

VERMONT LABOR RELATIONS BOARD

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| GRIEVANCE OF:   | ) |                  |
|                 | ) | DOCKET NO. 90-55 |
| ANTHONY LEONARD | ) |                  |
|                 | ) |                  |
| GRIEVANCE OF:   | ) |                  |
|                 | ) | DOCKET NO. 90-77 |
| ANTHONY LEONARD | ) |                  |

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

On September 6, 1990, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Anthony Leonard ("Grievant") with the Vermont Labor Relations Board, Docket Number 90-55, alleging that the State of Vermont, Department of Corrections ("Employer"), violated the collective bargaining agreement for the Corrections Unit, effective for the period July 1, 1988 to June 30, 1990, by issuing a May 18, 1990, letter of reprimand in that: 1) there was no just cause therefor, 2) discipline was not imposed in a uniform manner, 3) discipline was not imposed in a timely manner, and 4) progressive discipline was inappropriately bypassed. As a remedy, Grievant requested that the letter of reprimand be rescinded.

On December 12, 1990, VSEA filed a second grievance on behalf of Grievant with the Vermont Labor Relations Board, Docket Number 90-77, alleging that the State violated the collective bargaining agreement for the Corrections Unit, effective July 1, 1990 to June 30, 1992, because it did not respond to VSEA's request for a decision within 5 days in the Step III grievance filed concerning the May 18, 1990, letter of reprimand issued to Grievant, as required under Article 15 of the Contract, and then did not grant Grievant automatic relief as is required by the Contract under such circumstances.

A hearing on Docket Number 90-77 was held on February 28, 1991 before Board Members Charles McHugh, Chairman; Louis Toepfer and Carroll Comstock. Michael Seibert, Assistant Attorney General, represented the State. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. At the conclusion of the hearing on February 28, the Board announced a decision granting VSEA's grievance in Docket Number 90-77, and without any further hearing thereby granted automatic relief for Grievant in Docket Number 90-55.

#### FINDINGS OF FACT

1. Article 15 of the 1990-1992 Contract for the Corrections Unit provides in pertinent part:

#### GRIEVANCE PROCEDURE

...

#### Section 3

...

#### Step III (Department of Personnel Level)

...

4. The Department of Personnel shall notify the aggrieved employee and his or her representative of its decision in writing within five (5) days after the Step III grievance hearing.

...

7. If the employer fails to render a decision at Step III within the time limits specified in subsection 4...the VSEA shall notify the Department of Personnel and shall be entitled, absent an agreement on an extension of the time limits, to a written decision within five (5) workdays after such date of notification. Failure to issue a written decision within the given additional workdays (or by the agreed upon extension date) shall result in the automatic granting of the contractual remedy requested by grievant. Any dispute over what the contractual remedy will be, shall be decided by the Vermont Labor Relations Board...(Grievant's Exhibit 2A).

2. Grievant is a Correctional Officer B for the Vermont Department of Corrections at the Windsor Correctional Facility. The Superintendent of the Windsor Correctional Facility is Thomas Coxon.

3. On or about May 18, 1990, Grievant received a letter of reprimand from Superintendent Coxon. Grievant filed a Step II grievance over this letter of reprimand on June 7, 1990. Personnel Administrator John Murphy denied the grievance on June 22, 1990. Grievant filed a Step III grievance on June 26, 1990. In the Step III grievance, Grievant requested that "notice of remedial action be provided ... in writing within the time frames outlined in the contract" (Grievant's Exhibits 5, 6, 7 and 8)

4. A Step III hearing was held on July 11, 1990, before Thomas Ball, Director of Employee Relations for the Vermont Department of Personnel. At the end of the hearing, Mary Madden, VSEA Field Representative representing Grievant, indicated to Ball that she wanted him to issue a decision on the grievance within 5 days. Ball made no promises, and he did not ask for an extension of time to issue his decision on the grievance.

5. Sometime during the work week of July 16-20, 1990, Madden called Ball and requested a decision on Grievant's Step III grievance. Ball informed Madden that he was going on vacation. Madden indicated to Ball that, even though he was going on vacation, she was anxious for his decision and wanted him to issue it. Ball again made no promises, and he did not ask for an extension of time to issue his decision. Madden told Ball that she was going to send him a letter, requesting a decision within 5 work days.

6. July 20, 1990, was Ball's last workday before he left on a two week vacation. Ball did not return to the office until August 6, 1990.

7. On July 23, 1990, Madden sent Ball a letter stating:

To date, we have not received your written decisio(n) in the Step III grievanc(e) of...Leonard, Windsor Correctional Center employe(e); hearing conducted on July 11, 1990. Pursuant to the Corrections Bargaining Unit contract, Grievance Article (Section 3,C,g.), please consider this notification.

Thus, I will expect the written decisio(n) within five days, or conclude that the contractual remedy sought in the grievanc(e) will be automatically granted (Grievant's Exhibit 9).

8. Ball made no prior arrangements with his office to provide for the opening of his mail during his two week absence on vacation. When Mr. Ball returned to work on August 6, 1990, the July 23, 1990, letter from Madden was unopened.

9. On August 7, 1990, Madden sent a letter to Ball which stated in pertinent part:

On July 23, 1990, I provided you with notification, consistent with the contract, that the Step III decision in the grievanc(e) of...Leonard had not been rendered within the timeframe specified by the contract.

The Corrections Bargaining Unit contract... reads in pertinent part: "the VSEA...shall be entitled...to a written decision within five (5) workdays after...date of notification. Failure to issue a written decision within the given additional workdays shall result in the automatic granting of the contractual remedy requested by the grievant."

Having not received any communication, verbal or written, in response to the notification, I conclude the automatic remedy sought in the grievance will be automatically granted...Specifically, that ... in the grievance of Leonard the written reprimand be rescinded and destroyed ...(Grievant's Exhibit 10).

10. On August 10, 1990, Ball issued his Step III decision concerning the letter of reprimand issued to Grievant, and denied the grievance. (Grievant's Exhibit 11).

11. Madden wrote a letter to Personnel Commissioner David Moers on August 15, 1990, and requested that he initiate procedures to grant the automatic remedy for Grievant because Ball's decision was not within the contractual time limits. Moers denied the request and stated:

The Department of Personnel received your July 23, 1990, request for decisio(n) in the grievanc(e) of ...Leonard on August 6, 1990. The requested decisio(n) (was) issued on August 10, 1990, within the five (5) day response period provided under the contract. Therefore, I do not believe that the remedy you have requested is appropriate" (Grievant's Exhibits 12, 13).

12. VSEA filed a Step III grievance on September 12, 1990 over the refusal to provide the automatic remedy to Grievant of rescinding his letter of reprimand. Ball denied the grievance, stating in pertinent part:

Your 7/23/90 request for decision letter, which was addressed to me, was not received by me until my return from leave on August 6, 1990...I believe that it is reasonable, and consistent with the terms of the contract, to use August 6th as the "date of notification" of the VSEA's request. No other person in the Personnel Department opened your letter or was able to deal with your request. The decisions requested were written and sent within the five (5) workday period after August 6th (i.e., they were sent on August 10, 1990, and apparently received by the VSEA on August 13, 1990) (Grievant's Exhibit 14, 15).

#### OPINION

Grievant contends that the State violated Article 15 of the Contract, by refusing to grant the automatic remedy of rescinding the letter of reprimand issued to Grievant, when the Step III hearing officer failed to respond to VSEA's notification for a decision in the Step III grievance concerning the letter of reprimand within the contractual time limits.

We agree. There is no ambiguity in the Contract regarding the Department of Personnel's obligation, in circumstances where the

Department of Personnel has failed to render a timely Step III decision, to issue a written decision within five work days of notification by VSEA for such decision. There is no dispute that the Step III hearing officer, Thomas Ball, did fail to issue a timely decision concerning the grievance over the letter of reprimand issued to Grievant, and that VSEA did, in fact, send a letter dated July 23, 1990, of notification to Ball requesting the Step III decision. There is no dispute that Ball issued his decision on August 10, 1990.

It is clear that Ball issued his decision well after five work days of "notification" by VSEA. The Contract is clear, under such circumstances, that the untimely decision "shall result in the automatic granting of the contractual remedy requested by grievant." Thus, the remedy sought by Grievant; that the May 18, 1990, letter of reprimand which he received be rescinded; is granted.

We recognize that Ball was on vacation at the time VSEA provided its notification, that he was not aware of the notification until his return from vacation on August 6, 1990, and that he issued his Step III decision within 5 work days of August 6. However, notification occurred at the time VSEA's letter was received by the Department of Personnel, which was during the week of July 23-27, not when the Step III hearing officer happens to review his mail.

#### ORDER


Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The Grievance of Anthony Leonard, Docket Number 90-77, is SUSTAINED, which thereby results in the automatic granting of the remedy requested by Anthony Leonard in 90-55; and

2. The State of Vermont, Department of Corrections, shall rescind forthwith the letter of reprimand issued by Superintendent Thomas Coxon to Anthony Leonard dated May 18, 1990.

Dated this 8<sup>th</sup> day of April, 1991 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
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Charles H. McHugh, Chairman

/s/ Louis A. Toepfer  
Louis A. Toepfer

/s/ Carroll P. Comstock  
Carroll P. Comstock