

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 05-34
LAWRENCE ROSENBERGER)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 13, 2005, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Lawrence Rosenberger ("Grievant") contesting his dismissal as a Game Warden with the State of Vermont Agency of Natural Resources, Department of Fish & Wildlife ("Employer"). Grievant alleges that the Employer violated Article 14 of the Contract by dismissing him. Specifically, Grievant contends that: a) his dismissal was not based in fact or supported by just cause, b) the Employer improperly bypassed progressive discipline, and c) the Employer failed to apply discipline with a view toward uniformity and consistency. Grievant also contends that the Employer's decision to dismiss him constitutes discrimination, retaliation, intimidation and harassment by the Employer in violation of Articles 5 and 15 of the Contract.

On March 30, 2006, the Labor Relations Board issued a Memorandum and Order granting a motion to exclude evidence filed by Grievant to the extent that the Employer may not rely on the following evidence to support disciplinary action taken against Grievant: 1) evidence of any harmful statements made by Grievant at an April 4, 2005, meeting with Lieutenant Robert Lutz after Lutz asked him if he had responded at all to an injured deer and gone on a call-out on March 27, 2005, as Grievant claimed in his time report; or 2) evidence of admissions made by Grievant concerning the March 27 incident

subsequent to the April 4 meeting. The Board reserved judgment on the motion to exclude evidence in all other respects. 28 VLRB 197.

On June 16, 2006, the Board issued Findings of Fact, Opinion and Order on three other motions filed with the Board. The Board granted a Motion to Strike filed by Grievant to the extent that Charges #3 and #5 set forth in the Loudermill letter, which were incorporated into the letter dismissing Grievant, were struck from the dismissal letter; and was denied to the extent that Charge #4 was not struck from the dismissal letter. The Board also ruled on a Motion to Compel filed by the Employer, and a second Motion to Exclude Evidence filed by Grievant. The Board granted the motions in part and denied them in all other respects. 28 VLRB 284.

The Board held hearings with respect to the remaining charges on August 17, 2006; September 5, 2006; and October 4, 2006; in the Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Carroll Comstock and Richard Park. Attorneys Scott Cameron and Michael Casey, VSEA Deputy Counsel, represented Grievant. Assistant Attorney General Julio Thompson represented the Employer. The parties filed post-hearing briefs on November 3, 2006.

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 . . . membership or non-membership in the VSEA, 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;
- b. Apply discipline . . . with a view toward uniformity and consistency;
- 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 . . .

...

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 15 GRIEVANCE PROCEDURE

...

6. The parties agree, subject to applicable law, that every employee may freely institute complaints and/or grievances without threats, reprisal or harassment by the employer.

...

2. 10 V.S.A. Section 4197 states: "A game warden shall keep a record of his official acts in the manner and form prescribed by the (Department of Fish & Wildlife) commissioner. He shall submit such record and such reports to the commissioner as he may require" (State's Exhibit 2).

3. The Employer's Standard Operating Procedures provide in pertinent part:

...

3.19 Wardens shall accurately record the actual hours they work on their time sheets. An officer may not volunteer time in any manner by working and not entering the time on their time sheets or by not signing on with the CAD system.

...

3.24 An officer shall not knowingly make a false entry in official records or maintain any false record or cause any false entry to be made in official records or cause any false record to be maintained.

...

3.31 An officer will submit all required reports within 14 days or as directed, except in those cases that are specifically extended by the District Chief.

... (State's Exhibit 2)

4. Grievant was employed as a game warden by the Employer from 1987 until his dismissal on August 22, 2005. Grievant worked in the Burlington District throughout that period. This district historically has had a high volume of work. Prior to his dismissal, Grievant had never been disciplined during his employment. During his tenure with the Employer, Grievant never received an unsatisfactory overall performance evaluation, and during the 14-year period beginning August 1991, until his dismissal, Grievant's overall performance on his annual evaluations was rated as either "excellent" or "outstanding". Then Lieutenant Robert Rooks completed Grievant's annual performance evaluations as Grievant's supervisor during the period August 1988 through August 2000. Then Lieutenant David LeCours completed Grievant's annual evaluations as Grievant's supervisor covering the period August 2001 through August 2004 (Grievant's Exhibits 1, 2 – 20).

5. Grievant was an active member of the Vermont State Employees' Association. He served on the Non-Management Unit bargaining team from 1999 – 2005. Grievant also served as an officer of the Wardens Association for several years, including serving as its President for two years and its Vice-President for two years. Included

among his duties as Association President were representing wardens in testifying before the Legislature, seeking new equipment, and advocating for pay increases for wardens.

6. Grievant's VSEA and Wardens Association activities brought him into conflict at times with his supervisors. During the fall of 2004, Fish and Wildlife Department management implemented a new call-out policy concerning when a call-out is justified before the beginning of a work shift . Grievant was one of the wardens who informed management that they believed the policy was inconsistent with the collective bargaining contract. Colonel Robert Rooks, Director of Law Enforcement, sent a memorandum dated December 22, 2004, to wardens on this issue. He noted that "(s)everal wardens have brought to my attention inconsistencies regarding 'call-in' compensation interpretation and VSEA contract language". He stated: "At my request, the recent attempt by the Lieutenants to address duty hour manipulation was unsuccessful and created much confusion. I wish to wipe the slate clean, reinstate any call outs that were recently denied, and start again. I take full responsibility for any and all confusion and grief that this has caused" (Grievant's Exhibit 28).

7. There was a meeting in early 2005 attended by Colonel Rooks, Major David Lecours and eight wardens in the Northwest District of the state. At the meeting, Lecours presented a new leave policy to be applied to wardens in the Northwest District of the state. Grievant indicated that it was improper to implement a new leave policy in one district that did not apply to other districts in the state, and that the policy was contrary to the provisions of the collective bargaining contract. Grievant stated that he would file a grievance if the leave policy was implemented, and that he would win the

grievance. Rooks indicated that Grievant was correct and that the policy would not withstand a challenge through the grievance procedure (Grievant's Exhibit 27).

8. If an off-duty warden is contacted regarding an injured deer in the warden's coverage area, the warden may respond and receive four hours of overtime compensation for the response. Such a self-activated response is termed a "call-out" and the compensation received is referred to as call-out pay. Wardens are not entitled to self-activate, respond and receive call-out pay if they are contacted concerning a dead deer. Grievant was aware of these requirements at all times relevant.

9. In November of 1996 and 2000, Major Roger Whitcomb, Chief Game Warden, sent a memorandum to lieutenants, state game wardens and deputies entitled: "Subject: Regular Deer Season". The memorandum provided in pertinent part: "In preparation for the regular deer season please give some thought to the following: . . . It is also the responsibility of the warden to notify the dispatcher when they are going on a callout, of the name and telephone number of the complainant for recording in the CAD system" (State's Exhibit 3).

10. Wardens going on call-outs are required to notify a State Police dispatcher that they are going on duty. They have to describe to the dispatcher the nature, location and source of the call-out. They also have to notify the trooper when they have completed the call-out. Grievant was aware of these requirements.

11. Grievant's communications with dispatchers were handled by the Vermont Department of Public Safety Answering Point ("PSAP") in Williston. Grievant contacted the Williston PSAP either by telephone or by use of his radio.

12. Telephone calls and radio calls to the Williston PSAP are tape-recorded and time-stamped by a machine called the TEAC. The TEAC contains an internal clock that records the time and duration of each call.

13. PSAP dispatchers log officer communications into a centralized computer database called the Spillman CAD (Computer-Aided Dispatch) System. When a warden notifies a dispatcher of a call-out, the dispatcher opens a new report in the Spillman CAD System, called a law incident report. The Spillman CAD System also contains a radio log that tracks all entries by a dispatcher in chronological order. Each entry is time-stamped according to the computer system's internal clock.

14. At the Williston PSAP, the clock used by the TEAC recording machine is separate from the clock used in the Spillman CAD System. On the evening of March 27, 2005, the TEAC machine's internal clock was running 37 seconds ahead of the Spillman CAD System's internal clock.

15. When a dispatcher creates a law incident report, the Spillman CAD System automatically assigns a tracking number, called the incident number. The dispatcher types into the law incident report pertinent information he or she receives from the warden, such as the warden's identity, where the warden intends to go, and what the warden ultimately does at the scene of the call. Wardens are required to notify the dispatcher when they complete a call for service, and the dispatcher types that information in the law incident report.

16. Upon completing a call for service, wardens typically ask the dispatcher for the law incident report's incident number. Wardens complete time reports every two

weeks. Therein, they include all claims for call-out pay. In recording a claim for call-out pay, they include a reference to any law incident report associated with the call-out.

17. In the late evening of March 26, 2005, The Essex Police Department received a telephone call about a dead deer lying on the shoulder of the Susie Wilson Road in Essex. This road is not part of the circumferential highway in Essex, also known as Route 289 (State's Exhibit 14, p.54-55).

18. On the morning of March 27, 2005, Easter Sunday, Grievant was working a regularly-scheduled shift. He was assigned to handle the above-described deer at 6:14 a.m. Grievant responded to the dead deer, and decided to give it to Joe Gaudette of Milton. Grievant had known Joe Gaudette for many years and had given him deer in the past. Grievant telephoned Joe Gaudette and asked him if he wanted the deer. Joe Gaudette indicated that he could not take the deer, but that his brother Bob (who also lived in Milton) may be able to take it. Grievant also had known Bob Gaudette for many years and had given him deer in the past. Grievant dropped the deer off at Bob Gaudette's house on the morning of March 27. The dispatcher logged the call as being completed at 9:04 a.m. (State's Exhibit 14, p.54-55).

19. After Grievant dropped the deer off at Bob Gaudette's house, he called the dispatcher to obtain the incident number which had been assigned to that deer. The dispatcher told Grievant that the deer had been assigned incident number 05FW01552. Grievant called Bob Gaudette and provided that number to him, so that he could account for the deer meat in his possession. Gaudette wrote that number on the packages of meat after the deer was butchered. At the time Grievant provided Bob Gaudette with the incident number, he was not aware that the dispatcher had given him the wrong incident

number. The correct incident number for the deer should have been 05FW01551 (State's Exhibit 14).

20. After Grievant completed his regular work shift on March 27, he went off duty. He had an Easter meal with his family, and fell asleep on a couch sometime before 8 p.m.

21. At 8:31 or 8:32 p.m., on March 27, Grievant made a call from his home to PSAP in Williston. The following telephone conversation occurred between Grievant and Williston State Police Dispatcher Still:

Still: Dispatcher S. Still.

Grievant: Hi 945. Would you show me 41, and 76 to an injured deer on the Circ. Complainant is going to be a (Grievant then said a first name which may have been "Gill", or possibly another name but did not appear to be "Joe") Gaudette.

Still: Gill Gaudette?

Grievant: Yup, its in Essex.

Still: Okay, okay.

Grievant: Alright, thanks.

Still: Thank you sir. Bye.

Grievant: Bye.

(State's Exhibits 9, 10; Grievant's Exhibit 31)

22. In making this call, Grievant was identifying himself by his warden number, 945, and using two law enforcement codes, 10-41 and 10-76. Code 10-41 denotes a warden going on duty. Code 10-76 refers to the warden traveling to a particular location. Grievant's reference to the "Circ" in Essex referred to the circumferential highway in Essex, Route 289.

23. Grievant does not know a person named Gill Gaudette.

24. At 8:53 p.m., on March 27, Grievant radioed the Williston PSAP. The following radio transmission occurred between Grievant and Dispatcher Still:

Grievant: 945 Williston

Dispatcher: 945.

Grievant: 24, 7750.

Dispatcher: 10-4.

Grievant: The last four?

Dispatcher: By 1566, that's 1566.

(State's Exhibits 9, 10; Grievant's Exhibit 31)

25. Grievant used two additional codes in this second call to the dispatcher: Code 10-24 and Code 7750. Code 10-24 denotes that a warden has completed a previously-reported call for service and is leaving the scene. It does not indicate that a warden is going off-duty. Code 7750 refers to an adult male deer killed by a motor vehicle. When Grievant asked Still for "the last four", he was requesting that the dispatcher provide him with the last four digits of the law incident report generated on the Spillman CAD System that related to the call-out. In providing Grievant with the number 1566, Still was referring to the last four digits of the law incident report that he had created for the call-out.

26. Although Grievant made his second call to Dispatcher Still at 8:53 p.m., the dispatcher did not type the information provided by Grievant into the Spillman CAD system until 9:01 p.m. It is not uncommon for dispatchers to delay in making entries

because they often have to handle multiple calls around the same time (State's Exhibit 8, p.40).

27. A radio log summary report is prepared at the Williston PSAP listing all radio and telephone communications a particular warden has with dispatchers in chronological order based on entries made by dispatchers. The radio log summary report for Grievant contains two additional listings on the evening of March 27 involving Grievant, one indicating that he went off duty at 9:01:37 p.m. and the other that he went off duty at 9:21:52 p.m. There were no radio or phone transmissions recorded on the tape at the Williston PSAP pertaining to either of these two listings on the radio log summary report (State's Exhibit 8, p.42).

28. Law incident report number 05FW01566 which was completed by Dispatcher Still for the above-described March 27 incident contains some errors. Although Grievant reported to him that there was an injured deer on the circ in Essex when he initiated the call-out, Still noted the location as "Vermont Route 127 – Burlington." Further, Still listed "Gill Gaudette" as the "contact" rather than the "complainant", although Grievant had indicated he was the complainant. Persons who make a report to the Department of Fish and Wildlife about a dead or injured deer are referred to as "complainants" (State's Exhibits 8, p. 40-41; 9 and 10).

29. It takes Grievant approximately ten minutes to travel from his home to the circumferential highway (Route 289) in Essex. The distance is approximately 6 miles. There are two stoplights enroute (State's Exhibit 21).

30. After the report of the dead deer on the Susie Wilson Road on the evening of March 26, 2005, the Essex Police Department did not receive any additional calls concerning dead or injured animals on the road until the evening of March 31, 2005.

31. There were no reports of dead or injured deer made to the Burlington Police Department for the period March 27 through March 30, 2005. Dave Rauschel, an independent contractor picking up dead animals for the cities of Burlington and Colchester, picked up a dead deer on Route 127, known as the Burlington beltline, in Burlington on March 30, 2005. A call relating to this deer had been received by the Williston PSAP that day (State's Exhibits 17, 20).

32. Wardens are not always able to locate deer which were reported either as injured or dead. If an injured deer is able to move, it may get off the road and run off before the warden arrives. Passing motorists have been known to stop, put dead deer in their trucks, and leave the scene.

33. When a warden does locate an injured or dead deer, the warden has several options. In the case of an injured deer, the warden needs to humanely kill the deer. A dead deer can be loaded into the warden's truck, and either delivered to the nearest Department of Fish and Wildlife pit for disposal or given to a citizen to salvage the meat. Alternatively, a warden may dispose of a dead deer at the scene by dragging it into nearby woods or brush.

34. Complainants who make a report to the Department of Fish and Wildlife about a dead or injured deer typically are identified. It is not unusual that someone a warden does not know provides information to the warden as a complainant. A warden typically would ask a complainant for their name and telephone number. A warden may

not ask a complainant for a telephone number if the complainant is specific about the location of the dead or injured animal. It is not a hard and fast rule that a warden needs a name and telephone number of a complainant before self-activating for a call-out.

35. On April 2, 2005, Grievant submitted a time report for the pay period March 20 – April 2, 2005. Grievant made two call-out related claims for compensation on this time report. The first claim was for a reported call-out on March 21, 2005, which Grievant had responded to an anonymous telephone call about a bear. The second overtime claim was for the reported March 27, 2005, injured deer call-out. Grievant claimed four hours of overtime for this date and wrote “1566” on the time report concerning this claim. This was a reference to law incident report number 05FW01566, the report number given him by the Dispatcher Still on the evening of March 27, 2005 (State’s Exhibit 7).

36. On the morning of April 4, 2005, Grievant’s direct supervisor, Lieutenant Robert Lutz, was in the Williston office of the Department of Fish and Wildlife reviewing time reports for wardens in his district. Lutz had been employed as a warden for the previous eighteen years, and he had a good working relationship with Grievant. Lutz had been promoted to lieutenant in March 2005, and had become Grievant’s supervisor.

37. As part of his review of time reports, Lutz checked to see if claims for call-out compensation by wardens whom he supervised met the criteria for such compensation. He also checked the law incident reports referenced on the time reports to ensure accuracy. Lutz was operating on a deadline in completing time reports; he was

required to deliver the approved timesheets that afternoon to the Agency of Natural Resources office in Waterbury.

38. While reviewing Grievant's time report on April 4 covering the period March 20 – April 2, 2005, Lutz accessed the Spillman CAD system on his office computer to review law incident report number 05FW01566, referenced on Grievant's time report to support his claim for call-out compensation for the evening of March 27. In reviewing the law incident report, Lutz noted that the report contained a dispatcher entry at 8:32 p.m. indicating that Grievant was responding to an injured deer call-out, and a second entry at 9:01 p.m. indicating that Grievant had reported completing the call. Lutz also noted that the dispatcher had listed the location of the call as Burlington. Lutz did not believe that the 29 minute time span in the dispatcher's entries provided Grievant with sufficient time to travel from his home in Milton to complete an injured deer call in Burlington. At this time, Lutz was not aware that the radio log summary report for Grievant on March 27 had an entry indicating that Grievant went off duty at 9:21:52 p.m. Lutz determined that he would not approve Grievant's time report until he discussed it with Grievant. At this point, Lutz thought that the problems with the call-out claim may have been attributable to data entry errors by the dispatcher on the time report (State's Exhibits 7, 8).

39. Lutz then contacted Grievant by radio and told him that he wished to speak with him. Grievant told Lutz that he was on his way to the Williston office and would discuss it with him when he arrived. When Grievant came into the office, Lutz told Grievant that he had questions about the March 27 call-out reported on Grievant's April 2 time report. Lutz showed Grievant his April 2 time report and the computer screen

display of law incident report no. 05FW01566. Lutz sought explanations from Grievant concerning responding to an injured deer in Burlington on March 27. At some point during the discussion with Grievant, Lutz mentioned that Grievant had reported that the injured deer was located in Essex, not Burlington. Grievant did not provide a satisfactory explanation to Lutz of the March 27 call-out. At one point, Grievant told Lutz that he must have written the wrong law incident number on his time report. Grievant also discussed other call-outs at times other than the evening of March 27. Grievant discussed the dead deer he had delivered to Bob Gaudette the morning of March 27. After approximately five minutes of conversation, during which Grievant appeared nervous and emotional, Grievant did not provide Lutz with the details of the March 27 call-out (State's Exhibits 7, 8).

40. After discussing the March 27 call-out with Grievant, Lutz informed Grievant that he would not be paid for the call-out. He struck the call-out from Grievant's time report, and deducted four hours from the time Grievant would be paid for call-out compensation, in Grievant's presence. Grievant expressed no objection to these actions by Lutz. Lutz told Grievant that the issue concerning the March 27 call-out was a "done deal". He further told Grievant that he would not report the issue to the chain of command (State's Exhibit 7).

41. After the discussion of the March 27 incident, Lutz and Grievant spent approximately 20 minutes discussing matters unrelated to the March 27 incident. They discussed workplace expectations and Grievant's work history. Grievant told Lutz that he felt that he had not been appropriately recognized for his work. Lutz told Grievant that good work would be recognized. He also told Grievant that there would be an opening for

a warden in the St. Albans district, and that he would support Grievant's transfer to the St. Albans District if Grievant desired to transfer. Grievant felt positive after this discussion.

42. After the April 4 meeting with Grievant, Lutz that day traveled to Employer headquarters in Waterbury. Lutz met with his superior, Major David Lecours. Lutz asked Lecours if there had been a problem in the past with respect to Grievant's claims for call-out compensation. When Lecours inquired why Lutz was asking, Lutz then disclosed his conversation earlier that day with Grievant. Lecours told Lutz that they should discuss the situation with Colonel Robert Rooks. Lutz and Lecours then spoke with Rooks. Lutz informed Lecours and Rooks of the details of his meeting with Grievant. This was the first knowledge that Rooks had of any alleged misconduct by Grievant. Rooks directed Lutz to conduct a preliminary inquiry on the March 27 incident and complete a misconduct complaint form on Grievant.

43. On the following day, April 5, Lutz asked Williston PSAP Administrator Betty Wheeler to review the Williston PSAP's tapes for the evening of March 27, 2005, for the time period 8 p.m. to 9:30 p.m., and to provide him with recordings of any communications from Grievant. Wheeler conducted the search and found only two transmissions, the above-discussed 8:32 and 8:53 p.m. calls to the dispatcher from Grievant. She provided Lutz with audio tapes of these two transmissions (State's Exhibit 11, p.46; Grievant's Exhibit 31).

44. When Lutz listened to the 8:32 p.m. transmission, he thought that Grievant may have referred to "Joe Gaudette", not "Gill Gaudette" as Dispatcher Still had typed on the law incident report, as the person reporting the injured deer. Lutz knew a Joe

Gaudette in Grievant's district and contacted him by telephone on April 5. Lutz asked Joe Gaudette if he had reported any injured deer to Grievant recently. Joe Gaudette responded that he had not talked to Grievant in about five months. He told Lutz that Grievant had given his brother, Bob Gaudette, a deer recently. He provided Lutz with his brother's telephone number (State's Exhibits 11, p.47; 12).

45. Lutz then contacted Bob Gaudette by telephone on the afternoon of April 5 and asked him if he had any recent contacts with Grievant. Bob Gaudette replied that Grievant had dropped off a deer at his house on the morning of March 27. He told Lutz that he had no other recent contacts with Grievant.

46. Also, on April 5, Lutz searched several state databases, such as that maintained by the Department of Motor Vehicles, for the name "Gill Gaudette", using a variety of spellings. He did not find any matches.

47. On April 5, Lutz completed a misconduct complaint form on Grievant. His complaint provided in pertinent part as follows:

Nature of alleged complaint: Warden Lawrence Rosenberger claimed compensation for call-in pay for incident #05FW01566, an injured deer on the circumferential highway in Essex. Warden Rosenberger reported the incident to VSP dispatch as an actual response, when he in fact did not respond to the incident.

...

Narrative of Complaint . . . On 4-4-05, during a routine review of time reports, I discovered inconsistent response times in a call reported to have occurred on the circ. Highway in Essex. This call was a self activation by Warden Rosenberger for an injured deer and began at 20:31 hrs.

Inspection of the radio log in CAD recorded radio transmissions revealed that the warden advised he had responded to the scene, completed the call and returned home and went off duty by 21:01. This did not allow sufficient travel time to the scene, much less handle the complaint.

No complainant was listed in the law incident report in CAD. The town of offense was incorrectly entered as Burlington.

When questioned about the call, Warden Rosenberger stated that he must have written the wrong law incident number on his time report. I advised him of the radio log describing his response to the call . . .

On 4-5-04, I reviewed audio tapes of transmissions by both telephone and radio from Warden Rosenberger to the PSAP dispatcher (Still). The tape contains two transmissions:

20:32 (telephone): Warden Rosenberger stating he is enroute to a deer on the circ. Highway and that the complainant is Joe Gaudette. The complaint is in Essex

20:53 (radio) Warden Rosenberger advises he has completed the call, verifies code 7750 and asks for the law incident number.

There are no radio transmissions 30 minutes prior or after the above first and second calls.

On 4-5-05, I spoke with Joe (Lawrence) Gaudette . . . I asked Joe if he had been the complainant on an injured deer recently. He had no idea what I was talking about, and further stated that he had not talked to Warden Rosenberger about any deer in at least 5 months. Joe did say that he believed Warden Rosenberger had given his brother Bob a deer recently. . .

I called Robert Gaudette . . . on 4-5-05. The person that answered the phone identified himself as Robert Gaudette. I asked Robert if he was given a tag number for a deer he received from Warden Rosenberger. He stated the tag number was 1552. Robert was sure of this as he wrote the number on the packages of meat cut from the deer. Robert confirmed that Warden Rosenberger had dropped the deer off on the *morning* (emphasis in original) of Easter Sunday (March 27) and that the deer was a small (about 80 lbs) buck.

Checking CAD law incidents, I found case # 05FW01552 assigned to Warden Rosenberger on 3-27-05 and that the call was completed on 08:49. The call was assigned an offense code of 7503. This call may have been called in as a 7753 and been mistakenly entered as a 7503.

Law incident #05FW01566 never occurred. The case was fabricated to allow compensation for a call-in situation . . . (State's Exhibit 11)

48. On April 8, 2005, Colonel Rooks reviewed the misconduct complaint form completed by Lutz. Rooks met with Major Lecours and Commissioner Laroche to discuss what action to take. Rooks recommended opening an internal investigation on Grievant. Commissioner Laroche agreed with the recommendation. On April 8, Rooks assigned Lieutenant Kenneth Denton to conduct an internal investigation concerning alleged false

claiming of call-out compensation for the evening of March 27. This was Denton's first knowledge of, and involvement in, allegations of misconduct against Grievant (State's Exhibit 6).

49. Prior to the April 4 meeting between Grievant and Lutz, Grievant was not under investigation for any alleged misconduct. At the time Commissioner Laroche approved the investigation of Grievant, the information he had concerning allegations against Grievant had originated exclusively from Lutz. Laroche had no role in the investigation of Grievant. At the time Rooks assigned Denton to conduct the internal investigation, the information that Rooks and Denton had concerning allegations against Grievant had been provided exclusively by Lutz.

49. On April 10, Lutz telephoned Grievant at his home and said he wished to meet with him that evening at McDonalds Restaurant in Milton. Grievant and Lutz did meet that evening at McDonalds. Lutz told Grievant that he had brought concerns concerning the March 27 call-out to the attention of his superiors. Grievant responded with words to the effect of "What are you trying to do, get me fired?" Lutz told Grievant that he needed to report to the Employer's Williston office the following day to turn in his truck, badge, computer and firearm.

50. On Monday, April 11, Grievant drove to the Williston office and met with Lutz. He turned in his badge, firearm, truck and computer. Lutz told Grievant that he also needed to turn in his daily logs. Grievant indicated that he had not done "dailies". Lutz responded that he did not do "dailies" either. At this time, Lutz kept daily notes in a spiral notebook but did not make entries in the logbook provided by the Employer for entering daily logs.

51. On April 13, Grievant spoke with Lieutenant Denton. Grievant informed him that he wished to “make it easy” on the Employer and have an investigative interview as soon as possible so that he could “get it over with”. The following day, April 14, Denton conducted a tape-recorded investigative interview of Grievant. Grievant was represented by VSEA Field Representative Marty Raymond. During the interview, the following exchange occurred between Denton and Grievant:

Denton: Alright, going back to this initial call on the 27, ok you provide the dispatcher with the name of the person that contacted you on this deer . . . Ok in the log it is entered Gill Gaudette 945 has a 43.

Grievant: Yes, I seen that, I don’t know a Gill Gaudette. I don’t know if they misunderstood me . . .

...
(Employer’s Exhibit 15, p.64)

52. Lutz sent a memorandum dated April 19, 2005, to Denton as part of Denton’s investigation. The memorandum provided in part:

On April 4, 2005 I was reviewing time sheets and corresponding CAD law incident reports . . .

Warden Rosenberger had claimed two calls for call in pay. One of these calls, #05FW01566 was reported to have occurred on 3-27-05 and was reported to dispatch by Warden Rosenberger at 20:31 hours. The call was for an injured deer on the circumferential highway. The town code was for Burlington. The circ. Highway is in Essex. The call was reported as completed at 21:01. This did not allow time for travel to the scene, dispatching and loading a deer and returning to home station in Milton. There was no complainant listed on the call, however a Gill Gaudette was listed as a contact.

Warden Rosenberger came into my office as I reviewed this call. I asked him if he had responded to a call for an injured deer in Burlington. He was unsure, and as I reviewed the call further I discovered that Warden Rosenberger had reported the call as having occurred in Essex to the dispatcher. He reportedly cleared from the call at 21:01 and went off-duty at the same time. Warden Rosenberger became very nervous and emotional as I reviewed the written radio log from the call.

I asked Warden Rosenberger where the call occurred. He was not sure. . . He stated that he may have written the wrong law incident number on his time sheet. He said he did take care of an injured deer, but forgot when it happened.

...
(State's Exhibit 13)

53. At the time Lutz prepared this April 19 memorandum, he still was not aware that the radio log summary report for Grievant on March 27 had an entry indicating that Grievant went off duty at 9:21:52 p.m.

54. On May 24, 2005, Lieutenant Denton conducted a second tape-recorded interview of Grievant. Grievant again was interviewed by VSEA Field Representative Mary Raymond. The following exchange occurred during the interview:

Denton: Alright we just finished reviewing the PSAP tape from Williston and I am asking Larry what the name was that was that he provided the dispatcher on the tape.

Grievant: According to the tape I said Gill Gaudette

Denton: OK Gill Gaudette, it wasn't Joe Gaudette?

Grievant: Correct.

Denton: OK because it sounded like the dispatcher said Joe Gaudette and you said yeah.

Raymond: Can we go through that again?

Denton: Sure yeah we will listen to again

Denton: Is that name

Grievant: According to the tape I can't tell if it says Gill or Joe Gaudette, I do know a Joe Gaudette.

Denton: Okay. But you do not know why you would have said it was a Gill Gaudette?

Grievant: No

Denton: Because you provided a name to a face that we have no, you have no recollection of for any reason why you did that.

Grievant: If I said Gill Gaudette I do not know a Gill Gaudette I guess I do not have an answer to that question.

...

(State's Exhibit 16, p.81)

55. On June 8, 2005, Denton issued a report of his investigation concerning allegations that Grievant violated Standard Operating Procedures ("SOP") of the Employer. Denton stated in pertinent part as follows in the section of the report entitled "Violations of SOP":

1) **SOP 3.24: Knowingly made false entry in official records.**

On 3/27/05, Incident #05FW01566, Warden Rosenberger provided the dispatcher false information concerning an injured deer, when in fact the deer was not injured and made no attempt to correct the misinformation and also providing a false name, "Gil Gaudette" as the complainant where Warden Rosenberger states that he does not know this person . . . This false information was entered into the CAD (Computer Aided Dispatch System) and a four hour callout entered on his time sheet. This false information was used to obtain financial compensation for four hours at the rate of time and one half. In Warden Rosenberger's case this would amount to approximately \$137.22.

...

3) **SOP 9.01: Failure to maintain Daily Log.**

Warden Rosenberger was ordered to turn in his 2004 and 2005 Daily Logs upon being placed on administrative leave. This did not occur. Warden Rosenberger stated that he has not kept daily logs for the past few years and did not have said records. He advised that he knew it was required by SOP to keep same.

...

6) **SOP 3.24: An officer will submit required reports within 14 days or as directed . . .**

On 5/29/04, Warden Rosenberger failed to check and verify incident 04FW03147 and did not complete the required moose injury or moose mortality report card. These still have not been received as of the completion of this report.

...

(State's Exhibit 6)

56. Fish & Wildlife Commissioner Wayne Laroche sent Grievant a

Loudermill letter dated July 20, 2005. The letter provided in pertinent part as follows:

As a result of your behavior described below, the Department of Fish & Wildlife is contemplating your dismissal from the position of Game Warden III. . . . The following charges of misconduct are based upon an Investigation report prepared by Lt. Kenneth Denton, District Chief, dated June 8, 2005 (copy attached) which my(sic) be consulted for further information regarding the basis for the charges summarized below.

The reasons for contemplating disciplinary action are as follows:

- 1) You fabricated a case (#05FW01566) in order to receive call-out compensation. This misconduct included your willfully making false entries in official records (including your time report, radio log, and Computer Aided Dispatch records), making false statements to a dispatcher, and providing your supervisor with misleading information. These actions are in violation of Fish and Wildlife SOP 3.24, 9.03, Article 24 of the Non-Management Unit Bargaining Unit Agreements, and Personnel Policy 5.6.
- 2) You failed to maintain daily logs in violation of Fish and Wildlife SOP 9.01.
- . . .
- 4) You failed to submit required reports within 14 days, or as directed, in violation of Vermont Fish & Wildlife policy SOP 3.31.
- . . .

You must notify me within twenty-four (24) hours after receiving this letter whether you wish to respond to the above allegations. . . .

(State's Exhibit 4)

57. Paragraph No. 4 of the Loudermill letter relates to paragraph No. 6 of Lieutenant Denton's report. Denton erred in stating in his report that this allegation concerned a violation of SOP 3.24. The Loudermill letter corrected this error by Denton by stating that this allegation concerned a violation of SOP 3.31.

58. By letter dated August 22, 2005, Commissioner Laroche notified Grievant that he was dismissed. The letter provided in pertinent part:

This is to notify you of your dismissal from the position of Game Warden III effective August 22, 2005. You will receive two weeks pay in lieu of two weeks notice. By letter dated July 20, 2005, I notified you that I was contemplating your dismissal, and gave you the opportunity to respond to charges of making false entries on official time sheet and radio log documents. On August 12, 2005, I met with you to hear your response. In making my final decision, I have considered all of the information that you brought to my attention.

The reasons for this action are those listed in my letter of July 20, 2005, (attached hereto for), which are incorporated herein by reference.

...

(State's Exhibit 4)

59. Until the advent of the Spillman CAD system in approximately 1994, daily reports prepared by wardens were collected by their supervisors. Much of the information contained in the daily reports was collected through the Spillman CAD system. There was a period of several years after the advent of the Spillman CAD system where Lutz and other wardens did not do daily logs. When Lutz was informed by his supervisor in approximately 2000 that the requirement to do daily logs still existed, he began keeping a record of activities in a notebook.

60. Grievant did not do daily reports for the last three years of his employment. When Lecours supervised Grievant during the last four years of Grievant's employment, Lecours never asked Grievant for his daily reports. There is no evidence of any wardens other than Grievant being disciplined for not doing daily logs.

61. The Department of Fish and Wildlife maintains biological data on moose. Game wardens are an important source of biological data since they regularly are involved in dealing with issues involving moose. The Department solicits various reports from wardens on moose.

62. On the evening of May 29, 2004, when Grievant was off duty, he received a call at his home about an injured moose. Grievant called the Williston PSAP and signed on for a call-out. He located the moose in Colchester. He saw the moose had been hit, and was stiff but still was walking. Grievant decided to not kill the moose. He notified the dispatcher that “all of (the moose’s) legs down”, meaning that it was walking on all four legs. He also told the dispatcher that he “may have to end up shooting it later”. Grievant did not file a report concerning the injured moose (State’s Exhibit 18, p. 111 and 119).

63. A few days later, on June 5, a moose was hit by a car and killed within a mile of the location where Grievant had seen the moose on May 29. Grievant handled the dead moose. He believed that it was the same moose he had seen on May 29.

64. At all times relevant, Cedric Alexander has been a biologist employed by the Department of Fish and Wildlife and the leader of the Department’s moose team. On July 18, 2005, Alexander sent a memorandum to wardens which provided in pertinent part:

As you know, Moose Mortality and Injury Reports provide essential information such as the geographic distribution, population density, age classes, and sex ratio of moose throughout the state. Every report helps build our database to allow meaningful interpretation of trends and statistics. . .

Please find enclosed a page of CAD data. The entries in yellow hi-lite indicate complaints for which we have no report of mortality or injury in our database. The entries in orange Hi-light indicate moose damage complaints that may or may not have resulted in a moose mortality or injury that we don’t have reports for. This may be for a variety of reasons such as : 1) No moose was located (unfounded, or complaint was for damage); 2) Two wardens responded, both assumed other would send card; 3) Deputy responded but did not send card; 4) Neither date nor town on card matched CAD report; 5) Card was not sent.

Unfortunately we have no data for 168 CAD incidents for the period 6-1-2004 through 5-31-2005. Please check your records and provide as much information as possible for the yellow and orange complaints if a dead or injured moose was located. Enclosed are several postage paid mortality and injury report cards for

your convenience. Please respond to Michele no later than July 25 if possible.
Thank you!
(Grievant's Exhibit 23.

65. The dead moose which Grievant dealt with on June 5, 2004, was one of the 168 listed CAD incidents referred to by Alexander for which there was no data. Alexander sends out such memoranda on an annual basis. He has not received responses to such memoranda from all wardens. The fact that the CAD data referred to by Alexander in his memorandum indicated that a report was missing for a CAD incident does not necessarily mean that a report had not been filed, or should have been filed, for the incident. Some of the listed CAD incidents do not require the filing of reports; others do require reports to be filed. As a result of such a memorandum, Alexander typically receives responses that allow the Department to close 25 to 50 percent of open cases.

66. Other than Grievant, there is no evidence that the Employer has disciplined any other warden who failed to file a required moose-related report. Lutz has not checked with the wardens he supervises to determine whether they have complied with the 14 day reporting requirement. Lutz has not complied with the requirement to file reports within 14 days. It is not unusual for wardens not to file required moose reports within fourteen days.

67. During his tenure as a warden, Grievant complained to Rooks and Lecours about one warden claiming compensation for call-outs on repeated occasions that did not meet standard operating procedures. When Rooks supervised this warden, he determined that a call-out claimed by the warden did not fit within the parameters of call-out requirements, and he struck those call-outs from the warden's time report. During the period that Lecours supervised this warden and other wardens, he determined that certain

call-outs claimed by this warden and other wardens did meet call-out requirements, and he struck these call-outs from the wardens' time reports. Neither Rooks nor Lecours took disciplinary action against the involved wardens in these instances.

68. Prior to Grievant's dismissal, Lutz confiscated crappie from persons fishing because they had exceeded their daily limit, and issued a citation to the fishermen. A day or so later, Lutz approached Grievant and told him they were going to eat the crappie at the upcoming regional meeting of the wardens. Lutz told Grievant that he had received permission from Lecours to eat the crappie at the meeting. Lutz asked Grievant to fillet the crappie. Grievant did so at his home.

69. After the fish were filleted, Lutz determined that there was not enough fish to feed everyone at the meeting. Lutz told Grievant that they needed to go fishing while on duty to catch more fish. Lutz did not receive permission from his supervisor, Lieutenant Lecours, to fish on duty on this occasion. Lutz and Grievant did fish while on duty and caught many perch. The perch and crappie then were served to the wardens at the meeting. Lutz believes Lieutenant Lecours was aware of this incident. Lutz was not disciplined as a result of the incident.

OPINION

Grievant alleges that the Employer violated Article 14 of the Contract by dismissing him. Specifically, Grievant contends that: a) his dismissal was not based in fact or supported by just cause, b) the Employer improperly bypassed progressive discipline, and c) the Employer failed to apply discipline with a view toward uniformity and consistency. Grievant also contends that the Employer's decision to dismiss him

constitutes discrimination, retaliation, intimidation and harassment by the Employer in violation of Articles 5 and 15 of the Contract.

We first address Grievant's allegation that the Employer violated Article 14 of the Contract in dismissing him. In fulfilling our duty of deciding whether just cause exists for an employee's dismissal, the Board has power to police the exercise of discretion by the employer and to keep such action within legal limits. In re Goddard, 142 Vt. 437, 444-45 (1983). 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) is it reasonable to discharge an employee because of certain conduct, and 2) did the employee have 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.

In an earlier decision in this matter, we struck two of five charges that the Employer made against Grievant. 28 VLRB 284. Of the remaining three charges against Grievant, the primary charge is that he "fabricated a case" on March 27, 2005, "in order to receive call-out compensation". Specifically, the Employer charged that "(t)his misconduct included your willfully making false entries in official records (including

your time report, radio log, and Computer Aided Dispatch records), making false statements to a dispatcher, and providing your supervisor with misleading information.”

We concluded in an earlier decision in this matter that it was reasonable for Grievant’s supervisor, Lieutenant Lutz, to suspect in an April 4 meeting with Grievant that Grievant had committed misconduct in claiming call-out compensation for March 27. 28 VLRB 197, 214-215. However, the Employer has not sustained its burden of demonstrating by a preponderance of the admissible evidence that Grievant fabricated the call-out, made false entries in official records, made false statements to a dispatcher, or provided his supervisor with misleading information. The evidence presented by the Employer is not sufficient to demonstrate that Grievant; a warden with eighteen years experience, an excellent performance record and no prior discipline; had fabricated the March 27 call-out and falsely obtained call-out compensation.

The Employer relies on Grievant informing the dispatcher that the complainant in the March 27 incident was “Joe” or “Gil” Gaudette. As indicated in the Findings of Fact, the first name of the complainant which Grievant gave the dispatcher may have been “Gill”, or possibly another name, but did not appear to be “Joe”.

Nonetheless, the Employer contends its charge is supported even assuming that Grievant identified the complainant as “Gill Gaudette” because Grievant does not know anyone by that name and the Employer’s search was unable to locate anyone in the State with that name or a similar name. The fact that Grievant did not know a “Gill Gaudette” does not bolster the Employer’s case since the evidence indicates that it is not unusual for a warden to not know a complainant. We give little weight to the fact that the Employer was unable to locate a Gill Gaudette or a person with a similar name in Vermont. The

complainant could have been from another state or Canada. Also, there is no assurance that the Employer's database would capture every individual in Vermont.

The Employer further contends that its charge is supported based on the reported time that it took Grievant to complete the call-out. The Employer contends that Grievant could not respond to and complete a deer call within the 20 minutes that he reported to the dispatcher on March 27 since it would take approximately 60 minutes to complete such a call.

The evidence does not establish that there was a span of 20 minutes from Grievant going on duty to off duty with respect to the reported call-out. Instead, it indicates that there was a span of 21 or 22 minutes from when Grievant reported that he was on duty, and enroute to the reported location of an injured deer, to when Grievant informed the dispatcher that he had completed the call for service with respect to a deer killed by a motor vehicle and was leaving the scene. Grievant did not report at that time that he was going off duty. A radio log summary report for March 27 indicates that Grievant went off duty 50 minutes after he went on-duty. 50 minutes is within reasonable range of the estimated time of 60 minutes that it took Grievant to complete a typical deer call.

Nonetheless, the Employer disputes that the radio log summary report actually indicates when Grievant went off duty. Grievant testified that the radio log entry reflects a portable radio call he made from his truck at the time he returned home that evening to indicate he was going off duty. The Employer disputes this version of events because no such transmissions were captured by the dispatch center's tape machine which records incoming calls. The Employer's witnesses testified that the radio log entry was caused by a dispatcher noting Grievant was off-duty because the dispatcher had not heard from him,

or reflected a data entry error for an unknown reason made by a dispatcher trainee who was undergoing training on the evening of March 27.

The Employer's explanations for the radio log entry are speculative, and are no more credible than Grievant's version of events. It is true, as the Employer asserts, that it is unexplained why a telephone call by Grievant was not recorded. However, there also is no satisfactory explanation demonstrating that the radio log summary did not accurately reflect a communication from Grievant that he was going off duty 50 minutes after going on duty. Given the state of the evidence, we conclude that the Employer has not demonstrated by a preponderance of the evidence that it took Grievant less than 50 minutes to complete the reported deer call-out. Since this time is within range of a typical deer call-out for Grievant, we do not find that the time it took Grievant to complete the call-out supports a charge that Grievant fabricated the call-out and falsified his claim for call-out compensation.

The Employer relies on the absence of reports of injured deer to the Burlington and Essex police during the pertinent time period to support the charge that Grievant had fabricated the call-out. This does not demonstrate that an injured deer was not reported to Grievant. It is plausible that a complainant could make a report of an injured deer to a warden, and that a warden could take care of the deer without a further report being made to a police department.

The Employer further relies on the April 4 meeting between Lieutenant Lutz and Grievant to support the charge against Grievant. The Employer asserts that Grievant's behavior during the meeting, and his failure to provide a satisfactory explanation of the March 27 call-out at the meeting, demonstrate that he had not actually gone on a call-out

that evening and dishonestly claimed call-out compensation. Grievant did appear nervous and emotional during the meeting and did not provide a satisfactory explanation for the call-out.

Although this evidence makes it reasonable to suspect that Grievant may have committed misconduct in claiming call-out compensation for March 27, it is not sufficient without further evidence to demonstrate Grievant fabricated the call-out and falsified the call-out compensation claim. Persons may appear nervous and emotional in being questioned about an incident even if they have not committed misconduct. The lack of a satisfactory explanation could at least in part be attributed to there being some confusion during the meeting with Lutz whether the involved call-out concerned an incident in Burlington or Essex. The evidence concerning lack of satisfactory explanation would have to be bolstered with other significant evidence incriminating Grievant to result in a conclusion that the Employer has met its burden of demonstrating that Grievant committed dishonesty.

The Employer has not presented such evidence here. The evidence previously discussed does not, combined with Grievant's actions during the April 4 meeting with Lutz, rise to a level sufficient for us to conclude that the Employer has met its burden of proving the charge by a preponderance of the evidence. In addition, there is no other evidence which we view as contributing to a conclusion that the Employer proved its charge against Grievant by a preponderance of the evidence.

The second charge that the Employer makes against Grievant to support his dismissal is that he failed to maintain daily logs in violation of Fish & Wildlife Standard Operating Procedure 9.1. The evidence indicates that Grievant failed to maintain daily

logs. However, this does not result in a conclusion that this failure should have resulted in disciplinary action against Grievant.

This is because the evidence also indicates that there were occasions when other wardens failed to do daily logs, and there is no evidence of any wardens other than Grievant being disciplined for not doing daily logs. The lack of significance the Employer placed on daily logs is also indicated by Grievant's supervisor not asking him for daily logs the last four years that he was employed. Article 14 of the Contract provides that "the State will . . . apply discipline . . . with a view toward uniformity and consistency". The Employer violated this contractual provision by disciplining Grievant for failure to maintain daily logs while disciplining no other employees for like offenses.

The final charge against Grievant is that he failed to submit a required report within 14 days in violation of Standard Operating Procedure 3.31 by not submitting a report on a May 29, 2004, incident involving a moose. The evidence indicates that Grievant did fail to file a report on a May 29, 2004, incident involving a moose. Once again, however, this does not result in a conclusion that Grievant should have been disciplined for such failure.

The evidence indicates that failure by wardens to file required reports is not unusual, and has been treated by the Employer as a non-disciplinary administrative matter addressed by a reminder from the moose team biologist to wardens to file such reports. Other than Grievant, there is no evidence that the Employer has disciplined any other warden who failed to file a required moose-related report. The Employer violated the Article 14 provision concerning uniformity and consistency of discipline by

disciplining Grievant for failure to file a moose report while disciplining no other employees for such omissions.

In sum, we conclude that the Employer has not established by a preponderance of the evidence that any discipline should have been imposed on Grievant. Accordingly, Greivant should be reinstated with back pay. Given our conclusion that the Employer violated Article 14 of the Contract in dismissing Grievant, it is unnecessary to address Grievant's further claims that the Employer violated Articles 5 and 15 of the Contract.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The Grievance of Lawrence Rosenberger is sustained;
2. Grievant shall be reinstated to his position as Game Warden III in the Burlington District of the State of Vermont Department of Fish and Wildlife;
3. Grievant shall be awarded back pay and benefits from the effective date of his dismissal until his reinstatement, for all hours of his regularly assigned shift plus the amount of overtime Grievant would have worked, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim;
4. The interest due Grievant shall be computed on gross pay and shall be at the legal rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing with Grievant's dismissal, and ending on the date of his reinstatement; such interest for

each paycheck date shall be computed from the amount of each paycheck minus income (including unemployment compensation) received by Grievant during the payroll period;

5. The parties shall file with the Board by April 5, 2007, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing by 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. A hearing on disputed issues, if any, shall be held on April 12, 2007, at 9:00 a.m., in the Labor Relations Board hearing room; and
6. The Employer shall remove all references to Grievant's dismissal from his personnel file and other official records.

Dated this ____ day of March, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Carroll P. Comstock

Richard W. Park