

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 00-37
SCOTT CAMLEY)	

MAJORITY MEMORANDUM AND ORDER

The issue before the Labor Relations Board in this grievance over the dismissal of Chittenden Regional Correctional Facility employee Scott Camley (“Grievant”) is whether to grant a motion filed by the State of Vermont Department of Corrections (“Employer”) to stay the entirety of the Board’s decision in this case pending appeal of the decision to the Supreme Court. On September 6, 2001, the Board issued a decision reducing the dismissal of Grievant to a 30-day suspension and ordering the reinstatement of Grievant to his position as a shift supervisor at the facility. 24 VLRB 119, 157. In that decision, the Board also ordered that Grievant receive back pay and benefits from the date commencing 30 working days from the date of his dismissal until his reinstatement for all hours of his regularly assigned shift, minus any income received by him in interim. Id.

On April 26, 2002, the Employer filed a motion requesting that the Board order that Grievant be reinstated to his shift supervisor position and receive back pay be stayed pending appeal. On May 7, 2002, Grievant filed a response to the Employer’s motion. He did not object to staying the Board order as it relates to the back pay award, but requested that the motion for stay be denied as it related to his reinstatement to his position.

3 V.S.A. Section 1003 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”. In determining whether to grant a stay, the Board and the Court 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 the 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, 249-251 (1993). In applying this three-part test in two state employee dismissal cases, the Board denied employer requests to stay Board orders reinstating employees pending appeal, but granted employer stay requests of the parts of the Board orders that the employees be granted back pay. Id. Grievance of Gregoire, 18 VLRB 217 (1995).

Nonetheless, in this case the Employer contends that each part of the three-part test favors a stay of the Board's reinstatement order. The Employer contends that it would suffer irreparable harm if the stay is not granted because Grievant's return to the correctional facility would disrupt operations and pose a significant threat to the security of both the inmates and certain staff members at the facility. As a basis for this contention, the Employer relies on correctional facility Superintendent John Murphy's knowledge of Grievant as an employee, information received during the investigation of the assault on inmate Carrasquillo, and interviews of Rich Rocheleau and Anna Shakett in which they allege that Grievant made threats of violence against Superintendent Murphy, bragged about physically abusing inmates and having sex with female inmates at the facility, and indicated he intends to retaliate against officers John Hanson and Shawn McCuin for testifying against him.

The Employer contends that stay of the Board order will not result in substantial harm to Grievant because he is employed elsewhere and, should the Supreme Court rule in his favor, he will receive a back pay award that will compensate him for any loss of

earnings since his dismissal. The Employer further contends that the public interest will best be served by a stay because there is a significant risk of further harm to the inmate population should Grievant be reinstated, and disruption to the workplace will result if Grievant is placed in a position of authority over staff who have testified against him.

We are not persuaded by the Employer's contention that it would suffer irreparable harm if the stay is not granted. The Employer's position that Grievant's return to the correctional facility would disrupt operations and pose a significant threat to the security of both the inmates and certain staff members at the facility implies that management does not maintain control over the conduct of employees and the direction of its workforce. We are not prepared to accept the validity of such a position. The Employer's position also ignores the reality that Grievant would not be able to act with impunity and would be held responsible for any future misconduct he committed. Any retaliatory or abusive actions by Grievant can, and should, be met with swift and severe response by the Employer.

The Employer's claim of irreparable harm also is substantially undercut by the basis for its claim of disrupted operations and threat to the security of inmates and staff. The Employer relies on statements made by two individuals, Rich Rocheleau and Anna Shakett, whom the Board previously has concluded lacked credence with respect to other statements they made in this case. Grievance of Camley, 24 VLRB 185, 189-192. Thus, the reliability of their statements at issue now also is suspect.

The Employer's claim of irreparable harm also disregards factors we found significant in ordering Grievant's reinstatement. We concluded that Grievant's offense of striking an inmate was an uncharacteristic aberration on his part, and that he had taken

responsibility for his misconduct. 24 VLRB at 152. We also concluded that Grievant's strong prior work record over nine years of consistently good performance and no previous discipline meant he is a good candidate for rehabilitation, once a strong message was sent to him that future similar misconduct will not be tolerated. 24 VLRB at 151-153. We concluded that a 30 day suspension was an adequate and effective sanction to deter Grievant in the future from engaging in such misconduct. 24 VLRB at 153. Under these circumstances, we conclude that the Employer will be able to obtain productive work from Grievant during the appeal period, and such productive work will outweigh any harm to the Employer caused by Grievant's reinstatement. Grievance of Gregoire, 18 VLRB at 220.

Further, issuance of a stay with respect to Grievant's reinstatement will substantially harm Grievant. His dismissal occurred more than two years ago, and the appeal may take years to be completed. Although Grievant is presently employed, his earnings have been reduced from what he earned in state employment and he is not employed in a comparable position. Obviously, an employee is substantially harmed economically and professionally by removal from a job for such an extended period without a comparable interim job. McCort, 16 VLRB at 252. Gregoire, 18 VLRB at 221.

Also, if we were to stay Grievant's reinstatement on the basis asserted by the Employer, the due process rights of Grievant would be adversely impacted. The Employer relies primarily on interviews of two persons done by an Employer-retained investigator after the Board issued its decision in this case ordering Grievant's reinstatement. It would be fundamentally unfair to Grievant to be denied reinstatement based primarily on interviews conducted under the unilateral direction of the employer

who takes issue with the Board's reinstatement decision. This is particularly so in this case where the reliability of the statements made by the persons interviewed is suspect.

Finally, the interests of the public will best be served by reinstating Grievant pending appeal. The public will gain the benefit of productive work during this period, instead of potentially having to pay a large back pay sum at the conclusion of the appeal for which no work was performed. McCort, 16 VLRB at 252. Gregoire, 18 VLRB at 221. We are not persuaded by the Employer's claim that there is a significant risk of further harm to the inmate population should Grievant be reinstated, and disruption to the workplace will result if Grievant is placed in a position of authority over staff who have testified against him. As discussed above, the support for this claim is deficient.

Now therefore, based on the foregoing reasons, it is ordered:

1. The Employer's request for a stay pending appeal of the part of the Board order that Grievant be awarded back pay is granted; and
2. The Employer's request for a stay pending appeal of the part of the Board order that Grievant be reinstated is denied.

Dated this ____ day of June, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Richard W. Park

DISSENTING OPINION

I disagree with my colleagues' denial of the Employer's request to stay the Board order reinstating Grievant pending appeal. I concur with the Employer that the potential of irreparable harm to the Employer, and the best serving of the public interest, outweighs any harm to Grievant.

Serious allegations have been made against Grievant that he made threats of violence against facility Superintendent John Murphy, bragged about physically abusing inmates and having sex with female inmates at the facility, and intends to retaliate against officers John Hanson and Shawn McCuin for testifying against him. The Employer is responsible for ensuring the safekeeping of inmates within its custody, as well as the safety of those it employs. The reinstatement of Grievant will subject the Employer to a significant risk of legal liability should allegations be made against Grievant after he is reinstated that he engaged in abusive treatment of inmates, or retaliatory or violent actions against staff. This risk persuades me that there is a potential for irreparable harm to the Employer if Grievant is reinstated pending appeal.

While I recognize that the issuance of a stay would result in some harm to Grievant, since he would remain removed from State employment without having a comparable interim job, I am unable to agree with the majority that such harm would be substantial. Should the Supreme Court rule in his favor on appeal, Grievant would receive a back pay award that would compensate him for his loss of earnings since dismissal and essentially render him whole in an economic sense. The potential harm to Grievant pales when measured against the very real harm which the State would suffer if Grievant engaged in misconduct after being restored to his position. I am unable to

fathom how the majority can conclude that the Employer would not suffer irreparable harm if the Board denies its request for a stay and the Supreme Court later upholds Grievant's dismissal. The potential harm to Grievant pales when measured against the potential harm to the Employer.

Finally, I believe the public interest would best be served by staying Grievant's reinstatement until the appeal is decided. The public would benefit through operations of the correctional facility not being disrupted and legal liability risks not being present pending appeal. Meanwhile, the public interest in just resolution of labor relations disputes would be served through the Supreme Court decision on appeal.

Edward R. Zuccaro