

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 99-62
GLORIA DANFORTH)	

MEMORANDUM AND ORDER

The Vermont Department of Public Safety (“Employer”) filed a motion on June 28, 2004, to amend the Findings of Fact, Opinion and Order issued by the Labor Relations Board in this matter on June 16, 2004. 27 VLRB 153. The Employer takes issue with the Board’s statement in the Opinion portion of the decision that Appellant “had not received disciplinary action” prior to being dismissed. 27 VLRB at 165. The Employer contends that Appellant did receive previous disciplinary action in 1988 as a result of her refusal to submit to the Employer’s physical assessment program.

Charges were brought against Appellant in 1988 that she violated the Employer’s Code of Conduct by failing to submit to portions of the Employer’s physical assessment testing. After a hearing panel convened by the Employer determined that these charges were proved, Commissioner Walton informed Appellant that he would suspend her without pay if she did not submit to the testing by a certain date. Appellant complied with the testing before that date, and she was not suspended.

These circumstances do not warrant a conclusion that Commissioner Walton imposed disciplinary action on Appellant. Article 13 of the collective bargaining agreement in effect at the time contained the following definition of “disciplinary action”: “any action taken by the Commissioner as a result of an employee’s violation of the Code of Conduct. Forms of disciplinary action include written reprimand, transfer, reassignment, suspension without pay, forfeiture of pay and/or other rights, demotion,

dismissal, or a combination thereof.” Commissioner Walton indicated that he was going to take the disciplinary action under this provision of suspension without pay *if* Appellant did not submit to physical assessment testing by a certain date. However, the threatened disciplinary action never materialized once Appellant complied. The contingent disciplinary action became moot once Appellant eliminated the underlying basis for discipline by submitting to the testing.

Based on the foregoing reasons, it is ordered that the Employer’s motion to amend the Findings of Fact, Opinion and Order issued by the Board on June 16, 2004, is denied.

Dated this 27th day of July, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Acting Chairperson

Richard W. Park

Joan B. Wilson