

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 97-52
JESSE BARTH)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 2, 1997, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Jesse Barth ("Grievant"). Therein, Grievant alleged that the State of Vermont ("State") violated the State Health Insurance Plans article of the collective bargaining agreements between the State and VSEA for the Non-Management Unit effective for the periods July 1, 1996-June 30, 1997, and July 1, 1997-June 30, 1999 ("Contracts"), and the past practice of the parties, by not considering Grievant's daughter to be covered under his health insurance as of May, 1997, when Grievant informed the State that his daughter had enrolled in college as a full-time student for the Fall 1997 semester.

A hearing was held on February 5, 1998, in the Labor Relations Board hearing room in Montpelier before Board members Catherine Frank, Chairperson; Carroll Comstock and Richard Park. VSEA Legal Counsel Mark Heyman represented Grievant. Assistant Attorney General David Herlihy represented the State. The parties filed post-hearing briefs on February 19, 1998.

FINDINGS OF FACT

1. The Health Insurance Plans article of the Contracts refers to the right of employees covered by the State's health insurance plans to have their children who are full-time students covered under their health insurance plan. The article

provides that "(f)ull time students shall be required once per year at the beginning of the school year to provide certification from their school that they are a full time student."

2. The State's Choice Plus health insurance plan, administered by Blue Cross Blue Shield of Vermont, provides in pertinent part as follows:

ELIGIBLE DEPENDENTS . . . The following may be dependents of a Plan Participant only if dependent on the plan participant for support and maintenance:

- a. Unmarried children who are nineteen but have not yet reached their 23rd birthday and whose time is devoted principally to attending school or college . . .

PROOF OF FULL-TIME STUDENT STATUS - A full-time student shall be required once per year, at the beginning of the school year, to provide certification from their school that they are full-time students.

. . .

(Grievant's Exhibit 2)

3. Grievant has been employed by the State for 17 years. At all times relevant, he has had health insurance coverage through the State's Choice Plus insurance plan. Under such plan, the State has paid 80 percent of the premium payment for Grievant's health insurance, and Grievant has paid the remaining 20 percent.

4. Grievant's daughter graduated from high school in the Spring of 1994. During the 1994-1995 school year, Grievant's daughter was enrolled as a full-time student at the University of Utah. During the 1995-1996 school year and the Fall 1996 semester, she was enrolled as a full-time student at Montana State University-Bozeman. Grievant's daughter was covered as a dependent under Grievant's' health

insurance plan through the Fall 1996 semester. Her coverage continued through the summers of 1994, 1995 and 1996 although she was not taking any summer classes during those months.

5. After the Fall 1996 semester, Grievant's daughter decided to not attend school during the Spring 1997 semester. At some point during December 1996, or January 1997, Grievant notified the State Department of Personnel that his daughter was not enrolled for the upcoming semester as a full-time student. Grievant completed the necessary forms, and made 100 percent of the required COBRA payments, so that his daughter would continue to receive health insurance by Grievant making the required COBRA premium payments. Grievant made COBRA premium payments during the time his daughter was not enrolled as a full-time student (Grievant's Exhibit 5).

6. On April 21, 1997, Grievant's daughter pre-registered for the Fall 1997 semester at Montana State University-Bozeman as a full-time student (Grievant's Exhibit 3).

7. In May of 1997, Grievant sought to have his daughter covered again as a dependent under his health insurance plan on the basis that she had pre-registered as a full-time student. The Department of Personnel denied Grievant's request, determining that Grievant's daughter would not be covered as a dependent under Grievant's health insurance plan until she actually had started school for the Fall 1997 semester (Grievant's Exhibit 4).

8. It has been the State's uniform practice for more than forty years in administering its health insurance plan that once a dependent child, age 19 or older

but under age 23, no longer is in school as a full-time student, the dependent's insurance coverage is canceled, and the dependent child does not receive insurance coverage again until actually returning to school as a full-time student. It also has been the State's uniform practice that students, age 19 or over but under age 23, continue to receive insurance coverage during the summer months following academic years in which they have been full-time students, and when they will be continuing their full-time studies in the Fall. The State's practice in this regard is consistent with the policy followed by Blue Cross Blue Shield and other insurance carriers.

OPINION

Grievant contends that the State violated the Contract and the State's health insurance plan by not considering Grievant's daughter to be covered under his health insurance as of May, 1997, when Grievant informed the State that his daughter had pre-registered as a full-time college student for the Fall 1997 semester.

There is no provision of the Contract which supports Grievant's position that pre-registration for college, rather than actually being in school, entitles an employee's child to health insurance coverage. The health insurance plan itself supports the State's position that present attendance at school is required for coverage by providing for coverage for a child "whose time is devoted principally to attending school or college". The plan document does not extend coverage to a child who is pre-registered to attend school in the future, but limits coverage to a child who "is . . . attending school".

Moreover, the past practice clearly defeats Grievant's case. The Board has recognized that day-to-day practices mutually accepted by the parties may attain the status of contractual rights and duties, particularly where they are significant, long-standing and not at variance with contract provisions. Grievance of Hanifin, 11 VLRB 18, 27 (1988). Grievance of Cronin, *supra*. Grievance of Allen, 5 VLRB 411, 417 (1982). Grievance of Beyor, 5 VLRB 222, 238-239 (1982). It has been the State's uniform practice for more than forty years in administering its health insurance plan that once a dependent child, age 19 or over but under age 23, no longer is in school as a full-time student, the dependent's insurance coverage is canceled, and the dependent child does not receive insurance coverage again until actually returning to school as a full-time student. Such a longstanding practice has attained the status of a binding past practice mutually accepted by the parties.

Grievant contends that his daughter should be treated the same as other full-time students, 19 years of age or over but under age 23, who are not physically at school during the summer months, but are still covered under an employee's health insurance plan. We do not find this analogy apt. A student who decides to take a semester off from school has lost full-time student status. To the contrary, a student not attending school during summer months has not lost full-time student status because summer attendance is not required for a full-time course of study. It is a normal break time, just as are Winter and Spring breaks. The significant difference is the break in full-time student status. The State's practice of requiring actual return to school, rather than just intent to return to school, provides a reasonable, clear,

equitable and easy to administer rule for determining insurance coverage of full-time students.

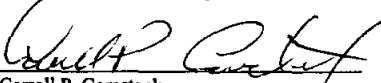
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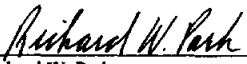
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Jesse Barth is DISMISSED.

Dated this 20th day of April, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Carroll P. Comstock


Richard W. Park