

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

RICHARD VOGT

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DOCKET NO. 86-56

MEMORANDUM AND ORDER

At issue is whether the motion of the State of Vermont, Department of Health ("Employer") to dismiss the matter for want of jurisdiction should be granted.

On September 25, 1986, Dr. Richard Vogt, State Epidemiologist for the Employer, filed a grievance with the Labor Relations Board. Dr. Vogt alleged that the failure of the State Department of Personnel to act on his request to upgrade his position by two pay scales until 16 months after he made his request violated the Contract for the Supervisory Bargaining Unit between the State and the Vermont State Employees' Association, effective July 1, 1984 to June 30, 1986 ("Contract"). Specifically, Dr. Vogt cites Article 17, Section 2 of the Contract, concerning classification grievances, which requires the Department of Personnel to "review the grievance (for job classification), conduct a job audit and make its determination normally within one month for a single position". The Department of Personnel upgraded his position two pay scales as he requested, but Dr. Vogt alleges this occurred 16 months after he made his request and he has received no retroactive pay as he requested.

On October 14, 1986, the Employer moved for dismissal of the appeal for want of jurisdiction on three grounds: 1) the Classification article cited by Grievant does not apply to managers; 2) the Board lacks jurisdiction because this is not a grievance under

3 VSA §926; and 3) even if this was a grievance, it would be untimely filed. In support of its motion, the State submitted documentation which establishes that Dr. Vogt is designated as a manager and that the classification grievance article in question was not extended to managers for the relevant contract period.

The Board, as a public administrative body, has only such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks. The Board is given jurisdiction by statute to hear and make final determination on State employee grievances. 3 VSA §926. The extent of the Board's jurisdiction in grievance proceedings is limited by the definition of the term "grievance" in 3 VSA §902(14). In re Stacy, 138 Vt. 68, 70 (1980). Grievance is defined as "an expressed dissatisfaction...with aspects of working conditions under a collective bargaining 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".

We agree with the Employer that Dr. Vogt is not covered by the Contract provisions he cites. He is a manager pursuant to 3 VSA §902(18) and §906 and is, therefore, excluded from membership in a bargaining unit. As such, he is not covered by the terms of the Contract, except where certain terms of employment contained therein have been extended to him by action of the Secretary of Administration. Grievance of Russell, 7 VLRR 60, 80 (1984). Here, the classification grievance article cited by Dr. Vogt was not extended to managers.

Dr. Vogt having cited no other Contract provision extended to managers as being violated and having claimed no discriminatory application of a rule or regulation, has not filed an actionable grievance pursuant to 3 VSA §902(14). Thus, the Board lacks jurisdiction herein. Given this ruling, we need not address the timeliness issue.

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

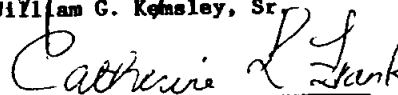
The Grievance of Richard Vogt is DISMISSED for lack of jurisdiction.

Dated this 4th day of December, 1986, at Montpelier, Vermont.

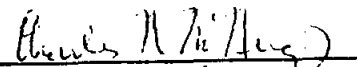
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William G. Kinsley, Sr.



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Charles H. McHugh