

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 00-69
PAUL BARCI)	

MEMORANDUM AND ORDER WITH RESPECT TO PRELIMINARY RELIEF

The issue before the Labor Relations Board is whether to grant the Motion For Preliminary Relief filed by Paul Barci ("Appellant"). This case involves an appeal over the disciplinary demotion of Appellant from State Police Detective Sergeant to the rank of Corporal. In appealing the demotion and requesting that it be rescinded, Appellant contends that the Department of Public Safety ("Employer") violated Article 14 of the collective bargaining agreement between the Vermont State Employees' Association ("VSEA") and the State of Vermont by imposing discipline without just cause, bypassing progressive discipline, not imposing discipline in a uniform and consistent manner, and not preferring charges in a timely manner.

In the Motion For Preliminary Relief, Appellant seeks an order directing the Employer to allow Appellant to take the promotional examination for the rank of Lieutenant on May 15, 2001. Otherwise, Appellant contends that he will be denied his ability to receive the full benefit of a decision from this Board reinstating him to the rank of Sergeant, should the Board ultimately rule in his favor on the merits of the appeal, because he would not be able to take the Lieutenant's exam until the next exam is given in 2003.

The Employer filed a response in opposition to the motion on April 17, 2001. The Employer contends that Appellant should have known at the time charges were preferred against him that the Lieutenants' exam was going to be administered in May and his

acceptance of a demotion to Corporal would make him ineligible to take the exam. The Employer contends that, by electing to forego a hearing before a hearing panel once charges were preferred against him and instead filing an appeal of the Commissioner's disciplinary action with the Labor Relations Board, he accepted the discipline recommended by the Commissioner. The Employer also contends that Appellant's assertion that he will not be able to receive full and complete relief if he is not allowed to take the exam is conjectural in nature because it assumes that the Board will order him reinstated to his former rank of Sergeant and that he will receive a passing grade on the promotional exam. The Employer contends that the Board should not grant prospective relief based on conjectural harm.

We do not find the Employer's contentions in opposition to the motion persuasive. First, we do not conclude that Appellant somehow accepted the discipline imposed on him by the Commissioner by electing to forego a hearing before a hearing panel once charges were preferred against him and instead filing an appeal of the Commissioner's disciplinary action with the Board. 20 V.S.A. Section 1880 explicitly grants a state police member the ability to contest the disciplinary action imposed by the Commissioner by filing an appeal with the Board. By choosing this route rather than requesting a hearing panel, Appellant did not in any way accept the discipline imposed by the Commissioner.

Also, the fact that the harm asserted by Appellant is conjectural in nature does not defeat his claim for temporary relief. If we ultimately conclude that the demotion of Appellant was improperly imposed and that the demotion should be rescinded, we would grant a remedy that would make Appellant whole by placing him in the position he would

have been in had the improper demotion not occurred. Grievance of Lowell, 15 VLRB 291, 339-40 (1992). Part of making Appellant whole would be allowing him to take the Lieutenant's exam if he was otherwise eligible to take it but for the improper demotion. However, since the exam is only given every two years and any decision on the merits we issue will be after the exam is given, Appellant potentially will be foreclosed from being made whole if we do not grant the temporary relief request by him. The Employer has not indicated any harm to its interests that will occur by allowing Appellant to take the exam. The Employer also has not indicated any timely alternative testing of Appellant that could occur subsequent to the May 2001 Lieutenant's exam. Thus, under the unusual circumstances of this case, we conclude it is appropriate to grant the requested temporary relief.

Now therefore, based on the foregoing reasons, it is hereby ordered that Appellant's Motion For Temporary Relief is granted, and the Department of Public Safety is directed to allow Appellant to take the promotional examination for the rank of Lieutenant on May 15, 2001.

Dated this 3rd day of May, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Richard W. Park

Edward R. Zuccaro