

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
ALBERT A. LEVESQUE	)	DOCKET NO. 79-83S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On November 23, 1979, Albert A. Levesque, Grievant, through his attorney, Charles S. Martin, filed an appeal with the Vermont Labor Relations Board regarding his dismissal from the State of Vermont, Agency of Development and Community Affairs. In that petition, Grievant claimed he was dismissed in violation of Article XV of the Agreement between the Vermont State Employees' Association for the Non-Management Unit and the State of Vermont because the State failed to impose progressive discipline in Grievant's case.

The State filed its answer to Grievant's allegations on December 5, 1979. It asserted the State's action was for just cause, Grievant's alleged failure to obey a lawful and reasonable order. Therefore, the State was permitted to dismiss Grievant.

A hearing on this matter was held before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown on January 31, 1980. Grievant was represented by Attorney Charles S. Martin. Assistant Attorney General Bennett E. Greene represented the State. Grievant was not present at the hearing, Grievant's counsel having been unable to communicate with his client since December 3, 1979. At this time, Grievant's counsel moved for a continuance which was denied.

Requests for findings of fact, conclusions of law and order were filed by the parties on February 14, 1980.

#### FINDINGS OF FACT

1. At all times material to this grievance, Grievant was a permanent-status, full-time employee of the State of Vermont, and a member of the Non-Management Unit of the Vermont State Employees' Association. As such, the terms and conditions of Grievant's employment were governed by the Agreement between the State and the Non-Management Unit (hereinafter, the "contract").

2. Grievant held the position of Stock Clerk B with the Travel Division of the Agency of Development and Community Affairs until November 1, 1979.

3. State's Exhibit #2 includes the Department of Personnel Class Description for the position held by Grievant. That description provides, in pertinent part, that the duties and responsibilities include:

Clerical and manual work of more than ordinary difficulty and responsibility involving the receipt and issuance of a large variety and moderate volume of materials and supplies ...

and that:

This class is differentiated from that of Stock Clerk A by the greater volume of materials handled ...

4. State's Exhibit #2 also includes Grievant's specific Position Description signed by Grievant on September 25, 1976, certifying its accuracy and completeness.

5. Grievant's signed Position Description lists several activities under item #12 where it is noted that 50% of the time Grievant works for Vermont Life Magazine. (State's Exhibit #2 at 3)

6. At no time prior to this petition did Grievant initiate a grievance expressing disagreement with his day-to-day work assignments as they related to his Position or Class Description.

7. The Agency of Development and Community Affairs is divided into four divisions: Administration, Historic Preservation, Vermont Travel Division, and Vermont Life Magazine.

8. On November 1, 1979, Mr. Levesque received a letter from C. Harry Behney, Secretary of the Agency of Development and Community Affairs, dismissing him from the position of Stock Clerk B. (State's Exhibit #1) The letter provided the following reason for his dismissal:

"You refused to obey a lawful and reasonable order given by your supervisor on October 31, 1979, to assist in wrapping, labeling, and mailing Vermont Life materials. You were specifically warned, in writing on June 21, 1979, that refusing to do a reasonable amount of work as requested by your supervisor could result in disciplinary action up to and including dismissal. You also used vulgar and abusive language to your supervisor, about which you have been previously warned. Either one of these alone or both is sufficient reason to dismiss you."

9. Article XV of the contract, Disciplinary Action, provides in pertinent part that:

The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:

(c) impose a procedure of progressive discipline, in increasing order of severity:

1. oral reprimand;
2. written reprimand;
3. suspension without pay;
4. demotion;
5. dismissal.

10. Recognizing some instances where immediate dismissal may be warranted, the parties to the contract also provided that:

Notwithstanding the provisions of paragraph 2 above [fact #9], an employee may be dismissed immediately without prior notice or pay in lieu of notice for ... refusal to obey lawful and reasonable orders given by supervisors ...

### OPINION

In this grievance we are required to determine if the grievant was dismissed for just cause: refusal to obey a lawful and reasonable order of his supervisor; and, if so, does the contract permit the State to bypass less severe discipline under these circumstances.

Despite Grievant's failure to appear at the hearing and to offer testimony rebutting the allegations made against him, Grievant's counsel vigorously argued on his client's behalf. First, Grievant's counsel argued that Grievant was not an employee of the Vermont Life Magazine Division of the Agency of Development and Community Affairs, but was an employee of the Travel Division of that Agency. With that distinction in mind, counsel noted that pursuant to 3 V.S.A. §2455(2), classified positions may be transferred from one division to another, subject to approval of the Commissioner of Personnel and State personnel laws and regulations. Maintaining that Grievant was never transferred from the Travel Division to the Vermont Life Division of the Agency, Grievant's counsel urges this Board to find Grievant was not required to perform work for Vermont Life Magazine. Therefore, he concludes, the order given Grievant to "assist in wrapping, labeling, and mailing Vermont Life materials" was unlawful and unreasonable.

We disagree. The order was neither unlawful nor unreasonable. The record shows that Grievant had been working for several years in the Agency of Developmental and Community Affairs with a clear understanding of the nature of the duties required of him. The activities he was ordered to engage in prior to his separation were specified within his Class and Position descriptions. There was no evidence offered that Grievant didn't understand the order or that he didn't recognize the authority of the supervisor making the order.


Grievant's counsel argues a transfer of positions was required in order for Grievant to be utilized by Vermont Life. Thus, any order given by a superior in the Vermont Life division would be unlawful, because that individual would not be in the chain of command conforming to the Personnel Department's records. We are not persuaded. In our view, the key determinant of the employer's identity and authority to assign work is the employee's relationship with a supervisor on a regular basis. That supervisor has the authority to assign the employee work within the scope of that employee's job description. The order given here was "lawful and reasonable".

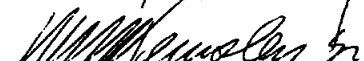
Absent evidence to the contrary, we conclude Grievant did in fact refuse to carry out his supervisor's order, a cause for dismissal which permits the State to bypass the progressive discipline procedure.


ORDER

For all the foregoing reasons, the Grievance of Albert A. Levesque is ORDERED ~~DISMISSED~~ and is DISMISSED this 7<sup>th</sup> day of March, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Sr.

  
Robert H. Brown