

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)
) DOCKET NO. 82-72
GORDON AMIDON)

MEMORANDUM AND ORDER
DENYING STATE'S MOTION TO DISMISS

On December 7, 1982, the State of Vermont filed a motion to dismiss this matter on the grounds that the Step II grievance was filed in an untimely manner.

The grievance was initially filed at Step II, and Article 16, Section 4(b) of the applicable collective bargaining agreement, the July 1, 1982 - June 30, 1984, Contract between the State and the Vermont State Employees' Association ("Contract"), provides:

Grievances initially filed at Step II or Step III shall be submitted within fifteen workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to his grievance.

The operative facts here are as follows: Grievant became aware of the occurrence giving rise to his grievance on September 24, 1982. His representative, Barbara Morrissey, mailed the Step II grievance on October 18, 1982, to David Wilson, Agency of Human Services Commissioner. October 18, 1982, was the 15th workday within which Grievant had to submit his Step II grievance. Commissioner Wilson received the Step II grievance on October 19, 1982.

At issue here is the meaning of the word "submit". The State, in essence, has taken the position throughout the grievance process that "submit" means filed (i.e., receipted as received) with the employer, and accordingly the Step II grievance had to be filed with the employer by October 18, 1982, to be timely. We note that if the State's position is correct, various information copies of the grievance would also have to be received by the addressee within 15 days, because both action addressees and information addressees have the grievance "submitted" to them. Grievant contends "submit" means "send", and therefore the grievance is timely because the grievance was mailed on October 18, 1982.

In construing contracts, we are guided by the rules of construction that "a contract will be interpreted by the common meaning of its words where the language is clear", In re Stacy, 138 Vt. 68 (1980), and "a contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole". In re Grievance of VSEA on behalf of certain "Phase-Down" Employees, 139 Vt. 63 (1980).

The common meaning of the word "submit" adds little to the resolution of this matter. Black's Law Dictionary (4th Edition, West Pub. Co. 1951), defines submit as "to commit to the discretion of another", and it is unclear whether "commit" means "dispatch" or "deliver". Accordingly, we do not believe the meaning of the word "submit" in the context of this case is clear.

A review of the use of terms in the Contract concerning grievance time deadlines does not resolve the ambiguity. Article 16, Grievance Procedure, uses various terms in connection with the filing and processing

of grievances - "notify", "submit", "file", and "receipt". The meanings of the words "receipt" and "file" are clear, both terms indicating the receiving party actually has the submitted material in its possession. Grievance of Val Austin, 5 VLRB 345 (1982). Grievance of Joseph Roy, (Docket No. 81-83, Order Dismissing Grievance, October 21, 1982).

The usages of "submit" and "notify" are less clear. For instance, the Contract provides that at Steps II and III grievances "shall be submitted" within certain time periods, and management shall hold a grievance meeting within a certain amount of workdays from "receipt" of the grievance if a meeting is requested. It is unclear whether "receipt" and "submit" mean the same thing in this context. Also, at Steps II and III, the Contract provides that the employer shall "notify" the employee of the grievance decision "in writing" within a certain amount of workdays after the grievance meeting or receipt of the grievance. It is unclear whether "notify" means management has to merely issue its decision or the employee has to be in receipt of it by the specified deadline. If "file" had been used in place of "submit" and "notify", the ambiguity present here would not exist.

Given the ambiguity of the meaning of "submit", we are going to construe it in such a way to preserve an employee's rights to due process, and decide a case on its merits. We conclude that an employee conforms to the provisions of Article 16, Section 4(b) and "submits" a grievance if s/he places a grievance in the United States mail, postage paid, within 15 workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to the

grievance. This construction appears to carry out the intention of the parties since Article 16 requires grievances be "submitted" to both action and information addresses at the same time. Accordingly, if a grievance is postmarked on the 15th day, it will be considered timely irrespective of when it is received by the employer. Of course, if a grievance is hand-delivered, it must be received by the employer on the 15th day. Grievance of William O'Connell (Docket No. 82-57, Memorandum and Order Denying State's Motion to Dismiss, February 3, 1983). Thus, the grievance here was filed in a timely manner.¹

¹Consistent with this ruling, we believe the following time deadlines would apply at various steps of the grievance procedure where the deadlines are now unclear:

Step I: Since Step I complaints are filed and processed orally, "notify" here means the employee verbally informing the supervisor of a complaint within the specified time period (i.e. 15 workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to the complaint), and the supervisor verbally informing the employee of the decision within the specified time period (i.e. two workdays after discussion of complaint).

Step II: Grievances and required copies of grievances shall be postmarked or hand-delivered within the appropriate specified time period (i.e. 10 workdays after receipt of Step I decision or, if initially filed at Step II, 15 workdays after the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to the grievance). The administrative head of the department (or his/her designee) shall have his/her grievance decision postmarked or hand-delivered within the appropriate specified time period (i.e. four workdays after grievance meeting or, in absence of meeting, 10 workdays after receipt of Step II grievance).

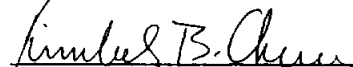
Step III: Grievances and required copies of grievances shall be postmarked or hand-delivered within the appropriate specified time period (i.e. 10 workdays after receipt of the Step II decision, or if initially filed at Step III, 15 workdays of the date upon which the employee could reasonably have been aware of the occurrence of the matter which gave rise to the grievance). The Department of Personnel shall have its grievance decision postmarked or hand-delivered within the appropriate specified time period (i.e. three workdays after grievance meeting, or, in absence of meeting, 10 workdays after receipt of Step III grievance).

Now, therefore, based on the foregoing reasons, it is hereby
ORDERED:


The Motion to Dismiss filed by the State of Vermont is DENIED.

Dated this 21st day of April, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson