

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 97-40
PAULINE LIESE)	

MEMORANDUM AND ORDER

At issue is whether we should grant a motion to dismiss filed by the State of Vermont, Department of Personnel ("State") in this matter. On July 2, 1997, Pauline Liese ("Appellant") filed an appeal with the Vermont Labor Relations Board, contending that a classification determination by the State on her position did not follow the requirements of the collective bargaining agreement and was made in an arbitrary and capricious manner. On September 24, 1997, the State filed a motion to dismiss. Appellant filed a response to the motion on October 10, 1997.

The State bases its motion to dismiss on Article 16, Section 4(a), of the collective bargaining agreement between the State and the Vermont State Employees' Association, which provides: "Notwithstanding any contrary provision of this Article, a classification grievance may be filed only if the position submitted for review was not changed to a higher pay grade". The State contends that this provision bars Appellant's classification appeal to the Board because her position was reclassified from pay grade 17 to pay grade 18.

Appellant does not contest that her position was reclassified upward one pay grade retroactive to the time she filed her request for reclassification, but contends that the Board should allow her appeal to proceed because the State's path to the reassignment determination did not progress pursuant to contractual requirements. Specifically, Appellant contends that the State did not respond directly and pointedly to the specific reasons listed in her request for review, did not make a timely decision on the request for review, and did not change their determination after she had presented justification for a pay grade 20 rating.

In interpreting the provisions of Article 16, Section 4(a), of the collective bargaining agreement, we are governed by rules of contract construction developed by the Vermont Supreme Court. A contract will be interpreted by the common

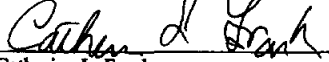
meaning of its words where the language is clear. In re Stacy, 138 Vt. 68, 72 (1980). If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Sweet v. Vermont State Colleges, 141 Vt. 275 (1982). The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts, not to make or remake them for the parties, or ignore their provisions. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).


In applying these rules of construction here, we conclude that the State's motion to dismiss should be granted. The provisions of Article 16, Section 4(a), clearly and unambiguously set forth the parties' intent that a classification determination can be grieved only if the position is not reclassified to a higher pay grade. Since Appellant's position was reclassified upward one pay grade, she lacks standing to grieve the reclassification determination.


NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the State of Vermont's Motion to Dismiss is GRANTED, and the Appeal of Pauline Liese is DISMISSED.

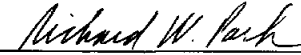
Dated this 23rd day of October, 1997, at Montpelier, Vermont.

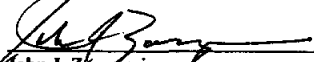
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