

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 87-5
VICTORIA JAMISON	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 16, 1987, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Victoria Jamison ("Grievant"). The grievance alleged that the State of Vermont, Department of Agriculture ("Employer") violated Article 17 of the Agreement between the State and VSEA for the Non-Management Unit, effective June 1, 1986 to June 30, 1988 ("Contract") by giving Grievant a letter of reprimand, in that 1) the alleged offense took place during non-working hours and so there was no nexus between Grievant's job and the alleged offense, 2) the letter infringed upon Grievant's Constitutional rights, 3) there was no just cause for discipline, and 4) the progressive discipline requirements of the Contract were not followed and it was inappropriate to bypass progressive discipline.

A hearing was held on July 2, 1987, before Board Members Louis A. Toepfer, Acting Chairman; and Dinah Yessne. Member William G. Kemsley, Sr. recused himself from participation in the case. The Board indicated that, if the two sitting members disagreed as to the outcome of the case, then a third member of the Board would review the record and participate in the deliberation and decision.

At the hearing, the Employer agreed that the only possible bases for disciplining Grievant were conversations which she had with Barbara Monti on August 8, 1986, and comments concerning these

conversations which she made at work on August 11, 1986, in the presence of three other employees. The Employer indicated that it was not alleging that any other areas addressed in the letter of reprimand constituted grounds for discipline.

Grievant filed Requested Findings of Fact and a Memorandum of Law on July 13, 1987. The Employer filed a Memorandum of Law on July 16, 1987.

#### FINDINGS OF FACT

1. Grievant has been employed by the State for nearly 10 years, and has worked the entire period for the Department of Agriculture. The only disciplinary action taken against her during that period prior to the letter of reprimand at issue herein were one or two letters of reprimand, which were removed as the result of grievances filed by Grievant. At all times relevant, Grievant's position title has been Agriculture Laboratory Analyst.

2. On August 8, 1986, Grievant heard that Barbara Monti, a Department of Agriculture manager outside of Grievant's chain of command, had resigned effective that day. Grievant, who had remained at home because of illness, decided to telephone Monti to express her satisfaction at Monti's departure. At about 4:45 p.m., 15 minutes after the close of the normal working day at the Department of Agriculture, Grievant telephoned Monti's Agriculture Department office on the chance that Monti might still be there. Monti answered the telephone. Grievant then said, "I'd like to be the first to wish you good riddance". Then Grievant hung up. Grievant did not identify herself to Monti.

3. At about 5:30 p.m. that same day, Monti telephoned Grievant at her home. Monti said, "Now that I know who you are, do you have anything else to say," or words to that effect. Grievant responded by saying, "I had no doubt you knew who I was, but, now that you mention it, I do have something else to say." Then, in a conversation that lasted about five minutes, Grievant told Monti that she thought that Monti had been shoddy in her treatment of her subordinate employees in the Department, that she had worked to get rid of Monti, and that she was "happy as hell" that Monti was gone. Grievant again hung up on Monti. Grievant was rude during the conversation, and Monti acted pleasant.

4. On Monday, August 11, 1986, Grievant, who was on her break, passed by the office of Elsie LaFlamme, the Business Manager and Personnel Officer for the Department of Agriculture. Seeing that LaFlamme and Richard Rogers, who had worked for Monti, were engaged in conversation, Grievant entered the room, and said, "Did you hear what I did Friday?" When LaFlamme and Rogers replied in the negative, Grievant told them that she had called Monti and wished her good riddance. LaFlamme and Rogers reacted with a mixture of chuckling and disbelief. Then Grievant told them that Monti had called her back, and then described the conversation with Monti. LaFlamme asked Grievant what she had said to Monti, and Grievant jokingly said, "Well, I didn't call her a slut like I wanted to", or words to that effect. LaFlamme responded with "Oh, Vickie", or something similar. LaFlamme then took out the dictionary, and began searching for the definition of "slut". When LaFlamme found the definition, she began reading aloud from the dictionary. Among the definitions of "slut"

was "bold and brazen woman". When Grievant told those assembled that that definition accurately described Monti, it appeared to Grievant there was general consensus. Grievant then left LaFlamme's office.

5. Grievant's comments to Monti in the August 8 conversations were strictly personal comments and were not motivated by public concern. After making the comments, Grievant believed she had demonstrated a lack of judgment and acted immaturely in making them.

6. On September 12, 1986, Paul Stone, Commissioner of Agriculture, sent Grievant a letter of reprimand. The letter provided in pertinent part as follows:

As you know, I have been conducting an investigation into possible misconduct by you in your treatment of and comments about Barbara Monti. On Wednesday, September 3, 1986, I met with you to discuss the reports I had received about your conduct... At that time, you said you had worked with others for a long time to "get rid of Monti". You admitted that on August 8, 1986, you called Ms. Monti anonymously, said, "I just want to be the first one to say good riddance", and hung up. When Ms. Monti, who recognized your voice, called you back, you were rude and abusive to her. In addition, you admitted that on Monday, August 11, 1986, you referred to Ms. Monti as "like a slut" in front of Elsie LaFlamme, Richard Rogers and Carl Cushing. We consider that the allegations that you have admitted to amount, at the very least, to inappropriate behavior and poor judgment on your part.

... This lack of concern for the efficient functioning of the Department is further evidenced by your unprofessional, inappropriate and possibly illegal treatment of Ms. Monti once her resignation occurred. Your rude and abusive treatment of her on the telephone, your bragging about your role in "getting rid of her", your reference to her as being "like a slut" and other comments made along that line are inappropriate. Certainly, you cannot claim these actions to have been motivated by any real concern for the Department. Your actions in this regard further disrupted a Department already affected by the departure of Ms. Monti. Your actions also lay the groundwork for a hostile work environment in which employees and Department programs suffer. Such talk and name calling is absolutely inexcusable and totally unacceptable. It will not be tolerated.

...Your actions...were more than mere mistakes: they were intentional acts designed to further your own aims rather than the goals of the Department. I consider your actions to warrant serious disciplinary action. However, in hopes of avoiding any further disruptions to the Department, I have decided to issue this letter as a formal reprimand. Of course, your behavior as discussed above adversely affects my assessment of your overall performance and will be accurately reflected in future performance evaluations. Finally, if you continue to subvert Department goals, disrupt the efficient functioning of the Department or engage in any further rumor mongering or other hostile treatment of others, you will be subject to serious discipline, up to and including dismissal.

(Grievant's Exhibit 2)

7. Article 17 of the Contract, Disciplinary Action, provides in pertinent part as follows:

A.

1. No permanent or limited status employee covered by this agreement shall be disciplined without just cause. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:

... c. impose a procedure of progressive discipline... in increasing order of severity;

d. In misconduct cases, the order of progressive discipline shall be:

- i. oral reprimand,
- ii. written reprimand,
- iii. suspension without pay,
- iv. dismissal

... f. The parties agree that there are appropriate cases that may warrant the State:

- i. bypassing progressive discipline...

#### OPINION

At issue is whether the letter of reprimand received by Grievant violated Article 17 of the Contract.

Grievant first contends that Grievant's alleged offenses took place during non-working hours and there was no nexus between Grievant's job and the alleged offenses. We conclude a sufficient nexus exists between Grievant's conduct and her employment. Suffice it to say that initiating a call to a manager in the same department at

that manager's office, making comments to the manager in that conversation and a subsequent phone conversation directly relating to the manager's employment with the department and then reporting the contents of the conversation to other department employees at work, as Grievant did here, demonstrates a sufficient nexus. c.f. Grievance of Early and Ibey, 6 VLRB 72, 81 (1983).

Grievant further contends that the letter of reprimand infringed upon her Constitutional free speech rights. In determining whether cause existed for the discipline of a State employee, the Board has held that it will look to Constitutional law when an assertion is made that the employee was unfairly disciplined for exercising free speech rights. Grievance of Morrissey, 7 VLRB 129, 169-170 (1984).

Here, no free speech rights were violated. When a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, an employee's speech is not entitled to Constitutional free speech protections. Connick v. Myers, 103 S.Ct. 1684, 1690-1691 (1984). Grievant's conversations with Monti concerned matters only of personal interest to Grievant, as she admitted, and her subsequent reporting of those conversations to other employees again involved no matters of public concern.

Thus, having decided that sufficient job nexus exists and that no violation of free speech rights occurred, we turn to determining whether just cause otherwise existed for the letter of reprimand. We conclude, taking Grievant's conduct in the light most unfavorable to her, that her conduct in the August 8 phone conversations with Monti and her subsequent August 11 discussions at work with other employees,

was inappropriate and demonstrated poor judgment. However, at most these were minor infractions. The Contract calls for progressive discipline. The first step of progressive discipline - oral reprimand - was bypassed here, and Grievant's misconduct was not substantial enough for bypass. Grievant's conduct would call for some discipline, but warranted at most an oral reprimand.

ORDER

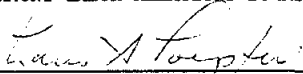
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The Grievance of Victoria Jamison is SUSTAINED; and

2. The State of Vermont, Department of Agriculture shall rescind the September 12, 1986, letter of reprimand from Commissioner Paul Stone to Grievant and remove such letter from Grievant's personnel file.

Dated this 17<sup>th</sup> day of September, 1987, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
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Louis A. Toepfer, Acting Chairman

  
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Dinah Yessne