

VERMONT LABOR RELATIONS BOARD

Grievance of:

EDWARD LYNN GODDARD

DOCKET NO. 80-65

MEMORANDUM AND ORDER

The Board makes the following determination on the issues raised relevant to implementing our March 5, 1981, ORDER in the above-entitled matter.

1) Demotion is applicable even if there are no available openings for Correctional Officers. The parties have negotiated the imposition of demotion as a step on the progressive discipline ladder (Article XV, Agreement). As such a step, its imposition must be an option available to the State in all cases in its determination of appropriate discipline.

For the State to impose demotion in one instance where there are available openings and not in another because of no available openings would be a violation of Article XV, Agreement, which provides the "...State will...apply discipline with a view toward uniformity and consistency".

2) Under Section 6.072 of the Rules and Regulations for Personnel Administration, Grievant is rated as fully satisfactory. In evaluations of his performance, Grievant's supervisor consistently rated him fully satisfactory (Finding #6, March 5, 1981, Findings of Fact, Opinion, and Order). We accept these determinations as the status quo and consider Grievant's performance rated as fully satisfactory until the date of this incident.

3) Grievant is to be demoted from a Pay Scale 10 to the next lowest pay scale for which positions exist within the Department, namely, Correctional Officer (Pay Scale 8) position. Our intent in imposing demotion, however, is to reduce Grievant in pay by one step, rather than two. Therefore, we will order Grievant reinstated in Pay Scale 8 at a rate equal to the difference in pay at the post-probation minimum in Pay Scale 10 and Pay Scale 9 or \$9.00. Grievant's gross weekly salary was \$209 in Pay Scale 10. It will now be \$200 in Pay Scale 8, effective July 30, 1980.

4) Grievant is entitled to the pay increase effective September 14, 1980. Grievant was suspended without pay for 10 days. His first effective working day following the suspension is July 30, 1980. He is, thus, as a classified employee, entitled to any pay increases implemented from July 30, 1980, until the time of his reinstatement.

Grievant will not be a "restored" employee upon his reinstatement. Restoration is the "reentry" of a former permanent-status employee. Grievant is not being rehired, but is a suspended employee who will, simply, return to work.

5) The award of back-pay shall not reflect the amount of overtime pay Grievant may have received but for his dismissal. Amount of overtime worked is unpredictable and is not part of the regular workweek of Grievant. Grievant shall be compensated only for pay lost on his regularly-assigned shift.

6) The award of back-pay shall include an amount that reflects shift differential as Grievant was regularly assigned to a shift which required the payment of a shift differential of \$ .30 per hour.

7) The monetary compensation awarded to Grievant shall correspond to specific monetary losses suffered. The award of damages should be limited to the amount necessary to make Grievant "whole"; thus, outside earnings are properly deducted from the back-pay award. The back-pay award must take into consideration any income (including unemployment compensation) Grievant has received since his dismissal.

ORDER

For the foregoing reasons, it is hereby ORDERED the grievance is allowed and:

- 1) Grievant is demoted to the position of Correctional Officer, Pay Scale 8, effective July 30, 1980 at a rate of pay of \$200 weekly;
- 2) Grievant shall receive all pay increases a person occupying that position would be entitled to receive after that date; and
- 3) Grievant shall be awarded back-pay from July 30, 1980, until the time of his reinstatement for all hours of his regularly-assigned shift at the rate of \$5.00 per hour, plus shift differential and any negotiated pay increases, minus any income (including unemployment compensation received and not paid back) received by Grievant during the period July 30, 1980, until reinstatement.

Dated this 21<sup>st</sup> day of May, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

By: Kimberly B. Cheney  
Kimberly B. Cheney, Chairman.

*Reversed by  
Supreme Court  
Docket # 426-81  
Nov 1982  
(Feb 7, 1983)*