

Class Action Grievances

The Board has considered whether class action grievances may be filed. In one case, a named grievant brought an action on behalf of himself and "other similarly situated employees".¹ The Board agreed to grant a remedy to the named grievant, but not to the "other similarly situated employees". In reference to statutory language² which provides in pertinent part that "(a)ny number of employees who are aggrieved by the same action of the employer may join in an appeal with the consent of the board", the Board stated:

We think this statute prevents us from including similarly-situated employees in the grievance absent actual appeals by named and identified employees. The statute appears designed to avoid the complexities of class actions, allowing the Board to act only when specific employees are aggrieved by the same action of the employer.³

However, in another case the Board, in a split decision, noted that the statutory definition of grievance expressly contemplates representative grievances being brought by the employees' collective bargaining representative, and concluded that there are circumstances where it is appropriate for a collective bargaining representative to pursue a grievance which seeks a remedy on behalf of a class of employees whom are not specifically identified.⁴ One such instance was a case where affected individuals were a potentially large number of employees scattered throughout the State, whose identity could not be easily ascertained by the union within the time allowed to grieve, and whom were affected by a common question of contract interpretation.⁵

¹ Grievance of Beyor, 5 VLRB 222 (1982).

² 3 V.S.A. §1002(c).

³ Beyor, at 232. See also Grievance of VSEA, Langlois, et al, 36 VLRB 4 (2021).

⁴ Grievance of VSEA (re: Compensatory Time Credit), 11 VLRB 300 (1988).

⁵ Id. at 307.

In a 2021 decision, the Board declined to extend this holding to a Vermont State Colleges case alleging the employer had violated the collective bargaining agreement by requiring employees to use accrued leave when they were not able to work on campus due to the COVID-19 pandemic. There was a period of approximately two and one-half months between the time VSEA was aware of those employees who were not required to work on campus and had not requested telework, and accordingly were potentially required to use accrued leave, and the Step Two grievance (the step prior to filing a grievance with the Board). The Board noted VSEA had provided no information why three employees who VSEA was seeking to add to the grievance at the Board level could not be identified until three weeks after the Step Two grievance hearing.⁶

⁶ Grievance of VSEA, Langlois, et al, 36 VLRB 4, 9-10 (2021).