

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 92-5
VALVETTE MASON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 22, 1992, the Vermont Labor Relations Board received a letter from Valvette Mason ("Grievant"), in which she indicated that she wanted to "appeal the end results of (her) recent dismissal", and wanted to appeal her "harsh dismissal", from the position of Clerk/Dispatcher" with the State of Vermont, Department of Public Safety ("Employer"). As filed, Grievant's "appeal" did not conform to the Rules of Practice of the Board and the Board requested that her amended appeal conforming to Board Rules be received by the Board by February 13, 1992. On February 13, 1992, the Board received an amended grievance filed by the Vermont State Employees' Association ("VSEA") on behalf of Grievant.

The amended grievance alleged that: 1) the Employer violated Article 14 of the collective bargaining agreement between the State and VSEA for the Non-Management Unit, effective for the period July 1, 1990 to June 30, 1992 ("Contract"), by subjecting Grievant to corrective action and dismissing her without just cause; 2) the Employer violated Article 14 of the Contract by failing to follow progressive corrective action; and 3) the Employer violated Article 14 of the Contract and Chapter 13 of the Rules and Regulations for Personnel Administration by giving her an improper "promotional evaluation".

On March 9, 1992, the Employer filed an answer to the grievance and a motion to dismiss the grievance as untimely. On March 13, 1992, Grievant filed a motion to preclude the Employer from filing an answer to the grievance, and deem the Employer's failure to file a timely answer as an admission of the material facts alleged in the grievance and a waiver of an evidentiary hearing. After an August 6, 1992, hearing, the Board issued a Memorandum and Order on October 22, 1992, denying the Employer's Motion to Dismiss and Grievant's Motion to Preclude. 15 VLRB 428.

The Board held hearings on the merits on December 17, 1992, January 12, 1993, and February 11, 1993. Board Chairman Charles McHugh and Board Member Catherine Frank were present for all of the hearings. Board Member Carroll Comstock was not present for the January 12, 1993, hearing, and has not participated in this decision. Assistant Attorney General Michael Seibert represented the Employer. VSEA Legal Counsel Jonathan Sokolow represented Grievant.

FINDINGS OF FACT

1. Grievant was hired as a District Office Clerk, Pay Grade 11, by the State of Vermont Department of Social Welfare in June, 1989. During her two-year employment with the Department, Grievant received satisfactory performance evaluations (Grievant's Exhibits 1, 2, 3 and 6).

2. In April 1989, Grievant passed the qualifying written and oral examinations for the position of Clerk/Dispatcher, Pay Grade 16, with the Vermont State Police. In July, 1991,

Lieutenant Roger Gilbert, Derby Station Commander, contacted Grievant about a vacant Clerk/Dispatcher position in Derby. Grievant told Lieutenant Gilbert that she was interested in the position.

3. On July 28 or 29, 1991, Lieutenant Gilbert met with Grievant in her home. Gilbert explained what the dispatcher position entailed and noted that it was a difficult position. Gilbert told Grievant that there would be an initial six to eight-week training period, but that it would take two years to completely know the job. At the end of this meeting, Gilbert offered, and Grievant accepted, the dispatcher position. Grievant was scheduled to begin work on August 20, 1991. This position constituted a promotion for Grievant.

4. On August 13, 1991, Grievant met with Department of Public Safety Personnel Officer Duncan Higgins. Higgins gave Grievant a packet of information which was for employees in their original probationary period. When Higgins noticed that the packet was for original probationary employees, he told Grievant that this packet of information was not for her because she was in a promotional probationary period. Higgins told Grievant that he would have the material changed to reflect her promotional probationary status, but Grievant indicated that she understood and it was not necessary for Higgins to change the materials. Among the materials which Higgins provided to Grievant was a memorandum informing Grievant that her supervisor "will evaluate your performance... for the period August 20, 1991, to February 20, 1992". Higgins informed Grievant that, because she was in a

promotional probationary period, she could not be dismissed without warning. Higgins also told Grievant that, if the position did not work out for Grievant, the Employer would attempt to find alternative employment for her in State government (Grievant's Exhibit 8; State's Exhibit 8, p. 1-2).

5. Grievant began working as a dispatcher in Derby on August 20, 1991. Gilbert had indicated to Grievant that, for training purposes, he would assign her to Heather Myers, an experienced dispatcher who worked the night shift (i.e., 4:00 p.m. to midnight). However, Myers did not work during the week of August 20, 1991. Grievant began working with Myers on August 27, 1991.

6. Usually, two dispatchers work during each shift. Together they must handle radio traffic, computer operations, phone calls and clerical duties. There are eight phone lines and two phone sets. One dispatcher handles the radio and is primarily responsible for phone calls. The second dispatcher covers the second phone set and performs clerical and related duties. The Derby station covers 30-32 towns and gores, and it is important for dispatchers to know their location to be able to handle dispatching duties. There were maps in the Derby station to assist dispatchers in this regard.

7. On August 27, 1991, Myers explained telephone communications in detail to Grievant. Initially, Grievant observed Myers handle radio communications before handling the radio herself (State's Exhibit 8, page 8).

8. On September 3, 1991, Myers explained radio communications in detail to Grievant. On that day, Myers also explained to Grievant how to use the computer to do such things as run criminal record checks, stolen vehicle checks and suspended license checks (State's Exhibit 8, p. 6-7).

9. Myers worked closely with Grievant during the period August 27, 1991, to September 27, 1991, and instructed her on dealing with problems as they arose. During this time, Grievant had problems connecting troopers and their call numbers, and keeping track of their locations. This confusion, which potentially jeopardized the safety of troopers and the effective providing of police services, continued throughout the period. Also, there were occasions during this period when Grievant "froze" at the console and did not properly handle emergencies. One incident in this regard involved an officer in pursuit of a vehicle, and another incident involved a call reporting a baby choking. Grievant had trouble handling radio communications and phone calls coming in at the same time, which is a necessary skill for a dispatcher. Grievant also had trouble running checks on the computer. By September 27, 1991, Grievant was well behind where other dispatchers were at this point in the training process. Due to Grievant's problems in these areas, Myers did not require her to perform clerical duties to allow her to work on her deficiencies. On September 27, 1991, Myers sent a memorandum to Lieutenant Gilbert relaying Grievant's above-cited problems (State's Exhibit 6).

10. At some point around the time of Myers' memorandum, Gilbert spoke to Grievant about the problems identified by Myers. Gilbert told Grievant that she was not progressing quickly enough.

11. On September 30, 1991, Grievant told Personnel Officer Higgins that she was having difficulty making it through her promotional probationary period. Grievant told Higgins that she was taking manuals home and studying them, and also told him of taking a map and traveling around the area within the Derby station's jurisdiction.

12. On October 4, 1991, Gilbert told Higgins that Grievant was not working out. Gilbert also told Higgins that he hoped Grievant would work out, because it was difficult to recruit in the Derby area. Higgins advised Gilbert to do a performance evaluation and provide Grievant with time to correct her deficiencies (Grievant's Exhibit 15).

13. During the period from late September to November 13, 1991, Gilbert monitored Grievant's performance, which included consulting with other state police members and Myers, and made notes of her deficiencies (State's Exhibit 5, p. 1-5). Grievant continued to work closely with Myers during this period and Myers instructed her on handling problems as they arose. During this period, Grievant continued to have problems handling telephone calls and radio communications simultaneously, generally handling radio communications, handling emergencies without "freezing", operating the computer to run checks accurately and read

printouts, dispatching the correct ambulances to the correct area and confusing the identity of troopers. Grievant also continued to have problems of familiarity with the geographic area in which the Derby station had jurisdiction. Gilbert discussed with Grievant the problems in many of these areas prior to November 13, 1991.

14. On November 13, 1991, Gilbert provided Grievant with a performance evaluation, covering the period August 20, 1991, to October 31, 1991. Therein, Gilbert rated Grievant's overall performance as "unsatisfactory". At the time Gilbert gave Grievant the performance evaluation, he discussed it with her in detail and informed her it was a "warning" evaluation. The evaluation provided as follows with respect to Grievant's performance in specific areas:

(1. RADIO PROCEDURE)

- A. Dispatcher Mason speaks clearly and intelligibly during her radio transmissions.
- B. Understanding radio transmissions and who is calling is a problem.
- C. Gets confused if more than one radio transmission in close proximity comes in.
- D. Needs to work at improving geographical directions to responding units.
- E. Does not know who is who call number-wise. Even after working with the same troopers and call signs, she does not readily know who is who.
Loses track of cars when they sign off for a short duration.
Does not readily recognize stations calling cars and the fact other Stations are on the same frequency.
- F. Freezes if more than one thing happens at a time such as the phone ringing and radio calls at the same time.

(2. INTERACTION WITH THE PUBLIC)

- A. Dealing with hysterical individuals has not been a problem probably because of not having to deal with this type of situation yet other than becoming somewhat excited also.
- B. Gathering the right information from the public is coming along as expected. Inexperience is the main thing right now.

- C. This area right now could use more improvement. The tone of voice tends to make her sound more authoritative than she really means.
- D. Patience with distraught individuals has not been a noticeable problem as much as becoming excited also and forgetting to get the necessary information.
- E. She has demonstrated professional integrity and continues to do so with the public.

(3. COMPUTER OPERATION)

- A. Dispatcher Mason needs to improve in the area of understanding and reading computer printouts.
- B. Messages are transmitted properly when she understands them. If she does not realize the crux of the message, then it is not always transmitted clearly.
- C. Understanding the security procedures reference NCIC (National Crime Information Center) and VCIC (Vermont Crime Information Center) is fine, no problem.
- D. Understanding the proper destination of messages is an intermittent problem. This area needs work.
- E. Does not have a solid working knowledge of VLETS (Vermont Law Enforcement Telecommunications System) and NLETS (National Law Enforcement Telecommunications System) functions. She has to be repeatedly reminded what format to use.

(4. CLERICAL RESPONSIBILITIES)

- A. Assigned typing is done accurately and timely.
- B. She accepts typing assignments without complaining. Doing well in this area.
- C. She is still new enough so that a determination on how she prioritizes assignments has not been something to take notice of. She had not been in a position to do this yet.

(5. PERSONAL HABITS)

- A. Personal hygiene and appearance are fine and within expectations.
- B. Dispatcher Mason has demonstrated a good attitude toward her work.
- C. She definitely tries to do her job right. Because many things are coming slow to her, dependability is in question as knowing what to do and when.
- D. Her human relations skills are being properly utilized and contact especially with the public is fine.
- E. She has accepted changes, especially shift changes, very well.
- F. Accepting constructive criticism needs some improvement. She sometimes leaves the impression that she isn't interested in what she is being instructed.

(State's Exhibit 1, p. 2-4)

15. Accompanying the performance evaluation was a memorandum from Gilbert to Grievant, which provided:

You are still in a probationary promotional position. After 12 full weeks of on-the-job training, which is more than normally conducted, your overall performance has not met the required standards.

The attached evaluation outlines the standards expected and what your performance is. On two prior occasions I spoke with you concerning your performance. I mentioned some of the areas needing improvement. This evaluation was done at this time because you are not meeting the requirements after three months of training.

You have (30) thirty days to meet the standards. If you are not able to meet the requirements at the end of thirty days, further action will be taken up to and including dismissal.

(State's Exhibit 1, p.1)

16. On November 14, 1991, Grievant told Higgins that she was looking for other employment. Higgins told Grievant he would check with other departments in State government to see what positions may be available for which she was qualified. Subsequently, Higgins made such inquiries but Grievant did not secure other employment.

17. Grievant filed no grievance over the November 13, 1991, performance evaluation, and accompanying corrective action, which she received. She believed that Gilbert had followed the proper procedure in evaluating her performance.

18. Grievant continued to work closely with Myers after November 13, 1991, until Grievant's dismissal. After November 13, 1991, Grievant continued to have problems handling radio and phone communications simultaneously. She continued to be confused when events were occurring simultaneously, and was unable to determine priorities in such instances. In one

instance, she was going to call out the wrong fire department, even when the identity of the department wanted was made clear to her. Grievant also had problems understanding radio transmissions. She continued to have some problems understanding call numbers and ascertaining which trooper or other person was calling on which radio channel, although her performance improved in this regard. She continued to have problems accurately reading computer printouts. Myers informed Gilbert of Grievant's continuing problems in these areas during the first week of December, 1991. On one occasion after November 13, 1991, Grievant was unable to activate a radio channel to communicate with a trooper, and another trooper had to show her how to activate the channel. Also, Grievant continued to have problems keeping track of the location of troopers (State's Exhibit 5, p. 6-7).

19. On December 13, 1991, at the end of Grievant's 30-day period, Gilbert met with Grievant and explained her options. Gilbert told Grievant that she could either take an unpaid leave of absence or be dismissed. On the following day, Gilbert informed Grievant that if she took a leave of absence, she would not be eligible for unemployment compensation, but that if she was dismissed, she could collect unemployment compensation. In addition, Gilbert told Grievant that with a dismissal Grievant had the option of receiving two weeks severance pay and leaving immediately, or working for the two week period.

20. On December 16, 1991, Department of Public Safety Commissioner James Walton sent Grievant a letter which provided

in pertinent part as follows:

As a result of your action described below, I am contemplating your dismissal from the position of clerk dispatcher. 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 be represented by VSEA during proceedings connected with this action.

The reason(s) dismissal is contemplated is as follows:

1. Does not perceive and understand radio transmissions even when quality is good.
2. Gets confused if telephone and radio traffic occur at the same time.
3. Does not understand call numbers and the significance of who the number is assigned to whether it is State Police or someone else. Even after three months working with the same troopers and agencies she does not readily know who is calling.
4. Loses track of troopers when they sign off at a complaint.

(State's Exhibit 2, p. 1)

21. Shortly before Grievant's dismissal, Myers told Grievant that her performance had showed some improvement with respect to getting officers' call numbers correct.

22. Grievant elected to not respond to the allegations contained in Commissioner Walton's December 16, 1991, letter prior to her dismissal. On December 19, 1991, Commissioner Walton sent Grievant a letter informing her of her dismissal. The letter provided in pertinent part as follows:

After due consideration of the information available to me, I have decided to terminate your employment with the Department of Public Safety as a clerk dispatcher. I am sorry that things have not worked out for you as a dispatcher.

I have reviewed the reasons for your dismissal as enumerated in my December 16, 1991, letter to you and find that your performance does not meet the standards required of a clerk dispatcher for the Vermont State Police. You have been given an opportunity to provide me with any details you feel are pertinent before this decision was made. I have been informed that you have verbally told Lt. Roger Gilbert, Station Commander for Derby, and Duncan Higgins that you are not contesting this dismissal.

Therefore, I have determined that you will be terminated December 19, 1991, and will receive two weeks pay in lieu of notice...

(State's Exhibit 3, p. 1)

23. The Employer did not provide Grievant with a separation performance evaluation upon her dismissal.

OPINION

The ultimate issue before us is whether just cause existed for Grievant's dismissal from employment as a Clerk/Dispatcher with the Employer. However, before addressing that issue, we first need to address jurisdictional questions raised by the Employer. These concern the amended grievance filed by Grievant with the Board and the failure to grieve certain issues at the lower steps of the grievance procedure.

Amendment of Grievance

The Employer contends that Grievant's "amended" grievance of February 13, 1992, was not in fact an amendment to Grievant's January 16, 1992, letter, but rather a new and untimely grievance of a different character over her dismissal and the corrective action which preceded it. The Employer contends that, since the February 13 grievance bore little or no relationship to the January 16 letter, it should be found to be untimely filed in its entirety.

We disagree. The January 16 letter from Grievant indicated that she wanted to "appeal the end results of (her) recent dismissal from the position of Clerk/Dispatcher" with the Employer, and that she was "appealing the harsh dismissal". In the letter, Grievant alleged, among other things, that she was

not provided with proper training, given proper notice of the length of the training period or given enough time to learn the position. The amended grievance filed on February 13 by VSEA on behalf of Grievant was pursuant to a Board request to conform to Board Rules of Practice. The original letter from Grievant did not contain "specific references to the pertinent section or sections of the collective bargaining agreement... or the pertinent rule or regulation", and provided an unclear "statement as to the nature of the grievance", as required by Section 18.3 of Board Rules.

Given the provisions of Board Rules that "all pleadings shall be liberally construed", Section 12.10, and that the Board "may permit amendment" of grievances "as it deems proper", Section 12.7, we conclude that the amended grievance filed on behalf of Grievant is proper. This is because the amended grievance relates back to the original circumstances of Grievant's original letter, as liberally construed, concerning Grievant's ultimate dismissal from State employment. Thus, we deny the State's request to dismiss the amended grievance as untimely filed.

Notice of Performance Deficiencies, and November 13, 1991, Performance Evaluation and Corrective Action

On the merits, Grievant contends that the Employer first violated the Contract by failing to provide proper notice of performance deficiencies prior to providing her with an unsatisfactory performance evaluation on November 13, 1991. Grievant further contends that the November 13, 1991, evaluation, and accompanying corrective action, was not a contractually valid

step in progressive corrective action, and constituted inappropriately bypassing progressive corrective action. The Employer contends that the Board lacks jurisdiction to address the merits of these claims because no grievance was filed concerning these matters at the earlier steps of the grievance procedure.

The Board will resolve an issue on the merits if at all possible unless the collective bargaining agreement requires it to be dismissed on procedural grounds. Grievance of Kimble, 7 VLRB 96, 108 (1984). Grievance of Amidon, 6 VLRB 83, 85 (1983). Failing to file a grievance pursuant to the grievance procedure of a collective bargaining agreement constitutes such procedural grounds. This is reflected in Section 18.1 of Board Rules of Practice, which provides that the "Board shall hear and finally determine the grievances brought before it, provided that such grievances are appealed pursuant to the procedures contained in an existing collective bargaining agreement".

Here, Grievant did not grieve her claims regarding notice of performance deficiencies, and the November 13, 1991, performance evaluation and accompanying corrective action, pursuant to the Contract's grievance procedure. The Contract's grievance procedure is intended to "provide for a mutually satisfactory method for settlement for complaints and grievances", and "(i)t is expected that employees and supervisors will make a sincere effort to reconcile their differences as quickly as possible at the lowest possible organization level". Article 15, Section 1, Contract. VSEA and the State have established a four step

procedure to achieve "(t)hese admirable purposes". In re Bushey, 142 Vt. 290, 294. The first step is a verbal complaint to the immediate supervisor, the second step is a written grievance to the department head, the third step is a written grievance to the Department of Personnel, and the fourth step is a written grievance to the Board. Article 15, Contract. Notice of performance deficiencies, and an adverse performance evaluation and accompanying corrective action, are grievable through this four step procedure once an unsatisfactory performance evaluation is issued. Article 12, 14 and 15, Contract.

The Contract requires an employee or representative to "notify his or her immediate supervisor of a complaint within fifteen (15) workdays of the date upon which the employee could have reasonably been aware of the occurrence of the matter which gave rise to the complaint". Article 15, Section 3(a). Failure to timely grieve to Step II and Step III of the grievance procedure means "the matter shall be considered closed". Article 15, Section 3(b) and (c).

This language mandates specific and timely raising of issues at the earlier steps of the grievance procedure or the right to raise the issue is waived. Grievance of Ulrich, 12 VLRB 230, 239 (1989). Aff'd (Vt. Supreme Court Docket No. 89-608, Unpublished Decision, 1991). Grievances of Collieran and Britt, 6 VLRB 235, 239 (1983). Since Grievant did not raise her claims regarding notice of performance deficiencies and the November 13, 1991 performance evaluation and accompanying corrective action at earlier steps of the grievance procedure, she has waived her right to raise those issues.

The Contract makes the goal of early resolution clearly paramount, and requires that in-house resolution of problems should first be attempted. Bushey, 142 Vt. at 294, 297. Grievant's failure to grieve these issues at earlier steps of the grievance procedure frustrated the desirable goal of early and in-house resolution of problems. The consequences of Grievant's failure in this regard is that we consider the notice of performance deficiencies given Grievant, and the November 13, 1991, performance evaluation and accompanying corrective action, as contractually valid and appropriate. Grievance of Roy, 6 VLRB 163, 188 (1983).

Dismissal

Thus, Grievant waived her rights under the Contract to contest any actions of the Employer except the dismissal action itself, which she appropriately grieved directly to the Board in a timely manner.

Grievant contends that the Employer violated the Contract by inappropriately bypassing progressive corrective action and dismissing Grievant without just cause. Grievant further contends in her post-hearing brief that the Employer violated Chapter 13 of the Rules and Regulations for Personnel Administration by failing to give Grievant a performance evaluation prior to her dismissal. This latter issue is untimely raised as it was not raised in the amended grievance filed with the Board. We decline to resolve issues which were not raised in the amended grievance filed with the Board pursuant to Section 18.3 of the Board Rules of Practice, which requires that a

grievance contain a concise statement of the nature of the grievance and specific references to the pertinent section of the collective bargaining agreement and/or rules and regulations. Grievance of Regan, 8 VLRB 340, 364 (1985). Aff'd, 153 Vt. 333 (1989). Grievant's amended grievance alleged a violation of Chapter 13 of the Personnel Rules, but it was in reference to the November 13, 1991, performance evaluation, not the failure to provide a separation evaluation. Thus, we decline to consider this untimely allegation of Grievant.

Dismissal is the contractually prescribed final step in the Employer's corrective action efforts to address the unsatisfactory performance of an employee. Article 14, Section 1(e)(iv), Contract. Article 14, Section 11, of the Contract further provides that, "(i)n any case involving dismissal based on performance deficiencies, the Vermont Labor Relations Board shall sustain the State's action as being for just cause unless the grievant can meet the burden of proving that the State's action was arbitrary and capricious". This latter provision does not bar a grievance alleging that progressive corrective action was inappropriately bypassed. Article 14, Section 11, Contract.

Just cause means 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 Muzzy, 141 Vt. 463, 468 (1982). A discharge may be upheld as one for "cause" only if it meets two criteria of reasonableness: one that it is reasonable to discharge an employee because of certain conduct, and the other, that the employee had fair notice,

express or fairly implied, that such conduct would be grounds for discharge. Id. at 468-69. An "arbitrary" decision is one fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance. Lewandoski and VSCFF v. Vermont State Colleges, 142 Vt. 446 (1983). "Capricious" is an action characterized by or subject to whim. Appeal of Degreenia and Lewis, 11 VLRB 227, 229 (1988).

In reviewing dismissals, the Board will not look beyond the reasons given by the employer in the dismissal letter for the actions taken. In re Grievance of Warren (Supreme Court Docket No. 83-640, Unpublished Decision, 1986). Grievance of Boucher, 9 VLRB 50, 57 (1986). Regan, 8 VLRB at 365. 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. Regan, 8 VLRB at 366. In such cases, the Board must determine whether the remaining proven charges justify the penalty. Colleran and Britt, 6 VLRB at 265-66.

In reviewing a dismissal based on performance deficiencies, as well as a dismissal based on misconduct, we look to the factors articulated in Colleran and Britt, 6 VLRB at 268-69, in determining whether dismissal is for just cause. Grievance of Schmitt, 15 VLRB 454, 495-96. Grievance of Merrill, 8 VLRB 259, 286 (1985); Affirmed, 151 Vt. 270, 274-75 (1988). The pertinent factors here, adapted to a dismissal for performance reasons, are: 1) the nature and seriousness of Grievant's performance deficiencies, and their relation to Grievant's duties, position and responsibilities; 2) the effect of the deficiencies on

Grievant's ability to perform at a satisfactory level and the effect on supervisors' confidence in her ability to perform assigned duties; 3) Grievant's past work record, including length of service and performance on the job; 4) consistency of the action taken with the progressive corrective action provisions of the Contract; 5) the clarity of the notice given to Grievant; 6) the potential for Grievant's rehabilitation; and 7) the adequacy and effectiveness of alternative sanctions.

In reviewing the nature and seriousness of Grievant's performance deficiencies, the issue is whether the deficiencies, in total, constitute a substantial shortcoming detrimental to the Employer's interests. Muzzy, supra. Schmitt, 15 VLRB at 496; Merrill, 8 VLRB at 286. The performance deficiencies cited in the dismissal letter for Grievant's dismissal were: 1) not perceiving and understanding radio transmissions, 2) getting confused if telephone and radio traffic occur at the same time, 3) not understanding call numbers and significance of who is assigned the number, and 4) losing track of troopers when they sign off. It is evident that these charged performance deficiencies existed and that Grievant had not made significant improvement in these areas by the time of her dismissal, except that she showed some improvement during her last month of employment with respect to getting officers' call numbers right.

We conclude that the proven deficiencies, in total, constitute a substantial shortcoming detrimental to the Employer's interest. It is necessary that dispatchers adequately perform the integral functions of the job, in which Grievant was deficient, to ensure the safety of officers, allow them to

quickly respond to emergencies on the basis of accurate information, and otherwise provide police services to the public in an effective manner. Also, the effectiveness of ambulance and fire services are hindered by the deficiencies exhibited by Grievant. These deficiencies severely affected Grievant's ability to perform at a satisfactory level, and understandably undermined her supervisors' confidence in her ability to perform assigned duties.

We recognize that Grievant's past work record with the State, prior to her employment as a dispatcher, indicates two years of satisfactory performance. However, it is evident that she simply was unable to handle the very demanding duties associated with her promotion to a dispatcher.

Grievant's failure to timely grieve the Employer's actions relating to notice of performance deficiencies, and the November 13, 1991, performance evaluation and accompanying corrective action, defeat her claims that the Employer did not follow the progressive corrective action requirements of the Contract and that she did not have fair notice she could be dismissed for her performance deficiencies. The result of not grieving is that we are left with the following contractually valid actions leading to her dismissal: 1) notice of performance deficiencies; 2) subsequent issuance of an overall unsatisfactory performance evaluation; and 3) notice that she had 30 days to meet performance standards or further action would be taken, up to and including dismissal.

This provided contractually valid notice to Grievant that she could be dismissed if her performance was not satisfactory

within 30 days. Under the circumstances, we conclude both that Grievant had fair notice that continued unsatisfactory performance in the cited areas could result in her dismissal, and that the Employer did not violate the progressive corrective action requirements of the Contract in dismissing Grievant when her performance remained unsatisfactory in the cited areas during the 30-day period.

Grievant contends that she was given insufficient time to correct her performance deficiencies; that she had improved her performance by the time of her dismissal and could have significantly improved it further if the Employer had allowed her two more months of employment. We cannot conclude that the Employer acted in an arbitrary and capricious manner by dismissing her four months into her promotional probationary period, rather than giving her more time to improve. Although she had showed some improvement in her performance, it is evident that she continued to have substantial difficulty in adequately performing essential duties of the Clerk/Dispatcher position. This indicates that Grievant's potential for rehabilitation was limited, despite her best efforts to improve. It was reasonable for the Employer to conclude that providing Grievant with more time to bring her performance to a satisfactory level was not an adequate and effective alternative to dismissing Grievant. This is particularly so given her limited improvement over four months of employment in a position upon which effective police, fire and ambulance services greatly depend.

In sum, we conclude that the dismissal of Grievant was reasonable. Grievant has not sustained her burden of proving

that the Employer's action was arbitrary and capricious. Thus, we conclude just cause existed for her dismissal.

Parenthetically, we would be remiss if we failed to express our recognition of the unfortunate situation in which Grievant found herself. She had demonstrated she was a capable employee in a less demanding position in her previous years of State employment. Upon selection for the more demanding Clerk/Dispatcher position, a position for which she was recruited by the Employer, she simply was unable to satisfactorily perform in this more demanding position despite her best efforts. There should be some mechanism in the Contract to require the State to place employees in Grievant's situation in another position in State government, or give such employees preference for available positions for which they are qualified. Unfortunately for Grievant, such mechanism was not in place and her dismissal from employment was warranted under the Contract.

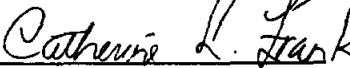
ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Valvette Mascn is DISMISSED.

Dated this 4th day of June, 1993, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank