

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

THOMAS REVENE

)
)
)

DOCKET NO. 03-2

MEMORANDUM AND ORDER

The issue before the Labor Relations Board in this appeal over the dismissal of Thomas Revene (“Appellant”) is whether to grant a motion filed by the State of Vermont Department of Public Safety (“Employer”) on March 29, 2005, to stay the Board’s majority decision reinstating Appellant; 27 VLRB 282 (December 16, 2004); and to stay any further proceedings on the issue of back-pay due Appellant. The Employer requests that both stays remain in force until the disposition of the Employer’s appeal of the Board decision to reinstate Appellant. Appellant filed an opposition to the Employer’s stay motion on May 23, 2005.

In determining whether to grant a stay, the Board and the Supreme 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 three 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). Grievance of Camley, 25 VLRB 147 (2002).

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 maintains that the

public interest and the interests of the Employer will be irreparably harmed if the stay is not granted. The Employer takes the position that the integrity of the Employer's law enforcement operations and the public interest in maintaining that integrity will both be unalterably compromised if reinstatement is required. This is because, the Employer argues, the Employer charged Appellant with several incidents of untruthfulness in dismissing him and the Board found that Appellant made the untruthful statements. In addition, the Employer contends that the public fisc will be irretrievably damaged if Appellant is reinstated pending appeal because Appellant will be paid salary and benefits which the Employer will have little likelihood of recovering if the Employer prevails on appeal.

The Employer further contends that stay of the Board order will not result in substantial harm to Grievant because he is currently employed at Vermont Yankee and, if he prevails on appeal, then he will be entitled to the salary and back-pay which accrued while the appeal was pending. Instead, the Employer maintains that Appellant will be substantially harmed if he resigns his current employment to take a job which he may lose after the appeal is decided.

Appellant contends that the Employer, in arguing irreparable harm to the Employer and the public if the stay is not granted, ignores and mischaracterizes the Board's findings regarding Appellant's truthfulness. Appellant maintains that there is no objective evidence to substantiate its claim that the Employer's integrity is at risk if Appellant is reinstated.

Appellant also maintains that there is no irretrievable damage to the public fisc if he is reinstated pending appeal because Appellant will simply be receiving his rightful

salary and benefits while he works. Instead, Appellant argues that the public fisc will suffer substantially if the reinstatement decision is stayed because the Employer will continue to accrue back pay liability without benefit of Appellant's services as a police officer.

Appellant further contends that the Employer's assertion that Appellant will suffer harm if the stay motion is not granted is inaccurate. He states that he is eager to resume working in his vocation as a police officer which pays substantially more in salary and benefits than his interim employment at Vermont Yankee, and that he should not be required to wait a lengthy period before resuming this employment.

We are not persuaded by the Employer's contention that reinstatement of Appellant will mean that the integrity of the Employer's law enforcement operations and the public interest in maintaining that integrity will both be unalterably compromised due to Appellant's untruthfulness. This contention by the Employer is at odds with our decision on the merits. Therein, we determined that the Employer had not met its burden of establishing a false statement charge and charges of untruthfulness against Appellant. Accordingly, the basis for the Employer's claim of irreparable harm to the Employer and the public is unsubstantiated.

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 a year or more to be completed. Although Grievant is presently employed, he has indicated that his wage and benefits are less than what he earned in state employment. 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. Camley, 25 VLRB at 150.

Finally, the interests of the public will best be served by reinstating Grievant pending appeal. In our decision on the merits ordering that Grievant be reinstated, we recognized that there is a question as to Appellant's fitness for duty as a result of the trauma triggered by the confrontation with Paul Mason. Under these circumstances, we determined that the best course of action is that Appellant be reinstated in a paid leave status pending an independent medical examination by a psychiatrist to determine whether Appellant is fit to return to duty. 27 VLRB 342-43.

It is in the public interest for this course of action to be expeditiously followed. If Appellant is quickly examined and is cleared to return to duty, the public will gain the benefit of productive work during the period of appeal, 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. Camley, 25 VLRB at 151. If Appellant is not cleared to return to duty, it is best for the parties and the public to have the consequences of such a determination addressed sooner rather than later. The stay of Appellant's reinstatement will only serve to unnecessarily increase potential costs to the public.

We turn to addressing the Employer's contention that back-pay proceedings should be stayed under the special circumstances of this case. The Employer states that Appellant has not produced answers to the Employer's discovery requests on back-pay issues because Appellant's attorney has had to deal with a series of serious health issues.

As a result, the parties have been unable to comply with the deadlines set by the Board by resolution of back-pay issues.

The Employer contends that, if its appeal is delayed or dismissed because back-pay issues require resolution, Appellant's back-pay will unnecessarily increase under the circumstances due to delays not of the Employer's making. The Employer requests instead that the Board stay further proceedings on back-pay issues to avoid the possible delay of its appeal. The Employer further maintains that Appellant will not suffer substantial harm if the stay of back-pay proceedings is granted because his back-pay and benefits will continue to accrue while the appeal is pending.

Appellant contends that the Employer should not be granted permission to engage in piecemeal appellate review of issues before the Board which will unnecessarily prolong the finality of this appeal. Appellant requests that the Board should rule on any back-pay disputes between the parties as soon as possible so that the parties and the public will be spared the expense associated with a potential separate Supreme Court appeal of the Board's back-pay decision, and so that there is not a wasting of scarce judicial resources.

If we stay back-pay proceedings, we would create the potential for a separate appeal in this matter on back-pay issues subsequent to a Supreme Court ruling on the Employer's appeal of the Board's reinstatement decision. This would be contrary to normal practice. The normal mode of judicial review in Vermont is by appeal after final judgment, and while a further mode of relief is allowed under narrowly defined circumstances, the policy against piecemeal review of any matter is strong and consistent. In re Hill, 149 Vt. 86 (1987). There are weighty considerations that support the normal

restriction of appellate jurisdiction to the review of final judgments. In re Pyramid Co., 141 Vt. 294, 300 (1982). Piecemeal appellate review causes unnecessary delay and expense, and wastes scarce judicial resources. Id.

The Employer has not presented a compelling reason to diverge from the normal policy under the circumstances of this case. We recognize that back-pay proceedings have been delayed to this point due to serious health issues of Appellant's attorney. Nonetheless, this period of delay appears to have run its course. Appellant's attorney filed responses to the Employer's discovery requests on back-pay issues this week.

We share the views of both parties of the importance of proceeding expeditiously in this matter. We will be requiring the parties to notify us of any back-pay issues within two weeks. If there are any issues, we will schedule them for hearing on June 30. Given this timetable, we are on track to shortly issue a final order in this matter. Thus, the processing of the Employer's appeal should not be unduly delayed and we decline to stay back-pay proceedings.

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 reinstated is denied;
2. The Employer's request for a stay of back-pay proceedings pending appeal is denied;
3. The parties shall submit to the Labor Relations Board by June 22, 2005, a proposed order indicating the specific amount of back pay and benefits due Appellant; and if they are unable to agree on such proposed order, shall notify the Board in writing

that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board; and

4. The parties shall be prepared to appear before the Board for a hearing on June 30, at 9:00 a.m., in the Board hearing room on any remaining issues on back pay and benefits due Appellant.

Dated this 8th day of June, 2005, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Carroll P. Comstock

John J. Zampieri