

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

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DOCKET NO. 97-20

SARAH ROYEA

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MEMORANDUM AND ORDER

Grievant and the Employer both have filed motions requesting that we amend the decision which we issued in this matter on September 16, 1997, 20 VLRB 194. Grievant requests that we amend our decision to clarify that Grievant retains her status as an employee on a leave of absence without pay pending a decision on her disability RIF request. Grievant further requests that the Employer be required to process Grievant's request for reasonable accommodation which was filed prior to her dismissal. The Employer requests that we amend our decision to hold that Grievant was properly separated from state employment by her failure to appear for work for five days in a row without permission to do so.

We are not inclined to reconsider our determination under the unusual circumstances of this case that the Employer was not justified in dismissing Grievant for voluntarily quitting her job, or for the alternative justification of unauthorized absence. Thus, we deny the Employer's motion to amend our decision.

We conclude that it is appropriate to clarify our decision as requested by Grievant to explicitly state what was inferred in our decision - i.e., that Grievant retains her status as an employee on a leave of absence without pay pending a decision on her disability RIF request. In so clarifying our decision, we need to make clear one issue which we are not deciding. Grievant takes the position that, if the Employer concludes that Grievant is not entitled to a disability RIF, Grievant then should have an opportunity to obtain medical clearance from her physicians to return to her former position. We express no opinion, and make no ruling, on the implications that Grievant's leave of absence without pay status has on Grievant's

rights in the event her disability RIF request is denied. If we were to make such a ruling, we would be making a declaratory judgment since we would be declaring the rights of the parties and ruling on a question of law prior to the fact. Hinesburg School District and Board of School Directors v. Vermont-NEA, et al, 9 VLRB 1, 3 (1986). The Board does not have the authority to make declaratory judgments. *Id.*

Finally, we believe it is appropriate that the Employer be required to consider Grievant's reasonable accommodation request to the extent that it is intertwined with Grievant's disability RIF request. As stated in Finding of Fact No. 2 of our September 16 decision herein, 20 VLRB at 195, the "disability RIF" procedure under Article 35 of the Contract requires that an employee first comply with the State's Reasonable Accommodation Policy.

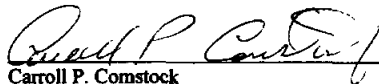
NOW THEREFORE, it is hereby ORDERED: 1) the Employer's Motion to Amend Judgment is denied; and 2) Grievant's Motion to Amend Judgment is granted to the extent that our September 16, 1997, decision in this matter is clarified to provide that Grievant retains her status as an employee on a leave of absence without pay pending a decision on her disability RIF request, and is further clarified to require the Employer to consider Grievant's reasonable accommodation request to the extent that it is intertwined with Grievant's disability RIF request.

Dated this 5th day of November, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Richard W. Park, Acting Chairperson



Carroll P. Comstock