VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 02-44
LOUIS STAMERRA	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 23, 2002, Louis Stamerra ("Grievant"), an employee of the Vermont Department of Taxes, filed a grievance contending that the State of Vermont Department of Personnel violated Article 37 of the collective bargaining agreement between the State and the Vermont State Employees' Association ("VSEA") for the Non-Management Unit, effective July 1, 2001 – June 30, 2003 ("Contract"), by denying him tuition reimbursement for two college courses Grievant registered for in 2002.

A hearing was held on April 17, 2003, in the Labor Relations Board hearing room in Montpelier before Board Members Edward Zuccaro, Acting Chairperson; Carroll Comstock and Joan Wilson. Grievant represented himself. Assistant Attorney General William Reynolds represented the State. Grievant and the State filed post-hearing briefs on May 1, 2003.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

. . .

ARTICLE 37
TUITION REIMBURSEMENT

. . .

4. Written requests for reimbursement will be first submitted to the employee's own department which may determine if its own department's funds will be allocated in whole or in part. Such decision shall not be subject to appeal or grievance.

5. The employee may then request reimbursement from the Tuition Reimbursement Fund, for any remainder. The application shall be submitted to

the Department of Personnel before the course begins . . . For courses beginning between July 1st and December 31st, applications must be submitted by U.S. mail to the Department of Personnel and must be postmarked between May 25th and June 7th. Applications will indicate which course is the employee's first priority and which course is the second priority. If there are insufficient funds to cover all of the first priority course applications, all timely submitted applications will be combined in a receptacle and one representative each from the State and VSEA will draw out applications until all of the available funds for that semester are committed for first course tuition reimbursement. If all first priority courses are funded, the above drawing process will be used to determine which second priority courses will receive tuition assistance . . .

. . .

APPENDIX B
PROBATIONARY EMPLOYEES

This Memorandum of Agreement outlines our understanding of the rights and benefits of original probationary employees in permanent, classified positions . . .

2 . . .

(d) The following contract provisions shall not apply to original probationers:

. . .

Tuition Reimbursement

(State's Exhibit 2)

2. Appendix B of the Contract first appeared as a side agreement to the collective bargaining agreement. The side agreement was entered into by the VSEA and State on April 30, 1990. It has appeared as an appendix to every collective bargaining agreement negotiated by them since then.

3. Grievant is a Tax Examiner for the Department of Taxes. He works in Montpelier. He is in the Non-Management Unit represented by the VSEA.

4. On June 4, 2002, Grievant was in an original probationary period. His probationary period was scheduled to end on June 17, 2002.

5. On June 4, 2002, Grievant submitted an application to the State Department of Personnel seeking tuition reimbursement for two courses that Grievant planned to take at Franklin Pierce College. One of the courses, Statistics, began on July 6,

2002, and ended on August 29, 2002. The second course, College Writing I, started on September 3, 2002, and ended on October 28, 2002. The application form submitted by Grievant had a shaded section to be completed by the employee's department that asked the question: "Has the employee completed original probation?" The "Yes" box accompanying this question was marked on Grievant's completed application. The following statement was handwritten next to the question: "Will complete on 6-17-02 Courses begin in July + Sept. '02". Department of Taxes Business Manager Leo Clark signed Grievant's application (State's Exhibit 1; Grievant's Exhibit 1, pages 1-2).

6. Marcia Blondin, Personnel Administrator/Business Manager for the Department of Personnel, received Grievant's application on June 5, 2002. Blondin has administered the tuition reimbursement program for classified employees in the Non-Management and Supervisory Units represented by the VSEA for the past four years. Upon receiving Grievant's application, Blondin determined through checking the State's Human Resource Management System that Grievant would not complete his original probationary period until June 17, 2002. On June 5, Blondin sent Grievant a letter which stated in pertinent part:

> Your tuition reimbursement program application has been received and reviewed. Unfortunately, as an original probationary employee, you are not eligible to participate in the tuition program at this time. See Appendix B, Section 2(d) of the current collective bargaining agreement for specific details. Therefore, we are unable to approve your request for tuition assistance.
> . . .
> (State's Exhibit 1)

7. During the time she has administered the tuition reimbursement program, Blondin's practice has been to check whether employees are eligible to receive tuition reimbursement. During that period, Blondin has rejected tuition applications of all

employees who had not passed their original probationary period at the time they submitted their applications (State's Exhibit 4).

8. The form that Grievant used to submit his application was an old form. A more recent form, which was mailed to all employees with their paychecks on April 18, 2002, states in pertinent part: "WHO IS ELIGIBLE? Classified employees in the non-management and supervisory bargaining units, who have completed original probation, are eligible to apply for Tuition Reimbursement." (Grievant's Exhibit 1, pages 1 – 3; State's Exhibit 1, page 2; and State's Exhibit 3, pages 10-11).

9. Grievant passed his original probationary period on June 17, 2002.

OPINION

Grievant contends that the State violated Article 37 of the Contract by denying him tuition reimbursement for two college courses Grievant registered for in 2002. Grievant contends that the language of the Contract is unclear and ambiguous, and that it does not prohibit probationary employees from applying for tuition reimbursement. Grievant maintains that it is unfair to deny him reimbursement. He contends that the deadlines set forth in the Contract for applying for tuition reimbursement constitute an administrative convenience for the State and appear to be reasonable ways to avoid many applications from arriving once courses begin. He maintains the application deadlines should have nothing to do with substantive eligibility for tuition reimbursement for courses taken after the probationary period has ended, particularly when the probationary period has ended prior to the start of the disbursement timeframe for the courses.

The State contends that Appendix B of the Contract states clearly and unambiguously that the tuition reimbursement article of the Contract, Article 37,

Contract, does not apply to employees in their original probationary period. Even if the Board concluded that the Contract is unclear, the State maintains that the bargaining history of Appendix B supports the State's position that tuition reimbursement is not available to employees who have not passed original probation.

A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (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. Swett 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. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

Extrinsic evidence under such circumstances is inadmissible as it would alter the understanding of the parties embodied in the language they chose to best express their intent. Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981). However, resort to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language is appropriate if sufficient ambiguity exists in the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Where the disputed language is sufficiently ambiguous, it is appropriate to look to the extrinsic evidence of past practice and bargaining history to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract. Grievance of Majors, 11 VLRB 30, 35 (1988).

In applying these standards here, we conclude that the Contract provides that employees in their original probationary period are not entitled to apply for tuition

reimbursement during their original probationary period, even if the applicable courses are taken and disbursement for such courses occurs after the probationary period ends. Appendix B of the Contract states that "(t)he following contract provisions shall not apply to original probationers: . . . tuition reimbursement". The tuition reimbursement provisions of the Contract are contained in Article 37, which states in pertinent part to this grievance: "For courses beginning between July 1st and December 31st, (tuition reimbursement) applications must be submitted by U.S. mail to the Department of Personnel and must be postmarked between May 25th and June 7th." Since Appendix B provides that the tuition reimbursement provisions of the Contract do not apply to original probationers, and the tuition reimbursement application deadlines are set forth in the tuition reimbursement provisions of the Contract, then the Contract clearly does not entitle employees in their original probationary period to apply for tuition reimbursement.

The application deadlines established in Article 37 are an integral part of the tuition reimbursement process, and not just an administrative convenience for the State as claimed by Grievant. Deadlines set into motion a process by which available tuition reimbursement funds can be allocated in a timely manner to employees applying for tuition reimbursement. If deadlines are not set and adhered to, then adequate enforcement cannot occur of the provisions of Article 37 that establish a drawing process if there are insufficient funds to cover all applying employees' first priority course or, if all first priority courses are funded, which second priority courses will receive tuition assistance.

Contrary to Grievant's contention, the parties to the Contract provided that application deadlines do affect substantive eligibility for tuition reimbursement. Employees in their original probationary period are not entitled to tuition reimbursement

funds for courses if they are still in original probation at the end of the applicable tuition reimbursement application period.

As a result, we conclude this grievance should be dismissed. On June 4, 2002, when Grievant was in an original probationary period scheduled to end on June 17, 2002, Grievant submitted a tuition reimbursement application for two college courses that he planned to take from July to October that year. Given these facts, he was not entitled to apply for or receive tuition reimbursement for the two courses because he was in his original probationary period when he applied for tuition reimbursement and the tuition reimbursement application period ended prior to Grievant completing his original probationary period.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of Louis Stamerra is dismissed.

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

VERMONT LABOR RELATIONS BOARD

_____
Edward R. Zuccaro, Acting Chairperson

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Carroll P. Comstock

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Joan B. Wilson