VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 02-1
MARY LEE McISAAC	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant the motion filed by Grievant on February 5, 2003, the first day of the hearing on the merits, to amend her grievance in respect to her prayer for relief. Grievant and the Employer filed memoranda of law and reply memoranda of law on this motion on February 11 and 13, 2003.

In Grievant's original prayer for relief, contained in her original grievance, she requested as a remedy "a supervised reconsideration of her tenure case under appropriate procedures that include disqualification of those who have acted in bad faith, any lost pay and benefits, interest, and attorney's fees and costs". In her motion to amend the grievance, Grievant requests that the Board grant Grievant:

> a. reinstatement and grant of tenure as there is no legitimate factual basis in the record that indicates anything but the Grievant is entitled to tenure based on her teaching, service to the UVM community, and scholarship, or a supervised reinstatement and reconsideration of her tenure case under appropriate procedures that include disqualification of those who have acted in bad faith or are unable to review the matter without prejudice or bias, or alternatively,
>
> b. all lost pay and benefits,
>
> c. such other relief as this Board may deem just,
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> d. interest, and attorney's fees and costs.

Section 12.7 of the Board Rules of Practice provides that the Board may permit amendment of a grievance as the Board "deems proper". In deciding whether to permit amendment of grievances, the Board examines whether amendment would prejudice the employer, or be disruptive to the orderly and efficient processing of cases by the Board.

Grievance of VSEA, Barnard, et al, 17 VLRB 203, 225 (1994). Grievance of Brimblecome, 18 VLRB 391, 399 (1995).

We conclude that we can grant Grievant's proposed amendment without being prejudicial to the Employer or disruptive to the orderly and efficient processing of this case. In reviewing the amendment, the only additional relief requested by Grievant is that the Board grant supervised reinstatement or tenure.

We can grant the amendment without addressing whether the Board has the authority to grant tenure. Despite our earlier view that we should proceed to determine the merits of the grievance and any appropriate relief to be granted in a single proceeding, we now conclude that we should bifurcate the proceeding. In the event we sustain the grievance after a hearing on the merits, it is only then necessary to address the issue of remedy, making for an orderly and efficient process. At the remedy stage of the proceeding, the Board can have a subsequent hearing and reach the question of whether the Board has the power to include among its remedies the granting of tenure.

In the event we sustain the grievance, the Employer will not be prejudiced because the Employer will be provided ample time to prepare for remedial proceedings. Conversely, in the event we deny the grievance, it will be unnecessary for us to determine the scope of the Board's authority in fashioning an appropriate remedy. Under the circumstances of this case, a bifurcated proceeding appears to be the most orderly and efficient way to proceed.

Based on the foregoing reasons, it is ordered that Grievant's motion to amend her grievance in respect to her prayer for relief is granted.

Dated this ____ day of February, 2003, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Richard W. Park, Chairperson

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Edward R. Zuccaro

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Joan B. Wilson