

GRIEVANCE OF:)
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 RANDALL SHINE) DOCKET NO. 97-62

At issue is whether the Labor Relations Board should grant the Motion to Dismiss, or alternatively the Motion For Partial Summary Judgment, filed by the State of Vermont, Agency of Natural Resources ("Employer").

The Employer first contends that this grievance must be dismissed because Grievant failed to file a timely grievance at the second step of the Contract's grievance procedure. Upon review and consideration of the Employer's motion to dismiss, we deny the motion.

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pay, should not predate the pay period immediately preceding the date upon which Grievant submitted his Step I grievance to the Employer. The Employer's request is consistent with Board precedents. In cases such as this where pay practices are involved, the Board has held that grievants were permitted to institute grievances at any time during the period in which the alleged violations were occurring since there was a new occurrence of the alleged violation every time a paycheck was issued, with the restriction that grievants waived their right to back pay for all periods prior to the pay period immediately preceding the filing of the grievances. Grievance of Reed, 12 VLRB 135, 143-44 (1989). Grievance of Cole, 6 VLRB 204, 209-210 (1983).

Nonetheless, Grievant contends that he has been the victim of a long-standing injustice and is entitled to retroactive pay dating back to July 1, 1994, based on the following provision of the Grievance Procedure article of the Contract:

In appropriate cases, the time limits for filing and processing a grievance may be waived by mutual consent of the parties in order to correct a long-standing injustice, provided in no case shall retroactive pay pre-date the effective date of this Agreement.

A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Swett v. Vermont State Colleges, 141 Vt. 275 (1982). Here, the Contract clearly and unambiguously provides that mutual consent of the parties is required to waive the time limits for filing a grievance to correct a long-standing injustice. There being no mutual consent in this case, there is no waiver of the time limits for filing a grievance.

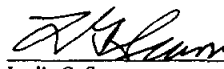
Grievant relies on our decision in Grievance of Reed, 12 VLRB at 145, for the proposition that lack of timeliness can be excused if the Board concludes there is a long-standing injustice. It is true that the Board interpreted the applicable contract language in the Reed case to excuse the lack of timeliness if the Board concluded there was a long-standing injustice. However, the applicable contract provision in the Reed case differed significantly from the applicable provision in this case. Although the contract language in the Reed case was identical to the above-quoted language in this case in all other respects, it did not contain the words "by mutual consent of the parties". 12 VLRB at 136-37, Finding of Fact No. 2. If we were to accept Grievant's position, we would be inappropriately rendering meaningless the contractual changes negotiated by the State and VSEA.

It is hereby ORDERED: 1) the Employer's Motion to Dismiss is DENIED; and 2) the Employer's Motion For Partial Summary Judgement is GRANTED, and Grievant has waived his right to back pay for all periods prior to the pay period immediately preceding the filing of his grievance.

Dated this 8th day of May, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


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