

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 00-71
PAULINE LIESE)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant Grievant's requests that the Board correct a misstatement in the February 27, 2001, decision in this matter dismissing the grievance; 24 VLRB 67; and that the Board modify the decision. Grievant filed her requests on March 28, 2001, indicating that she was making the requests pursuant to 3 V.S.A. Section 924(b), which provides:

Until a transcript of the record in a case is filed in a court under this chapter the board at any time upon reasonable notice and in such manner as it considers proper may modify or set aside wholly or partially a finding made or order issued by it.

In response to Grievant's requests, the State contends that the requests should be denied because they "are truthfully Motions to Alter or Amend Judgment that should be considered under V.R.C.P. 59(e)", and the requests were not filed in a timely manner pursuant to Rule 59(e). Grievant contends that Rule 59(e) is superceded by the statutory provisions of 3 V.S.A. Section 924.

We agree with the State that Grievant's requests were untimely filed. The Board has incorporated Rule 59 of the Vermont Rules of Civil Procedure into Section 12.1 of the Board Rules of Practice. Rule 59(e) provides that "(a) motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment". Grievant's requests constitute attempts to alter and amend the judgment issued by the Board in its February 27, 2001, decision, and should have been filed no later than 10 days after the Board issued the decision. Contrary to Grievant's contention, we do not interpret 3

V.S.A. Section 924(d) as negating the time requirements of V.R.C.P. Rule 59(d). Section 924(d) grants the Board the discretionary ability to modify or set aside a decision until a transcript of a case is filed in court, but does not grant parties coming before the Board discretion to circumvent the timeliness requirements of the Vermont Rules of Civil Procedure, incorporated by the Board in its Rules of Practice. For us to rule otherwise would make the provisions of V.R.C.P 59(e) meaningless.

Even assuming *arguendo* that Grievant's requests were timely made, we would not grant her requests to modify our decision concerning this grievance which involve the issue of whether Grievant should receive more backpay stemming from a reclassification of her position with the Transportation Board of the Agency of Transportation. In our February 27, 2001, decision, we stated:

. . . (W)e conclude this grievance should be dismissed. Article 16, Section (3)(e) of the Contract provided Grievant with the specific means to protect herself against negligence by the Employer and to secure the full retroactive pay back to January 1999 she seeks in this grievance. Under the contract language, she simply had to file a copy of the PER-10 directly with the Department of Personnel at the same time she submitted the PER-10 to her supervisor, and she failed to do so. As explicitly stated in the Contract, filing directly with the Department of Personnel would have permitted Grievant "to ensure that the effective date of any corrective action is not delayed at the employee's department level due to management or supervisory review of the request." When contract language clearly and unequivocally provides employees with the means to avoid delay in the effective date of any retroactive wage increase, it would be inappropriate for the Board to go beyond this contractually provided remedy. To do so would be to remake the contract and ignore its specific provisions.

In her requests, Grievant contends that Article 16(3)(e) does not preclude her grievance because it refers to delay at the "employee's department level", and the delay in her case was at the agency level of the Agency of Transportation rather than at the department level of the Transportation Board. This is a new assertion by Grievant which

she did not make prior to the Board issuing its February 27, 2001, decision, and we conclude that Grievant waived this argument by not raising it earlier. We will not consider new issues on reconsideration that could have been raised prior to the Board issuing its decision in the case.

Now therefore, based on the foregoing reasons, it is hereby ordered that Grievant's requests that the Board correct a misstatement in the February 27, 2001, decision in this matter, and that the Board modify the decision, are denied.

Dated this 23rd day of July, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Edward R. Zuccaro