

STATE OF VERMONT  
LABOR RELATIONS BOARD

GRIEVANCE OF LEONA WAMSLEY

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Docket No. 22-38

AMENDED FINDINGS OF FACT, OPINION, AND ORDER<sup>1</sup>

Leona Wamsley (“Ms. Wamsley” “Grievant”), a Secretary IV at the Chittenden County State’s Attorney’s Office (“CCSAO”), within the Department of State’s Attorneys and Sheriffs (“SAS”), grieves her termination for insubordination and gross misconduct in failing to return to work after being directed to do so, failure to attend a Loudermill hearing, and past poor performance. Grievant alleges her employer violated Article 11 of the Collective Bargaining Agreement (“Agreement” “CBA”) between the VSEA and the State’s Attorneys’ Offices Bargaining Unit in effect for the period July 1, 2020, to June 30, 2022, by terminating her without just cause, improperly bypassing progressive discipline, and failing to apply discipline with a view toward uniformity and consistency in terminating her.

The Board held hearings at the Vermont Labor Relations Board on March 22, and June 1, 2023, before Board members, Robert Greemore, Chairperson, Karen Saudek, and David Boulanger. Grievant appeared pro se, and the Department of State’s Attorneys and Sheriffs (“SAS”) was represented by Joseph Farnham, Esq., and Joseph McNeil, Esq., of McNeil Leddy & Sheehan, P.C. The parties filed post-hearing briefs on June 26, 2023.

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<sup>1</sup> The Vermont Labor Relations Board Findings of Fact, Opinion, and Order, dated 2/22/24, contained a typographical error in paragraph 5 of the Order. The deadline for filing the proposed order on back pay was incorrectly listed as March 2, 2024. The deadline is **March 27, 2024**, and the pertinent portion of paragraph 5, now provides: “The parties shall file with the Labor Relations Board by March 27, 2024, a proposed order indicating the specific amount of back pay and other benefits due Grievant . . . .”

## FINDINGS OF FACT

### Background

1. Grievant began working at the Chittenden County State's Attorney's Office ("CCSAO") as an intern and was recruited to join the administrative staff in 2016. At the time of her termination, she was a Secretary IV.
2. At all times relevant to this Grievance, the relationship between Grievant and her Employer was governed by the "Agreement between the Vermont Department of State's Attorneys & Sheriffs and the Vermont State Employees' Association, Inc.: VSEA-State's Attorneys' Office (SAO) Bargaining Unit Contract Effective July 1, 2020-Expiring June 30, 2022" ("CBA" or "Agreement"). SAS Exhibit 1.
3. Grievant's duties involved providing administrative support to attorneys in the office, including contacting witnesses regarding court dates and other commitments, facilitating discovery, closing cases, and issuing flash citations. Flash citations are citations issued to someone for a crime when they are not initially lodged in jail for that crime. Flash citations are issued a week or two after the commission of the crime. Effective communication and maintaining positive relationships with the public and colleagues in the CCSAO are paramount.
4. Chittenden County State's Attorney Sarah George, ("SA George") began working as a Deputy State's Attorney for Chittenden County in 2011. In 2017, Governor Scott appointed her State's Attorney following the election of her predecessor T.J. Donovan to the office of Attorney General. SA George was elected in 2018 and reelected in 2022 to the position of State's Attorney for Chittenden County.

5. The CCSAO is staffed by fourteen attorneys, including SA George, seven administrative positions, and four victims' advocates. The office is very busy handling approximately 10,000-12,000 cases per year, or roughly 500 cases a month. Each Deputy handles a large caseload.
6. Grievant received satisfactory employee evaluations during her years of employment until 2022. She received an Unsatisfactory Performance Evaluation in 2022, for the evaluation period April 26, 2021, through May 16, 2022.
7. On November 4, 2021, before being sworn in as a Superior Court Judge, then Chief Deputy State's Attorney, Justin Jiron, provided Grievant with a letter of recommendation. In the letter, he described Grievant as an intelligent, helpful, friendly, and dedicated employee.
8. On October 8, 2021, Grievant received a letter of reprimand as discipline for her disrespectful comments made to Chief Deputy State's Attorney Sally Adams.
9. On March 31, 2022, the Vermont Department of State's Attorneys and Sheriffs ("SAS") Labor Relations and Operations Manager Annie Noonan, emailed Grievant advising her that on April 1, 2022, Grievant would be placed on Temporary Relief from Duty ("TRD") with pay pending the outcome of an investigation "that will include a Loudermill hearing to determine if disciplinary action will be taken." SAS Exhibit 2-D. The email advised that during the TRD period, Grievant was not to come to the office or perform any work unless and until directed by SA George or Chief Deputy Adams.
10. Also on March 31, 2022, Grievant received a Special Warning Evaluation ("SWA") with a three-month prescriptive period of remediation from SA George. The SWA was provided because Grievant's performance "inconsistently meets the performance

standards of the position.” The evaluation identified the core values that Grievant was not meeting. SAS Exhibit 9.

11. The prescriptive period of evaluation overlapped with the period Grievant was placed on Temporary Relief from Duty. Grievant was out of the office on TRD, and not required to report to work from April 1, 2022, until May 16, 2022.

12. On April 1, 2022, Ms. Noonan emailed Grievant advising her that SAS was contemplating suspending her without pay for a period of three (3) workdays. The Loudermill letter advised Grievant of the allegations that led to the suspension and which were the subject of an investigation. The email alleged Grievant was engaging in the following behaviors:

bullying other staff and creating a hostile work environment at the CCSAO, which is negatively impacting the health and well-being of other employees, creating stress and fear among some of your coworkers, and impeding office operations. You have been counseled and reprimanded for such behaviors. SAS Exhibit 6-C.

13. The Loudermill letter advised that Grievant or her VSEA Union Representative must notify Ms. Noonan “by next Tuesday whether you wish to respond in writing or meet (virtually, via TEAMS) to discuss the contemplated discipline. You must respond to me within ten workdays of receipt of this written notification of the contemplated discipline.”

Id.

14. The Loudermill letter also notified Grievant of her right to have VSEA representation at the meeting and further advised Grievant of her duties and responsibilities during the period of the investigation, including cooperating with the investigation, providing truthful information, and refraining from any action that could impede the investigation. SAS Exhibit 6-C.

15. Annie Noonan conducted an investigation regarding the allegations of bullying and hostile work environment. Attorney Joseph McNeil was appointed to serve as the Loudermill hearing officer because Annie Noonan had previous involvement in disciplining and counseling Grievant.
16. When Grievant returned to work on May 16, 2022, she received her 2021-2022 Annual Evaluation. Grievant received an “Unsatisfactory” overall performance rating. Due to COVID-19 and the shifting work habits and routines of the office, the responsibilities of administrative positions changed as did Grievant’s responsibilities. She was provided with a new list of duties, advised that she would be working remotely from home from 8 a.m. to 4:30 p.m., and that she would report directly to SA George.
17. Grievant filed a Step II Grievance to Director Campbell challenging the Special Performance Evaluation and Unsatisfactory Annual Evaluation.
18. On May 17, 2022, Ms. Wamsley notified Annie Noonan that she would not be working on that date due to an issue with her youngest child. The email was forwarded by Ms. Noonan to SA George. After being notified of Grievant’s absence, SA George emailed Grievant reminding her that she, SA George, was her direct supervisor and Grievant needed to contact SA George if she were going to be off or on leave from duty. As a result of SA George’s lack of notice that Grievant was not in the office, a flash citation was delayed in being issued.
19. On May 25, 2022, Attorney McNeil forwarded to SA George his Memorandum and Recommendation in response to Grievant’s Loudermill meeting.
20. On May 31, 2022, Grievant emailed John Campbell, SAS Executive Director, with a copy to Annie Noonan and VSEA representative Brian Morse, notifying him that she

would “be out sick or what not until the result is determined from my Loudermill and grievance.” Grievant detailed her concerns regarding the delay in the investigation of her alleged misconduct and resulting Loudermill hearing determination. She mentioned her mental health stress and claim that “things going on here that shouldn’t and I cannot wait any longer [sic] go into that office for my mental health.” SAS Exhibit 5.

21. SA George texted Grievant directing her to report to work by 1:30 p.m. Grievant sent a work email on May 31, 2022. Sending an email qualifies as work or working according to SA George.

22. On June 1, 2022, SA George texted Grievant asking if Grievant was out. Grievant responded that she would be out “until I get the result of my grievance. Thank you.” In response, SA George texted Grievant twice asking her to see her email. SA George directed Grievant to return to work.

23. On June 2, and 3, 2022, Grievant did not report for work and each day SA George directed her to report or return to work.

24. On June 3, 2022, SA George sent Grievant a Memorandum with the subject line “Loudermill Recommendation and Disciplinary Decision” that included the Memorandum and Recommendation of the Department’s appointed Loudermill hearing officer, Attorney McNeil for a one-day suspension for Grievant’s behaviors and interactions with her coworkers. SA George noted she agreed with the findings of Attorney McNeil, and “hope that this disciplinary action will result in a change in your attitude and interactions with staff and management. You will serve this one-day suspension on Tuesday, June 7, 2022.” SAS Exhibit 3.

25. Grievant did not appeal this decision to the Vermont Labor Relations Board.

26. On June 3, 2022, SA George also forwarded to Grievant a letter under the subject

“Loudermill.” The letter outlined Grievant’s not coming into work since May 31, 2022.

The letter provides in pertinent part:

On Tuesday, 5/31/22, you communicated via email to SAS Executive Director Campbell, LR Director Noonan VSEA Sr. Field Rep Brian Morse your refusal to be at work and complete your assigned work responsibilities until you received the results of the Loudermill meeting relating to your possible 3-day unpaid suspension. That email was forwarded to me by Annie Noonan hours after you had sent it, since she was in meetings all morning and did not see your email, thus leaving those of us in the office without any notice that you were refusing to work. I informed you on May 17<sup>th</sup> that you must notify me as your direct supervisor when you are not coming to work, but you again failed to do so on May 31<sup>st</sup>. This meant critically essential work tasks did not get accomplished in a timely manner, to include the filing of several flash cites.

Subsequent to that email, I have sent you daily emails to your work email and via Teams messenger, and on the first day to your personal email and your personal cell phone as well, to report to work and perform your work responsibilities. Despite this direct order, you have been absent from work for three full days without authorization. This was notwithstanding the fact that after the Loudermill hearing, Attorney Joe McNeil, who served as a hearing officer, left the record open for submission of documents that you said you wanted to submit for his consideration. He advised that he would work as expeditiously as possible to thoroughly review all the materials you sent, and then would issue a decision. You have no right to essentially go on strike while awaiting a decision from either a grievance or a Loudermill hearing.

Your refusal to follow direct orders from me to report to work is insubordination and an impermissible refusal to follow a clear and unambiguous directive to follow a lawful and reasonable order from your supervising/managerial authority. Additionally, your absence from work without authorization represents an additional basis for a significant disciplinary response. Consequently, you are advised that another ‘Loudermill’ meeting will be held with you via Teams on Monday, June 6, 2022, at 1:30 PM. You and your VSEA Representative will receive an invitation to this hearing. This will be an opportunity for you and/or your VSEA representative to provide me with an explanation as to why, in light of your intentional/refusal/insubordination above referenced, and your prior work record, you should not be terminated as an employee of this office and the State of Vermont. A decision concerning this matter will be made following such meeting.

SAS Exhibit 2-C (emphasis in original).

27. That same day, on June 3, 2022, SAS Director Campbell issued a Step II decision on Grievant's Annual Evaluation and Special Performance Evaluation. Director Campbell affirmed or upheld the Special Evaluation and Annual Evaluation. SAS 10-C.
28. On Saturday, June 4, 2022, Grievant forwarded a sick note from her primary care provider, APRN Alison Hobart that "Leona Wamsley is being treated for a medical condition and her work absence should be excused from June 1 until the decision of her grievance/Loudermill is resolved." Grievant's Exhibit R, page 60.
29. SA George does not recall her response to the sick note. SA George acknowledged that she was not familiar with the policy for sick leave and whether and when a medical note was required. She had never experienced the issue and would need to consult with Annie Noonan for information on the policy. There was no testimony that SA George consulted with Annie Noonan on that policy before or after she forwarded the June 3, 2022, "Loudermill" letter to Grievant.
30. On Monday June 6, 2022, SA George presided over a Loudermill meeting regarding Grievant's alleged insubordination and absence from work without authorization. Grievant did not attend the meeting, but Union representative Brian Morse did. SA George did not question or inquire about the sick note.
31. On June 7, 2022, SA George wrote Grievant regarding "Separation from Employment." The correspondence notified Grievant that "her employment with the State of Vermont, Department of State's Attorneys and Sheriffs, Chittenden County State's Attorney's Office would terminate effective June 8, 2022." SAS Exhibit 2-A.
32. The separation from employment correspondence provides the following in pertinent part:



Efforts to correct your behaviors through progressive disciplinary actions-- including oral and written feedback, letter of reprimand, unpaid suspension action; as well as formal “unsatisfactory” Special and Annual evaluations with prescriptive period of remediation, have all failed in their intent to bring about changed behavior and conduct.

Last week, you announced via email that you were refusing to work until you received a Step II decision on your Unsatisfactory Special Performance Evaluation, and decision from the Loudermill hearing officer on a proposed three-day suspension for your actions that led to coworkers to complain that you were again creating a hostile and intimidating work environment. You were represented by your union representative, Sr. Fielded Rep Brian Morse in both the “Unsatisfactory” Special Evaluation Step II hearing and the Loudermill on the harassment and intimidation of coworkers.

. . . .

During this same period of time, you were also due an Annual Evaluation which you received within the contractually prescribed timeframes. This was also “Unsatisfactory.” Your union representative suggested via email to the Department that the two “unsatisfactory evaluations be considered together as one grievance. The Department said that this “might make sense” provided that the hearing officer be given additional time-until June 3<sup>rd</sup> to respond to the combined two grievances.

33. The Separation Letter recounted Grievant’s May 31, 2022, email to Director Campbell and Ms. Noonan which SA George described as refusal to work and insubordination:

Nevertheless, you persisted in your refusal to report to work, deciding instead to engage in an impermissible and personal boycott/strike and absence without leave. As a result of your refusal to respond and report for work duty you ignored a lawful, clear and reasonable directive of management which constitutes insubordination and gross misconduct as an employee. The fact that your refusal also involved ignoring the directive to prepare flash citations constituted gross neglect of duty. Additionally, your declination to even attend the noticed Loudermill meeting represented a refusal to cooperate with respect to an official employment inquiry contrary to DHR Policy # 17. The totality of your misconduct and unsatisfactory performance has led me to decide to terminate you from employment, effective immediately.

34. The Separation letter did not notify Grievant of her rights to appeal the termination decision to the Vermont Labor Relations Board nor the deadline for filing an appeal.

35. The Separation letter did not mention the medical note provided by Grievant on Saturday June 4, 2022.
36. Prior to terminating Grievant, the SAS did not conduct a twelve-factor or reasonableness analysis to determine whether there was just cause to terminate Grievant.
37. Grievant appealed the termination decision. Grievant did not appeal the Step II decision regarding the Unsatisfactory Evaluation and Special Performance Evaluation.

### OPINION

Grievant alleges the SAS dismissed her without just cause, improperly bypassed progressive discipline, and failed to discipline her with a view towards consistency and uniformity. She asserts the SAS failed to comply with Article 11 of the CBA in firing her. 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). 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 underlying facts have been proven, we must

determine whether the discipline imposed by the employer is reasonable given the proven facts.  
Id. at 266.

CBA Article 11 and the absence of adequate notice

The Employer terminated Grievant because of her insubordination when failing to report to work despite being directed to do so, combined with her past unrehabilitated poor work performance and behavior. On June 3, 2022, two business days before her termination, Grievant received two Memoranda both including the subject line “Loudermill” from her supervisor, SA George. The order she received the memoranda was not elicited at the hearing, the order provided here, therefore, is illustrative only.

First, Grievant received notice from SA George that the penalty or discipline for her poor behavior with coworkers, related to the March 31, 2022, Relief from Duty, and April 1, 2022, Loudermill letter, had been reduced to a one-day suspension, to be served on June 7, 2022. The notice also included the following aspiration from SA George that “this disciplinary action will result in a change in your attitude and interactions with staff and management.” SAS Exhibit 3

In the second communication SA George sent Grievant on June 3, 2022, (SAS Exhibit 2-C), SA George notified Grievant that “another ‘Loudermill’ meeting will be held with you via Teams on Monday, June 6, 2022, at 1:30 PM.” SAS Exhibit 2-C (emphasis omitted). The June 3 correspondence informed Grievant that the meeting will be an opportunity for Grievant “to provide me with an explanation as to why, in light of your intentional refusal/insubordination above referenced, and your prior work record, you should not be terminated as an employee of this office and the State of Vermont.” Id.

The June 3, 2022, letter, (SAS Exhibit 2-C) purports to contain notice of potential discipline, which is governed by Article 11 of the CBA, and provides in pertinent part:

Whenever the Department contemplates suspending or dismissing a bargaining unit employee other than a DSA, the employee will be notified in writing of the reason(s) for such action, and will be given an opportunity to respond either orally or in writing. The employee will normally be given twenty-four (24) hours to notify the Department whether he or she wishes to respond in writing or to meet in person to discuss the contemplated discipline. The employee's response, whether in writing or in a meeting must be provided to the Department's Labor Relations Manager within ten (10) workdays of receipt of a written notification of the contemplated discipline. . . . At such meeting, the employee and VSEA representative will be given an opportunity to present points of disagreement with the facts, to identify supporting witnesses or mitigating circumstances, or to offer any appropriate argument in his or her defense.

SAS Exhibit 1, CBA, Article II, ¶6.

The Collective Bargaining Agreement affords Grievant an opportunity to respond before the Loudermill hearing is scheduled. The June 3, 2022, letter (SAS Exhibit 2-C) did not afford Grievant an opportunity to respond to the letter either orally or in writing. The CBA guarantees the employee up to ten (10) days of receipt of the Loudermill letter to respond. Grievant did not have ten days to respond. The June 3, 2022, letter does not comply with Article 11 of the Collective Bargaining Agreement.

Before making its termination decision, the SAS also failed “to consider the factors for determining the appropriate level of discipline as determined by the Vermont Labor Relations Board” as required under Article 11, ¶ 4 of the CBA. The Board announced the factors required for determining the appropriate level of discipline in Grievance of Colleran and Britt, 6 VLRB 235, 268-69 (1983) (Board adopts twelve factors to be weighed when evaluating the reasonableness of the employer's disciplinary action). There was no testimony that SA George or SAS considered the Colleran and Britt reasonableness factors before making the decision to terminate Grievant. The SAS also failed to present an exhibit outlining its reasonableness or

twelve factor analysis for assessing the appropriate level of discipline or supporting the termination decision. Although the SAS attempted to muster such an analysis in its post-hearing legal brief, there is nothing in the record demonstrating that such an analysis occurred prior to the termination decision. Indeed, the speed with which the termination decision was reached left no time for the required analysis.

In addition to violating Article 11 of the CBA, the haste with which the termination decision was issued fails to comply with the due process requirements announced in Cleveland Board of Education v. Loudermill, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495 (1985). Employees have a property interest in their continued employment. This Board and the Vermont Supreme Court have consistently applied the due process requirements of notice and an opportunity to be heard announced in Loudermill. The employee is entitled to “notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present [her or] his side of the story.” Id. at 546, 105 S. Ct. at 1495, cited in, In re Gregoire, 166 Vt. 66, 71–72 (1996). See also In re Grievance of Towle, 164 Vt. 145, 153 (1995).

The due process protections outlined in Loudermill and applied by this Board require that the notice be sufficiently specific to allow adequate preparation for the employee’s defense. Grievance of Morrissey, 149 Vt. 1, 10 (1987). A Loudermill “hearing must be preceded by adequate notice. . . .” In re Gregoire, 166 Vt. 66, 71 (1996). Time for adequate preparation, therefore, is an essential component of due process. Grievant was denied an opportunity to present her side of the story in part because she received the Loudermill letter one business day before the Loudermill meeting or hearing. A Loudermill hearing unilaterally imposed by the employer one day after the Loudermill letter was issued does not satisfy the adequate notice standard.

The June 3, 2022, Memorandum regarding “Loudermill Recommendation and Disciplinary Decision” (SAS Exhibit 3), forwarded on the same day as the June 3, 2022, Memorandum regarding “Loudermill” (SAS Exhibit 2-C) casts a shadow over the clarity of the notice in the latter. In the memo enclosing the decision regarding the Loudermill hearing outcome for the bullying allegations, SA George wrote that she “hope[s] that this disciplinary action will result in a change in your attitude and interactions with management and staff.” SAS Exhibit 3. Despite this desire, on the same day in her second communication, entitled “Loudermill” (Exhibit 2-C), SA George wrote that Grievant had to show cause why SA George should not fire her. The concurrent timing of the “Loudermill” memoranda creates confusion and blurs the utility of the notice contained in the June 3, 2022, Loudermill letter regarding the insubordination allegation (SAS Exhibit 2-C).

The deficiencies in the June 3, 2022, Loudermill letter, (SAS Exhibit 2-C), are not limited to the absence of sufficient notice to the Grievant or an opportunity to respond. The letter also announces the employer’s predetermined intent to terminate Grievant unless Grievant demonstrates to SA George the reasons why Grievant should not be terminated. Rather than advise Grievant that the employer was considering discipline, up to and including termination, SA George demanded that Grievant show cause why she should not be terminated. Where the CBA requires the Employer to provide meaningful notice and a hearing when contemplating discipline, to comply with the CBA, the employer must “keep[] an open mind and allowing the possibility of not dismissing an employee.” See Grievance of Taylor, 15 VLRB 275, 280 (1992). The Employer did not maintain an open mind and instead had predetermined that Grievant should be terminated and placed the burden on Grievant to demonstrate why she should not be terminated.

Because of its violation of the CBA, Article 11, lack of adequate notice and a meaningful opportunity to respond, and the predetermined outcome announced by the SAS, the State has not sustained its burden of proving the requisite elements of just cause, reasonableness and adequate notice.

The termination letter

The termination decision letter or notice also violates Article 11 of the Collective Bargaining Agreement. The termination decision fails to notify Grievant of her right to appeal.

In any written dismissal notice other than a dismissal of a DSA, the Department shall state the reason(s) for dismissal and inform the employee of his or her right to appeal the dismissal to the Vermont Labor Relations Board within the time limit prescribed by the rules and regulations of the VLRB.

SAS Exhibit 1, CBA Article 11, ¶ 1(g).

After notifying her of her dismissal, SA George offered Grievant an opportunity to resign and telephone numbers to call for questions regarding retirement and other benefits. There was nothing in the letter about her right to appeal to the Vermont Labor Board.

In addition to citing Grievant's alleged insubordination and past misconduct as grounds for termination, the Employer also relies on Grievant's failure to attend the June 6, 2022, Loudermill meeting as cause for the termination. "Additionally, your declination to even attend the noticed Loudermill meeting represented a refusal to cooperate with respect to an official employment inquiry contrary to DHR Policy # 17." The SAS has not presented any evidence that attendance at a Loudermill meeting is mandatory for the employee. A Loudermill hearing or meeting is for the benefit of the employee and their opportunity to present their side of the story. See In re Gregoire, 166 Vt. 66, 71 (1996) (citing, Cleveland Board of Education v. Loudermill, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495 (1985)).

Moreover, as compared to the detailed obligations outlined in the April 1, 2022, Loudermill letter, SAS Exhibit 6-C, including Grievant's duty to tell the truth and cooperate with the investigation, the June 3, 2022, Loudermill letter, SAS Exhibit 2-C, failed to mention or include Grievant's responsibilities during the investigation into employee's alleged misconduct. Indeed, the fact that the Loudermill hearing was held one business day after the Loudermill letter was distributed belies that there was an investigation into Grievant's misconduct or insubordination.

Because SA George cites Human Resources Policy 17 in supporting the termination decision, the Board reviews it to determine whether the Employer complied with the Policy. The State, however, did not include the applicable DHR Policy 17 as an exhibit. The Board is familiar with and has applied the Policy in other matters, See, e.g., Grievance of Ducey, 37 V.R.B.R. 135, 144 (2024), and takes judicial notice of the applicable Policy here. See VRE 201. Review of the Policy demonstrates that the SAS and SA George as the designated authority failed to fulfill the requirements for conducting an investigation.

The Department of Human Resources Policy Number 17 governs employment related investigations. "The purpose of this policy is to establish the framework for Appointing Authorities to conduct employment related investigations." The Policy sets out the process and responsibilities for investigating employee misconduct. Under the Policy, the Appointing Authority or designee "shall" perform the following responsibilities:

- Notify and coordinate with DHR [Department of Human Resources] whenever they have reason to suspect an employee has engaged in, or is engaging in misconduct.
- Authorize investigations into allegations or suspicions of employee misconduct promptly, in order to establish facts necessary to make informed decisions regarding discipline or other remedial measures in the workplace.



- Determine the scope of misconduct investigations.
- Determine whether investigations will be carried out by professional State investigative units, manager, or human resources staff.
- ....
- Notify subject(s) when an investigation has concluded.

Employment Related Investigations, Number 17.0, Effective Date November 3, 2016.

SA George did not follow the Policy when she had “reason to suspect [Grievant] has engaged in, or is engaging in misconduct” in June 2022. Rather than notify and coordinate with DHR or anyone else, or authorize an investigation, SA George notified Grievant on Friday June 3, 2022, “that another ‘Loudermill meeting will be held with you” on June 6, 2022. SAS Exhibit 2-C. SA George went on to explain that Grievant would receive “an invitation to this hearing” at which Grievant or her VSEA would have an opportunity “to provide me with an explanation as to why, in light of your intentional/refusal/insubordination above referenced, and your prior work record, you should not be terminated as an employee of this office and the State of Vermont.” On June 6, SA George held that Loudermill meeting, at which Grievant’s VSEA representative attended, and on June 7, 2022, SA George terminated Grievant. There was no investigation nor involvement of Human Resources nor other steps taken “to establish facts necessary to make informed decisions regarding discipline or other remedial measures in the workplace.”

The SAS failed to comply with the requirements of the CBA, due process, and State Policies regarding investigations when terminating Grievant. The SAS was aware of these requirements during the March 2022 investigation but disregarded them during its leap to termination arising from the alleged insubordination in June 2022.

## ORDER

Based on the findings and reasoning stated above, it is ordered:

1. The Grievance of Leona Wamsley is sustained;
2. Grievant shall be reinstated to her position with the Chittenden County State's Attorneys Office;
3. Grievant shall be awarded back pay and benefits from the effective date of her dismissal, excluding the one day of suspension on June 7, 2022, until her reinstatement, for all hours of her 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 12 percent per annum and shall run from the date each paycheck was due during the period commencing from Grievant's dismissal, and ending on the date of her 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 March 27, 2024, 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.
6. If the parties do not submit a proposed order, a hearing on disputed issues shall be scheduled via the Microsoft Teams platform; and

7. The Employer shall remove all references to Grievant's dismissal from her personnel file and other official records.

Dated this 29<sup>th</sup> day of February 2024, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

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Robert Greemore, Chairperson

/s/ Karen Saudek

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Karen Saudek

/s/ David Boulanger

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David Boulanger