

## Timeliness Requirements

The Board will resolve an issue on the merits if at all possible unless the collective bargaining agreement requires it to be dismissed on procedural grounds.<sup>1</sup> The leading area where the Board has dismissed grievances on procedural grounds has been if grievances were not timely filed, or issues were not raised or were untimely raised, at earlier steps of the grievance procedure or in the grievance filed with the Board.

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 grievances which were untimely filed, or issues which were not raised or were untimely raised, at earlier steps of the grievance procedure.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> The Board

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<sup>1</sup> Grievance of Brewster, 23 VLRB 96, 98 (2000). Grievance of Kimble, 7 VLRB 96, 108 (1984). Grievance of Amidon, 6 VLRB 83, 85 (1983).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> In re Bushey, 142 Vt. 290, 294 (1982). Grievance of Mason, 16 VLRB 222, 237 (1993).

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.<sup>5</sup>

The Board also has dismissed cases where employees bypass earlier steps of the grievance procedure and seek to bring an issue directly to the Board.<sup>6</sup> Employees may not bypass the grievance procedure on the grounds that they do not expect to receive a result satisfactory to them.<sup>7</sup> Employees are required to adhere to the requirements of the Contract with respect to filing grievances; failure to do so means they waive the right to grieve issues.<sup>8</sup>

Similarly, the Board has declined to resolve issues that were not raised in the grievance filed with the Board pursuant to the Board Rules of Practice, which requires that a grievance contain a concise statement of the nature of the grievance and specific references to the pertinent section of the collective bargaining agreement and/or rules and regulations.<sup>9</sup> The Board will not reach the merits of an issue not raised in the grievance filed with the Board even if it was raised at earlier steps of the grievance procedure.<sup>10</sup>

Also, the Board has dismissed grievances as untimely filed if they did not meet the requirement of the Board Rules of Practice of being "filed within 30 days after receipt of notice of final decision of the employer."<sup>11</sup> In one case, the Board permitted an exception to this general rule where an employee sent a grievance to

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<sup>5</sup> Mason, 16 VLRB at 237.

<sup>6</sup> 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).

<sup>7</sup> McCort, 19 VLRB at 322-325. VSEA and Barney, 21 VLRB at 228.

<sup>8</sup> Id.

<sup>9</sup> Grievance of Regan, 8 VLRB 340, 364 (1985).

<sup>10</sup> Grievance of Shockley and VSCFF, 5 VLRB 192, 202-203 (1982).

<sup>11</sup> Grievance of Monti, 10 VLRB 246, 249-250 (1987). Grievance of Roy, 147 Vt. 403 (1986).

the Board by certified mail five days before the deadline, but it was not received by the Board until the day after the deadline.<sup>12</sup>

The Board has accepted the validity of a continuing grievance in cases where pay practices were involved and employees initially did not grieve the alleged violations within contractual time limitations, but grieved the alleged violations during the period they were still occurring. The Board held that grievants were permitted to institute grievances over the matter at any time during the period in which the alleged violations were occurring, since there was a new occurrence of the alleged violation every time a paycheck was issued, with the restriction that the grievants waived their right to back pay for all periods prior to the pay period immediately preceding the filing of the grievances.<sup>13</sup>

To render a grievance timely, the aggrieved employee must demonstrate that at least one alleged violation occurred within the specified timeframe for filing grievances.<sup>14</sup> In limiting the time period for aggrieved employees to receive back pay, the Board has indicated that the purpose of a grievance is to officially bring to the employer's attention a grievable action, and an employer cannot be held financially liable for an action of theirs of which they were never made officially aware was a source of employee dissatisfaction.<sup>15</sup>

Continuing grievances are not recognized when completed acts are involved such as termination through discharge or resignation, a job transfer, or discontinuance of a particular job assignment.<sup>16</sup>

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<sup>12</sup> Grievance of Mason, 15 VLRB 428 (1992).

<sup>13</sup> Grievance of Cole and Cross, 28 VLRB 345, 367-369 (2006). Grievance of Shine, 21 VLRB 103 (1998). Grievance of Reed, 12 VLRB 135, 143-44 (1989). Grievance of Cole, 6 VLRB 204, 209-210 (1983).

<sup>14</sup> Id. Miller v. University of Vermont, 23 VLRB 205, 212 (2000). Grievance of Boyde, 165 Vt. 624, 626 (1996).

<sup>15</sup> Grievance of Pierson, 25 VLRB 168, 171-72 (2002). Grievance of VSEA on Behalf of Meat Inspectors, 4 VLRB 144, 154 (1981).

<sup>16</sup> Grievance of Boyde, 165 Vt. 624 (1996).

Another timeliness issue addressed by the Board is whether to allow grievances filed with the Board to be amended. The Board Rules of Practice permits amendment of grievances as the Board "deems proper".<sup>17</sup> In deciding whether to permit amendment of grievances, the Board examines whether amendment would prejudice the employer or be disruptive to the orderly and efficient processing of cases by the Board.<sup>18</sup>

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<sup>17</sup> Section 12.7, Board Rules of Practice.

<sup>18</sup> Grievance of VSEA, Barnard, et al, 17 VLRB 203, 225 (1994); *Affirmed*, 164 Vt. 214 (1995). Grievance of Rennie, 16 VLRB 1 (1993). Grievance of VSEA (Re: Refusal to Provide Information, 15 VLRB 13 (1992).