

VERMONT LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL 300)

DOCKET NO. 85-16

v.)

ENOSBURG FALLS WATER AND)
LIGHT DEPARTMENT)

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should clarify its July 29, 1985 Order in this matter. 8 VLRB 193. On March 3, 1988, the International Brotherhood of Electrical Workers, Local 300 ("Union") filed a Motion to Reopen Case and Clarify Order, requesting that the Board's July 29, 1985, Order be clarified to require the Enosburg Falls Water and Light Department ("Employer") to reimburse employees of the Employer for the amount of unemployment compensation benefits they are required to reimburse the Vermont Department of Employment and Training. The Employer filed a response in opposition to the motion on March 11, 1988. On March 28, 1988, the Union filed a copy of a March 18, 1988, decision of the Vermont Employment Security Board of the Department of Employment and Training with respect to the unemployment compensation claims of the involved employees.

On May 2, 1988, the Board informed the parties that it would grant the Union's motion to reopen the case and, thus, would consider whether the July 29, 1985, order should be clarified. On May 10, 1988, the Employer informed the Board that it wished to present evidence and further legal argument to the Board. A hearing was held on June 9, 1988, before Board Members Charles H. McHugh, Chairman,

William G. Kemsley, Sr., and Catherine L. Frank. Attorney Richard Gadbois represented the Employer. Attorney Aaron Krakow represented the Union.

At the hearing, the parties stipulated to various facts and made oral argument before the Board. The facts necessary to resolve this matter are based upon the facts stipulated to by the parties, prior Orders of the Labor Relations Board (i.e. the July 29, 1985, Order and an August 28, 1987, Order, incorporating an agreement by the parties with respect to computation of back pay and benefits for the employees), an April 3, 1987 decision of the Vermont Supreme Court affirming the Board's July 29, 1985, Order, 148 Vt. 26, and the March 18, 1988, Order of the Vermont Employment Security Board.

FINDINGS OF FACT

1. On July 29, 1985, the Labor Relations Board concluded, among other things, that the Employer committed an unfair labor practice by discharging its employees represented by the Union who were engaged in a lawful strike. The Board ordered that the Employer reinstate the employees and award them "back pay and benefits from April 1, 1985, the date of their discharge, until their reinstatement ... for all hours of their regularly assigned shifts, minus any income (including unemployment compensation received and not paid back) received by employees in the interim." 8 VLRB 193, at 215-217.

2. On April 3, 1987, the Vermont Supreme Court affirmed the Board decision of July 29, 1985. 148 Vt. 26.

3. On August 28, 1987, the Labor Relations Board issued an Order incorporating a settlement agreement by the Union and Employer

with respect to computation of back pay and benefits and ordering the parties to comply with the agreement. The settlement agreement provided that the parties "have settled the outstanding claims for back pay, benefits, and expenses set forth in the ... Board's Order of July 29, 1985," and that "all issues with respect to back pay, benefits and expenses have been resolved." The settlement agreement provided for a total payment of \$55,000 in back wages and other payments to employees Merrill Jenne, Gregg Clark, Francis Elkins, Jay Robtoy and Allan Demar. The Employer complied with this agreement.

4. The Union calculated the amount of back wages to be paid as part of the settlement agreement. In calculating the back wages, the Union subtracted interim income and the amount that these individual employees had received and not paid back in unemployment compensation benefits from the total income they would have received if they had worked for the Employer continuously.

5. On March 18, 1988, the Vermont Employment Security Board concluded that since the five above-named employees had received back pay as a result of the Board Order, they were obligated under law to reimburse the Department of Employment and Training the full amount of unemployment benefits they had received during the period April 1, 1985 through April 20, 1987. They were to reimburse the Department of Employment and Training the following amounts: Francis Elkins - \$1606; Jay Robtoy - \$6643; Allan Demar \$292; Merrill Jenne - \$1752; and Gregg Clark - \$6576.

OPINION

At issue is whether the July 29, 1985, Order of the Board should be clarified to require the Employer to reimburse the employees for the amount of unemployment compensation benefits they are required to reimburse the Department of Employment and Training.

The Union contends that it is clear that the Labor Relations Board intended to make the employees "whole" when issuing the July 29, 1985, Order, and that this "make whole" order would be frustrated if the employees have to subtract unemployment benefits from their back pay award and also pay back the unemployment benefits to the Department of Employment and Training. The Union contends that the 1987 settlement agreement entered into by the parties was consistent with the 1985 Board Order. The Employer contends that the August, 1987, \$55,000 settlement agreement represents the full settlement of the July 29, 1985, Order and the Union is not entitled to relief from any errors or oversights that it might have made in negotiating that settlement. The Employer contends that the Board would be disturbing the settlement agreement reached by the parties if the Board accepted the Union's argument.

In calculating backpay awards for improperly dismissed employees, the monetary compensation awarded shall correspond to specific monetary losses suffered; the award should be limited to the amount necessary to make the employee "whole". Grievance of Warren, 10 VLRB 154, 155 (1987), Grievance of Goddard, 4 VLRB 189 at 190-191 (1982) cf., Kelley v. Day Care Center, Inc., 141 Vt. 608 at 615-616 (1982). To make employees "whole" is to place them in the position they would have been in had they not been improperly dismissed. Grievance of Benoir, 8 VLRB 165, 168. Warren, supra.

In the July 29, 1985, Order, the Board clearly intended that employees would receive the full amount of their lost wages, minus interim income, in the event they were required to pay back unemployment compensation benefits to the Department of Employment and Training. Under the circumstances of this case, the involved employees did not have an obligation to pay back unemployment benefits prior to receiving back pay from the Employer. Consequently, the Board Order, in addressing the issue of paying back unemployment benefits, is fashioning a prospective remedy under the circumstances. It is implicit in the Board Order that an employee whose back pay remedy is reduced by the amount of unemployment benefits, and who subsequently repays unemployment benefits, is entitled to have the back pay remedy increased accordingly. If the Order is not interpreted in that manner, the reference to benefits being paid back would be a nullity and the Board Order would no longer be a "make whole" order.

In so deciding, we are not disturbing the 1988 settlement agreement of the parties even though that agreement provided that "all issues with respect to back pay, benefits, and expenses have been resolved." The settlement agreement further provided that the parties "have settled the outstanding claims for back pay, benefits and expenses set forth in the ... Board's Order of July 29, 1985." This indicates the parties were reaching an agreement consistent with the July 29, 1985, Board Order and were not foreclosing the issue now before us. At the time the settlement agreement was reached, no "outstanding claims" with respect to unemployment compensation existed since the employees were under no requirement to reimburse the Department of Employment and Training for unemployment compensation

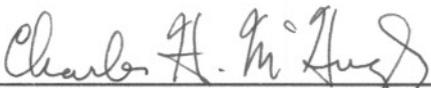
benefits received. The settlement agreement did resolve all outstanding issues and claims existing at that time, but did not foreclose an issue arising subsequent to the settlement agreement which issue was contemplated by the July 29, 1985, remedial Order of the Board. Such an issue is involved here.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, the July 29, 1985, Order of the Labor Relations Board is clarified to the extent that the reference in paragraph 2(c) to deducting "unemployment compensation received and not paid back" from a back pay award is a prospective remedy in circumstances where an employee is obligated to pay back unemployment compensation benefits subsequent to receiving a back pay award from the Employer, and it is hereby ORDERED that the Enosburg Falls Water and Light Department forthwith shall pay Merrill Jenne, Gregg Clark, Francis Elkins, Jay Robtoy and Allan Demar the full amount of unemployment compensation benefits they received during the period April 1, 1985 to April 20, 1987, which they are required to pay back to the Vermont Department of Employment and Training.

Dated the 8th day of July, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Charles H. McHugh, Chairman



William G. Kemsley, Sr.



Catherine L. Frank