positions were truly available for Appellant to seek.

The Employer also is critical of Appellant for failing to apply for job openings for security officers, security guards and transportation security administrators. These positions generally offered wage rates less than half of Appellant's pay with the State Police. Appellant was not obligated to apply for positions paying such lower wages to meet his obligation to seek substantially equivalent alternative employment. It may be reasonable at some point for an employee to lower expectations concerning alternative employment. Grievance of Gregoire, 18 VLRB 205, 210-211 (1995). However, the requirement to mitigate damages does not extend to such significant wage reductions as were involved here.

Annual Leave

There is an issue as to the treatment of Appellant's annual leave resulting from the Employer making a payment to Appellant of all accrued annual leave when he was dismissed. We can summarily address this issue given our precedents. In such a case, Appellant's accrued annual leave balance should be restored and the payment made at the time of dismissal should be used to offset the amount of back pay otherwise due. Grievance of Rosenberger, 29 VLRB at 202-203. Grievance of Merrill, 8 VLRB 383, 386 (1985). Grievance of Carosella, 8 VLRB 178, 181 (1985). Grievance of Benoir, 8 VLRB at 168. Should Appellant's annual leave accruals upon reinstatement put him over the contractual limit of annual leave accrual, he is entitled to a payment representing the monetary value of the annual leave exceeding the contractual limit without payment of

interest. Rosenberger, 29 VLRB at 204-205. Grievance of Greenia, 22 VLRB 85, 87 (1999). Merrill, 8 VLRB at 386.

Personal Leave

The next issue is whether Appellant should be credited with personal leave during the period between his dismissal and reinstatement. Pursuant to Article 35 of the collective bargaining contract covering the State Police Bargaining Unit, an employee accrues one and one-quarter personal leave days in any quarter of the year when the employee does not use sick leave, except an employee may use up to nine hours of sick leave for medical examinations or routine dental appointments. Employees must use the personal leave by the end of the succeeding fiscal year in which they earn it, or they forfeit it.

Appellant seeks financial compensation for personal leave that Appellant contends he would have earned if he had not been dismissed. Appellant contends that the Board should treat personal leave the same way annual leave accruals have been treated by the Board upon an employee's reinstatement. The Employer requests that the Board conclude that Appellant is entitled to only be credited with the personal leave hours that he would have accrued in the previous quarter.

The Board has decided that an improperly dismissed employee who was owed annual leave accruals upon reinstatement which would have put the employee over the contractual limit on annual leave accrual was entitled to a payment representing the monetary value of the annual leave exceeding the contractual limit. Grievance of Merrill, 8 VLRB at 386. Grievance of Greenia, 22 VLRB at 87. The Board has reasoned that such

payment is proper since the employee was in the situation of not being able to use leave through no fault of the employee. Id.

We conclude that personal leave accruals are sufficiently distinct from annual leave accruals so that they should be treated differently. The amount of annual leave which an employee is entitled to depends only on an employee's active status and length of service. Personal leave accrual to the contrary is much more speculative, depending on the employee's usage of sick leave. The speculative nature of personal leave accrual versus annual leave accrual causes us to conclude that dismissed employees should not be credited with personal leave accrual during the period between their dismissal and reinstatement.

Compensation for Gains Lost Due to Cessation of Deferred Compensation Payment

We next address the amount of compensation Appellant should receive for gains lost as the result of the Employer's cessation of deferred compensation payments during the period between Appellant's dismissal and his reinstatement. Appellant seeks to be compensated for a loss of gains and interest on his deferred compensation plan. The Employer contends that Grievant should receive the amount of the deferred compensation payments that would have been made into the plan, plus interest payments on such amounts at the legal rate of interest.

We agree with the Employer. A back pay award treating deferred compensation payments like other lost wages is cleaner, more practical, more predictable, and more consistent with Board precedents on back pay awards. It is Board practice to add interest, at the legal rate, to a back pay award to make an employee whole for income losses suffered as a result of an improper dismissal. Grievance of Warren, 10 VLRB 64, 65-66

(1987). The awarding of interest compensates the employee for the loss of the use of the money represented by the wages not paid the employee due to the dismissal. Id. Appellant will be made whole for losses suffered by an award requiring the Employer to pay Appellant the amount of the deferred compensation payments that would have been made into the plan, plus interest payments on such amounts at the legal rate of interest.

The alternative sought by Appellant - compensation for the loss of gains and interest on his deferred compensation plan – suffers from unpredictability and uncertainty caused by volatility of the stock market and reliance on potentially shifting investment choices made by Appellant. It is better public policy for back pay awards to rest on more predictable and stable ground than exists with stock market investments.

Compensation for Losses Due to Withdrawal of Deferred Compensation Monies

Appellant further seeks compensation for losses on deferred compensation monies that he withdrew subsequent to his dismissal. Appellant claims entitlement to this compensation to make him financially whole because the investment losses were a direct result of his wrongful dismissal. The Employer contends that Appellant is improperly seeking compensatory damages by such a request.

We conclude that any such investment losses realized by Appellant are beyond the proper reach of a back pay award. The payment of lost wages in a back pay award, plus payment of interest on such wages, is designed to make improperly dismissed employees whole for the loss of income. As previously discussed, the awarding of interest compensates the employee for the loss of the use of the money represented by the wages not paid the employee due to the dismissal. Additional compensation to account for investment losses essentially would further compensate the employee for the loss of

the use of money, and go beyond making employees whole for income losses suffered as a result of the dismissal.

Penalty for Withdrawal of Deferred Compensation Monies

The next issue is whether Appellant should be reimbursed for an Internal Revenue Service penalty he and his wife incurred for withdrawing monies from his wife's deferred compensation plan. Appellant seeks such reimbursement on the basis that such penalty directly resulted from the need to withdraw monies due to his wrongful dismissal. The Employer contends that Appellant unilaterally withdrew the monies knowing they would be subject to an IRS penalty, rather than going out and seeking employment. The Employer maintains that Appellant is improperly seeking compensatory damages by such a request.

The Employer has not presented sufficient evidence to establish that it would have been unnecessary for Appellant to withdraw these monies had he engaged in a more diligent search for alternative employment. Absent this evidence, we conclude that the appropriate remedy to make Appellant whole, and place him in the position he would have been in had he not been improperly dismissed, is to reimburse him for the IRS penalty.

We distinguish the payment of a penalty on deferred compensation withdrawals from the withdrawal itself. As discussed above, compensation for losses on withdrawn deferred compensation monies would further compensate an employee for the loss of the use of monies that is already factored into a back pay award which includes payment of interest, and goes beyond making an employee whole for income losses suffered as a result of an improper dismissal. Reimbursement of a penalty payment, to the contrary,

does not involve compensation for the loss of the use of money. Instead, it recognizes that Appellant has been improperly subject to an external charge that the Employer is unable to establish would have been imposed on Appellant absent his improper dismissal.

Mileage Reimbursement for Attendance at Depositions and Board Hearings

The final issue is whether Appellant should receive mileage reimbursement for the mileage he traveled to attend depositions and hearings for this case. Appellant seeks such reimbursement; the Employer is opposed to it.

In a case where an improperly dismissed employee sought reimbursement for mileage expenses for attendance at the Labor Relations Board hearings on his dismissal, the Board denied such reimbursement. The Board stated: "We find no basis in law or the collective bargaining contract by which we may order such expenses reimbursement as requested by Grievant in addition to granting reinstatement with back pay and other emoluments." Grievance of Hurlburt, 9 VLRB at 234.

Appellant has presented no compelling argument causing us to diverge from this precedent. We recognize that, unlike the employee in Hurlburt, Appellant normally had the use of a state police cruiser as part of his employment. Nonetheless, we find no basis in law or the collective bargaining contract by which we may order such expenses reimbursement as requested by Appellant.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, and consistent with the May 4, 2007, Labor Relations Board Order in this matter, it is ordered:

1. The Employer shall pay to Appellant an amount representing back pay plus interest at the legal rate of 12 percent, said sum being calculated in

accordance with the terms of the stipulations entered into by the parties (the terms of which are incorporated herein by reference) and the provisions of the Findings of Fact, Opinion and Order herein. Appellant shall not receive back pay for the period from his dismissal through his August 21, 2006, deposition. Grievant shall receive back pay from the beginning of the first full pay period after August 21, 2006, until his reinstatement;

2. The back pay due Appellant shall be offset by the accrued annual leave payment received by Appellant at the time of dismissal, and the annual leave hours that Appellant had at the time of his dismissal shall be restored to Appellant's accrued annual leave bank. Should Appellant's annual leave accruals upon reinstatement put him over the contractual limit of annual leave accrual, he is entitled to a payment representing the monetary value of the annual leave exceeding the contractual limit without payment of interest;

3. Appellant shall not be credited with personal leave accrual during the period between his dismissal and reinstatement;

4. The Employer shall reimburse Appellant for a $2,000 Internal Revenue Service penalty he and his wife incurred for withdrawing monies from his wife's deferred compensation plan;

5. The Employer shall pay Appellant the amount of the deferred compensation payments that would have been made into Appellant's deferred compensation plan from his dismissal to his reinstatement, plus interest payments on such amounts at the legal rate of interest; and

6. Appellant shall not receive mileage reimbursement for the mileage he traveled to attend depositions and hearings for this case.

Dated this 26th day of September, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Edward R. Zuccaro, Chairperson
Edward R. Zuccaro, Chairperson

/s/ Joan B. Wilson
Joan B. Wilson

/s/ Leonard J. Berliner
Leonard J. Berliner