Voluntary Resignations

The Board and the Court have addressed the issue whether employees have actually resigned from employment in grievances stemming from state employees bargaining units. The employer bears the burden of proving that the employee resigned.[1]

Oral resignations can be valid and enforceable. The Board has concluded, and the Vermont Supreme Court has concurred, that an employer is not precluded from accepting a resignation based on an employee's verbal representations and other actions, if that employee fails to resign in writing.[2] Such representations and actions must clearly indicate, and demonstrate conclusively, that the employee has resigned.[3]

Another crucial issue is whether a valid resignation exists when a written agreement on the resignation is contemplated pursuant to verbal discussions, but is never executed.[4] The generally accepted rule is that when parties negotiating a proposed contract express an intent not to be bound until their negotiations have culminated in the execution of a formal contract, they cannot be held bound until that event has occurred.[5] However, parties are free to enter into a binding oral contract without memorializing their agreement in a fully executed document even if they contemplate a writing to evidence their agreement.[6]

In any given case, it is the intent of the parties that will determine the time of contract formation.[7] To discern that intent, the court or board must look to "the words

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[1] Grievance of Wright, 16 VLRB 415, 428 (1993).
[2] Grievance of Baldwin, 13 VLRB 20, 35 (1990); *Affirmed,* 158 Vt. 644 (1992).
[3] Baldwin, 13 VLRB at 37. Grievance of Nye, 21 VLRB 47, 54 (1998).
[4] Wright, 16 VLRB at 429.
[5] Id. Jim Bouton Corp. v. Wm. Wrigley Jr. Co., 909 F.2d 1074, 1081 (2d Cir. 1990).
[6] Winston v. Mediafare Entertainment Corp., 777 F.2d 78, 80 (2d Cir. 1985). Wright, 16 VLRB at 429-430.
[7] Id.

and deeds of the parties which constitute objective signs in a given set of circumstances."[8] There are several factors that help determine whether the parties intended to be bound in the absence of a document executed by both sides: 1) whether there has been an express reservation of the right not to be bound in the absence of a writing; 2) whether there has been a partial performance of a contract; 3) whether all of the terms of the alleged contract have been agreed upon; and 4) whether the agreement at issue is the type of contract that is usually committed to writing.[9]

If a union representative is involved in negotiations concerning the employee's potential resignation, in the absence of the employee, and a question exists whether a binding oral agreement for the employee to resign is reached in the negotiations, a threshold agency issue exists. An agreement will be enforced only if the evidence supports the conclusion that the representative had actual or apparent authority to reach such an agreement on behalf of the employee.[10]

When there is a dispute as to whether a binding resignation agreement exists, there must be mutual manifestations of assent or a "meeting of the minds" on all essential particulars for there to be a binding agreement.[11] It is not enough that the parties think they have made a contract; they must have expressed their intentions in a manner that is capable of such an understanding. It is not even enough that they have actually agreed, if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the terms of the agreement can be determined. The time for measuring a "meeting of the minds" is at the point of agreement.[12]

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[8] Id.
[9] Id.
[10] Wright, 16 VLRB at 430-31. NEET v. Silver Street Partnership, 148 Vt. 99 (1987).
[11] Grievance of Kennedy, 18 VLRB 19, 39 (1995).
[12] Id.

A related area to voluntary resignations is voluntary quits. The collective bargaining agreements between the State and the Vermont provide: "An employee who fails to return from absence . . . for five (5) consecutive workdays after a leave is terminated . . . without notifying management shall be considered a voluntary quit". In one case, the Board concluded that an employee had not voluntarily quit, even though she did not return to work within five workdays after the end of a leave of absence, because the employer did not make reasonable attempts to contact the employee and, once they did contact her, did not reasonably consider her explanation for her continuing absence.[13] In another case, the Board determined that an employee had voluntarily quit where he made no effort to communicate to his employer that he was interested in maintaining his job after he had exhausted his leave, and the employee failed to respond to a letter from his employer providing him with the opportunity to respond to the employer's assertion that he had voluntarily quit his employment.[14]

[13] Grievance of Royea, 20 VLRB 194 (1997).
[14] Grievance of Sikora, 23 VLRB 216 (2000).