

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 15-22
MICHAEL WILSON)	

ORDER

The issue before the Labor Relations Board is whether to grant the application filed by Michael Wilson (“Grievant”) to amend his grievance. Grievant filed a grievance on May 19, 2015, contesting the termination of his employment from the University of Vermont. Grievant contended in the grievance that the University of Vermont (“Employer”) violated the Risk Management/4-H Safety Policy, the University of Vermont Progressive Discipline Guidelines, and Employees Practices Liability.

Grievant filed an application to amend his grievance on August 25, 2015. The Employer filed a memorandum in opposition to Grievant’s amendment application on September 14, 2015. On October 7, 2015, Grievant filed a second application to amend his grievance, seeking to entirely substitute this second amended grievance for the grievance he filed on May 19, 2015, and the first amended grievance he filed on August 25, 2015. In the second application to amend his grievance, Grievant provided the following as the pertinent rules or regulations which he alleged were violated:

Binding UVM Policies

- A. UVM Progressive Discipline Guidelines: Just Cause Checklist, partial/biased investigation, retaliation, unequal treatment
- B. UVM Grievance and Mediation Policy

Non-Binding policies, rules, procedures, practices, codes, precedents, legal definitions

- A. Vermont Supreme Court just cause standard: definition
- B. UVM Risk Management Policy: Personal Safety and Security/Employees
- C. 4-H Safety Policy
- D. Employees Practices Liability, Bullet #4
- E. UVM Common Ground Code
- F. Howe v. State of Vermont precedent
- G. 4-H Motto: To make the best better

The Employer filed a memorandum in opposition to Grievant’s second application to amend his grievance on October 15, 2015. The Employer contends that the second application to amend the

grievance should be denied to the extent it asserts that the *UVM Mediation and Grievance Policy* has been violated because Grievant failed to raise this issue at earlier steps of the University grievance procedure. The Employer did not object to any other amendments which Grievant made to his original grievance.

Grievant filed a response to the Employer's memorandum on November 4, 2015. Grievant asserts that he raised the violation of the University grievance policy with Barbara Johnson of the University Human Resources Department prior to the filing of his grievance with the Employer. Grievant asserts that he complained to Johnson prior to filing the grievance that the Employer would be violating the University Grievance Policy if she named Dean Douglas Lantagne as lead investigator of his grievance, and that Johnson did name Lantagne lead investigator.

We consider Grievant's application to amend his grievance pursuant to Section 12.7 of Board Rules of Practice, which permits amendment of grievances as the Board deems proper. In determining whether amendment is proper here, we first look to the basis for Grievant to file a grievance in connection with his employment at the University. Grievant is not represented by a union and thus is not covered by a collective bargaining agreement. Instead, he is covered by the Employer's *Grievance and Mediation Policy* which applies to non-represented staff.

This policy states that it is designed to "provide a mechanism for effective and efficient resolution of workplace disputes." Covered employees may file grievances under this policy. A grievance is defined in the policy as "a formal complaint . . . alleging that a decision or action has adversely affected the employee's conditions of employment constituting a grievable matter under the terms of this policy". "Grievable matters" include: 1) "disciplinary actions, including written warnings suspensions and dismissal in which the Grievant alleges a violation of due process"; and 2) "(a)lleged violation of a specific University rule, policy or practice related to employment matters." Grievant filed a grievance contesting

the disciplinary action of dismissal, citing alleged violations of University rules and practices, pursuant to this Grievance and Mediation Policy.

Section 18.1 of the Board Rules of Practice provides that “(g)rievances of persons not covered by a collective bargaining agreement . . . shall be heard only after exhaustion of any administrative procedures that may be required by the . . . University of Vermont”. This rule is consistent with the important labor relations policy that employees and employers seek to resolve their disputes internally before invoking the Board’s grievance jurisdiction. Grievance of Ulrich, 12 VLRB 230 (1989); *Affirmed*, 157 Vt. 290, 293-95 (1991). Grievance of Sklar, 19 VLRB 183, 207 (1996). The Board is not a forum of first resort; the Board becomes involved only when efforts to resolve specific issues in dispute have been made unsuccessfully at earlier steps of the grievance procedure. Sklar, 19 VLRB at 207.

Grievant acted contrary to our Rules and these important policy considerations by not specifically raising the issue concerning the alleged violation of the Grievance Policy when he filed his grievance with the Employer. He also did not raise this issue when he filed his grievance with the Board; he did not raise it until he filed his second application to amend his grievance five months after he filed his grievance with the Board. Although we recognize that Grievant was acting *pro se* and may not have made himself fully aware of the need to raise issues specifically at the earlier step of the grievance procedure, we do not think it wise to depart from these well-considered precedents. Sklar, 19 VLRB at 207. The Board conducts *de novo* evidentiary hearings, but acts as an appellate body in grievances on issues raised at earlier steps of the grievance procedure. Id. We do not wish to preempt the grievance procedure, and that would be the effect if we considered the issue concerning alleged violation of the Grievance Policy properly before us. Id. at 207-08.

We recognize that Grievant asserts he raised the issue with Barbara Johnson of the University Human Resources Department prior to filing his grievance. However, this did not excuse him from

raising the issue upon the filing of the grievance with the Employer. The Board has dismissed cases where employees bypass earlier steps of the grievance procedure and seek to bring an issue directly to the Board. Grievance of McCort, 19 VLRB 319 (1996); *Affirmed* (Unpublished decision, Sup.Ct.Dock. No. 96-540, 1997). Vermont State Employees' Association and Barney v. Department of Public Safety, 21 VLRB 224 (1998). Employees may not bypass the grievance procedure on the grounds that they do not expect to receive a result satisfactory to them. McCort, 19 VLRB at 322-325. VSEA and Barney, 21 VLRB at 228. Employees are required to adhere to the requirements of a collective bargaining agreement or rules and regulations with respect to filing grievances; failure to do so means they waive the right to grieve issues. Id. Grievant has waived the right to grieve the alleged violation of the Grievance Policy by failing to raise it in the grievance which he filed with the Employer. He was obligated to seek to resolve the issue with the Employer to preserve it for decision by the Board.

Based on the foregoing reasons, it is ordered that Grievant's second application to amend his grievance is granted except that the application is denied to the extent it asserts that the Employer violated the *UVM Mediation and Grievance Policy*.

Dated this 9th day of November, 2015, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s Richard W. Park

Richard W. Park, Acting Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

Alan Willard