

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 16-02
CHRISTOPHER SCHWANER)	

MEMORANDUM AND ORDER

There are two motions to dismiss before the Labor Relations Board for decision, one filed by the Vermont State Colleges (“Colleges”) and the other submitted by Grievant Christopher Swawner (“Grievant”).

The Colleges contend that the grievance filed in this matter is seriously deficient procedurally and should be dismissed. The Colleges assert that the grievance does not comply with Section 18.3 of Labor Relations Board *Rules of Practice*, which provides in pertinent part that the “grievance shall contain: . . . (C) A concise statement of the nature of the grievance . . . ; (D) Specific references to the pertinent section or sections of the collective bargaining agreement if applicable, or the pertinent rule(s) or regulation(s), which are alleged to be violated: and E) A brief statement of facts concerning the grievance.” The Colleges contend that it is impossible to tell from the pleading filed by Grievant the nature of the grievance because Grievant does not state what actually happened to him, what harm came to him, and what he is trying to remedy.

In deciding this motion, we consider Section 12.10 of Board *Rules of Practice* as well as Section 18.3 of the *Rules*. Section 12.10 provides that “(a)ll pleadings shall be liberally construed”. In applying these provisions, we deny the Colleges’ motion. The grievance sufficiently sets forth the nature of the grievance by indicating that Grievant is seeking to overturn the November 12, 2015, decision of President Wolk concluding that Grievant had engaged in sexual harassment of a former student and ordering that Grievant be banned from Castleton University property and students. Grievant alleges in the grievance that the Colleges

violated specific provisions of Colleges Policy 311, Policy 311A and the collective bargaining agreement by its actions. Grievant requests as a remedy reimbursement for lost pay including regularly performed overloads, internships, independent studies and open houses. Contrary to the Colleges' contention, these statements in the grievance sufficiently sets forth what actually happened to Grievant, what harm came to him, and what he is seeking to remedy. Further, despite the Colleges' claim that it is impossible to tell the nature of the grievance, the Colleges indicated in its response to Grievant's subsequent motion to dismiss an understanding what Grievant was contesting, stating: "In essence, the grievance was over the suspension of Professor Schwaner by Castleton University".

We turn to ruling on Grievant's motion to dismiss. Grievant contends that the Labor Relations Board is without jurisdiction in this matter. Grievant's motion is premised on his claim that the person who brought a complaint against him was a non-student without the authority to invoke the jurisdiction of the Colleges. Grievant contends that, as a result, the Colleges lacked standing to take action against him based on the complaint and the Board is without jurisdiction to entertain this matter.

We reject this novel claim over our jurisdiction. The Board has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). In deciding grievances, the Board is limited by the statutory definition of grievance, which provides:

"Grievance" means an employee's, group of employees', or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under a collective agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors. 3 V.S.A. §902(14).

Grievant invoked our jurisdiction pursuant to this statutory provision by claiming that the Colleges violated the collective bargaining agreement and its own policies in the actions it took against him. It is illogical to invoke our grievance jurisdiction and then claim that we are without jurisdiction to decide the grievance. Grievant can seek to establish at the hearing on the merits that the Colleges violated its policies and the collective bargaining agreement by taking action against him based on a complaint filed by a former student, but we fail to see any valid basis to dismiss this matter based on our lack of jurisdiction to decide it.

Also, if Grievant believes the Board is without jurisdiction in this matter, he may simply withdraw the grievance with prejudice.

Based on the foregoing reasons, it is ordered that the motions to dismiss filed by the Vermont State Colleges and Grievant Christopher Schwaner are denied.

Dated this 27th day of May, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

Alan Willard