

Vacating Board Decisions

In one case remanded from the Supreme Court, the Board considered a request by the parties to vacate a decision concluding that just cause did not exist for the dismissal of a state trooper. The employer had appealed the Board decision to the Supreme Court. Pending appeal, the parties entered into an agreement to settle all issues in dispute in the appeal. The dismissal of the appeal was contingent on the Court entering an order vacating the Board decision. The Court remanded the case to the Board to allow the Board to consider the parties' request to vacate the decision.

On remand, the Board denied the parties' request.¹ The Board determined that the parties had not demonstrated the required exceptional circumstances necessary to vacate a decision. The Board indicated that it was concerned that a practice of vacating decisions could deter settlement of cases prior to being decided by the Board because some litigants may think it worthwhile to take the chance of an adverse Board decision if an unfavorable outcome could be "washed away" by a settlement-related vacating of the decision. The Board stated: "There is a significant potential for damage to Board precedents and our dispute resolution process if our earlier decision . . . is vacated. We decline to set such forces into motion."²

¹ Appeal of Revene, 28 VLRB 377 (2006).

² Id. at 382.