VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	DOCKET NO.	89-61
	)		90-05
BRUCE KING	)		90-13

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 28, 1989, the Vermont State Employees' Association ("VSEA") filed a grievance, Docket No. 89-61, on behalf of Bruce King ("Grievant"), alleging that the State of Vermont, Agency of Transportation ("Employer") violated Articles 17, 18, 34, and 72 of the Agreement between the State of Vermont and VSEA for the Non-Management Unit, effective for the period July 1, 1988 through June 30, 1990 ("Contract"). Specifically, the grievance alleges: (1) that on April 10, 1989, Grievant was given an oral reprimand which was without just cause, constituted retaliation for Grievant having reported a safety violation, and was given without Grievant having been notified of his right to have a VSEA representative present; (2) that on April 11, 1989, Grievant was given a one-day suspension without pay which was without just cause, inappropriately bypassed progressive discipline, constituted double punishment for the same offense, was not followed by a written letter of suspension, constituted retaliation for Grievant having reported a safety violation, and was given without Grievant having been notified of his right to have a VSEA representative present; (3) that on April 12, 1989, Grievant was given an oral reprimand which was without just cause, was triple punishment for the same offense, constituted retaliation for Grievant having reported a safety violation, and was given without Grievant having been notified of his right to have a VSEA representative present; and (4)

that on April 26, 1989, Grievant was given a written reprimand which was without just cause, was quadruple punishment for the same offense, constituted retaliation for Grievant having reported a safety violation, and constituted retaliation for Grievant having filed a grievance over the prior disciplinary actions of April 10-12. At the hearing in this matter, Grievant withdrew the claim the April 10 oral reprimand constituted retaliation for having reported a safety violation.

On January 11, 1990, VSEA filed a second grievance, Docket No. 90-5, on behalf of Grievant, alleging that on December 12, 1990, the Employer violated Article 17 of the Contract by dismissing Grievant. The grievance contended that the dismissal was without just cause, inappropriately bypassed progressive discipline, was so severe as to constitute abuse of discretion, and was unreasonable. The grievance also contended that the dismissal was undertaken by someone who was not Grievant's appointing authority, which allegation was withdrawn at the hearing in this matter.

On February 9, 1990, VSEA filed a third grievance, Docket No. 90-13, on behalf of Grievant, alleging that on September 8, 1990, the Employer violated Article 17 of the Contract by giving Grievant a written reprimand which was without just cause, inappropriately bypassed progressive discipline, was too severe, and was not specific enough as to provide adequate notice. The third grievance was filed subsequent to the grievance concerning Grievant's dismissal due to the time delay caused by proceeding on this issue through the grievance procedure.

For purposes of hearing, the three grievances were consolidated. On May 24, July 19, and August 23, 1990, hearings were held before Board members Louis Toepfer, Acting Chairman; Catherine Frank and Leslie Seaver. Michael Zimmerman, VSEA Staff Attorney, represented VSEA.

Michael Seibert, Assistant Attorney General, represented the Employer. Requested Findings of Fact and a Memorandum of Law were filed by VSEA on September 7, 1990, and the Employer filed a Memorandum of Law on September 13, 1990.

FINDINGS OF FACT

1. At all times relevant herein, the Contract provided in pertinent part:

ARTICLE 17
DISCIPLINARY ACTION

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:

a. act promptly to impose discipline... within a reasonable time of the offense;

b. apply discipline... with a view toward uniformity and consistency;

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...
ii. applying discipline... in different degrees;
iii. applying progressive discipline for an aggregate of dissimilar offenses, except that dissimilar offenses shall not necessarily result in automatic progression; as long as it is imposing discipline... for just cause.

2. The appointing authority or his authorized representative may dismiss an employee for just cause with two weeks' notice or two weeks' pay in lieu of notice... In the dismissal notice, the appointing authority shall state the reasons(s) for dismissal...

3. Notwithstanding the provisions of Paragraph 2 above, an employee may be dismissed immediately without two weeks' notice or two weeks' pay in lieu of notice for any of the following reasons:

a. gross neglect of duty;

b. gross misconduct;

c. refusal to obey lawful and reasonable orders given by supervisors;

d. conviction of a felony.

... 6. No written warning or other derogatory material shall be used in any subsequent disciplinary proceeding or merged in any subsequent evaluation unless it has been placed in an employee's official personnel file.

7. Whenever an employee is required, by his/her supervisor or management, to give oral or written statements on an issue involving the employee, which may lead to discipline against the employee, or whenever an employee is called to a meeting with management where discipline is to be imposed on the employee, he/she shall be notified of his/her right to request the presence of a VSEA representative and, upon such request, the VSEA representative shall have the right to accompany the employee to any such meeting. The notification requirement shall not apply to the informal initial inquiry of the employee by his supervisor without knowledge or reason to believe that discipline of the employee was a likely possibility...

8. The appointing authority or his authorized representative may suspend an employee without pay for disciplinary reasons for a period not to exceed 30 workdays. Notice of suspension, with specific reasons for the action, shall be in writing or shall be given personally by the appointing authority or his representative and confirmed in writing within 24 hours...

9. An appointing authority may relieve employees from duty temporarily with pay for a period of up to 30 workdays to permit the appointing authority to investigate or make inquiries into charges and allegations made by or concerning the employee...

10. In any misconduct case involving a suspension or dismissal, should the Vermont Labor Relations Board find just cause for discipline, but determine that the penalty was inappropriate or excessive, the Vermont Labor Relations Board shall have the authority to impose a lesser form of discipline.

. . . .

ARTICLE 18
GRIEVANCE PROCEDURE

SECTION 2.

A grievance shall contain the following information:

... 4. Specific references to the pertinent section(s) of the contract... alleged to have been violated...

SECTION 7.

The parties agree, subject to applicable law, that every employee may freely institute complaints and/or grievances without threats, reprisal or harassment by the employer.

ARTICLE 34
OCCUPATIONAL SAFETY AND HEALTH LAWS

... 6. The employer shall make available at the duty station a form for the employee to report safety hazards and to receive a copy of the report filed. An employee or group of employees who complain or refer questions on job safety or health hazards, in good faith, to the employers, the VSEA, VOSHA, NIOSH (National Institute for Occupational Safety and Health) or any other relevant government agency shall not be discriminated against, intimidated or harassed therefore. Complaints of such discrimination, intimidation or harassment shall be processed under the grievance procedure.

... 9. An employee who believes he is being required to drive or operate unsafe vehicles or equipment shall report the condition immediately to his supervisor for appropriate action. The employee shall file a report describing the unsafe condition in accordance with the procedure of Section 6 of this article at his earliest convenience.

10. An employee who establishes a reasonable fear of death or serious injury resulting from performance of an assigned task shall be exonerated from a charge of insubordination of violation of the rule "work now, grieve later". This section shall not excuse non-performance of duty when risk of death or injury is an inherent part of the job.

. . . .

ARTICLE 72
WHISTLEBLOWER

1. A "Whistleblower" is defined as a person covered by this Agreement who makes public allegations of inefficiency or impropriety in government. No provisions of this Agreement shall be deemed to interfere with such an employee in the exercise of his constitutional right of free speech, and such person shall not be discriminated against in his employment with regard thereto.

... 3. Employees who possess information about inefficiency or impropriety in State government are urged to bring that information to the attention of appropriate officials prior to making public allegations (Grievant's Exhibit 2).

2. Grievant was a Transportation Maintenance Worker B who was employed by the Employer from April 21, 1980 to December 15, 1989, the latter being the effective date of Grievant's dismissal. Grievant worked out of the District 5 Garage in Colchester, Vermont. At all times relevant herein, Grievant's job responsibilities generally included repair and maintenance of certain assigned highway roads, including sanding and plowing in the winter months. In performance evaluations received by

Grievant during his tenure, Grievant always received overall ratings of "3" (i.e. "consistently meets job requirements/standards), and received at least "3" ratings, and sometimes "4" ratings ("frequently exceeds job requirements/standards") in the individual rating factors of relationship with co-workers, relationship with supervisors, and use of equipment and tools (Grievant's Exhibits 1, 13).

3. At the time of the events in question herein, Grievant's immediate supervisor was Ben Cantrell, who was supervised by David Blackmore, General Maintenance Supervisor at the Colchester Garage. Blackmore reported to John Wood, District Transportation Administrator, who reported to Frank Aldrich, Director of Maintenance. Paul Philbrook was and is Secretary of the Agency of Transportation.

4. At some point in about 1982, Grievant was assigned a 1982 International Dump Truck as his primary work vehicle. It is the policy of the Employer that an employee is responsible for the cleaning, inspection and daily maintenance of his or her assigned vehicle.

5. The care and daily maintenance of Department vehicles is governed by various written documents put forth by the Employer. In part, these documents provide:

> <u>Vehicle Condition Safety Reports</u>
>
> All vehicles in use shall be inspected at the beginning of each day to assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use...Coupling Devices, Safety Devices... Operating Controls...
>
> All defects shall be reported immediately and corrected before the equipment or vehicle is placed in service.
>
> <u>Safety</u>
> <u>Equipment and Vehicle Maintenance</u>
>
> . . . .
>
> <u>Operator's Responsibility</u>: It shall be the responsibility of the operator to notify his Supervisor of any unsafe condition of the vehicle he is to operate.

> Deadline Vehicles: No vehicle shall be operated when it is known that the vehicle has an unsafe condition that may reasonably cause an accident or may be in violation of current Vermont Motor Vehicle Law.
>
> Supervisor's Responsibility: Supervisors shall "Dead-line" vehicles upon learning such vehicles are unsafe, no matter how urgent may be the need for such vehicles. Personnel responsible for maintenance shall be notified immediately and proper repair accomplished before placing the vehicle back into service (Grievant's Exhibit 3, pages 3-4).

6. Operators to whom a vehicle is assigned are also required to complete Daily and Weekly Inspection Reports which are covered by Section 5280 of the Agency of Transportation Policy and Procedures Manual. In pertinent part, that Section states:

> Person(s) to whom the vehicle is assigned is responsible for preparing and submitting to the Central Garage the Daily and Weekly Operator Inspection Reports. He/she is also responsible for scheduling with the Central Garage/District for maintenance and assuring the vehicle is at the Central Garage/District at the scheduled time (Grievant's Exhibit 3, Page 1).

These reports, which a vehicle operator is required to submit to his or her supervisor on a weekly basis, are referred to as "Yellow Sheets".

7. Each Yellow Sheet is a form basically containing two sections: an upper section on which required daily maintenance checks are recorded, and a lower section on which required weekly maintenance checks are recorded. To the right of the weekly maintenance checks section, there is a column headed "Remarks" (Grievant's Exhibit 4).

8. During the term of Grievant's employment, Grievant generally took very good care of his vehicle. It has often been Grievant's practice to clean and care for his truck on weekends on his own time. Grievant also generally is regarded by management and co-workers as being a superior vehicle operator. Since 1982 and at all times relevant herein, Grievant has continued to have the same 1982 International Dump Truck assigned to him. Although Grievant is the primary operator, other employees use Grievant's truck on occasion.

9. On April 10, 1989, Grievant brought his truck to Central Garage for Norm Sheldrake, a mechanic, to look at. Grievant's strobe lights were not working, and Grievant complained to Sheldrake of an electrical smell coming from the strobe light box. The cab was dirty, containing old lunch bags and soda bottles which had been left by another employee, and Sheldrake thought that the smell might be coming from old food in the cab. Sheldrake felt that the condition of the truck was not consistent with Grievant's practice of keeping his truck clean, and asked Grievant why his truck was so messy. Grievant made two comments in response: that another employee had been driving the truck, and that additionally Grievant had been told that cleaning the truck was not part of his job description.

10. With regard to the latter comment, Grievant was referring to a conversation with Blackmore and Wood that had occurred a few years earlier when Grievant applied for a promotion. In the course of that conversation, Grievant had asked that his performance in caring for his vehicle be considered favorably in connection with his application. Grievant was told by Blackmore and/or Wood that care of his vehicle was not part of his job description and would not be considered.

11. Grievant's comment to Sheldrake that he was not required to care for his truck was not meant in earnest. Subsequent to the conversation with Sheldrake, Grievant immediately began cleaning out his truck.

12. Sheldrake placed a call to John Wood to ask that Wood resolve the problem with Grievant. Wood then called Blackmore and asked that Blackmore talk with Grievant and investigate the problem.

13. When Blackmore arrived, Grievant was still cleaning out the cab of the truck. Blackmore asked Grievant why he was refusing to take care of his truck, and instructed Grievant to go to Wood's office to discuss

the matter. Grievant continued to clean his truck, and said to Blackmore, "I'm not going to play your childish fucking games," or words to that effect.

14. Among employees at the Colchester Garage, profanity is a daily occurrence. In conversations between Blackmore and his subordinates, it is not unusual for Blackmore and the employees to use profanity with each other.

15. Blackmore went back to Wood's office and asked Wood to intervene. Wood then spoke to Grievant. Grievant explained to Wood that another employee had been driving his truck, and that previously Wood and Blackmore had told Grievant that caring for his truck was not part of his job description. Wood denied having made such a statement to Grievant, but said that Grievant should let Wood know if another employee had left Grievant's truck messy in which case Wood would make the other employee help clean out Grievant's truck. At that meeting, Grievant acknowledged his responsibility to keep his truck clean.

16. Wood did not mention Grievant's language towards Blackmore, and did not intend to give Grievant an oral reprimand. Grievant was not told he was being given an oral reprimand. Following the meeting with Wood, Grievant worked the remainder of the day without incident. Subsequently, on April 26, 1989, Grievant did receive written notice from Wood that he had received a warning on this date. [See Finding No. 28, following.]

17. On Grievant's truck, there is a piston-type mechanism which controls the raising and lowering of the dump bed. Sometime in early 1989, Grievant's truck developed stress cracks at the point where the dump bed piston connects to the truck body. Grievant believed the condition was serious and required immediate attention. Grievant reported the

problem to Norm Sheldrake, a mechanic at Central Garage. When Sheldrake inspected Grievant's truck, Sheldrake did not believe that the problem required immediate repair.

18. Grievant had mentioned the piston problem on the Yellow Sheet for the week of March 11, 1989, but had not mentioned the problem on any other Yellow Sheets. It was Grievant's understanding that repair problems only needed to be written once on the Yellow Sheets. At approximately the end of March or beginning of April, Grievant asked a mechanic why the cracks surrounding the piston connection had not yet been repaired. Grievant understood from the conversation that the mechanic had not yet received permission from Blackmore to repair the truck.

19. On April 11, 1989, the day following the "dirty" truck incident, upon arriving at work, Grievant found Jim Dubuque, a mechanic at Central Garage, and Blackmore in conversation. Grievant was angry, and first asked Dubuque and then Blackmore why his truck had not yet been repaired. Blackmore said he did not know what Grievant was talking about, and asked Grievant if he had been regularly writing down the problem on the Yellow Sheets. At the time of the conversation, Grievant understood Blackmore to ask if he had been writing the repair problem down daily, while Blackmore understood that he was asking Grievant if he was indicating the problem on a weekly basis on the yellow sheets. Grievant said to Blackmore something to the effect of, "We don't have to write it down every day. I wrote it on the fucking thing once, and I'm not going to write it again." Blackmore asked Grievant if he was refusing a direct order. Grievant responded, "this one I am," or words to that effect.

20. At some point in 1988, Blackmore spoke with the employees at the Colchester Garage and said that at the request of Central Garage all

non-critical repair problems were to be recorded on the weekly Yellow Sheets. However, for critical problems requiring immediate attention. Blackmore told the employees that the operator could coordinate directly with the mechanics at Central Garage. It was Blackmore's intent to require that all problems, whether critical or non-critical, be repeatedly recorded each week until the problem was fixed. Subsequent to Blackmore's directive, the practice of writing down requested repairs on the yellow sheets varied. Some operators would write down requested repairs on a weekly basis until the repair had been completed; some operators would write the repair down only once; some operators would not write down needed repairs at all but would normally coordinate directly with the mechanic for all repair problems.

21. As a result of Grievant's use of profanity and refusal of a direct order on April 11, 1989, Blackmore ordered Grievant to go home for the day. Grievant was not paid for the day. Grievant was not advised that he had a right to have a VSEA representative present at that time he was suspended. Grievant was not sent a letter of suspension within 24 hours as required by Article 17 of the Contract. Grievant did not receive a written notice of suspension until April 26, 1989 (See Finding No. 28, following).

22. At the time of the events at issue herein, Blackmore did not have authority to suspend employees without pay, and was not familiar with the Contract requirement that a suspension be followed within 24 hours by a letter confirming the suspension and stating the reasons therefore.

23. On April 12, 1989, Grievant was called to Blackmore's office to talk about events of the prior two days. In addition to asking Cantrell, Grievant's immediate supervisor, to sit in on the meeting, Blackmore asked two other employees to sit in as witnesses for him. At the meeting, Blackmore told Grievant that in the future profanity, threats, and refusal to follow orders would not be tolerated.

24. Grievant was not told at the April 12 meeting that he was being given an oral reprimand. Grievant was not advised that he had a right to have a VSEA representative present. Subsequently, Grievant did receive written notice from Wood that he had received a verbal warning on this date. [See Finding No. 28, following.]

25. At the time of the events of April 10 - 12, Blackmore and Wood were aware that Grievant was having personal difficulties. Grievant's wife had left him, and Grievant's children were separated from him.

26. On or about April 18, 1989, VSEA filed a Step I grievance over the events of April 10-12, which grievance was denied by Blackmore.

27. On April 26, 1989, VSEA filed a grievance on behalf of Grievant, grieving the one-day suspension imposed on Grievant on April 11, 1989. The grievance alleged that Articles 17 and 18 of the Contract were violated, and contended the suspension was unwarranted, imposed without just cause, inappropriately bypassed progressive discipline and violated Grievant's due process rights. This grievance was denied (Grievant's Exhibit 5, pages 2-7).

28. On or about April 26, 1989, Grievant was called to a meeting with Blackmore and Wood and was given a letter of written warning for the events of April 10-12. The letter, dated April 26, 1989, was written by Wood. In sum, that letter states:

> This letter is to inform you that in the future any personal threats, refusal of a direct order or verbal abuse to any supervisor is considered gross misconduct. Any of these actions may result in immediate dismissal.
>
> On April 10, 1989, you were warned about these actions. On April 11, 1989, you were suspended for eight (8) hours for these same actions. On April 12, 1989, you were verbally warned. This letter is your written warning (Grievant's Exhibit 5, Page 1).

29. On May 25, 1989, WSEA filed a Step III grievance on behalf of Grievant, contending that oral reprimands of April 10 and 12, 1989, the one-day suspension of April 11, 1989, and the written reprimand of April 26, 1989, imposed on Grievant violated Articles 17 and 18 of the Contract. Included among the allegations made in the grievance were that the April 11 suspension violated Article 17 of the Contract and violated Grievant's due process rights. By decision of August 2, 1989, Thomas Ball, Director of Employee Relations, found that on April 10, 1989, no oral reprimand had occurred; and that, with regard to the oral reprimand of April 12, 1989 and the written reprimand of April 26, 1989, the grievance was granted. As a result of this decision, the Employer understood that any actions arising from the events of April 10, 12, and 26 were to be rescinded and that, in effect, only the suspension of April 11 remained (Grievant's Exhibit 5, pages 8-11).

30. In an apparent effort to comply with the instructions of Ball concerning written confirmation of a suspension, on August 8, 1989, Wood wrote Grievant a letter. In sum, that letter states:

> On April 11, 1989, you were given a one day suspension without pay for insubordination toward your general foreman, David Blackmore (Grievant's Exhibit 5, page 12).

31. During the morning of August 31, 1989, Grievant became ill with a headache and shortness of breath. Grievant spoke with his immediate supervisor, Ben Cantrell, and asked if he could leave work because he was ill. Cantrell told Grievant to make a few more job trips and eat lunch. If Grievant still did not feel well after lunch, Cantrell said, Grievant could go home.

32. Grievant wanted to go home immediately, but did not wish to argue with Cantrell over the radio. Grievant worked until lunch time and returned to the garage to eat lunch.

33. When Grievant came in for lunch, he went to see Blackmore and asked Blackmore something to the effect of whether an employee's health or the roads come first. Grievant then explained that he was sick and wanted to go home, but that Cantrell had said he should not go home until after lunch. Blackmore suspected Grievant of drug abuse and commented on Grievant's red eyes. Blackmore also suggested to Grievant that Grievant wanted to go home because it was payday. Grievant asked Blackmore what would happen if he went out on the roads sick and had an accident. Blackmore inquired as to whether Grievant was suggesting that he would crash his truck on purpose. Grievant denied that he meant anything other than that he was sick and should not be driving. Blackmore told Grievant to follow Cantrell's instructions.

34. Some 30 minutes thereafter, Grievant was in the lunchroom eating lunch. Other employees were present. Blackmore was outside his office, some distance away from the lunchroom. Grievant answered the telephone in the lunchroom. The call was for Blackmore. Grievant walked to the door of the lunchroom and hollered out into the garage, "Blackmore, telephone," or words to that effect. As Grievant was turning to go back into the lunchroom, he added, "Asshole." Grievant did not intend for Blackmore to hear the comment, and did not say it in as loud a voice as "Blackmore, telephone." Grievant was angry that he had been hassled about being sick and that he had not been allowed to go home. Blackmore did hear Grievant say "asshole".

35. After lunch Blackmore told Grievant that he was giving Grievant a verbal warning for having called him an "asshole". Grievant denied having done so. Blackmore said that he would check with other employees who were in the lunchroom at the time, and if they denied having heard the comment Blackmore would drop the warning.

36. At or about the same time, Grievant called the VSEA office in Montpelier to ask how he should go about going home sick. Grievant was told to let his supervisor know that he was sick and was going home.

37. Grievant then went into Blackmore's office and told Blackmore that he was sick, had made a doctor's appointment and was going home. Blackmore asked Grievant why Grievant had not just said that in the beginning. Grievant asked Blackmore whether the verbal reprimand still stood. Blackmore stated that if other employees in the lunchroom heard the comment, the warning would stand.

38. As Grievant left Blackmore's office to go home, Blackmore followed Grievant out. Grievant turned and walked back to Blackmore, and told Blackmore that two other foremen had been hassling Grievant about his family problems. Blackmore said that Grievant should take that problem up with the foremen directly. Grievant made some physical motion as if he were going to strike Blackmore and then, without actually striking Blackmore, said "see how quick it can happen", or words to that effect.

39. Grievant spent the afternoon at the hospital and was given a catscan and other diagnostic treatment for his headache and shortness of breath (Grievant's Exhibit 6).

40. After Grievant had left, Blackmore asked Paul Liberty, a co-worker of Grievant's who had been in the room with Grievant during lunch, whether Liberty had heard the conversation in which Grievant allegedly called Blackmore an "asshole". Liberty was hesitant to become involved, and asked Blackmore what the consequences might be. Blackmore told Liberty that Grievant had committed a serious offense which could result in Grievant's suspension or dismissal. Blackmore also told Liberty he suspected Grievant of being on drugs. Liberty confirmed that Grievant

had said "asshole" in connection with the telephone call for Blackmore. Liberty suggested to Blackmore that Blackmore talk to Grievant and work it out. Blackmore told Liberty that he would do so.

41. Later that afternoon, Blackmore went to see Wood. Blackmore reported to Wood that Grievant had called Blackmore an "asshole", that Grievant had subsequently taken a swing at him, that Blackmore had leaned back and Grievant's swing had stopped just short of Blackmore's face, and that Grievant then said to Blackmore, "See how fast it can happen," or words to that effect.

42. That evening Liberty called Grievant at home to tell him about his conversation with Blackmore. Liberty told Grievant that Blackmore suspected Grievant of being on drugs, and warned Grievant that Blackmore was contemplating Grievant's suspension or dismissal.

43. The following day, September 1, 1989, Blackmore invited Grievant to sit in his truck and talk man to man. Grievant told Blackmore he did not know whether he could speak with him without a VSEA representative being present. Grievant had been told this by a VSEA representative because at the time Grievant was involved in grievance proceedings over the April disciplinary events, and because in the past Grievant had not been advised by Blackmore that he could have a VSEA representative present during disciplinary actions. Grievant refused to talk with Blackmore, and the conversation ended.

44. On or about September 8, 1989, Grievant was called to a meeting with Wood and Blackmore. Jim Dubuque, a union steward, was also present. Grievant was asked for his version of the events of August 31. Grievant denied having taken a swing at Blackmore, or saying, "See how fast it can happen," or words to that effect. Grievant was aware at that meeting that

Blackmore and Wood were considering disciplining Grievant for calling Blackmore an "asshole" and for threatening gestures and comments to Blackmore on August 31, 1989.

45. At the conclusion of the meeting, Grievant was given a letter from Wood, dated September 8, 1989, which states, in sum:

> On April 11, 1989, you were given a one day suspension without pay for insubordination toward General Foreman David Blackmore.
>
> Again on August 31, 1989, you were insubordinate toward General Foreman David Blackmore.
>
> This is a written reprimand for your behavior on August 31 and a warning that a reoccurrence of this type of behavior will result in immediate suspension for up to thirty days or dismissal (Grievant's Exhibit 7, page 1).

46. Wood gave Grievant the written warning of September 8, 1989, because of Grievant's profanity and threatening gestures of August 31, 1989. Wood believed that on August 31, 1989, Grievant had at least started to swing at Blackmore.

47. On September 9, 1989 and November 8, 1989, respectively, WSEA filed Step II and Step III grievances on behalf of Grievant with respect to the written reprimand Grievant received on September 8, 1989, which grievances were denied (Grievant's Exhibit 7, pages 2-10).

48. Wood has had more complaints from employees about Blackmore's management style than he has had for previous foremen in Blackmore's position. Wood attributes the increased number of complaints to Blackmore's age, as Blackmore is younger than the previous foremen who held that position.

49. On November 30, 1989, Grievant and other employees were called into work about 4:00 AM because of a snowstorm. Shortly thereafter, Grievant and the other employees began salting and plowing the roads. At the time, Blackmore was also patrolling the roads in his pickup.

Grievant, in his vehicle, overheard a radio conversation between Blackmore and Mark Manning, an equipment operator. Manning had previously asked Blackmore to authorize the purchase of a new drill press, which Blackmore had declined to do because of the cost. Over the radio that morning, Manning informed Blackmore that the drill press had been temporarily repaired but that a new one would still be needed. Manning said to Blackmore, "Tell me we can order one. Lie to me," or words to that effect. Blackmore then facetiously told Manning that he could order the press. Grievant interrupted the conversation by interjecting over the radio, "Yea, you're good at that," or words to that affect. Grievant meant that Blackmore was good at lying.

50. Grievant and Blackmore were both back in the garage by about 6:30 AM. As Grievant was seeking instructions whether to use salt or sand for the next road treatment, Blackmore said to Grievant, "Keep your fucking comments to yourself," or words to that effect. Blackmore was referring to Grievant's comment interjected into the radio conversation that morning. Blackmore and Grievant were both angry. Grievant said something to Blackmore to the effect that Blackmore and Wood were a couple of "lying fags". Blackmore was wearing a baseball cap. Grievant brought his hand up, palm open and struck the brim of Blackmore's baseball cap so that the cap came off and fell behind Blackmore. Grievant then turned and began walking to his truck to pick up a new load of sand. As Grievant was walking away, Blackmore told Grievant to go home. Grievant did not answer and kept walking. Grievant loaded his truck with sand. Blackmore then told Cantrell to tell Grievant to park his truck and go home. Cantrell intercepted Grievant in the parking lot and told Grievant that Blackmore would make trouble if Grievant did not go home.

52. After speaking with Cantrell, Grievant intended to go home. Grievant drove the truck back to the garage. It was Grievant's understanding that he was expected to return the truck to the garage after each use.

53. When Grievant arrived at the garage, the overhead door which served as the vehicle entrance to the garage was closed. Grievant parked the truck on the ramp leading up to the door, and got out to open the door. It was still snowing and there was approximately 3" of snow on the ramp. It is the practice of the garage not to salt the ramp until it has stopped snowing. After opening the door, Grievant, who was still angry from his encounter with Blackmore, got back in the truck, released the emergency brake, pressed in the clutch, put the truck in the lowest gear, depressed the accelerator and let out the clutch. Then there was a loud noise from the truck.

54. Grievant set the parking brake and jumped out of the truck. He was immediately joined by Cantrell. Grievant and Cantrell looked under the truck. The rear of the truck was vertically displaced; i.e., the back of the truck body was lower than it should be and was resting down on top of the truck's rear end mechanism. At the time there did not appear to be any lateral displacement of the wheel structure toward the front or back of the truck body. Cantrell put an arm around Grievant and said he thought Grievant had broken the drive shaft. Grievant told Cantrell that he was sorry and asked to be allowed to stay and help fix the truck. Cantrell told Grievant he should go home. Grievant left the truck parked on the ramp. The emergency brake was on, and the truck bed had a full load of sand weighing approximately 8-10 tons.

55. At the time of the accident, a number of people were in the immediate vicinity and heard a loud bang. No one heard any unusual noises prior to

that time, high engine revolutions or otherwise. On the way to the garage, Grievant appeared to be driving the truck normally. Grievant does not know what caused the accident. The Employer has not proven by a preponderance of the evidence that Grievant intentionally damaged the truck.

56. Blackmore instructed other employees to move the truck into the garage. Part of the load of sand was dumped off, and a front end loader was used to pick up Grievant's truck and bring it up the ramp and into a vehicle stall in the garage. Following was the condition of the truck at that time: the differential assembly was displaced approximately 18" on one side of the truck and approximately 3" on the other so that the rear wheels rested up against the battery box; the rear end mechanism extended out from the back of the truck; the airlines of the braking system in the rear end had ripped out; the universal joint was broken and its housing bent; and the universal joint had also been moved forward and broken the horizontal cross-member that holds the truck frame together. The truck was not subjected to a damage inspection prior to being moved by the front end loader.

57. Subsequent to Grievant's vehicle being moved into the garage, Blackmore called Wood. Blackmore relayed to Wood his version of the events of the day. Blackmore asked that Wood walk over to the garage and look at Grievant's truck. After Wood had inspected the truck, he called Central Garage and asked for a formal damage assessment. Central Garage contacted J&B International, the truck's manufacturer, who arranged to send a representative the following afternoon.

58. Wood and Blackmore then went to Montpelier, where they met with Jim Blakesley, personnel officer; Frank Aldrich, Director of Maintenance;

and William McManis, Transportation Human Resources Chief. During the meeting, Wood recommended that Grievant be dismissed. Wood's recommendation was based on Wood's belief that Grievant had intentionally damaged the truck; and on Blackmore's representations that Grievant had taken a swing at Blackmore that morning, had accused Blackmore of being a liar, and had used obscene language. As a result of that meeting, Aldrich concurred with Wood's recommendation that Grievant be dismissed.

59. Immediately following the meeting, Wood wrote a letter, dated November 30, 1989, to Grievant which states, in sum:

> This is to notify you that as of Thursday, November 30, 1989, you are on administrative leave with pay until further notice. This action has been taken because of your verbal profane abuse and threatening and threatening actions toward general maintenance supervisor David Blackmore and gross misconduct resulting in major damage to Truck No. 559.
>
> You will be notified as soon as possible regarding the final action to be taken (Grievant's Exhibit 9).

60. McManis wrote a letter, dated November 30, 1989, to Grievant which states, in sum:

> I am contemplating your dismissal from the position of Transportation Maintenance Worker B. You have the right to respond to the specific allegations listed below, either orally or in writing, before the final decision is made. You have the right to Vermont State Employee's Association representation during the proceedings connected with this action.
>
> The reasons dismissal is contemplated is that on Thursday, November 30, 1989, you verbally abused General Maintenance Supervisor, David Blackmore and District Transportation Administrator, John Wood, by using profanity and calling them liars. You physically threatened David Blackmore by taking a swing at him knowing his hat off. You intentionally abused truck number 559 causing significant mechanical damage, down time and repair costs (Grievant's Exhibit 10).

61. Following the events and meeting of November 30, 1989, Grievant's truck was examined. On the afternoon of December 1, 1989, a representative of J&B International arrived at the Colchester Garage and inspected the truck.

62. Subsequently, several mechanics at Central Garage repaired the truck. The cost of parts for the repair, including a labor charge of $60 to pick up parts, totalled $677.94. Several days of employee labor were also required to repair Grievant's truck (Grievant's Exhibit 11, page 2).

63. During the process of repair, it was found that the key or pivotal damage to Grievant's truck was to two structural elements known generically within the industry as "U-bolts". These structural devices essentially hold the rear-end assembly together. Upon inspection, it was observed that the U-bolts in Grievant's truck had stretched somewhat and then broken, thus allowing the rear wheel axle to become laterally displaced with respect to the truck body.

64. Similar damage to other vehicles has been observed in the past by mechanics of the Employer in rear-end collisions (i.e., when one vehicle had been "rear-ended" by another), and when a dump truck carrying a full load of sand had gone off the road down into a gully and had been towed by its rear end backwards up onto the road.

65. In Grievant's truck, the U-bolts which had broken were of 5/8" diameter steel. When the truck was repaired, these bolts were replaced with new bolts of 3/4" diameter steel. The plate to which the U-bolts connect was also replaced with a larger plate of heavier gauge steel.

66. It is standard practice at the Colchester Garage to replace damaged U-bolts with those of the larger 3/4" diameter. It is also the practice, whenever possible, to replace the plate to which the U-bolts connect with a plate of heavier gauge. This practice is the result of recommendations made by J&B International, the truck manufacturer. Over a period of several years, J&B observed that a number of trucks had problems similar to Grievant's where the U-bolts had either stretched, cracked or

broken. J&B determined that the original U-bolts and connecting plate, with which Grievant's truck was equipped, were too light to withstand the weight and torque of normal truck operations.

57. On December 4, 1989, Richard Duprey, Assistant Motor Shop Supervisor at Central Garage, inspected the damaged parts which had been removed from Grievant's truck. Duprey also spoke with Blackmore and Dave Bora, one of the employees who repaired the vehicle. Duprey had not seen the truck prior to its repair, but learned of the details of the accident from this conversation with Blackmore and Bora. Duprey then prepared a written damage report, dated December 5, 1989. In pertinent part, that report states:

> At the time of my inspection the vehicle had been repaired and put back into service. All the information about the accident that I will be reporting is from talking to one of the mechanics that worked on and helped move the truck inside for repairs.
>
> The operator moved the truck 7559 (82-17-217) around in front of the building, with a full load of sand on, to be put inside. He stopped on the incline in front of the door and waited for someone to open it. I was informed that the ramp up to the door was wet but was not snow covered, it had been salted earlier. The door was opened to let the truck in. The truck not only did not make it into the garage but was next seen just outside the door with the rear axle/differential assembly broken out of its mounting hangers and the wheels up against the battery box on the right side of the air dryer assembly on the left side.
>
> After my inspection of the broken parts and questioning the mechanic on the damaged parts and repairs made, it was clear to me that an extreme amount of torque was applied to the drive train. The combination of the fully loaded truck, uphill grade, and the excessive amount of torque applied caused spring U-bolts to break on one side and the bottom spring U-bolt plate to break on the other side. This caused the rear axle/differential assembly to shift forward and upward letting the drive line come in contact with the second from rear crossmember causing the remainder of the damage to the truck. The broken spring U-bolt and plate show no signs of fatigue from age or defective materials. The breaks are clean as with what occurs from shock loading. The other damage was to the drive shaft and yoke, two spring torque leaves, differential yoke, breaking of one U-joint, one air brake chamber and hoses, one camshaft bracket, and the two speed motor.

> It is my opinion the damage to this vehicle most likely was caused by the quick release of the clutch in combination with excessive engine RPM which is improper and abusive operation of the vehicle (Grievant's Exhibit 11, Page 1).

68. Duprey was unable to conclude whether the damage to Grievant's vehicle was intentional.

69. In response to McManis' November 30, 1989, letter to him, Grievant requested a meeting concerning his contemplated dismissal. On December 8, 1989, a meeting was held on the subject of Grievant's dismissal. At the meeting, Grievant admitted tipping off Blackmore's hat but denied having taken a swing at Blackmore or intentionally having damaged his truck.

70. On December 12, 1989, McManis wrote Grievant a letter confirming the Employer's decision to dismiss Grievant. In pertinent part, that letter states:

> The decision has been made to dismiss you from your position of Transportation Maintenance Worker B effective December 15, 1989. You were notified by letter dated November 30, 1989, that your dismissal was contemplated and the reasons why. On Friday, December 8, 1989, a meeting was held at your request to give you a chance to present points of disagreement with what the Agency believed the facts to be; to identify any mitigating circumstances which should be considered; and to offer any other argument you felt was appropriate.
>
> This decision was made due to the insufficient evidence presented to the Agency to change the opinion that gross misconduct did occur. You will receive two weeks pay in lieu of notice (Grievant's Exhibit 12, Page 1).

71. In deciding to dismiss Grievant, McManis concluded that Grievant's offenses were very serious. McManis concluded that Grievant had intentionally damaged the truck, and that Grievant's actions toward Blackmore on November 30 continued a pattern of conflicts he had with Blackmore, with each incident being increasingly more serious. McManis considered that Grievant's work record over nine years indicated

consistently satisfactory performance. However, McManis concluded that Grievant's actions had escalated to the point that they could not be tolerated any longer and supervisory confidence was destroyed. McManis decided that Grievant could not be rehabilitated, and that alternative sanctions less than dismissal were insufficient.

OPINION

Docket No. 89-61

Grievant contends that the Employer violated various provisions of the Contract through oral reprimands on April 10 and 12, 1989; a one-day suspension on April 11, 1989; and a written reprimand of April 26, 1989.

We can quickly address Grievant's allegations concerning oral reprimands of April 10 and 12, 1989; and a written reprimand of April 26, 1989. At Step III of the grievance procedure on these issues, the Step III hearing officer found that no oral reprimand had occurred on April 10, 1989; and granted the grievance with regard to the oral reprimand of April 12, 1989, and the written reprimand of April 26, 1989. Accordingly, any actions grieved with respect to these issues no longer are in effect.

Jurisdiction is conferred on the Board under the Contract only where an actual controversy between the parties exists. In re Grievance of Friel, 141 Vt. 505 (1982). An actual controversy between the Employer and Grievant no longer exists herein with respect to alleged improper April 10 and April 12 oral reprimands, and an April 26 written reprimand, since no such actions remain in effect.

This means that the only remaining issue before the Board in Docket No. 89-61 concerns the one-day suspension Grievant received on April 11, 1989. Among the allegations made by Grievant is that the suspension violated Article 17 of the Contract because a written notice of suspension

was not provided to Grievant pursuant to the requirements of that provision of the Contract. Article 17, Section 8, provides that "(n)otice of suspension, with specific reasons for the action, shall be in writing or shall be given personally by the appointing authority or his representative and confirmed in writing within 24 hours".

The Employer contends that the Board is without jurisdiction to decide this claim because Grievant failed to raise this allegation in his Step II or Step III grievances. We disagree, and conclude that the issue was adequately raised at the earlier steps of the grievance procedure.

The grievance filed herein at Steps II and III sufficiently raised an alleged violation of the contractual requirement of a written letter of suspension within 24 hours by citing the Contract article wherein that provision is found, Article 17, and alleging that the Employer "violated (G)rievant's due process rights". The Vermont Supreme Court has held that a notice of dismissal involves due process considerations. Grievance of Morrissey, 149 Vt. 1, 10 (1987). Similarly, a notice of the lesser disciplinary action of suspension also involves due process considerations. Thus, by contending that Article 17 and Grievant's due process rights were violated, Grievant sufficiently raised the issue of failure to provide Grievant with a letter of suspension within 24 hours.

It is clear on the merits of this issue that the Employer violated this provision of the Contract. A written notice of suspension was not provided to Grievant until April 26, 1989, 15 days after he was suspended, and this notice did not contain "specific reasons" for the action.

We conclude that this failure by the Employer warrants the rescinding of the one-day suspension of Grievant. In Morrissey, supra, at 10, the Vermont Supreme Court indicated that "(d)ue process considerations require that a notice of dismissal be sufficiently specific to allow adequate preparation for the employee's defense", even where a written notice of dismissal was not mandated. In another case, where a written notice of dismissal with stated reasons was required to be given an employee within 24 hours by a contract, the Court essentially stated that any reasons given for dismissal outside of reasons stated in the dismissal letter could not be used in defending the dismissal of the employee. In re Grievance of Warren (Unpublished Decision, August 22, 1986, Sup. Ct. Docket No. 83-640). Grievance of Warren, 10 VLRB 65, 68 (1987).

We see no reason why the Court rulings in Morrissey and Warren should not guide us in this case involving the suspension of the employee. Under the circumstances, where the Contract requires written notice of suspension with reasons within 24 hours, and Grievant did not receive any written notice of suspension until 15 days after his suspension, which notice lacked specific reasons, we believe the Employer's failure warrants rescinding the suspension. We consistently have held that we will not look beyond the reasons given by the employer in the disciplinary letter for the disciplinary action taken. Grievance of Hurlburt, 9 VLRB 174, 185 (1986) In this case, failure of the Employer to provide any written notice with reasons, at any time close to the suspension, raises sufficient due process concerns warranting setting aside the suspension. The Employer did not timely set forth any reasons by which it can defend Grievant's suspension.

Since we have rescinded the suspension on this basis, we need not reach other allegations made by Grievant concerning the suspension.

Docket No. 90-13

Grievant alleges that his September 8, 1989, written reprimand violated Article 17 of the contract because it was without just cause, inappropriately bypassed progressive discipline, was too severe, and was not specific enough to provide adequate notice.

We first address Grievant's allegations that the written reprimand was not specific enough to provide adequate notice. The written reprimand which Grievant received simply provided, as a reason, that "on August 31, 1989, you were insubordinate toward General Foreman David Blackmore".

The Contract, contrary to the requirement for suspension and dismissal, does not explicitly require that "reasons" be given for a written reprimand. However, we believe the ruling in Morrissey, supra, applies to a written reprimand to the extent that due process considerations require that a notice of reprimand be sufficiently specific to allow adequate preparation for the employee's defense. Contemporaneous oral notification may combine with the disciplinary letter to provide adequate specificity. Id, at 10-11.

We conclude that these specificity requirements were met here through the combination of the meeting between Grievant and his supervisors on the day he received the letter of reprimand and the letter of reprimand itself. At the meeting, it was discussed that the Employer was considering disciplining Grievant for calling Blackmore an "asshole" and for threatening gestures and comments to Blackmore on

August 31, 1989. The written reprimand which he received at the conclusion of the meeting for being "insubordinate" on August 31, 1989, was a more general statement of the specific charges discussed at the meeting. Grievant was adequately able to prepare his defense to the disciplinary action based on the meeting and the letter.

On the merits, we conclude that just cause existed for the reprimand. Grievant was charged with being insubordinate, and a charge of insubordination is supported by an employee's attempt to undermine a superior's authority. Morrissey, supra. Use of objectionable language or abusive behavior toward a supervisor may be deemed to be insubordinate under certain circumstances because it reveals disrespect of management's authority. Roberts' Dictionary of Industrial Relations, 3rd Edition, Harold Roberts (BNA Books, 1986).

The evidence indicates that on August 31, 1989, Grievant called Blackmore an "asshole", loud enough for Blackmore and other employees to hear; made a physical motion as if he were going to strike Blackmore; and then, without actually striking Blackmore, said "see how quick it can happen", or words to that effect. These were the actions for which Grievant was reprimanded, and they demonstrate disrespect and an attempt by Grievant to undermine Blackmore's authority. Grievant had at least implied notice that such actions could lead to disciplinary action, and these actions by Grievant were serious enough misconduct to warrant bypassing the lowest step of progressive discipline, oral reprimand, and proceeding to the next step of written reprimand.

Docket No. 90-61

Grievant contends that his dismissal was without just cause. Grievant contends that the penalty of dismissal constituted inappropriate bypassing of progressive discipline, was so severe as to constitute an abuse of discretion, and was unreasonable.

The ultimate criterion of just cause is whether the employer acted reasonably in discharging an employee for misconduct. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). There are two requisite elements which establish just cause for dismissal: 1) that it is reasonable to discharge an employee because of certain conduct, Id, and 2) the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge. Id. In re Grievance of Yashko, 138 Vt. 364 (1980). On the issue of fair notice, the ultimate question for the Board is whether the conduct was or should have been known to the employee to be prohibited to the employer. Brooks, supra.

Our review does not go beyond the reasons given for its actions by the employer in the dismissal letter. In re Grievance of Warren, supra. Failure of the Employer to prove by a preponderance of the evidence all the particulars of the dismissal letter does not require reversal of a dismissal action. Grievance of Regan, 8 VLRB 340, 366 (1985). In such cases, the Board must determine whether the remaining proven charges justify the penalty. Grievance of Colleran and Britt, supra.

The Employer charges Grievant with the following acts of misconduct on November 30, 1989: 1) verbally abusing supervisors David Blackmore and John Wood by using profanity and calling them liars; 2)

physically threatening Blackmore "by taking a swing at him... knocking his hat off"; and 3) intentionally abusing his truck, causing significant mechanical damage, down time and repair costs.

The Employer has substantially established by a preponderance of the evidence two of the three charges against Grievant. Grievant did "verbally abuse" Blackmore and Wood by calling them something to the effect of "lying fags", and earlier that day telling Blackmore he was good at lying. Grievant did strike the brim of Blackmore's baseball cap so that the cap came off Blackmore's head and fell behind Blackmore. However, the Employer has not demonstrated by a preponderance of the evidence that Grievant intentionally damaged his truck.

We must determine whether the remaining proven charges justify the penalty of dismissal. We look to the specific factors articulated in Grievance of Colleran and Britt, supra, to determine the reasonableness of the dismissal imposed based on the proven charges.

Grievant's offenses were serious. His actions of November 30, 1989, similarly to his actions of August 31, 1989, demonstrated a disrespect for his supervisors and an attempt to undermine their authority. The actions of November 30 were more serious than his actions of August 30, in that he made physical contact in a threatening way with his supervisor.

Grievant's offenses adversely affected supervisor's confidence in his ability to perform assigned duties. An employee's relationship with supervisors is central to their job performance, and Grievant demonstrated disrespect for supervisors and sought to undermine their authority through his offenses.

Grievant had fair notice that his offenses were prohibited by the Employer. All employees have implied notice that they should not engage in conduct which undermines the authority of supervisors and/or indicates disrespect for supervisors. Moreover, Grievant had express notice that such conduct was prohibited because he was reprimanded on September 8 for conduct demonstrating disrespect for supervisors and undermining of their authority.

However, analysis of all the factors in this case leads us to conclude that the Employer acted unreasonably in bypassing progressive discipline and imposing the maximum penalty of dismissal for Grievant's proven offenses.

Grievant's past work record and disciplinary record during his nine years of employment weigh in favor of his retaining his job. In his first eight years plus of employment. Grievant was not disciplined. He was considered to be a good truck operator who took very good care of his vehicle. His relationships with co-workers and supervisors was satisfactory during this period.

It was only during 1989 that serious problems manifested themselves, and it is apparent that personal problems of Grievant combined with personality conflicts Grievant had with Blackmore resulted in his displays of misconduct. These mitigating circumstances do not excuse Grievant's misconduct but are relevant in judging whether the Employer acted unreasonably in bypassing progressive discipline.

Under the circumstances, we conclude that the Employer did act unreasonably in bypassing progressive discipline. Grievant had been given a written reprimand three months earlier for similar, and

somewhat less egregious, behavior. The disciplinary article of the Contract provides that the State shall impose a procedure of progressive discipline in increasing order of severity, while recognizing that there are appropriate cases that may warrant the State bypassing progressive discipline. Given the proven charges stemming from Grievant's November 30 misconduct, the reasonable action by the Employer was to impose the next progressively more severe action for the more severe similar offense, but not to bypass progressive discipline and dismiss Grievant. A suspension was an adequate and effective alternative sanction to impose on Grievant to deter such conduct by him or others in the future. A lengthy suspension would have served as effective notice to Grievant that similar conduct in the future would have resulted in his dismissal.

We will impose the maximum penalty short of dismissal allowed by the Contract - a 30-day suspension. This is a severe penalty warranted by Grievant's misconduct, while recognizing that all charges made by Grievant were not proven, Grievant had a good work and disciplinary record until shortly before his dismissal, and mitigating circumstances did exist.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Bruce King is DENIED in Docket No. 90-13, and is SUSTAINED in Docket Nos. 89-61 and 90-5; and

1. Grievant shall be reinstated to his position as Transportation Maintenance Worker B, Department of Highways, Agency of Transportation, at the District 5 Garage in Colchester, Vermont;

2. Grievant shall be awarded back pay and benefits from the date commencing 30 working days from the date of his discharge until his reinstatement for all hours of his regularly assigned shift, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim;

3. The interest due Grievant on back pay shall be computed on gross pay and shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing 30 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 unemployment compensation received by Grievant during the payroll period;

4. Grievant shall be awarded back pay for the one day suspension he received on April 11, 1989, plus interest at the rate of 12 percent per annum which shall run from the date the paycheck was due immediately following Grievant's suspension and ending on the date Grievant receives such payment; and

5. The parties shall submit to the Board by November 16, 1990, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date 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.

Dated this 15th day of November, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer

Catherine L. Frank

Leslie G. Seaver