VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 17-27
JOHN SUMMA	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by Grievant John Summa on November 27, 2017, to amend his grievance contesting the denial of reappointment to allege a violation of Article 14.3 of the collective bargaining agreement between the University of Vermont and United Academics for the full-time faculty bargaining unit ("Contract"). Article 14.3 concerns annual performance reviews of faculty members.

Section 12.7 of Board *Rules of Practice* governs motions to amend grievances. Section 12.7 provides that the Board may permit amendment of grievances as the Board "deems proper". The University contends that the motion to amend should be denied because Grievant did not allege a violation of Article 14.3 of the Contract at earlier steps of the grievance procedure.

Article 12 of the Contract sets forth a four-step grievance and arbitration procedure with the Labor Relations Board constituting the fourth step of the procedure. Article 12, Section 2, provides that: "A formal filing of a grievance shall in every case and at every step specify: a. the nature of the grievance, including a brief statement of pertinent facts and a history of the grievance process to date; b. the provision(s) of the Agreement alleged to have been violated, misinterpreted or misapplied (or discriminatorily applied); and c. the remedy sought by the grievant." Article 12, Section 3, states: "This procedure is designed to attempt to resolve a grievance to the mutual satisfaction of all parties at the lowest possible level." The materials filed

by the University and Grievant concerning the motion to amend indicate that Grievant did not allege that Article 14.3 of the Contract was violated in either his Step 2 or Step 3 grievance.

Under contracts providing that grievances must be filed within specified times at earlier steps of the grievance procedure, and must include a concise statement of relevant facts and the provision(s) of the contract alleged to be violated, the Board, with the approval of the Vermont Supreme Court, has refused to consider issues which were not raised or were untimely raised at earlier steps of the grievance procedure. Grievances of Aleong, 32 VLRB 218, 241 - 242 (2013), *Affirmed*, 2014 VT 15 2014). Grievance of Benoit, 31 VLRB 237, 249-50 (2011). Grievance of Adams, 23 VLRB 92 (2000). Grievance of Boyde, 18 VLRB 518 (1995); *Affirmed*, 165 Vt. 624 (1996). Grievance of D'Aleo and VSCFF, 4 VLRB 192, 193 (1981); *Affirmed*, 141 Vt. 534, 540 (1982). Grievance of Peck and VSCFF, 139 Vt. 329, 331-332 (1981). Grievance of Ulrich, 12 VLRB 230, 239 (1989); *Affirmed*, 157 Vt. 290 (1991). Grievance of O'Neil and Vermont State Colleges Faculty Federation, AFT Local 3180, AFL—CIO, 3 VLRB 100 (1980). Generally, there must be specific and timely raising of issues at earlier steps of the grievance procedure or the right to raise the issue is waived. Ulrich, 12 VLRB at 239, 157 Vt. at 293-95. Grievances of Aleong, 32 VLRB at 241-242; *Affirmed*, 2014 VT 15 2014). Grievance of Bagley, et al, 16 VLRB 448, 464 (1993). Grievance of O'Neil, 3 VLRB 100, 103 (1980).

In so holding, the Board and Supreme Court have stressed that the collective bargaining contract made the goal of early resolution clearly paramount, and required that in-house resolution of problems should first be attempted. In re Bushey, 142 Vt. 290, 294 (1982). Grievance of Mason, 16 VLRB 222, 237 (1993). The Board has indicated that an employee's failure to grieve issues at earlier steps of a grievance procedure frustrated the desirable goal of early and in-house resolution of problems. Mason, 16 VLRB at 237. These policy considerations are reflected in Section 18.1

of Board *Rules of Practice*, which provides that the "'Board shall hear and finally determine the grievances brought before it, provided that such grievances are appealed pursuant to the procedures contained in an existing collective bargaining agreement".

Grievant acted contrary to the Contract, Board *Rules of Practice*, and these important policy considerations by not specifically raising the alleged violation of Article 14.3 of the Contract until after he filed his grievance with the Board. It would be improper for us to preempt the grievance procedure, and that would be the effect if we considered the alleged violation of Article 14.3 properly before us.

Based on the foregoing reasons, it is ordered that the motion by Grievant to amend his grievance to allege a violation of Article 14.3 of the Contract is denied.

Dated this 3rd day of January, 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Alan Willard

Alan Willard

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr.