

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

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DOCKET NO. 99-34

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MATTHEW GREENIA

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MEMORANDUM AND ORDER

Statement of Case

At issue is whether the Labor Relations Board should grant the Motion for Stay Pending Appeal filed in this matter by the State of Vermont, Agency of Human Services, Department of Corrections (“Employer”) on December 29, 1999. By such motion, the Employer is seeking to stay, pending appeal by the Employer, the Board Order of November 30, 1999, 22 VLRB 336 (1999). Therein, a majority of the Board panel concluded that the Employer violated Article 5 of the collective bargaining agreement between the Employer and the Vermont State Employees’ Association (“VSEA”) by discriminating against Matthew Greenia (“Grievant”) for having filed a grievance that resulted in his reinstatement by restricting the areas he was allowed to work upon his reinstatement pursuant to a decision of the Labor Relations Board in Docket No. 98-23. Grievance of Greenia, 22 VLRB 18 (1999). As a remedy, the Board ordered that the Employer cease and desist from discriminating and retaliating against Grievant and reinstate him without restrictions to his position.

The Employer filed a memorandum in support of its motion. VSEA filed a memorandum in opposition to the motion. The Board considers the Employer’s request for a stay pursuant to 3 V.S.A. Section 1003, which provides that a Board order “shall not automatically be stayed pending appeal”, and that the Board “may stay the order or any part of it”.

### MAJORITY OPINION

In determining whether to grant a stay, we apply the following three-part test: 1) whether the party seeking the stay will suffer irreparable harm if the stay is not granted, 2) whether issuance of the stay will substantially harm the other party, and 3) by what result will the interests of the public best be served. Grievance of McCort, 16 VLRB 248, 249-51 (1993); *Affirmed*, Sup.Ct. Doc. No. 93-370, April 5, 1994 (unpublished decision). Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges, 11 VLRB 1 (1988); *Affirmed*, Sup.Ct. Doc. No. 87-224, April 5, 1988 (unpublished decision).

In applying the three-part test, we first review the respective contentions of the parties. The Employer contends that it will suffer irreparable harm if Grievant is permitted to return to work in the female units. The Employer argues that Grievant's presence in such units may result in future allegations of Grievant engaging in misconduct with female inmates because of earlier allegations that he had engaged in such impropriety. The Employer maintains that such future allegations of impropriety will cause disruption in the facility and require the Employer to expend resources to investigate the allegations. Also, the Employer contends that the Board's decision in Docket No. 98-23, which did not substantiate the Employer's allegations that Grievant had engaged in misconduct with female inmates, will be meaningless to female inmates and they will feel threatened by his presence in their units.

The Employer further contends that granting the stay will not substantially harm Grievant because he continues to be employed and did not

demonstrate any economic harm by the restrictions the Employer placed on his employment. The Employer also argues that, although the Board found in Docket No. 99-34 that Grievant was adversely treated upon his reinstatement because he was not able to work as an acting shift supervisor, or float officer, on second and third shift; 22 VLRB at 343; Grievant should not expect to be selected to act as a shift supervisor because he has lost the superintendent's trust by lying during an investigation, as determined by the Board in Docket No. 98-23. 22 VLRB at 42. Further, the Employer contends that, although the Board also found in Docket No. 99-34 that Grievant was adversely treated because he was embarrassed by the restrictions placed on his employment, such embarrassment only will be marginally exacerbated during the appeal of the Board decision. 22 VLRB at 343. Finally, the Employer maintains that the public interest will best be served by continuing to impose limitations on Grievant because of the above-stated irreparable harm for the Employer.

Grievant contends that there is insufficient evidence to show irreparable harm for the Employer if he is permitted to work in the women's units. Grievant argues that there is no factual basis to support the Employer's contention that his presence in the female units would put them at risk, given that the inmates' allegations of misconduct by Grievant were unproven. Also, Grievant maintains that the Employer's fear of future allegations against him by female inmates is purely speculative.

Grievant further contends that the issuance of a stay would substantially harm him since the Board found in Docket No. 99-34 that he is being adversely

treated by the Employer's restrictions, and he will continue to be harmed if a stay is granted. Id. Finally, Grievant argues that the interests of the public would best be served by denying the stay because to allow the Employer to continue to impose punitive restrictions, which are based on unproven allegations by inmates and speculation of future allegations, is contrary to the public interest.

In applying the applicable three-part test for determining whether a stay will be granted, we first determine whether the Employer will suffer irreparable harm if the stay is not granted. We conclude that there would not be irreparable harm to the Employer. There is no factual basis for the Employer's fears of future allegations against Grievant and such fears are purely speculative. Also, as we stated in our decision, speculation of future problems cannot override an employee's right to be placed in the position he would have been in but for his improper dismissal. Id. at 345.

We also conclude that Grievant will suffer substantial harm if the stay is granted. The Board has concluded that Grievant was adversely treated by the restrictions placed on his employment. 22 VLRB at 343. These restrictions have substantially harmed Grievant, and given the deleterious effect such restrictions have on his assignments and relations with inmates and employees, he will continue to be substantially harmed if the restrictions on his employment are not lifted.

Finally, we conclude that the public interest will best be served by denying the Employer's request for a stay. It would be contrary to the public interest to

allow the Employer to continue to impose restrictions on Grievant that are based on unproven allegations and speculation of future allegations.

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Carroll P. Comstock

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John J. Zampieri

DISSENTING OPINION

I respectfully disagree with my colleagues that Grievant will be substantially harmed if this stay is granted. I also believe the best interest of the public will be served with a stay. Therefore, in balance, I believe the stay should be granted.

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Catherine L. Frank, Chairperson

ORDER

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Vermont Department of Corrections' Motion to Stay the Order issued by the Labor Relations Board on November 30 1999, is DENIED.

Dated this \_\_\_\_ day of January, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Carroll P. Comstock

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John J. Zampieri