

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
SELMA GROPMAN	)	DOCKET NO. 79-91S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On December 10, 1979, the Vermont State Employees' Association, Inc., ("VSEA") filed a grievance on behalf of Selma Gropman ("Grievant"), appealing her dismissal from State service.

The State filed an answer to the grievance on December 31, 1979.

Hearings were held on February 14, 1980, at the Board hearing room in Montpelier, and on June 12, 1980, in Rutland, Vermont. Board members Kimberly B. Cheney and William G. Kemsley, Sr. were present at both hearings. Member Robert H. Brown was present at the February 14 hearing only.

Grievant was represented by Michael R. Zimmerman, Counsel for VSEA. Assistant Attorney General Bennett E. Greene represented the State.

Requests for findings of fact and memoranda were filed by Attorneys Zimmerman and Greene on June 26 and June 27, 1980, respectively.

FINDINGS OF FACT

1. Grievant, Selma Gropman, was at all times relevant herein, a permanent status State employee, and, as such, had all rights conferred by the Agreement between the State of Vermont and the Vermont State Employees' Association, Inc., for the Non-Management Unit, effective for the period July 1, 1979 to June 30, 1981 (hereinafter referred to as "the contract").

2. From July of 1972, until November 16, 1979, Grievant was employed as a Stenographer B, pay scale 5, at the Putnam Memorial Hospital, School of Practical Nursing, at Bennington, Vermont. The Putnam Memorial Hospital, School of Practical Nursing is administered by the State of Vermont, Department of Education.

3. Grievant's Exhibit #1 is the Department of Personnel class specification for Stenographer B, Grievant's position prior to her dismissal. It accurately represents the duties, responsibilities and skill requirements of that job.

4. From August of 1973, until the termination of her employment on November 16, 1979, Grievant's immediate supervisor was Mrs. Frances P. Crozier, who held the position of Director of the School of Practical Nursing. Mrs. Crozier resigned from that post in January of 1980.

5. During her term of employment, Grievant was the only clerical employee at the School of Practical Nursing. She was required to perform clerical duties for Mrs. Crozier and the seven instructors on staff at the School of Nursing. Generally, Grievant's duties included typing, answering the telephone, record keeping, filing, handling money, photocopying, and handling supplies.

6. In April of 1976, Grievant was placed in a warning period by Mrs. Crozier. During that period, Grievant improved her performance and was retained in her position. (Grievant's Exhibit #3, page 2, Item F).

7. On June 25, 1979, Mrs. Crozier completed a Special Performance Evaluation Report (Grievant's Exhibit #3) covering the period August 11, 1978 to June 22, 1979, because of Grievant's unsatisfactory job performance during that period. Grievant received that evaluation at some point between June 25, 1979 and July 13, 1979, the date she signed it. In that Performance Evaluation Report, Mrs. Crozier gave Grievant an overall rating of 1,

which means "unsatisfactory." Mrs. Crozier gave Grievant a 1 rating in all areas (ie., "job knowledge and skills," "quality of work," "quantity of work," "work habits," "attitude, interest & initiative," "learning ability," "judgment," "work under stress," "managing workload,") except one -- "personal relationships" -- in which Grievant was given a 2 ("inconsistently meets job requirements/standards"). In that Performance Evaluation Report, Mrs. Crozier made the following recommendation:

"... I feel Selma should be put on warning for a period of 20 working days from this date. I further recommend that should her performance become fully satisfactory during that time she should be reinstated only on the condition that her performance remain fully satisfactory without constant supervision. Otherwise (sic) that she be terminated immediately from state employment. An alternative might be to consider that there may be a 'mis-match' between Selma and and (sic) this particular position and she request a lateral transfer."  
(Grievant's Exhibit #3).

8. On July 27, 1979, Grievant received a letter, dated July 26, 1979, from Mrs. Crozier, in which Mrs. Crozier informed Grievant that the warning period imposed by the Performance Evaluation Report of the period August 11, 1978 to June 22, 1979 (Finding #7; Grievant's Exhibit #3) became effective July 16, 1979, and that 20 working days after July 16, 1979 (ie., August 13, 1979), the warning period would end, at which time Mrs. Crozier would prepare another Special Performance Evaluation Report and determine whether Grievant should be taken out of the warning period, be placed in an extended warning period, or dismissed.

9. At some time between September 4, 1979, and September 10, 1979, Grievant received a Special Performance Evaluation Report covering the period June 23, 1979 to September 4, 1979 (Grievant's Exhibit #4). In that Performance Evaluation Report, Mrs. Crozier gave Grievant an overall 2 rating ("inconsistently meets job requirements/standards") for Grievant's failure

to improve: 1) the quality of her work, particularly her failure to decrease the number of typographical errors left uncorrected; 2) the quantity of work, by Grievant's chronic tardiness and time spent engaged in personal telephone calls; 3) her work habits, again Grievant's frequent tardiness was cited here; and 4) in Grievant's failure to improve her relationship with her supervisor, evidenced by Grievant's argumentative responses to Mrs. Crozier when her work was criticized.

10. Accompanying the Performance Evaluation Report for the period June 23, 1979 to September 4, 1979, was a letter from Mrs. Crozier dated September 4, 1979 (Grievant's Exhibit #6), to which Mrs. Crozier had referred in the Performance Evaluation Report for specific comments on Grievant's deficiencies in several performance areas. Also in that letter, Grievant was informed that she was being placed in another warning period, for failure to improve to a "satisfactory" level. That letter begins:

"Due to an administrative error, and not satisfactory performance, you are technically out of the first warning that was imposed from July 16 - August 13, 1979. Since your performance is still not at a satisfactory level (refer June 22 - September 4 evaluation), you will be placed in a new warning period from September 17 to November 16, 1979" (emphasis added).

The letter then sets forth substantially what had already been given to Grievant as standards of performance for fiscal year 1980 (State's Exhibit #1), a document prepared by Mrs. Crozier with the assistance of Grievant which set forth specific performance goals.

11. Thereafter, on October 10, 1979, Grievant received a letter from Mrs. Crozier (State's Exhibit #6) wherein Mrs. Crozier reviewed Grievant's progress during the warning period of September 17, 1979 to November 16, 1979. The letter contains specific criticisms of Grievant's performance during that period. Generally, Grievant: failed to improve her typing by

not proofreading her work as directed; continued to misfile materials and did not record an explanation of and directions for access to her filing system as directed; did not ensure recipients of telephone messages received them in a timely manner; failed to consult with supervisor as directed to set priorities for completion of assigned tasks when conflicts arose; failed to follow directions or seek clarification if they were not understood; failed to check her own work to determine if it was complete and systematizing her work as directed in such a manner so as to determine what aspects of a particular job assignment had been completed and what remained to be done; and continued to be tardy for work.

12. On October 11, 1979, Grievant was notified by letter from Mrs. Crozier (State's Exhibit #5) that she was suspended two days without pay for "excessive tardiness without due cause," effective October 12 and 15, 1979.

13. By letter dated November 1, 1979, from Mrs. Crozier, (State's Exhibit #3) sixteen days before the end of her most recent warning period, Grievant was informed of Mrs. Crozier's decision to recommend Grievant be dismissed for failure to improve her overall job performance to a satisfactory level in accordance with the standards of performance established by Mrs. Crozier at the beginning of the last warning period (Grievant's Exhibit #6). Grievant consistently failed to perform the duties and assume the responsibilities required of a Stenographer B as set forth in her job description (State's Exhibit #1).

14. At that same time, on or about November 1, 1979, Grievant was given a copy of a Special Performance Evaluation Report (State's Exhibit #2) for the period September 4, 1979, to November 16, 1979, Grievant's last warning period.

15. It is the practice of the State that an employee on warning, who is not dismissed during the warning period, has successfully completed the warning period. In order to be dismissed for unsatisfactory performance, a person would be dismissed before the end of the warning period. If during the warning period an employee shows no real progress, he is dismissed and a Special Performance Evaluation Report is completed as a final assessment of that employee's job performance. Grievant was dismissed in this manner and consequently her Special Performance Evaluation Report for the period September 17, 1979, to November 16, 1979, was completed prior to the last day of that warning period.

16. Mrs. Crozier gave Grievant an overall rating of 1, "unsatisfactory," on Grievant's final Evaluation Report (State's Exhibit #2), citing continued performance deficiencies in those areas which were identified as needing improvement at the beginning of her fall 1979 warning period, despite intensive supervision and instruction.

17. Based on all the credible evidence on record, the Board finds as facts or conclusions, as may be appropriate, the statements and representations made by Mrs. Crozier in Mrs. Crozier's letter recommending dismissal and Grievant's final Special Evaluation Report (State's Exhibits #3 and #2, respectively).

18. By letter dated November 8, 1979, from Robert Withey, Commissioner of the Department of Education (Grievant's Exhibit #7), Grievant was dismissed, effective November 16, 1979, for failure to meet the specified performance standards identified at the beginning and throughout her warning period.

19. After her dismissal was effective (on November 16, 1979), Grievant received a letter written on school letterhead dated November 21, 1979,

from Mrs. Crozier, which provided, in pertinent part, as follows:

"Because I have not heard from you since I called you on the telephone, I want to be sure that you know that my offer to discuss your warning and the accompanying letter from me still holds and that I genuinely would like to do so ..."

(Grievant's Exhibit #8).

20. Because of her personal feelings that Grievant should be dismissed as kindly and courteously as possible, Mrs. Crozier wished to discuss the matter and, hence, wrote and mailed to Mrs. Gropman Grievant's Exhibit #8. Mrs. Crozier had expected, when she composed the letter of dismissal for Commissioner Withey's signature, that there would be an opportunity to speak with Grievant at the time of her dismissal, regarding that action.

21. Irrespective of Mrs. Crozier's intent to speak with Grievant personally when Grievant became aware of her ultimate dismissal as communicated in Grievant's Exhibit #8, Grievant was fully aware of the reasons for that action by Mrs. Crozier's November 1 letter (State's Exhibit #3) informing Grievant of her decision to recommend dismissal.

22. Section 2.043 of the Rules and Regulations for Personnel Administration provide as follows:

"WARNING PERIOD means a specified period immediately following the receipt of a marginal or unsatisfactory performance rating by an (sic) non-probationary employee, during which he is expected to achieve an adequate level of performance."

#### OPINION

The issue here, as in other dismissal cases recently decided by this Board, is whether the substance of Grievant's offenses amounts to "just cause" for dismissal under the standard established in In re Grievance of Albert Brooks, 135 Vt. 563 (1977); and whether her right to notice of dismissable offenses was protected under the standard of In re Grievance of

Michael Yashko, \_\_\_\_ Vt. \_\_\_\_ (1980). See: Grievance of Paul Cook, 3 VLRB 105 (1980); Grievance of Robert DeForge, 3 VLRB 204 (1980); Grievance of Jo Ann Kindestin, 3 VLRB 288 (1980); and Grievance of Peter Carlson, 3 VLRB 305 (1980); where one or both of these standards is fully treated.

We find the requisite elements to sustain Grievant's dismissal are present here. The State amply proved the facts necessary to establish Grievant's performance deficiencies amounted to grounds for dismissal, and Grievant was duly warned that failure to improve in several identified work areas to a satisfactory level would result in her dismissal.

Unlike the grievances of DeForge, Carlson and Kindestin, supra, the grievant here was dismissed for reasons related to her ability to perform the job duties and responsibilities required of her position, and not for alleged misconduct. Hence, we need only determine if Grievant did perform her job less than satisfactorily as charged by her employer, whether her deficiencies amounted to "some substantial shortcoming detrimental to the Employer's interests," Brooks, supra at 568 and whether Grievant knew or should have known that her failure to raise her overall job performance to a satisfactory level could result in her dismissal.

In summary, the facts are as follows. Grievant was placed in the warning period which effected her dismissal on September 4, 1979. She was informed of this fact, and the reasons why that action was taken, by her immediate supervisor, Mrs. Crozier, near or on that same date. (See Grievant's Exhibit #6). In Mrs. Crozier's September 4 letter to Grievant, Grievant was notified of eighteen specific aspects of her job performance which needed to be improved to a satisfactory level. There is no evidence that Grievant did not understand the requirements for successful completion of the warning period or



that she was unaware of her employment status as it was changed by the imposition of that warning period.

At approximately that same time, early September, 1979, Grievant was also given a document detailing expected Standards of Performance for fiscal year 1980 in her position of Stenographer B at the nursing school.

The credible evidence before us warrants a conclusion that Grievant did not meet these standards of performance either, and that the standards are reasonable. Moreover, Mrs. Crozier, on November 1, 1979 (State's Exhibit #3) wrote a detailed criticism of Grievant's performance in her letter recommending dismissal. We find the facts and incidents recited in that letter amply supported by the evidence, and conclude on all the evidence that Grievant's dismissal was legally justified.

In reaching this result, we have taken into account the sharp conflict in the evidence concerning Mrs. Crozier's managerial skills, trustworthiness, and bias towards Grievant. In our judgment, Grievant's assertions of Mrs. Crozier's inadequacies were not sustained, rather we believe Mrs. Crozier was a competent, fair-minded, and prudent supervisor at all times here relevant. Moreover, as the State has so aptly put it in its memorandum "Mrs. Gropman appears to view criticism of her work performance as if it were an attack on her person. That is unfortunate ... It is clear for all to see that she is a decent, sincere and very pleasant person ..." Still, viewed as objectively as we are able, the evidence supports the action taken by Mrs. Crozier and Grievant's inability to respond constructively to criticism.

ORDER

For the foregoing reasons it is hereby ordered that the Grievance of Selma Gropman is DISMISSED.

Dated this 17<sup>th</sup> day of July, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney  
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.  
William G. Kemsley, Sr.