VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 20-32
PATRICK RYAN	)	

INTRODUCTION

This Grievance returns to the Vermont Labor Relations Board after our decision of April 14, 2021, was reversed and remanded by the Vermont Supreme Court. In re Ryan, 2021 VT 82, ¶ ¶ 1, 27. The Supreme Court remanded the decision to the Board "for it to make proper findings and any additional conclusions as may be necessary to support its decision, and to enable this Court to conduct our review with an adequate record of what the Board decided and why." Ryan, ¶ 27. The Court provided the following reasoning why it could not evaluate the Board's findings or conclusions.

> We cannot readily evaluate the connection between the Board's findings and its conclusions for at least two reasons. First, many of the Board's factual findings were simply recitations of the evidence. Second, the Board offered little analysis of the evidence so we can discern how the Board assessed the weight and credibility of the evidence and reached its factual findings and conclusions of law.

In re Ryan, 2021 VT 82, ¶ 22.

On remand, the Board reviews its decision and provides sufficient findings of fact to support its conclusions of law. In conducting its remand review, the Board has examined the pleadings, exhibits, and transcripts from the hearing and conducted additional deliberations. The opportunity to review allowed the Board to bolster its findings, clarify or resolve any ambiguities, and correct conclusions not supported by the evidence. To the extent there are any discrepancies between the remand decision and the initial decision, the remand decision controls.

Procedural background

On June 25, 2020, and amended on June 26, 2020, Patrick Ryan ("Grievant" "Mr. Ryan"), former Family Services District Director with the State of Vermont Department of Children and Families ("Employer" "State" "DCF") filed a Grievance with the Vermont Labor Relations Board. Grievant alleged that Employer violated the State of Vermont Personnel Policies and Procedures 8.0, 9.1, and 17.0, when it dismissed Grievant without just cause, improperly bypassed progressive discipline and progressive corrective action, and failed to conduct an adequate investigation.

The Board conducted a hearing through Microsoft Teams on January 14, and 25, 2021, before Board Members Robert Greemore, Acting Chairperson; Karen Saudek and Roger Donegan. Attorney Pietro Lynn represented Grievant. Assistant Attorney General Alison Powers represented the Employer. The Board issued a decision on April 14, 2021. The Employer appealed the decision to the Vermont Supreme Court. On October 29, 2021, the Vermont Supreme Court issued its decision reversing and remanding the decision of the Board.

FINDINGS OF FACT

1. Mr. Ryan began his career with DCF in 2004, as a Social Worker in the DCF Family Services Division ("FSD") in Newport. In 2012, Grievant was promoted to Social Services Supervisor. In 2015, Grievant was promoted again to District Director.

2. The Newport District Office covers approximately 260 square miles of territory. Although the population density served is small, it is one of the largest geographic districts in the state. The office provides services to children and families in crisis. The decisions made by the DCF employees can impact the lives of children and families.

3. As District Director, Grievant managed an office of approximately twenty-five staff members, including approximately fourteen family service workers, and additional contract workers.
4. Grievant's duties included workflow management, supervising staff, building community relationships, and participating in community meetings. He was also responsible for monitoring and overseeing documents needed to support court filings, recruitment and retention, and managing administrative staff.
5. As District Director, Grievant supervised three direct supervisors that supervised investigators.
6. During the summer of 2015, DCF suffered the loss of one its own employees through the tragic killing of a DCF worker by a distressed woman whose parental rights had recently been terminated.
7. After the murder, DCF and its management became more vigilant regarding the security of its employees and the public.
8. In 2019, the caseload in the DCF Newport office increased by approximately one-third. The office did not receive a corresponding increase in staff to manage the increased workload.
9. During 2018 and 2019, one of the intermediate supervisors Grievant managed was often out on medical or other leave. As a result of her absences, Grievant was required to supervise the absent employees' direct reports as well as continue to manage the office with its burgeoning caseload.

Performance

10. Grievant received an overall "excellent" rating for his annual performance evaluation in May 2015. For the first ten months of the rating period, Grievant was a supervisor in the office. Thereafter he was promoted to District Director with two months remaining in this rating period.

11. For the evaluation period April 4, 2015, to April 4, 2016, Grievant received an overall "satisfactory" rating. As part of the evaluation, Grievant's subordinates were invited to provide feedback. Grievant's supervisor Rebecca Duranleau summarized the feedback in the evaluation. Although most staff recognized that Grievant was knowledgeable about policy and demonstrated good leadership in the community, "they expressed serious concerns regarding [his] mood, temperament, and treatment of staff. They report [him] as being unapproachable, defensive, authoritative, demeaning, mean and rude." Grievant's Exhibit 2. As a result of these comments, Ms. Duranleau advised Grievant "that if there is no significant improvement in the behaviors described above I will have no choice but to initiate a formal notice of performance deficiency." Id.

12. Ms. Duranleau advised Grievant that Grievant's supervisor conferred with Grievant about the evaluation and the comments made by his subordinates. Grievant was concerned about his staff's impression of him. Ms. Duranleau worked with Grievant on a plan to address employee concerns.

13. Ms. Duranleau did not implement or impose a corrective action plan or place Grievant on a prescriptive period of remediation in response to the Satisfactory Evaluation or employee comments.

14. Grievant worked on improving his communication and interactions with staff and the employee surveys received in subsequent years demonstrated that he was making improvements.
15. Mr. Ryan received an overall "satisfactory" performance evaluation for the period April 2016-April 2017. In the evaluation, Ms. Duranleau remarked that she was "impressed with the self-reflection you did during this period and the leadership you took to help staff understand that everyone contributes to the work place environment so everyone has a responsibility to make it what they want it to be." State's Exhibit 25. She noted that Grievant should "[c]ontinue to contribute to and lead a safe and supportive learning environment in the NDO [Newport District Office] and positively address any future concerns raised by staff related to office environment and your leadership." State's Exhibit 25.
16. For the next two years, Grievant received a "satisfactory" rating on his performance evaluations. At no point was he placed on a corrective action plan or prescriptive period of remediation. His performance evaluations recognized that he "continues to work on improving his communication skills and interactions."
17. When conducting a performance evaluation, Ms. Duranleau weighs the positive and negative feedback and performance. Had there been too many negative comments, Ms. Duranleau would not have awarded Mr. Ryan with a positive rating.
18. According to Ms. Duranleau, the communication and demeanor issues noted by staff, including bullying, being rude, or short with people fall under the category of performance issues, not misconduct.

Employee A

19. Employee A began working at the DCF FSD Newport Office in August 2015. Prior to working at DCF Newport, she worked at Northeast Kingdom Community Action ("NEKCA"), a community action agency providing outreach and assistance to people with housing, fuel, and food insecurity.
20. Employee A and Grievant both participated in Community Partners, an effort to pool resources to assist families. Grievant was the representative from DCF.
21. Grievant and Employee A texted about professional matters. Employee A sometimes contacted Grievant by text to advise that she was coming to the DCF offices to drop off or retrieve documents. These texts evolved into jokes or personal matters.
22. In the Summer of 2014, the staff of both offices sometimes engaged in social interactions, including softball games or outings for ice cream. Employee A recalls texting Grievant to tell him she and others were going to get ice cream and whether he and his co-workers wanted to grab ice cream at the local ice cream place.
23. While Employee A was working at NEKCA, she "jokingly" sent Mr. Ryan a sympathy card and he was not happy with it and reported it to her supervisor.
24. Employee A testified that she could not recall the exact words of the texts that she received from Grievant because "it was just so long ago now[.]"
25. When pressed by the Employer's counsel to be more specific about the nature of the text messages, Employee A responded:

> So they were - - they were text messages that were not - - like I said, not professional. They were text messages more about me, personally; myself and the way I appeared or the way I looked. They were not – I can't say, at the time, that they were, like, rude or lascivious or sexualized in the sense of, like, sexting, but they were just comments that made me feel like an awkward teenager.

26. Employer's counsel again attempted to elicit the nature of the text messages and Employee A responded she felt awkward about them. She could not recall what was said in the messages. She expressed confusion about how she would characterize the comments.
27. Unable to provide information or details about the text messages themselves, the State elicited testimony on how the text messages made Employee A feel. Employee A did not say they were offensive. She did not say they were unwanted. She focused her testimony on wondering how she should feel about the text messages. She felt awkward because she was married and trying to get pregnant and the two were professionals that worked together at separate agencies. Employee A reiterated that she felt like an awkward teenager. "I got this text message, exciting but really, I shouldn't feel excited about it, because it's really not okay. But that's where I – but that was that struggle I was having at that time."
28. Employee A told a coworker at NEKCA, Tara Shatney, that she and Grievant were exchanging text messages.
29. While she was employed by NECKA, Employee A never told Grievant to stop sending her text messages.
30. The text messages were not unwelcome, and Employee A never asked that they stop. At no time while she was working at NEKCA did Employee A ask Grievant to stop the text messaging or non-work-related communication.
31. Ms. Shatney recalls Employee A reading her some of the text exchanges with Grievant. Because of the passage of time, Ms. Shatney could not exactly recall the text messages but remembers that they were generally flirty or joking and maybe crossing the line

between community partners. Ms. Shatney has a general impression that one related to Employee A's appearance or that she looked nice, and that Employee A responded in a joking or laughing tone.

32. In 2015, Employee A applied for a position to work at DCF Newport.

33. After being appointed Director, Grievant sat on the second interview panel for Employee A along with other hiring panel members. He did not share with the other panel members that he had exchanged personal text messages with the applicant Employee A while she was employed with NEKCA.

34. Employee A did not have any reservations about accepting the DCF Newport position. She represented to her co-worker Ms. Shatney that the messages and social relationship would not continue when she went to work at DCF. Employee A did not have any communications with Grievant about the texting, nor ask him that it stop, before she began working at DCF Newport.

35. When she started working at DCF Newport, Employee A's immediate supervisor was Meghan Gyles. At the end of 2018, her immediate supervisor changed to Mr. Lamoreaux.

36. Ms. Gyles was often out of the office on leave during the time she supervised Employee A. During the period of Ms. Gyles' absences, Grievant was responsible for supervising Employee A, as well as the other direct reports of Ms. Gyles.

37. At some point soon after Employee A started working at DCF Newport in 2015, she and Mr. Ryan began exchanging personal texts.

38. Mr. Ryan testified that Employee A initiated the text messaging. Employee A could not recall who initiated the text messages. Because Employee A could not recall who

initiated the texting and the Board finds credible Grievant's testimony that Employee A initiated the texting, the Board finds that Employee A initiated the text messaging between the two once she was employed at DCF Newport.

39. Employee A told her supervisor Ms. Gyles that she and Grievant had exchanged text messages with Grievant while she was at NEKCA. She did not tell Ms. Gyles that there had been text messages exchanged while she was employed at DCF.
40. Employee A received texts from Grievant when she was out of the office. She never received a personal text when both she and Mr. Ryan were in the DCF office.
41. Employee A could not recall the substance of the texts. "I don't recall, like I said, it's been so long now, I don't recall the exact wording in any real capacity."
42. Employee A could not recall a single specific remark Grievant made in the text messages.
43. Although she could not recall the substance of the text messages or the exact words, she testified they were "more along the lines of a sexualized nature than just, hey, I like your boots, or your hair looks nice."
44. During her interview with Investigator Canales, Employee A did not mention that Mr. Ryan sent her sexualized text messages.
45. Employee A admitted that during her deposition which occurred sometime before the hearing, she testified that she did not remember whether Grievant ever remarked on her body or body parts. She also did not mention that Grievant had sent her sexualized messages.
46. The text messages made her feel uncomfortable. Employee A's discomfort came in part from her concern that her coworkers would perceive her in a certain way if they knew that she was receiving or responding to the text messages.

47. Employee A did not recall whether Grievant engaged in any lewd behavior in these text messages.
48. Grievant described his relationship with Employee A as jokey that never went any further than that.
49. Grievant testified that while Employee A was pregnant, she sent him a text that her breasts were sensitive. In response, Grievant asked if they hurt when touched. He did not ask if he could touch her breasts.
50. While testifying before the Board, Employee A did not mention a text or interaction with Grievant where she mentioned her breasts, nor any response from Grievant.
51. At some time during her first year at the Newport DCF office, a co-worker asked Employee A if she and Grievant were sleeping together. Thereafter Employee A told Grievant that they could not have a personal relationship, that their relationship would be strictly professional.
52. Prior to this request, Employee A did not tell or ask Mr. Ryan to stop the text messaging. Employee A did not tell or indicate to Grievant that the texts were unwelcome or offensive, or that they made her feel uncomfortable. She described mini casual conversations before this where she questioned whether the two should "be doing this."
53. Grievant agreed that the text messages should stop, and the overly familiar or friendly relationship should stop, "because it doesn't look proper."
54. The text messaging stopped after Employee A told Grievant that the text messaging and any personal relationship must stop. The request and the ceasing of text messaging occurred during Employee A's first year at DCF Newport.

55. Employee A did not feel bullied or retaliated against by Mr. Ryan in response to her indicating the texting should stop. Her working relationship with Mr. Ryan did not change after she asked him to stop texting her.
56. Employee A was aware of the sexual harassment policy and understood she could complain at any time if she felt uncomfortable with Mr. Ryan's text messages. Employee A admitted that at no time did she report or otherwise complain to any supervisor or human resource officer about the text messages between herself and Mr. Ryan.
57. Employee A described herself as boisterous and stern and that she puts her foot down often about how she will or will not do things.
58. A coworker described Employee A as short and snappy in her interactions with Grievant.
59. Employee A would frequently get into disagreements with Mr. Ryan because they held differing opinions on the application and interpretation of policies and procedures.
60. Employee A described her professional relationship with Grievant as toxic, later adding "the way we talk to each other." The examples she gave to support this characterization were that Grievant prioritized certain projects or tasks and expected that they be completed in the order he directed.
61. Employee A's professional interactions with Grievant were difficult because she would attempt to deviate from the rules on a case-by-case basis. Employee A recognized that Grievant as Director was responsible for the orderly and consistent application of the rules. Grievant as Director was the ultimate decision maker.
62. Employee A felt frustrated as an employee on the lower rung of the office hierarchy that could not get her way in the office.
63. Employee A did not like it when Grievant approached her desk or leaned over to speak with her.

64. Employee A provided positive feedback on Grievant's performance evaluations. She did not remark about a toxic relationship with Grievant or about the personal texting.

65. Employee A never raised a claim or complaint of sexual harassment against Grievant until the investigation in 2019, over three years after the personal text messages stopped.

66. Although Employee A may have provided additional information or detail about the text messages during the investigation, once before the Board and under oath, she could not recall the details of the messages, their frequency, or with any certainty the nature of the messages.

67. The Board does not find the testimony of Employee A as credibly supporting the State's allegation that the text messages by Grievant constitute sexual harassment.

68. The text messages were welcome until Employee A told Grievant that they should discontinue the messages. The text messaging ended after this request.

Office environment

69. Mr. Lamoureux stepped into Mr. Ryan's position serving as interim Director after Mr. Ryan was terminated.

70. According to Mr. Lamoureux, the employees that Grievant believed were not pulling their weight or performing their jobs felt pressure from Grievant and had a problem with him and his demeanor.

71. Mr. Lamoreaux did not respond to the surveys asking for input on Mr. Ryan's performance.

72. According to Mr. Lamoreaux, when Grievant became stressed, he became short with people. He often later apologized about the interaction in a constructive way. If someone identified his tone or interaction as a concern, Grievant apologized.

73. Mr. Lamoreaux testified that he observed Grievant going into people's offices, standing near or over their desks and at times using a loud voice.

74. Through 2019, Mr. Lamoureux observed Grievant working on improving his demeanor and setting goals to improve his communication and listening skills.

75. Tara Shatney began working at DCF Newport in 2017 as a front-end investigator. She had previously worked at NEKCA with Employee A. When working at DCF/Newport, Ms. Shatney had an immediate supervisor, Ms. Gyles. Grievant became her direct supervisor when Ms. Gyles was on medical or other leave. Ms. Shatney felt supported by Grievant. He was patient and knowledgeable when answering her many questions. She understood there were times when he was too busy with his many other duties to respond immediately to her questions, but she found times to talk with him when he was available.

76. Ms. Shatney described an interaction that made her feel uncomfortable between Grievant and another social worker that no longer works at the DCF Newport office. The social worker wanted to allow a mother whose parental rights had been terminated an after-hour office visit to say goodbye to her children. Such after-hour visits were not permitted at the Newport DCF office. Grievant denied this request. The mother came back to the office at 4:30 p.m. and the social worker again asked Grievant if the mother could come in the office to say goodbye to her children. Grievant said no. He stressed that when he says something he means it and she recalled him saying something to the effect of if this were a couple of years ago, he would "be a real asshole right now and no."

77. Meghan Gyles started as a social worker and was promoted to supervisor when Grievant became Director. As a social worker, she and Grievant had a good working relationship.

When she became a supervisor and he the Director there was more tension in their professional relationship. When she questioned Grievant about policy decisions, his responses were often short. Ms. Gyles developed a strategy to set up meetings where she could ask her questions. During these meetings, Grievant was more open to discussing issues with her.

78. Jason Wilkie, a family services worker, never experienced Grievant treating him in a concerning or disrespectful manner. Grievant's behavior did not interfere with his ability to perform his job.

79. The criticism of Mr. Ryan according to the witnesses for the State was that he was firm but would become short if challenged about policy and the decision to enforce policy. Staff members also noted that he would be short when he was interrupted for a question, while he was engaged with other matters or tasks. In contrast, during supervisory or other scheduled meetings, he was available, deliberative, and responsive. He was engaging and gave his full attention to the staff.

80. Grievant presented three witnesses who also worked in the Newport DCF office during his tenure. They describe Grievant as a good teacher who was helpful and responsive to their questions. They describe him as knowledgeable about policy and practice and responsive to their questions. He had expectations of his staff because of the federal mandates and the needs of their clients.

81. Martha Wiley, a family services worker started at the DCF Newport office in January 2019. Ms. Gyles was her direct supervisor, although she was frequently out of the office. She described Grievant as supportive and a good teacher. He was available to answer her many questions she had as a new employee learning the applicable rules and policies

applicable to her work. He gave her the time and attention needed to understand the reasoning behind the policies and the many steps required in the performance of her job.

82. Tammy Lalime, a resource coordinator, described Grievant as an exceptional supervisor who made her feel valued collaborating with her on matters. Her interactions with him were cordial, positive, and respectful. She observed that he was straightforward with staff and had expectations that people in the office would perform their jobs. There were times when she would cry in the office because the work was hard. Grievant never did anything to her to make her cry.

83. Misty Poitras, a family services worker described Grievant as a good supervisor who was direct, matter of fact, and very knowledgeable. She never saw Grievant bully anyone in the office. She noticed he became more personable in the time before his termination.

Investigation

84. In the fall of 2019, DCF management became concerned about the low volume of employees from DCF Newport participating in a survey seeking input on the office culture and climate. Mr. Ryan's supervisor, Sheila Duranleau, and Alison Land of the Department of Human Resources conducted an "Appreciative Inquiry" and interviewed staff in September 2019.

85. During the interviews, some staff raised concerns about Mr. Ryan's demeanor. As a result, Human Resources initiated an investigation into Mr. Ryan.

86. During the inquiry, Mr. Lamoreaux reported that one of his reports, Employee A, told him that she had information that could cause Grievant to be terminated. Employee A shared with Alison Land that she and Mr. Ryan had a textual exchange that was beyond professional.

87. As a result of the inquiry and interviews conducted by Human Resources, Investigator Peter Canales began formal investigative interviews.

88. During his interview with Investigator Canales, Grievant was unaware of the purpose or scope of the investigation. He denied engaging in hostile or bullying behaviors. He initially described his relationship with Employee A as jokey. He described his relationship with her while she was working in the community at NEKCA as flirty or flirtatious but that type of interaction did not occur once Employee A started working for DCF.

89. When asked by Mr. Canales, whether the text messages were "appropriate," Grievant did not understand what was meant by "appropriate." He conceded that sexualized texting would be inappropriate but did not concede that the text messaging was sexualized.

90. On January 29, 2020, DCF Deputy Commissioner Christine Johnson sent Grievant a Loudermill letter alerting him that "DCF is contemplating imposing serious disciplinary action, up to and including dismissal from your position as a Family Services District Director I with the Family Services Division ("FSD")." State's Exhibit 4, Grievant's Exhibit 24.

91. The Loudermill letter alleged that Grievant violated the following provisions of the relevant Collective Bargaining Agreement and State Personnel Policies

- CBA Article 14, Disciplinary Action
- Personnel Policy 3.1, Sexual Harassment
- Personnel Policy 3.7, Electronic Communications and Internet Use[1]
- Personnel Policy 11.11, Workplace Safety and Security
- Personnel Policy 17.0, Employee Related Investigations

[1] The Electronic Communications and Internet Use Policy, State's Exhibit 8, is Policy Number 11.17.

State's Exhibit 4.

92. Article 14 of the 2018–2020 Corrections Bargaining Unit Collective Bargaining Agreement ("Contract") provides in pertinent part:

> **1. DISCIPLINARY ACTION**
>
> [T]he appointing authority . . . may dismiss an employee immediately without two (2) weeks' notice or two (2) weeks' pay in lieu of notice for any of the following reasons:
>
> . . .
>
> (b) gross misconduct.

State's Exhibit 1.

93. State Personnel Policy 5.6, Employee Conduct, provides in pertinent part:

> **<u>REQUIRED CONDUCT</u>**
>
> 1. It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position. Employees should pursue the common good in their official activities, and shall uphold the public interest, as opposed to personal or group interests.
> 2. Employees shall devote their full time, attention, and effort to the duties and responsibilities of their positions during their scheduled work time.
> 3. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont, whether on or off duty.
>
> . . . .
>
> **PROHIBITED CONDUCT**
>
> . . . .
>
> 7. Employees shall not intimidate or harass any employee because of . . . sex . . . or any other factor for which discrimination is prohibited by law.

State's Exhibit 8

94. State Personnel Policy 3.1, Sexual Harassment, provides in pertinent part:

> **PURPOSE & POLICY STATEMENT**
>
> The State of Vermont prohibits sexual harassment. Sexual harassment violates an individual's basic civil rights, undermines the integrity of the workplace, and adversely affects workers and clients whether or not they are direct subjects of harassment. Sexual harassment is a form of discrimination on. the basis of sex

and/or gender identity and is, therefore, prohibited in the work place; or at any employer-sponsored event or activity during or after business hours, by both state and federal law as well as the collective bargaining agreements between the State of Vermont and the exclusive bargaining entities for State employees. It is also unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

. . . .

DEFINITION OF SEXUAL HARASSMENT

The prohibition of sexual harassment is found in the Vermont Statutes at Title 21 § 495h. Sexual harassment is a form of discrimination based on sex (and/or gender identity) and is defined in Title 21 § 495d (13). Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
b) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

Sexual harassment can be verbal, physical, auditory, and/or visual. It can be either subtle or overt. Sexual harassment refers to behavior that is not only unwelcome, but which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person's sense of well-being.

. . . .

PROHIBITED CONDUCT

Managers, supervisors, and employees with the appearance of authority shall not threaten or insinuate, either explicitly or implicitly, that an employee's submission to or rejection of sexual harassment will in any way affect the employee's employment, evaluations, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. Sexual harassment by co-workers is unlawful and prohibited, even though the loss to the victim may not involve tangible benefits. Persons found to behave in such behaviors may be subject to disciplinary action up to and including dismissal.

State's Exhibit 8.

95. The Employer alleged Grievant engaged in misconduct by sending inappropriate, flirtatious, and at times sexualized text messages to a subordinate staff member from his

work-issued cell phone; acting in a bullying, demeaning, hostile, intimidating manner toward subordinate staff members; and untruthfulness during the investigative process.

96. During the Loudermill hearing, Grievant described the exchange Employee A initiated during the first months of her tenure at DCF. Employee A was pregnant and complaining about the changes to her body and her fatigue. She said her breasts were growing and that she was more sexually aroused and Grievant could benefit from that. Employee A also said that her breasts were sore because she was pregnant. Grievant responded if they hurt when touched. Grievant believed the conversation was sexualized.

97. On June 5, 2020, Deputy Commissioner Johnson terminated Grievant. She provided the following reasons for termination:

> Specifically, you engaged in inappropriate sexualized personal communications by text message, utilizing your state issued cell phone, with a subordinate. You also created a work environment at the Newport District Office that was negative, counter-productive and hostile, by your mistreatment, intimidation, bullying, short-temperedness, demeaning and condescending behaviors in interactions with staff.

State's Exhibit 7.

98. On cross-examination, in describing the Sexual Harassment Policy, Deputy Commissioner Johnson acknowledged that if a comment were welcome, it could never qualify as sexual harassment.

99. Deputy Commissioner Johnson conceded that the requirements for violation of sexual harassment were not satisfied in the claim against Grievant.

100. On redirect, Deputy Commissioner Johnson testified that Grievant's behavior violated the sexual harassment policy because sexual harassment refers to behavior that is not only unwelcome but also personally offensive.

101. Deputy Commissioner Johnson did not review or consider how DCF handled consensual sexual conversations when making the termination decision.

102. In making her termination decision, Deputy Commissioner Johnson was influenced by Grievant's failure to acknowledge what was inappropriate about his relationship with Employee A. Also important was the behavior towards his subordinates that was described as bullying and demeaning and that he had previously been provided feedback about this behavior and it continued.

OPINION

Grievant alleges that Employer dismissed him without just cause and improperly bypassed progressive discipline and progressive corrective action when terminating him from his District Director position at DCF Newport. Grievant alleges the Employer dismissed him without just cause, improperly bypassed progressive discipline, and failed to discipline him with a view towards consistency and uniformity.

Just cause for dismissal is some substantial shortcoming detrimental to the employer's interests which the law and sound public opinion recognize as a good cause for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977) (internal citations and quotations omitted). The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. Id. There are two requisite elements which establish just cause for dismissal: 1) it is reasonable to discharge an employee because of certain conduct, and 2) the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge. Id.

In carrying out our function to hear and make a final determination on whether just cause exists, the Labor Relations Board determines *de novo* and finally the facts of a particular dispute, and whether the penalty imposed on the basis of those facts is within the law and the contract. Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983). 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. Id. Once the employer has proven the underlying facts, we must determine whether the discipline imposed by the employer is reasonable given the proven facts. Id. at 266.

The Employer alleges Grievant engaged in misconduct by 1) engaging in inappropriate sexualized personal communications with a subordinate by text messages while utilizing a state issued cell phone; 2) acting in a bullying, demeaning, hostile, intimidating manner toward subordinate staff members; and 3) untruthfulness during the investigative process. The Board evaluates each of these charges to determine whether the State has proven by a preponderance of the evidence the underlying misconduct.

Turning to the first allegation, the State claims Grievant engaged in inappropriate conduct with Employee A through their texting. The State has alleged Grievant violated the State Sexual Harassment Policy, 3.1, and Personnel Policy 5.6 regarding employee conduct, when engaging in texting with Employee A. Based on the testimony of the parties and evidence presented, the Board cannot find that the State has proven by a preponderance of the evidence that the text messages were unwelcome or that Grievant violated the sexual harassment policy.

The sexual harassment policy, like the sexual harassment statute upon which it is based, 21 V.S.A. § 495h, contains two requisite elements: first, the offending conduct or behavior; and second, its impact or effect. Turning to the first element, the predicate acts or conduct, "[s]exual

harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Personnel Policy 3.1. The State has not proven that the Grievant's conduct falls within the type of conduct prohibited by the sexual harassment policy.

The State has failed to prove by a preponderance of the evidence that the texts were unwelcome. Grievant testified that Employee A initiated the text messaging when she arrived at the Newport DCF office, and Employee A admits that the texting stopped once she asked that they stop. The text messages did not continue after Employee A told Grievant the text messages should stop. That the information revealed or suggested during the investigation suggests otherwise, does not override the unrebutted testimony at the hearing that the text messages stopped once Employee A requested they stop. This took place during the first year of Employee A's tenure at DCF Newport, before she went out on maternity leave. The Board examines the testimony and evidence and conducts its review de novo. The Employer cannot rely on the investigation report to prove the requisite facts necessary to support a just cause termination. In re Farnsworth, 35 VLRB 519, 534 (Dec. 9, 2020).

The one text exchange that was described in any detail and can be characterized as sexual was initiated by Employee A. Employee A initiated the conversation about the changes to her body due to her pregnancy, including her breasts. Grievant responded to this prompt. Grievant's response was inappropriate and demonstrated poor judgment. Grievant's testimony that Employee A initiated the conversation was unrebutted. Employee A did not testify about the comment nor deny that she initiated the comment. The State has not proven that Grievant's response to Employee A's comment was unwelcome or violated the sexual harassment policy.

In addition to the State failing to prove that Grievant's conduct fit within the behavior prohibited under the sexual harassment policy and satisfy the first element of the policy, it also

failed to prove by a preponderance of the evidence that his conduct, resulted in or had the impact or effect necessary to satisfy the following impact requirement of the sexual harassment policy:

a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
b) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

The texting and exchanges were neither an implicit nor explicit term or condition of Employee A's employment, nor was submission or rejection of the texting used as a basis for employment decisions. After she asked the texting to stop, Grievant stopped texting. Employee A testified that there was no change in the professional relationship between she and Grievant as a result of the texting ending, or her request that it end.

The State has not proven that the texting had the purpose or effect of unreasonably interfering with Employee A's work performance or creating an intimidating, hostile, or offensive work environment. Employee A's concern or discomfort from the texting resulted from its risk of discovery by her coworkers. She did not want her coworkers to know she was engaged in a texting or personal relationship with Grievant. Once a coworker questioned whether the relationship was sexual, she asked that the texting stop. Grievant agreed and the texting stopped.

Employee A did not testify about the text message involving her changing body, Grievant's reply, or whether or how it impacted her. The State has failed to prove by a preponderance of the evidence that the one text exchange described as sexual had the purpose or effect of interfering with Employee A's work performance or creating an intimidating, hostile, or offensive work environment.

The State has failed to prove any of the effect elements or criteria required under the sexual harassment policy.

The State suggests that the last paragraph of the definition section of the sexual harassment policy creates a new definition or standard for sexual harassment which effectively eliminates the impact or effect requirement outlined in paragraphs a-c of the policy. The language at issue provides in pertinent part:

> Sexual harassment can be verbal, physical, auditory, and/or visual. It can be either subtle or overt. Sexual harassment refers to behavior that is not only unwelcome, but which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person's sense of well-being.

We disagree. The added language expands the definition of the predicate actions or conduct that fit within the umbrella of behaviors covered by the sexual harassment policy. Indeed, Deputy Commissioner Johnson confirmed this interpretation when clarifying that sexual harassment refers to behavior that is not only unwelcome but also personally offensive.

This added language does not eliminate the second step of the sexual harassment analysis, the impact requirement outlined in paragraphs a-c of the Policy. If it did, it would render meaningless paragraphs a-c, despite its inclusion by the contracting parties. Rules of contract construction require that "[w]e assume that parties included contract provisions for a reason, and we will not embrace a construction of a contract that would render a provision meaningless." In re Abbey, 2023 VT 9, ¶16, (quoting In re West, 165 Vt. 445, 450, (1996)). Instead, consistent with rules of construction, the additional language should be read in conjunction with paragraphs a-c and interpreted as a further elaboration of the prohibited predicate behaviors outlined in the first prong of the sexual harassment policy. If the added behaviors are present, the Board must still consider whether the conduct falls within one of the

impact or effect criteria outlined in a-c to determine whether the sexual harassment policy has been violated.

Turning to the expanded definition or second paragraph of the sexual harassment policy raised by the State, the State has not proven that Grievant's text messaging falls within this expanded conduct. The State has failed to prove that the texts were personally offensive. The policy does not define "personally offensive" but the dictionary definition of personal, "of or peculiar to a certain person; private; individual [,]" connotes a subjective component. See Websters New World Dictionary, 1008 (3rd Coll. Ed. 1988). The recipient must perceive the conduct as offensive. Employee A, however, conceded that the text comments were not offensive. "I can't say at the time, that they were like, rude or lascivious or sexualized in the sense of, like, sexting." Employee A did not consider the texting offensive or personally offensive. Instead, she described the text exchanges as making her feel awkward "like a teenager." She described the texting as making her feel uncomfortable, but attributed the discomfort to her concern that her coworkers would discover the texting relationship and this would influence their opinion of her.

The State has failed to prove that the texting "lowers morale, interferes with work effectiveness, or violates a person's sense of well-being." Employee A did not testify that the texting lowered her morale, interfered with her work effectiveness, or violated her sense of well-being. Despite repeated questioning by the State, Employee A did not describe the texting as personally offensive or violative of her sense of well-being. Employee A described her feelings as awkward, like a teenager and she was concerned that others in the workplace perceived that she was having an affair with Grievant. Once aware of this perception, she requested that the texting stop, and the texting did stop. During the intervening years after the text messages

ended, Employee A provided favorable input about Grievant's job performance. The remnant or residue of the text messages did not impact her employment or interfere with her work effectiveness or violate her sense of wellbeing.

Although Employee A described her relationship with Grievant as toxic, she did not attribute the discord to the texting relationship. Instead, she acknowledged she bristled against Grievant's decision making and his reluctance to yield to her requests to bend or modify policy or rules. Grievant was snappy and comfortable putting her foot down and did not like to adhere to the difficult choices Grievant had to make to manage the critical services provided by the office and to ensure the safety of its employees and clients.

The State has not proven that the text messages interfered with the ability of Employee A or any other employee in the office to perform their job. Prior to the investigation into the dearth of survey responses on the office culture or environment, employees were unaware of the texting between Grievant and Employee A. By the time Employee A told Mr. Lamoreaux about the text messaging, the texting had already ended over three years prior. There was no credible evidence that they interfered with the work environment or effectiveness.

No other employee in the office was affected by the text messages that ended during Employee A's first year of employment. No employee, except Ms. Shatney, knew they had taken place and she became aware when she and Employee A were both employed by a community partner. Ms. Shatney had a positive relationship with Grievant and spoke highly of his ability to answer questions about her position, duties, and work performance. She also testified about his ability to be present, focused, and attentive during their one-on-one meetings. The knowledge of the text messages did not impact Ms. Shatney's employment experience.

Employee A testified that she told Ms. Gyles that she and Grievant exchanged texts when she was at NEKCA. Ms. Gyles did not mention the text messages during her testimony. She also did not indicate that they impacted her relationship with Grievant, the office environment, or interfered with her work effectiveness.

The State has failed to prove by a preponderance of the evidence that Grievant's conduct violated the sexual harassment policy.

The Board recognizes that its findings and conclusions are different and inconsistent with its analysis in its original decision. The remand, however, is an opportunity to review the decision and make corrections. The Board erred in its findings and legal analysis outlined below.

> Another category of sexual harassment under the policy is behavior that is "personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, and violates a person's sense of well-being." We conclude that Grievant's conduct falls in this category. As a supervisor, it was inappropriate for him to engage in flirtatious messages with a subordinate employee in his chain of command. A perception of favoritism very well may result from such a relationship. Also, the involved subordinate employee may not be evaluated on the merits of work performance. Further, the inherent power a supervisor has over a subordinate employee looms over such interactions. His behavior failed to respect the rights of others, would tend to lower morale, and could interfere with work effectiveness.

Grievance of Ryan, 36 VLRB 34, 53 (2021).

The intent of the Board was that this type of behavior could form the basis for the predicate conduct or action that when combined with any of the three required effect elements could violate the sexual harassment policy. A "potential for impact" outlined in our original decision is not the standard for sexual harassment. See generally, Grievance of Butler, 17 VLRB 247, 315, aff'd, 166 Vt. 423 (1997) (outlining the requirements for establishing hostile work environment form of sexual harassment). That the predicate conduct "very well may" result in a

perception of favoritism, or "would tend to" lower morale or "could interfere with work effectiveness" does not support a finding that it has had that effect or impact. Nor can such potential impact support a conclusion that it violates the sexual harassment policy.

The Board erred in speculating about the potential for harm resulting from Grievant's conduct and should have limited its analysis and review to the facts proven and presented by the parties and the standard outlined in the sexual harassment policy.

Although not violating the sexual harassment policy, Grievant violated Personnel Policy 5.6, by using State property, a cellphone, for inappropriate private use and conducting himself in a manner that could bring discredit or embarrassment to the State. Grievant's response to Employee A's comments about her breasts while pregnant was inappropriate and deviated from his duties and attention as a director. Personnel Policy 11.7 authorizes limited personal use of State issued cell phones, but such use must not otherwise violate the policy, including the requirement to conform to professional standards. The use of his state cell phone to transmit this message violated Personnel policy 11.7.

The State next alleges Grievant created a work environment that was negative, counter-productive and hostile by his mistreatment, intimidation, bullying, short-temperedness, demeaning and condescending behaviors with staff, in violation of Personnel Policy 11.11-Workplace Safety and Security. Deputy Commissioner Johnson identified Grievant's past performance issues related to his interactions with staff and their continuation as a reason for the termination.

When evaluating just cause for termination, it is necessary first to categorize the underlying action. "[N]either of the two requisite elements of just cause – 'reasonableness' and 'fair notice' can be determined without first categorizing the employee's underlying actions as a

question of misconduct or a question of performance." Grievance of Roy, 13 VLRB 167, 182 (1990). Grievant's supervisor conceded that his treatment of his subordinates, shortness, and bullying behaviors should be treated as performance problems, not disciplinary problems. Indeed, the Employer addressed Grievant's interactions with his subordinates in his annual performance evaluation. Four years earlier, after receiving feedback from staff describing Grievant as defensive, authoritative, mean, and rude, Grievant's supervisor included in his performance evaluation that she considered these very seriously and advised Grievant that "if there is not a significant improvement in the behaviors described above, I will have no choice but to initiate a formal notice of performance deficiency."

The State, however, did not follow through with a notice of performance deficiency nor any other performance deficiency sanction. Grievant took steps to improve his interactions with staff and this was noted by his supervisor in the subsequent performance evaluations. The next two years included supervisor comments about Grievant's progress in his communication and leadership style. The State, therefore, recognized and notified Grievant that his interactions with staff were performance issues.

The State has failed to sustain its burden of proving that Grievant violated Personnel Policy 11.11, which prohibits conduct with the intent to cause fear, hostility, or intimidation. At worst, Grievant's conduct was described as short, direct, and that he stood next to people or their desks when talking to them. Grievant had assumed the duties of one of his managers and the office caseload increased by one-third. Grievant's directness and adherence to policies and procedures and unwillingness to bend rules when pressed by his subordinates does not support a threat to security violation. Many of his subordinates praised Grievant, his leadership and guidance and willingness to listen and provide instruction. Employee A acknowledged that her

frustration was due in part to being the low person on the totem pole and not having power or input over decisions.

The Employer next alleges that Grievant violated Personnel Policy 17.0 because some of his responses "during the investigative process may not have been entirely truthful." The Employer claims that Grievant was not truthful when describing his relationship or interactions with Employee A, and how he characterized the text exchanges. The Employer also blames Grievant for not remembering the details of the text messages.

The investigator did not disclose the scope of the investigation when he was meeting with Grievant and Grievant was unaware of the nature of the investigation. Grievant described his relationship with Employee A as he remembered it and not the details of texts exchanged. The texting ended within the first year of Employee A's tenure at DCF, nearly four years before Grievant's interview with Mr. Canales. That Grievant could not recall the details of these messages nor characterize them in response to the investigator's questioning, is reasonable and consistent with the other two people aware of the text messages and does not support the State's claim that he failed to provide complete information. Employee A could not remember the details of the text messages, nor could Ms. Shatney, the coworker with whom she shared or described the text messages. Grievant's lack of recall and efforts to remember the details of events that transpired years earlier does not support the State's claim that he lied or was not truthful during the investigation.

The State also claims that Grievant was not truthful when estimating or stating when the texting ended. Employee A acknowledged that the texting ended after she told Grievant the texting should stop. The texting stopped during the first year of her employment. The State has

not proven by a preponderance of the evidence that Grievant was not truthful when estimating or stating when the texting ended.

The reasonableness of the Employer's decision to terminate Grievant.

In determining whether the proven charges justify the termination decision, the Board applies the factors announced in Grievance of Colleran and Britt, 6 VLRB 268, 269 (1983). The factors include: 1) the nature and seriousness of the proven offenses and their relation to Grievant's duties and position, 2) the Grievant's job level and whether he held a supervisory or fiduciary role, 3) the effect of the offenses upon Grievant's ability to perform at a satisfactory level and their effect on supervisors' confidence in Grievant's ability to perform assigned duties, 4) the Grievant's past work record including length of service, performance on the job, 5) Grievant's past disciplinary record, 6) the clarity of notice, 7) the notoriety of the offense or its impact upon the employer's reputation, 8) the potential for Grievant's rehabilitation, 9) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future; and 10) mitigating factors. See Id. at 268-69 (1983).

The Colleran factors provide a means of assessing the reasonableness of the employer's decision. The employer is not required to prove each factor to support the reasonableness of its decision, "only that 'on balance the relevant factors support management's judgment.'" In re Jewett, 2009 VT 67, ¶ 23, 186 Vt. 160, 170 (quoting In re Colleran, 6 VLRB at 269). If the State establishes that management "responsibly balanced the relevant factors in a particular case and struck a balance within tolerable limits of reasonableness, its penalty decision will be upheld." In re Jewett, 2009 VT 67, ¶ 24. Ll. 1124

We first consider the nature and seriousness of Grievant's offenses and their relation to Grievant's duties and position. The just cause analysis centers upon the nature of the employee's

misconduct. Grievance of Merrill, 151 Vt. 270, 273 (1989); In re Morrissey, 149 Vt. 1, 13 (1987). In deciding whether there is just cause for dismissal, the Board determines the substantiality of the detriment to the employer's interests. Merrill, 151 Vt. at 273-74.

Failure of an employer to prove by a preponderance of the evidence all the details of a dismissal letter does not require reversal of a dismissal action. Grievance of Dwire, 30 VLRB 240, 272 (2009); Grievance of McCort, 16 VLRB 70, 121 (1993). The State has not proven the most serious charges against Grievant that he engaged in sexual harassment or that he lied or was untruthful during the investigation. The State has also failed to show that his staff interactions violate Personnel Policy 11.11 or constitute misconduct that could bypass the progressive discipline requirements of the contract. The State bases its decision, and its twelve-factor analysis relies on charges which the State has not proven.

Grievant, however, violated Personnel Policy 5.6. Grievant is a supervisor and his position as Director is one of trust and responsibility. His violation of Personnel Policy 5.6 is serious. Grievant was on notice that spending work time texting a subordinate for his personal use violated Personnel Policy 5.6, or that responding to a subordinate's comments about her breasts could bring embarrassment or discredit to the state in violation of this policy. Grievant was not on notice, however, that his performance issues related to interactions with staff could lead to termination. On the contrary, the Employer had articulated the process it would follow to address these issues but failed to follow that process.

Given the charges proven, the State's claim that Grievant cannot perform his job at a satisfactory level is unreasonable. Grievant's supervisor lost confidence in him in part because of the text messages that were exchanged between Grievant and Employee A more than three years before his termination. The loss of confidence, however, was informed by a mistaken belief that

the texting was unwelcome, continued after Employee A requested it end, and that Grievant retaliated against Employee A for requesting it end.

The loss of confidence was also based on the recurrence of statements made by some of his subordinates about his demeanor and its impact on the office culture. The Board has found, however, that Grievant's demeanor and staff comments about him, do not support a violation of Personnel Policy 11.11, and do not rise to the level of misconduct. The chief complaint against Grievant was that he was short with staff when interrupted during performance of his many duties as director of an office that was serving a burgeoning caseload while often down one supervisor. During scheduled one-on-one meetings with staff, he was patient, thoughtful, and supportive. Any concern the Employer had about performance issues should have been addressed through performance measures. Just cause does not exist to bypass the progressive discipline for the allegations regarding Grievant's work performance and interactions with subordinate staff.

The Board's findings do not support the basis for, or the reasonableness of, the supervisors' loss of confidence in Grievant's ability to perform his job.

The Employer's twelve-factor analysis memorandum, written by Deputy Commissioner Johnson, did not include any cases for comparison on the consistency factor. The State also conceded that Grievant's conduct involving the text exchange with Employee A did not result in any notoriety. At the hearing, Deputy Commissioner Johnson confirmed that at the time of the termination decision, there was no notoriety regarding the conduct and that notoriety was not a driving factor of the termination decision.

Grievant's past work and disciplinary record weigh in his favor. Prior to his termination, Grievant received no discipline. His performance evaluations had all been rated at least

Satisfactory. Grievant continued to receive positive evaluations during the period after the text messages ended. He managed the Newport DCF office during a period of increased workload, the recurring absence of a supervisor, and the aftermath of the tragic murder of a fellow DCF worker by a mother whose parental rights had been terminated.

The Employer's claim that Grievant's potential for rehabilitation is weak is not reasonable. Grievant has demonstrated his ability to absorb criticism and take steps to improve and work on his performance issues. After learning of the concerns of his subordinates, Grievant dedicated himself to improving his demeanor with staff. Grievant's supervisor and his staff, including his successor, noted his progress and dedication to improving. After Employee A expressed that the text messaging should not continue, Grievant stopped text messaging her. Grievant had already demonstrated his ability to refrain from this behavior nearly four years before he was terminated. Because Grievant has demonstrated that termination was not needed to deter him from engaging in this behavior, a lesser sanction is appropriate to ensure Grievant continues to refrain from this behavior going forward.

A mitigating factor is that the texting occurred nearly four years before the termination. Grievant's ability, as well as the ability of Employee A, to remember the texting and events was limited by the passage of time. The passage of time has also diluted the sting or impact of the texts exchanged and the language or subjects discussed. In the intervening years, Grievant did not text Employee A or any other employee in a jokey, flirty, or sexual manner.

After weighing the relevant Colleran factors, the Board concludes it was not reasonable for the State to terminate Grievant.

An adequate and effective sanction other than dismissal is warranted for Grievant's conduct. The Board finds that Grievant should receive a fifteen (15) day suspension. This suspension will deter future conduct by Grievant and others.

ORDER

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

1. The Grievance of Patrick Ryan is sustained in part and his dismissal is reduced to fifteen (15) days;
2. Grievant shall be reinstated to his position as District Director of the Newport Office of the Family Services Division, Department for Children and Families;
3. Grievant shall be awarded back pay and benefits from the date commencing fifteen (15) working days 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 on back pay shall be computed on gross pay and shall be at the legal rate of twelve (12) percent per annum and shall run from the date each paycheck was due during the period commencing fifteen (15) working days from 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 Labor Relations Board by June 23, 2023, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on a proposed order, shall notify the Board in writing 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, and any proposed exhibits for a backpay hearing to be scheduled by the Board. A hearing on disputed issues, if necessary, shall be scheduled by the Board.
6. The Employer shall remove all references to Grievant's dismissal from his personnel file and other official records and replace it with reference to a fifteen (15) day suspension consistent with this decision.

Dated this 26th day of May, 2023, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

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Robert Greemore, Chair

/s/ Karen F. Saudek

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Karen F. Saudek

/s/ Roger P. Donegan

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Roger P. Donegan