

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 15-22
MICHAEL WILSON)	

FINDING OF FACT, OPINION AND ORDER

Statement of Case

Grievant filed a grievance on May 19, 2015, contesting the termination of his employment from the University of Vermont. Grievant contended in the grievance that the University of Vermont (“University”) violated the Risk Management/4-H Safety Policy, the University of Vermont Progressive Discipline Guidelines, and Employees Practices Liability.

Grievant filed an application to amend his grievance on August 25, 2015. On October 7, 2015, Grievant filed a second application to amend his grievance, seeking to entirely substitute this second amended grievance for the grievance he filed on May 19, 2015, and the first amended grievance he filed on August 25, 2015. In the second application to amend his grievance, Grievant provided the following as the pertinent rules or regulations which he alleged were violated:

Binding UVM Policies

- A. UVM Progressive Discipline Guidelines: Just Cause Checklist, partial/biased investigation, retaliation, unequal treatment
- B. UVM Grievance and Mediation Policy

Non-Binding policies, rules, procedures, practices, codes, precedents, legal definitions

- A. Vermont Supreme Court just cause standard: definition
- B. UVM Risk Management Policy: Personal Safety and Security/Employees
- C. 4-H Safety Policy
- D. Employees Practices Liability, Bullet #4
- E. UVM Common Ground Code
- F. Howe v. State of Vermont precedent

G. 4-H Motto: To make the best better

The University filed a memorandum in opposition to Grievant's second application to amend his grievance on October 15, 2015. The University contended that the second application to amend the grievance should be denied to the extent it asserted that the *UVM Mediation and Grievance Policy* had been violated because Grievant failed to raise this issue at earlier steps of the University grievance procedure. The University did not object to any other amendments which Grievant made to his original grievance. The Labor Relations Board issued a Memorandum and Order on December 15, 2015, granting Grievant's second application to amend his grievance except that the application was denied to the extent it asserts that the University violated the *UVM Mediation and Grievance Policy*. 33 VLRB 285.

Hearings were held in the Labor Relations Board hearing room in Montpelier on February 11, 12 and 17, 2016, before Board Members Richard Park, Acting Chairperson; James Kiehle and Alan Willard. Grievant represented himself. Attorney John Collins represented the University. Grievant and the University filed post-hearing briefs on March 2 and 8, 2016, respectively.

FINDINGS OF FACT

1. The *Progressive Discipline Guidelines for Management* issued by the University have provided at all times relevant in pertinent part:

...

Purpose of Progressive Discipline

Solid supervision is often the critical factor in successful management. Among the many tools available to the supervisor, the most important is communication. Frequent feedback, one-on-one meetings, staff meetings, performance appraisal

and a memorandum of understanding are a few tools for communication. Before administering progressive discipline, the supervisor should review these tools and use them when appropriate. After clear feedback has been provided and as an employee continues to fall short of job expectations, breaks rules or uses poor judgment, progressive discipline is a structured communication tool which encourages improved performance and protects the right of the University to manage its operations effectively including the right to terminate employment.

Progressive discipline is designed to improve a performance or disciplinary problem and positions the manager to be pro-active and resourceful, never vengeful or reactive.

...

Memorandum of Understanding (MOU)

Meeting with an employee to provide supervisory feedback addressing a performance or disciplinary problem is a good idea, and written follow-up is wise. The memorandum of understanding is a useful tool to notify an employee of performance concerns or misconduct using examples whenever possible, and providing expectations for future performance or conduct. This ensures that the employee is informed of concerns before a more formal disciplinary procedure is begun. A memo of understanding is not subject to the University grievance procedure unless the employee proposes to show the communication to be arbitrary or capricious or generated in violation of his/her legal rights. An MOU can be based on standards defined within the performance appraisal, or by the position description, or by guidelines within the unit. It should contain a summary of the area of concern and provide clear direction for the future. . .

...

Four Steps of Progressive Discipline

Whenever possible, progressive discipline is provided in a four-step process: verbal warning, written warning, suspension, and dismissal. Throughout the process, clear feedback and counseling should be provided.

...

Verbal Warning (Step One)

Verbal warning is the responsibility of the immediate supervisor who is expected to keep higher levels of management informed of actions taken.

Step One should be provided:

- In a timely manner and whenever possible, as close to the event as possible.
- When a supervisor must speak with an employee about poor performance, a violation of work rules or practices, or a failure to follow direction.
- A meeting should be held to discuss the matter and a letter should be prepared to document the concern.

- The letter should specify the date of and reason for action, and provide a description of constructive action required of the employee, the time and date of warning, the consequences when failure to improve does not result.

...

If the employee's performance does not change or additional incidents occur, further progressive discipline is warranted.

...

Written Warning (Step Two)

...

Step Two is a form of progressive discipline and should be provided

- When a verbal warning does not solve the problem.
- ...
- A letter should include a record of the specific violations or job performance problems leading to progressive discipline and how these may relate to previous verbal or written warnings.
 - The letter should specify the date of and reason for action, and provide a description of action required of the employee, the time and date of warning, the consequences when improvement does not result.
 - It should refer to previous related verbal or other written warnings and actions taken.
 - It should notify employee that if action is not taken, future disciplinary action could include additional written warning, suspension with or without pay, or dismissal.
- ...
- It should advise employee that written warning is subject to the employee appeals procedure outlined in the Staff Handbook.

...

Suspension Without Pay (Step Three)

As a general rule, when an employee who has already received a written warning and is involved in another incident requiring disciplinary action within one year of that warning, suspension without pay is the progressive action available to the supervisor. The length of suspension should be proportionate to the severity of the problem. If the concern is work performance and not a violation of work rules, policy, or work practice, the supervisor may choose to issue a second written warning instead of suspension.

...

The employee should be informed of the suspension without pay . . . in writing.

...

The letter should

- Describe the specific problems that have caused the suspension
- Document the progressive nature of the disciplinary action by specifying previous verbal, written, or suspension actions by date.
- Notify that further actions including suspension without pay or dismissal may be required if expectations are unmet.

...

- Notify that the suspension is subject to the employee appeals procedure as outlined in the Staff Handbook.

...

Dismissal (Step Four)

...

As a general rule, if an employee continues to violate rules, policies, or accepted practices, or if an employee fails to meet performance expectations over time, the employee could be dismissed from the job.

...

Prior to actual termination, the supervisor must notify the employee that dismissal is being considered. The reason for termination must be provided either verbally or in writing and the employee must be given an opportunity to present his or her side of the story.

...

Just Cause Checklist

In general terms, when a manager's actions have met the standard of just cause, the disciplinary actions are not arbitrary, capricious, or discriminatory. They are likely to be upheld on appeal. Just cause has both substantive and procedural features.

...

(Employer Exhibit 3)

2. The University has a *Grievance and Mediation Policy – Staff (Non-*

Represented) which has provided as follows at all times pertinent:

...

Applicability of the Policy

This policy applies to all non-represented staff ("employees") of the University of Vermont who have completed their probationary period. . .

...

Definitions

...

Grievance: A grievance is a formal complaint . . . by an employee alleging that a decision or action has adversely affected the employee's conditions of employment constituting a grievable matter under the terms of this policy and for which the employee is seeking one or more specifically identified outcomes.

...

Procedures

1. Grievable Matters

a. Matters expressly **included** in the definition of a grievance and subject to resolution . . . through . . . the grievance process, and which, therefore, are grievable matters under this policy, include:

- i. Disciplinary actions, including written warnings, suspensions and dismissal in which the Grievant alleges a violation of due process. This category includes cases in which appropriate procedures were not followed;
- ii. Alleged violation of a specific University rule, policy or practice related to employment matters.
- iii. A decision involving wages, hour or working conditions that had no rational basis or was the result of abuse of authority.

...

b. Matters expressly **excluded** from the definition of a grievance and not subject to resolution through the . . . Grievance Process, and which therefore are not grievable matters under this policy, include:

...

- i. Situations in which a person believes they have been subject to discrimination on the basis of race, color, religion, age, disability, national origin, sex, sexual orientation, gender identity and expression or other bases prohibited by law. Such matters are addressed through the Office of Affirmative Action/Equal Employment Opportunity.

...

- iii. The measurement and assessment of work activity, such as a performance evaluation, a memorandum of discussion or understanding that explains rules of conduct or sets forth work expectations, or a verbal warning.

...

3. The University Extension Division, which employs approximately 180 employees, includes the administration of the 4-H program in the State of Vermont. Douglas Lantagne has been Dean of the Extension Division at all times relevant. Sarah Kleinman has held the position of Director of the 4-H Program since 2002. She reports directly to Lantagne. There are eight 4-H Educators employed by the Extension Division. Kleinman supervises the eight 4-H Educators (University Exhibit 1).

4. Grievant was hired by the University in 2004 as a 4-H Educator for Washington and Orange Counties. Kleinman was Grievant's direct supervisor for the

entire time of his employment with the University. Grievant was a part-time employee with a 75 percent full-time equivalency position. Grievant had an office at the UVM Extension branch in Berlin. Grievant and the other 4-H Educators are not included in a bargaining unit represented by an employee organization.

5. The functional units of the 4-H program are known as clubs which are organized by county. In addition to the eight 4-H Educators responsible for different counties, there are three state-wide employees supervised by Kleinman: Youth and Family Specialist, Livestock Educator, and Teen and Leadership Specialist. Wendy Sorrell held the Livestock Educator position at all times relevant (University Exhibit 1).

6. The basic function of the 4-H Educator position is to provide program development, coordination, and teaching for regional 4-H youth development educational programs. This includes supervising and collaborating with volunteers, promoting and helping to expand 4-H efforts, and promoting excellence in carrying out the 4-H mission through both traditional club programs and non-traditional youth programs. 4-H Educators provide leadership to assist 4-H volunteers to implement 4-H programs that will enhance life skills of youth, encourage youth to explore career opportunities, and build youth knowledge and skills in subject areas supported by University academic programs. They recruit, train, and support adult and teen volunteer leaders in developing leadership skills and implementing educational programs. They provide faculty, staff and volunteers with timely and relevant information. They collaborate with Extension faculty and staff to promote and expand 4-H programming and educational opportunities (University Exhibit 2, Grievant's Exhibit 10).

7. Kleinman supervised 4-H Educators by a combination of individual meetings, group meetings and telephone check-ins. The meetings included mandatory team meetings every six to eight weeks, virtual meetings, and Extension Program meetings with faculty and staff. Kleinman also had periodic telephone check-ins with the 4-H Educators.

8. Kleinman issued Grievant a Memorandum of Understanding on September 28, 2010. She stated in part:

This memo of understanding addresses concerns I have about your time management and inability to acknowledge supervisor or team decisions.

...

Since the beginning of your employment, I have been receptive to your creative and non-conventional ideas, supporting you in pursuit of different methods . . .

I also have been receptive to open up conversations that review policy and decisions, including administrative functions . . .

I am now concerned by the amount of time and focus you are giving to matters that do not fall directly under program development, coordination, and teaching of 4-H projects. Your attention to how we, as a 4-H team, set agendas and take minutes, complete with the materials you produced for the meeting, and then your review in an email back to me with continued information after the team made the decision that I would take over this responsibility, is taking away time that should be spent on your job responsibilities. This past week, you sent numerous emails . . . questioning a team decision . . . Your point was made with the first email and the amount of time responding by all parties, again, took away time from a 4-H Educator's main responsibilities. Not only are you expending a lot of your time, and that of others, you are also demonstrating an inability to acknowledge either supervisor or team decisions. Your persistent focus on areas where you disagree is damaging team morale and the spirit of collaboration.

...

It is my expectation that you spend your time on increasing 4-H participation and recruiting new volunteers and program staff, as opposed to focusing on administrative matters like how we create our agendas and take minutes. . . I also expect that when I, or the 4-H team, make decisions, policy or otherwise, that you respect those decisions and move on to other matters. Your opportunity for input is expected at the time of decision.

Failure to meet these expectations may result in disciplinary action including verbal and written warning, suspension, and/or dismissal from University employment.

...

Your insight and opinions are important and add value to group discussions. You have done a good job adding quality to the 4-H club program and important service to your leaders. Continue in this effort, grow your programs, work collaboratively with other 4-H Educators . . .

(University Exhibit 4)

9. Kleinman issued an annual performance evaluation for Grievant on March 27, 2013, covering the period March 2012 to March 2013. Kleinman rated Grievant as meeting standards in all individual performance categories except for two categories in which Grievant was rated as exceeding standards (Grievant Exhibit 54).

10. Difficulties arose in the spring of 2013 with respect to coordinating and organizing a State Poultry Committee and development of a statewide poultry policy limiting the ability of young children to handle poultry. Grievant was critical of the way Kleinman and Wendy Sorrell, State Livestock Educator, handled some of the issues that arose. He expressed these concerns to them. He was not satisfied with Kleinman's response to his concerns. On June 4, 2013, Grievant notified Kleinman and Sorrell that he had contacted Dean Lantagne "to discuss how we can go about repairing this damage." Grievant sent an email to Lantagne on June 5, 2013, and sent a copy to Associate Dean Dan Lerner, in which he stated: "The approach that both Wendy and Sarah used to address the needs of our 4-H volunteers, the implementation of 4-H policy and lack of including them in a process is in need of your review." He further stated: "I am seeking your leadership to address and perhaps salvage the goodwill and trust (if there is any left) between these dedicated and hardworking 4-H volunteers and State 4-H Office".

Lantagne spoke to Kleinman about the concerns expressed by Grievant. He did not talk to Grievant about this issue (Grievant Exhibits 9A-E, 11, 12, 13A-E).

11. On June 6, 2013, there was a group email discussion among 4-H Educators across the state and state 4-H leaders. Among the participants in the session were Kleinman, Grievant, Sorrell, Martha Manning, and Martha Seifert. Grievant sent Kleinman an email on June 6 following the session, providing in pertinent part:

Martha crossed the line when she stated her opinion instead of stating her “interests” . . . When she took a position by falsely accusing me of “personal put down” she shifted the essence of sharing questions or feedback . . . into a personal attack. The conversation was now about “Martha Against Michael” with an unspoken invitation “Anyone with me?” Her invective did nothing more than to incite division and polarization. Martha S. and Wendy S. followed suit with responses that fueled that division and polarization.

By not addressing this infraction, you are allowing a few educators to run the show with accusations and opinions instead of stating their interests. This is a form of institutional “bullying”. By you not standing up and doing the right thing – i.e., addressing the breach, your silence is giving this message to the group, “It is okay to accuse others with your opinions”, “it’s okay to put others down” – which we all know is unacceptable.

The Ground Rule that was breached was: *State interests, not positions (Grievant Exhibit 14)

12. Grievant sent an email on June 7, 2013 to Dean Lantagne, with copies to Associate Deans Dan Lerner and Gary Deziel, which provided in pertinent part:

I am making a formal complaint against my supervisor, Sarah Kleinman for institutional Bullying: She has allowed 4-H Educators to insult and make negative accusations against me in a group discussion where our Ground Rules and Working Agreements are operational. By allowing others to “bully” me in group meetings she is condoning this behavior as an “acceptable” part of our discussion and interaction.

. . .
(Grievant Exhibit 15A)

13. Grievant did not send Kleinman a copy of the June 7, 2013, email that he sent to Lantagne. Kleinman was not aware at that time that Grievant had sent the email to Lantagne.

14. Lantagne did not contact Grievant concerning the June 7, 2013, email. Lantagne spoke with Kleinman about the issue raised by Grievant at some point by June 17, 2013.

15. Dean Lantagne sent Grievant a letter dated June 17, 2013, which provided:

I wish to let you know that I have reviewed the complaint you sent to Gary Deziel, Dan Lerner, and me against Sarah Kleinman regarding an allegation of institutional bullying. I am confident that Sarah is handling the situation appropriately and do not believe there are grounds for your complaint.

Sarah reviewed and reaffirmed the ground rules with the 4-H Educator team at the most recent 4-H Educator teleconference and held a discussion regarding appropriate use of “reply all” in emails. Sarah is working with Martha to ensure she is aware of your concern and is following the ground rules 4-H set down. I understand that Sarah has asked you to call Martha directly and I expect you both to work through this conflict in a constructive manner and move forward with your work.

If you wish to pursue this matter further, you may file a formal complaint with the Office of Affirmative Action/Equal Opportunity by calling 656-3368. (University Exhibit 41)

16. Kleinman issued Grievant a Memorandum of Understanding on June 10, 2013, to address “concerns I have about your lack of attendance at organization wide meetings, your notion of flexible schedules and general time management.” She stated in part:

I . . . have always supported situations when, given evening and weekend meetings and events, that you may determine to come in later, arrive earlier, or miss a day to compensate for weekend hours. I appreciate knowing about these times, either by communicating via email or better, by also keeping your oracle up to date. . .

Extension policy indicates that we are to use oracle calendar for scheduling. All faculty and staff are to keep this up to date and to use it to indicate your out of office time as well as for work appointments. It is also Extension expectation that attendance at EPIC is required. It is my determination that 4-H Educators also participate in program meetings. . . .

(E)ach supervisor needs to look at the needs of the department and determine if flexible schedules may work. It is my determination that 4-H Educators attend organization wide meetings such as EPIC and program meetings. These dates are listed on our calendars months in advance with ample time to make personal accommodations to attend.

I am concerned by your recent emails indicating that I am not supportive of flexible schedules and that your personal commitments should take precedence over the requirement of the organization to attend EPIC or over my direction to attend the program meetings. Your colleagues do note your absence, which is damaging morale, the notion of team, and the spirit of collaboration. . .

It is my expectation that you use oracle calendar to indicate your out of office hours, to accept meetings (or indicate otherwise) that others have placed on your calendar such as our check in calls, and for you to plan ahead so that you can attend both program meetings and future EPIC events. I also expect that you will communicate with me when you feel overloaded and think that work may need to be reassigned, so that I may assist and help determine how best to ease your workload. I also expect that when I communicate decisions, policy or otherwise, that you respect those decisions and move on to other matters. . .

Failure to meet these expectations may result in disciplinary action including verbal and written warning, suspension, and/or dismissal from University employment.

. . .

You have done a good job adding quality to the 4-H club program and important service to your leaders. Continue this effort, grow your programs, work collaboratively with other 4-H Educators . . .
(University Exhibit 5)

17. On Tuesday, July 16, 2013, Grievant and Kleinman exchanged a series of emails regarding a travel authorization that Grievant had submitted for an out of state conference which Kleinman had suggested Grievant attend. Kleinman had only partial information on Grievant's travel request, and needed further clarification from him. Kleinman called Grievant on the telephone and they had a conversation. Grievant was frustrated. He used a condescending tone with Kleinman, and stated words to the effect of

“you are talking out both sides”. Eventually, the travel request issue was resolved, and Grievant attended the conference (University Exhibit 43, Grievant Exhibits 18A – G, 19A-B).

18. Kleinman issued Grievant a verbal warning on July 22, 2013. Kleinman memorialized the verbal warning that day in a letter which provided in part:

This letter is a summary of the verbal meeting that we held today to discuss my concerns about your behavior. I am providing this to you in the hope that you will change the way you interact with me and with others. I said that working together requires a respectful way of handling differences. I also said that I am required to make decisions that you may not always agree with, but once made, you are to accept.

On Tuesday, July 16, we exchanged a series of emails. I asked you to call me to work out questions regarding a travel authorization that you submitted. I was making an effort to understand how to meet your needs within the framework of the UVM travel policy. After a number of emails, we spoke on the phone and you were frustrated. You used a condescending tone with me implying that I should have known your exact needs. You stated “You are talking out both sides,” indicating that I was contradicting myself. I explained that with partial information, your travel request was confusing and I needed further clarification to meet your needs. You eventually reached a more professional and respectful tone.

It is troubling to me that you are disrespectful in your interactions with me. We work together and to get things done, we must listen attentively, cooperate, and maintain a spirit of collegiality. Failure to maintain respectful workplace relations undermines our work and it is not acceptable.

In the future, I expect you to bring respect, patience, and a collaborative spirit to our meetings and discussions. Failure to meet this expectation may lead to further disciplinary action including written warning, suspension, and/or dismissal from University employment.

...
(University Exhibit 6)

19. Grievant sent an email on September 26, 2013, to Kleinman providing feedback on a staff meeting the previous day. He referred to one co-worker as “not well-prepared” and referred to the information which she provided as a “BIG WASTE OF

TIME” (caps in original). He made the following statements with respect to another co-worker: “I found it bizarre that she complains about not having enough volunteers . . . Very narcissistic. Give me a break”. He said it was “disappointing” to listen to another co-worker defend placing definitions on the 4-H website, and he stated: “Really? Has she heard of Google? . . . BIG WASTE OF TIME and Morale Killer” (caps in original) (University Exhibit 21, Grievant Exhibit 24A-B).

20. Grievant sent an email on October 2, 2013, to Debbie Fajans, 4-H Youth and Family Program Coordinator. He stated in part: “I’ve noticed a pattern with your presentations during our 4-H Educator meetings . . . I feel you don’t come off very prepared. You then ask others for help with the problem you are presenting. But when you haven’t done the groundwork, the request for help comes off more like a burden than a partnership.” Fajans responded to the email by informing Grievant that his comments “contained incorrect assumptions, unhelpful statements and was harsh.” She said she was “hurt and offended” and requested “strongly that our conversations on this subject end with this email” (University Exhibit 21, Grievant Exhibit 28C).

21. Grievant sent an email on October 9, 2013, to Wendy Sorrell, the 4-H Livestock Educator, which provided in part: “I’m sure it is not your intention, but you come off smug, insular and unwelcoming. In fact in some cases, your attitude is elitist”. Sorrell complained to Kleinman about Grievant’s email (University Exhibit 20, Grievant Exhibits 28A-B).

22. On October 9, 2013, Kleinman issued Grievant a written warning providing in part:

This letter serves as a written warning regarding continued concerns I have with your conduct as a member of the 4-H educator team. . .

On Wednesday, October 2, you exchanged a series of emails with me, Wendy Sorrell and Debbie Fajans. These emails made clear your disapproval with the way in which each handled communications, be it with the larger 4-H team or with a parent of a 4-H member in your county. Your colleagues were offended by your choice of words and accusations. I also felt that your choice to send those emails with words such as “smug” and “elitist” was an inappropriate and discourteous one. By doing this, you are breaking down the collaborative spirit I am trying to foster among the 4-H team. While you are welcome to send feedback regarding our staff meetings, doing so by indicating a colleague is “whiny” and “narcissistic” is unprofessional and does nothing to address the concern you may have with the outcome of the session.

I continue to be troubled by your disrespect in your interactions with me and with others. We work together and to get things done, we must listen attentively, cooperate, and maintain a spirit of collegiality. When you frame your criticism of your colleagues in negative personal remarks, you undermine our work. This is not acceptable.

In the future, I expect you to bring respect, professionalism, civility and a collaborative spirit to our meetings and discussions. . . . Failure to meet this expectation may lead to further disciplinary action including suspension, and/or dismissal from University employment.

...
(University Exhibit 8)

23. On November 12, 2013, there was a program meeting which Grievant had indicated he was attending through the Oracle calendar. Kleinman expected him to attend. On the day prior to the meeting, Grievant informed Associate Dean Dan Lerner by email that he would not be attending the meeting due to jet lag and because he was “on the verge of a cold”. Grievant did not inform Kleinman that he was not attending the meeting, and Kleinman was surprised he was not there. Subsequent to the meeting, Lerner forwarded to Kleinman Grievant’s email to Lerner. Kleinman also became aware that Grievant had worked in the office on November 12. Kleinman sent Grievant an email on November 13, 2013, referencing the June 10, 2013, Memorandum of Understanding setting forth the expectation that Grievant would attend program meetings. She stated: “I

expected that if yesterday was a work day, that your work was to be at the program committee meeting and participate with your colleagues. If you were too sick to not attend, then I would expect you to be too sick to be in the office working.” She informed him that she was “disappointed that you chose not to participate in the meeting”, and was “frustrated that you did not communicate to me your absence.” Kleinman indicated that “(c)ontinued challenges such as these can lead to further disciplinary action” (University Exhibit 9).

24. The 4-H Educators from around the state and Kleinman met on December 18, 2013, to discuss strategic planning for the 4-H clubs. During the morning of the meeting, Debbie Fajans made a general comment expressing an opinion that individual skill sets of 4-H educators should be considered if they were asked to assume additional responsibilities. Grievant responded with a comment about how he had time management skills to manage his time. Fajans expressed that Grievant misunderstood her point. The discussion among the group became confused and animated. At one point, Grievant rose from his chair, spoke in a loud voice and pointed aggressively at Fajans. Lisa Muzzey told Grievant to sit down. Fajans began quietly crying for a long period and stayed silent for the remainder of the morning.

25. In a January 8, 2014, email to Kleinman, Fajans informed her that she felt “misunderstood and vulnerable from (Grievant’s) physical threatening”, and that she was “frightened” by his actions at the meeting. In a January 9, 2014, email, Muzzey expressed “distress” to Kleinman about the December 18, 2013, meeting, and discussed Grievant’s actions at the meeting. She stated: “I don’t think that I should not have to worry about how someone might react physically or verbally when they don’t agree with what a

person has to say”. Sorrell also sent an email to Kleinman on January 9 in which she provided an accounting of what happened at the meeting. She stated in reference to Grievant’s actions at the meeting: “It makes me very uncomfortable to think that if I say something he doesn’t agree with that I may be verbally attacked like Debbie was” (University Exhibits 23, 24, 25).

26. On January 21, 2014, Kleinman sent Grievant a letter informing him that he was suspended for three days without pay. The letter provided in part:

On Wednesday, December 18, eleven 4-H educators gathered in Berlin for an Educator meeting. During that meeting, we began to revisit our strategic plan and Debbie raised the concern about asking existing staff to assume additional responsibilities outside of their knowledge area. She was making a general point, not implying that this is currently happening. She was not suggesting that this could not be managed. You followed her initial comment with remarks and questions focused around how you are able to manage your time and questioning why she was not able to do the same. The conversation among the group grew loud, confused and animated, as your comments and questions were off point to what Debbie was trying to say.

During this exchange, I and others witnessed you raise your voice and even rise out of your chair and point aggressively at Debbie, advancing your point. Lisa found it necessary to tell you to sit down.

Your conduct during this exchange scared some of your colleagues and put others on edge, so much so that they reached out to me to express their concerns. Your questioning and loss of composure during this meeting was aggressive, disrespectful, and divisive. . .

I hope that you take your three days away to think through how you interact with your colleagues, including myself. If you are committed to a more professional, composed and respectful way of interacting, this will work well. . . I expect you to bring respect, patience, and a collaborative spirit to our meetings and discussions. Failure to meet this expectation will lead to dismissal from University employment.

. . .
(University Exhibit 10)

27. Kleinman provided Grievant with an annual performance evaluation covering the period March 2013 to March 2014 which rated Grievant as “below

standard” in one individual performance category. The category was “listening skills”; Kleinman stated that “I continue to feel that listening is a skill that can be further developed”. Kleinman rated Grievant as “meets/below standard” in two individual performance categories. One of the categories was “dependability and consistency”. Kleinman stated with respect to this category: “You continue to be dependable and can get a job done. You meet your volunteers, program partners, and 4-H members’ needs well. . . (Y)our demeanor and tenor when frustrated or upset about issues can make a situation explode and put people on the defensive, which then inhibits colleagues from truly engaging in meaningful conversation.” The other category in which Kleinman rated Grievant as “meets/below standard” was “analysis and judgment”. Kleinman stated with respect to this category: “We have had some major challenges related to this category this past year, from an almost consistent disrespect of my decisions and focusing too much on others’ performance unrelated to your own job, to an aggressive challenging of a colleague’s comment. Having noted this, in the short time since these issues have been addressed (2.5 months), I have noticed an improvement in your tone at team meetings and in your shorter emails/lack of pushing a given topic when a point has been made or idea shared” (Grievant Exhibits 34A-C).

28. In July 2014, Grievant was involved in a minor accident with a University vehicle. He contacted a University administrative assistant about the accident. When Kleinman found out about the accident, she sent Grievant an email on July 17, 2014, stating that “UVM policy was not followed”. She informed him that “I need you to fill out an incident form . . . and get this submitted ASAP.” She further stated: “I need you to review the policies related to driving extension cars and make sure that you know what

you are to do in the future should something like this happen again. . . We need to report to insurance, we need to alert appropriate personnel and departments (including your supervisor which you failed to do), and follow UVM protocol, otherwise, you put UVM at risk.” (University Exhibit 11)

29. The University 4-H program has a Code of Violation Form for 4-H employees to use to report “any severe situations where either an adult or youth violated or potentially violated the code of conduct that had the potential to cause emotional, physical or mental harm to another”. Grievant and Sorrell were among those to whom Kleinman forwarded the form in November of 2009. Prior to Grievant’s dismissal, Kleinman had received only a few completed Code of Conduct Violation forms from 4-H staff (University Exhibit 15).

30. In early August 2014, K, a 14 year old member of a 4-H working steer club under Grievant’s purview, angrily yelled at a 4-H volunteer in the presence of Wendy Sorrell at an event in Waitsfield. Sorrell spoke to K about her inappropriate behavior, and K apologized. Sorrell did not complete a Code of Conduct Violation Form on the incident.

31. Sorrell and Grievant spoke during the week prior to August 10, 2014, concerning safety concerns involving K and use of profanity by K and her mother. On August 10, 2014, Grievant had a conversation with 4-H volunteers Becky Wood, Gail Billings and Laurie Morvan about concerns they had with K. Wood was the leader of the 4-H club to which K belonged. Following this conversation, Grievant sent an email to them, and sent a copy of the email to Wendy Sorrell. Grievant indicated that he had left a voicemail message for K’s mother to return his call. He indicated that he would discuss

with her that the 4-H code of conduct and dress code would have to be honored to be in 4-H, and that K and her mother could no longer be in 4-H if they use profanity one more time. Grievant also stated in the email that “I will also work with Wendy to send” K’s mother “a formal letter about this”.

32. Gail Billings, a member of the state working steer committee, sent Grievant an August 10, 2014, email in response to his email. She indicated that the “safety issue” should be addressed as well. She stated: “Leaving cattle standing unattended, unhaltered, and untethered at a fair out in the open could well be a disaster about to happen.” Billings indicated that she was told that this happened at the History Expo. She also stated that the issue she has had with K is “total disrespect for others, (including her parents) when the slightest thing upsets her apple cart” (University Exhibit 31, Grievant Exhibit 43).

33. Grievant did not send Kleinman copies of these emails, or otherwise discuss with her the issue involving K at this time. K’s mother did not return Grievant’s voicemail message. Grievant did not send a letter to K’s mother concerning this issue. He had a conversation with Sorrell in which he said he would draft a letter. He did not draft a letter at this time. At some point in August 2014 after August 10, Becky Wood asked Grievant to wait for one more incident involving K before sending a letter.

34. Subsequently, at some point in August 2014, Grievant spoke with Becky Wood and Stephanie Ordway as to when they could all meet to discuss K. Ordway was a 4-H volunteer who soon would be taking over leadership of the working steer club currently headed by Wood. They agreed that the Tunbridge Fair in mid-September would

be the next time they all would be in the same place and that would be a good time to meet. Grievant did not notify Kleinman that this meeting would occur.

35. On September 10, 2014, Grievant and Sorrell received an email from Becky Wood, which provided in pertinent part:

I have just now become aware of the continuing issues with K. I have not been able to attend the last two fairs because of my work schedule. I had a long talk with Stephanie today and am fairly confident that you should take action to remove her from 4-H. I also would like guidance on the Big E. I'm not sure she should go represent VT if she cannot even handle the small fairs in VT. . . It is unfortunate that we must do this, but at this time I feel we have no choice. We gave her three chances. . .
(University Exhibit 32, Grievant Exhibit 45)

36. Upon review of this email, Grievant informed Sorrell by email: "I'd be happy to work with Becky re: her email, if that is okay with you." Grievant did not contact Kleinman at this time concerning the issues with K (University Exhibit 32).

37. On September 13, 2014, K inappropriately rode her steer in public areas of the Tunbridge Fair. Grievant was not at the fair that day. He attended the fair on September 14. When he arrived at the fairgrounds, Stephanie Ordway informed him that K had ridden her steer in public areas of the fair. Grievant decided to call an immediate meeting to discuss the situation with K and her parents. Prior to calling the meeting, Grievant did not attempt to contact Kleinman about the situation and the meeting. Kleinman previously had provided 4-H Educators, including Grievant, with her cell phone number to contact her, including on nights and weekends.

38. Grievant gathered a group of several 4-H volunteers and Sorrell to meet with K and her parents in a back area of an arena far from any fairgoers. Wood, Ordway and Billings were among those at the meeting. Terri Chamberlain, a volunteer member of the 4-H state working steer committee present at the meeting, had previously worked

with K but was not working with her at present. She felt that she had no business being at the meeting. Chamberlain's husband, who was not a sanctioned 4-H volunteer, was present at the meeting at the request of his wife to support her.

39. Grievant confronted K and her parents during the meeting about K's improper behavior and violations of the 4-H code of conduct concerning safety issues and disrespect of others. K's parents reacted defensively to Grievant's comments, and indicated they had not previously been provided notice that K's behavior was inappropriate. Grievant raised the issue of K no longer being part of the working steer club.

40. After this meeting, Grievant took his 11-year daughter into the barn where K was with her steer. Grievant had his daughter stand next to the steer so he could take a photo.

41. Grievant did not contact Kleinman after the meeting to inform her of it. Grievant did not complete a Code of Conduct Violation Form to report the situation involving K.

42. On September 16, 2014, Grievant sent an email to Sorrell, Wood, Terri Chamberlain, Gail Billings, and two other 4-H volunteers attaching a draft letter he had composed to send to K and her parents. The draft letter set forth the "great concern" with various safety issues, instances where K had shown "total disrespect of others", and the "main points" of the September 14 meeting – i.e., K "can show at Eastern States this year", K "can become an independent member but no longer part of the Northern Vermont Working Steer Club", K can no longer participate in 4-H if one more

safety/code of conduct complaint was received, and K's mother should stop using profanity at 4-H events (University Exhibit 26, Grievant Exhibit 52).

43. Grievant did not send this email to Kleinman. Sorrell sent a copy of the email to Kleinman and requested that she "chime in". This was the first time Kleinman was aware of the issues involving K (University Exhibit 26, Grievant Exhibit 52).

44. Kleinman became actively involved in addressing the situation involving K once she became aware of it. She instructed Grievant to call the parents to talk to them prior to sending a letter to them. She told him to let the parents know that K was "welcome in the club", but "she must follow the code and one outburst or infraction will mean that the leaders can no longer support her involvement and that we'll need to find other ways for" K "to stay in 4-H, if that's what she chooses to do". Kleinman requested that Grievant send her the letter to K's parents to review before it was sent out (University Exhibit 27, Grievant Exhibits 44A, 47).

45. Early in October 2014, after consulting with the University's Human Resources Department, Kleinman conducted an investigation into Grievant's actions with respect to the September 14 meeting at the Tunbridge Fair with K and her parents. Kleinman spoke with Becky Wood and K's father. She attempted to reach Stephanie Ordway but she never spoke with her. She spoke with Heidi Stewart, a 4-H staffer from Maine, who had discussions with Grievant prior to the September 14 meeting. She also reviewed a letter which had been provided by K's mother that was critical of Grievant's actions on September 14 (University Exhibits 29, 30, 31).

46. Kleinman met with Grievant on October 14, 2014. During the meeting, Grievant informed Kleinman that he wanted the 4-H volunteer leaders to handle the

issues involving K, but that they did not have the skills to do so and needed training on how to manage such problems (University Exhibit 33).

47. On October 15, 2014, Kleinman sent Grievant a letter which provided in part:

As you are aware, over the past eighteen months I have received complaints about your judgment and your conduct. I have witnessed numerous situations that resulted in meetings and warnings, including suspension without pay in early January of this year, due to disrespectful behavior and poor judgment. These shortcomings have put the University's role as a 4-H educator at risk. You have been aggressively confrontational and accusatory with your colleagues. You have been disrespectful to me and my decisions and you have ignored policies by not alerting your supervisor to various situations of concern. . .

This past month on Sunday, September 14, 2014 at the Tunbridge Fair, you publicly confronted a 4-H member and her family in front of a large group of people you had convened to discuss the child's improper behavior. Your actions put both the parents and child in an extremely uncomfortable situation in a public setting. You neglected to document any of the 4-H member's previous violations of the 4-H code of conduct, and you allowed her 4-H volunteers to try and manage a situation that you yourself noticed the volunteers did not have the skills to handle. To make matters worse, you never reached out to me to ask for help in handling a problem that you knew had been ongoing and was affecting a larger community than just the child's local 4-H club. This put the statewide working steer program at risk. These difficulties reinforce my ongoing concern that you continue to show poor judgment and are unable to determine the necessary professional behavior required in order to serve as a 4-H Educator.

I have carefully reviewed the complaint filed by the 4-H member's mother and statements from witnesses to the incident in Tunbridge throughout this past week, October 10 – 13, 2014. On October 14, 2014, I met with you to hear your side of the story. Only after being asked hard questions did you accept some of the responsibility for your actions. You failed to adequately manage the situation with the 4-H member and her club, you lacked judgment in castigating a child in front of her family in a public setting, you contradicted safety rules by allowing your daughter to sit on (or lean against) the 4-H member's steer, and you disregarded seeking appropriate guidance from your supervisor. You informed me that you chose to put your energies into a new club connected with your program, rather than spending time to bring a rogue club into compliance. I found your answers to my questions to be evasive and unsatisfactory. As a result, I am notifying you that I am considering releasing you from University employment in accordance with the University's provision for termination for cause.

If you have any information that might cause me to change my mind, please provide that to me by Monday, October 20 . . .
(University Exhibit 12)

48. On October 21, 2014, Kleinman sent Grievant a letter which provided in part:

With regret, I am notifying you of the termination of your employment at the University of Vermont effective today, October 21, 2014.

In the letter of suspension presented to you on January 21, 2014, you were informed that any further failure to meet performance expectations would result in disciplinary action up to and including dismissal.

As you are aware, in your role as 4-H Educator, you are expected to train, support and supervise adult volunteers in developing leadership skills that allow for implementing educational opportunities. You are also expected to communicate with your supervisor in a timely and relevant manner. 4-H Educators are expected to be role models for our volunteers and youth, showing sound judgment and giving everyone the respect they deserve.

This past month on Sunday, September 14, 2014 at the Tunbridge Fair, you publicly confronted a 4-H member (K) and her family in front of not only K's club leaders but also members of the state working steer committee, to discuss the child's improper behavior. Your actions put both the parents and child as well as 4-H volunteers present, in an extremely uncomfortable situation in a public setting. You neglected to formally document any of the 4-H member's previous violations of the 4-H code of conduct, and you allowed her 4-H volunteers to try and manage a situation that you yourself noticed the volunteers did not have the skills to handle. You knew K's behaviors were affecting a larger community than just her club yet you did not act swiftly or appropriately.

When asked about what occurred at the September 14 meeting and lack of documentation, you indicated you had been collecting information since early August but as of September 10th, you had yet to share your concerns formally and in writing. You also made mention of sharing this with the state office but you never reached out to me, your supervisor, to ask for counsel, despite knowing this was a challenging family. Your email documentation on August 10 makes mention of working with Wendy Sorrell to craft a letter, yet that letter never materialized. You also indicated you shared a rough draft of your post-Tunbridge letter with me and asked for my opinion on how to move forward after I was the one who called you to learn of this situation and asked you to share your draft with me. I asked you to call your leaders and ask them to reconsider having K in the club and this is verified in the email documentation you provided. Last, you did not provide your volunteers with appropriate support or leadership to stop this

behavior before it got to a critical level. This lack of communication with me, coupled with poor judgment in your management of this challenging situation is unacceptable. You have been notified on many occasions that your disrespectful behavior towards people and policies, and your poor judgment in handling situations is a concern, as detailed in my recent letter of October 15, 2014.

...
(University Exhibit 14)

OPINION

At issue is whether we should grant this grievance contesting Grievant's dismissal from employment with the University of Vermont. At the outset, we discuss our jurisdiction to decide this case. The Board has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). In deciding grievances, the Board is limited by the statutory definition of grievance, Boynton v. Snelling, 147 Vt. 564, 565 (1987), which statutory definition provides:

"Grievance" means an employee's, group of employees', or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors. 3 V.S.A. Section 902(14).

Since there is no applicable collective bargaining agreement here, Grievant must allege and prove the discriminatory application of a rule or regulation. In re Grievance of Gobin, 158 Vt. 432, 434 (1992). Failure of an employer to follow a binding rule constitutes an actionable grievance. Id.

The central issue before us is whether just cause existed for Grievant's dismissal. The Employer's *Progressive Discipline Guidelines for Management* provides the standard of just cause for an employee's dismissal. In determining whether the Employer failed to follow the binding rule of dismissing employees only for just cause, we consider

case law in Vermont concerning just cause for the dismissal of employees. Grievance of Lightburn, 15 VLRB 372, 392 (1992). Grievance of Sklar, 19 VLRB 183, 199 (1996).

Just cause for dismissal is some substantial shortcoming detrimental to the employer's interests which the law and a sound public opinion recognize as a good cause for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). The ultimate criterion of just cause is whether the employer acted reasonably in discharging the employee because of misconduct. Id. A discharge may be upheld only if it meets two criteria of reasonableness: one, that it is reasonable to discharge employees because of certain conduct; and the other, that the employee had fair notice, express or implied, that such conduct would be ground for discharge. Id. In re Grievance of Yashko, 138 Vt. 364 (1980).

The just cause analysis centers upon the nature of the employee's misconduct. In re Morrissey, 149 Vt. 1, 13 (1987). Grievance of Merrill, 151 Vt. 270, 273 (1989). In determining whether there is just cause for dismissal, it is appropriate to determine the substantiality of the detriment to the employer's interests. Merrill, 151 Vt. at 273-274.

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. Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983). The Employer contends that just cause exists for Grievant's dismissal due to the proper exercise of progressive discipline imposed by the Employer against Grievant. This is a "last straw" type of dismissal, where several incidents accumulate to cause an employee's termination. Grievance of Sklar, 19 VLRB at 200.

The final incident leading to the discharge of Grievant concerned the way he handled a situation involving a teenage member of a 4-H club at the Tunbridge Fair in September 2014. The Employer charged Grievant with: 1) failing to adequately manage the situation, 2) lacking judgment in publicly confronting the 4-H member and her family in front of a large group of persons he had convened to discuss her improper behavior; 3) contradicting safety rules by allowing his daughter to sit on (or lean against) the 4-H member's steer, and 4) disregarding seeking appropriate guidance from his supervisor.

The Employer has established the bulk of these charges against Grievant. The Employer established by a preponderance of the evidence that Grievant failed to adequately manage the situation. Grievant demonstrated poor judgment in publicly confronting the 4-H member and her family in front of a large group of persons he had convened to discuss her improper behavior. He also failed to seek appropriate guidance from his supervisor, Sarah Kleinman, in handling the situation.

The Employer did not prove one of the charges against Grievant. The Employer did not establish by a preponderance of the evidence that Grievant contradicted safety rules by allowing his daughter to sit on, or lean against the 4-H member's steer. The preponderance of the evidence indicates that Grievant had his daughter stand next to the steer so that he could take a photo. This evidence is insufficient to demonstrate a violation of safety rules on Grievant's part. Failure of the Employer to prove by a preponderance of the evidence all the particulars of the dismissal letter does not require reversal of a dismissal action. Grievance of Regan, 8 VLRB 340, 366 (1985). In such a case, the Board must determine whether the remaining proven charges justify the penalty. Grievance of Colleran and Britt, *supra*.

We look to the specific factors articulated in Grievance of Colleran and Britt, 6 VLRB 235, 268-69 (1983), to determine the reasonableness of the dismissal based on the proven charges. The pertinent factors here are: 1) the nature and seriousness of the offenses and their relation to Grievant's duties, 2) Grievant's past disciplinary and work record, 3) whether Grievant had fair notice that such conduct would be grounds for discharge, 4) the effect of the offenses upon Grievant's ability to perform at a satisfactory level and upon supervisor's confidence in Grievant's ability to perform assigned duties, 5) mitigating circumstances surrounding the offenses, 6) the potential for Grievant's rehabilitation, and 7) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by Grievant or others. If the employer establishes that management responsibly balanced the relevant factors in a particular case and struck a reasonable balance, its penalty decision will be upheld. Colleran and Britt, 6 VLRB at 235.

Grievant's offenses were serious. The bulk of the charges against Grievant were established with respect to the way he handled the situation involving the teenage 4-H member at the Tunbridge Fair in September 2014. He demonstrated poor judgment and an inappropriate disregard of his supervisor in handling this situation. Standing alone, this would not provide just cause for dismissal. However, a review of Grievant's past disciplinary record indicates that his behavior concerning the Tunbridge situation was a culmination of previous incidents over the last fourteen months for which he was disciplined in which he had likewise demonstrated a lack of judgment and poor working relationships.

The Employer relies on the progressive discipline reflected in these incidents to justify Grievant's dismissal. Kleinman issued Grievant a verbal warning in July 2013 for

disrespectful interactions with her. She imposed a written warning on him in October 2013 for inappropriate, unprofessional, disrespectful and discourteous emails Grievant sent to colleagues and her. This was followed by a 3-day suspension instituted by Kleinman against Grievant in January 2014 for aggressive, disrespectful and divisive behavior at a staff meeting which scared some colleagues and placed others on edge so that they expressed their concern to Kleinman. The offenses engaged in by Grievant leading to these various disciplinary actions reflected a continuing pattern of lack of judgment, disregard of reasonable management authority, and poor relations with colleagues.

A review of Grievant's work record and disciplinary record does not operate in his favor on balance. Grievant had demonstrated strengths in creativity, adding quality to the 4-H program, and providing important service to volunteer leaders. However, Grievant's behavior resulting in multiple disciplinary actions had a substantial detrimental impact on the Employer's interests. His persistent behavior was disruptive to the efficient operation of the Employer's 4-H program for more than a year. Such misconduct was not conducive to maintaining productive working relationships. His misconduct reflected poor judgment and a disregard of following reasonable management authority.

Grievant had ample notice that his actions could be grounds for dismissal. In the period preceding his dismissal, he had received two memoranda of understanding, a verbal reprimand, a written reprimand, and a three-day suspension. Kleinman warned him at the time these actions were taken that future instances of disregard of supervisory

authority, poor relations with colleagues and lack of judgment could result in disciplinary actions, including dismissal.

Grievant's pattern of misconduct resulted in his being unable to satisfactorily perform his duties. His pattern of lack of judgment, disregard of supervisory authority and poor relations with colleagues, when taken together with the constructive and varied attempts by management to correct Grievant's misconduct, reasonably caused management to lack confidence that Grievant could satisfactorily perform his duties.

Grievant raises various issues which we consider in determining whether mitigating circumstances exist affecting the just cause for Grievant's dismissal. Grievant contends that the investigation of his alleged misconduct was not fair. The Board has indicated an unwillingness to call into question the sufficiency of the Employer's investigation in the absence of any specific contract provision giving the Board such authority or in the absence of any violation of an established due process right; particularly where the employee has the opportunity before the Board for a complete, impartial review of the appropriateness of the disciplinary action taken. Grievance of Simpson, 12 VLRB 279, 293 (1989). Grievance of Thurber, 11 VLRB 312, 323 (1988). Grievance of Munsell, 11 VLRB 135, 145 (1988). Grievant had ample opportunity in three days of hearing before the Board for an impartial and complete review of evidence on the appropriateness of his dismissal.

Grievant further alleges that he was subject to a series of retaliations from Kleinman because he complained to her supervisor, Dean Douglas Lantagne, in June 2013 about concerns he had with respect to how Kleinman handled an issue with respect to coordinating and organizing a State Poultry Committee and development of a

statewide poultry policy limiting the ability of young children to handle poultry. In the hearings before the Board, Grievant had the opportunity to present evidence to an impartial tribunal that improper retaliation resulted in his dismissal. We conclude that Grievant's dismissal did not result from retaliation by Kleinman. Instead, Kleinman exercised appropriate and reasonable supervisory authority in the progressive discipline she imposed on Grievant culminating in his dismissal. In sum, Grievant has not demonstrated that mitigating circumstances are present which affect whether just cause exists for his dismissal

It was reasonable for the Employer to conclude, given the persistence of Grievant's misconduct despite use of progressive discipline and ample warnings, that an action less than dismissal would not be an adequate and effective alternative sanction. Grievant demonstrated substantial shortcomings detrimental to the Employer's interests. The Employer applied progressive discipline in this case, and dismissal was a reasonable action to take for Grievant's continuing offenses. His offenses, when considered cumulatively, reflected a persistent inability and/or unwillingness to improve his behavior despite repeated corrective attempts by the Employer.

Grievant demonstrated that he was not a good candidate for rehabilitation. We view this case as a classic example of a justified "last straw" dismissal, where instances of repeated conduct insufficient in and of themselves accumulate so as to provide just cause for dismissal. Grievance of Sklar, 19 VLRB at 205; *Affirmed* (Unpublished Decision, Sup.Ct.Doc.No. 96-315, 1997) Grievance of Gadreault, 8 VLRB 87, 130-136; *Affirmed*, 152 Vt. 119 (1989). Grievance of Cook, 3 VLRB 105, 126-27 (1980).

ORDER

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

Dated this 3rd day of May, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Acting Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

Alan Willard