

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 99-41
GLORIA DANFORTH	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant the motion of the State of Vermont Department of Public Safety (“Employer”) to dismiss this grievance. On June 21, 1999, the Vermont State Employees’ Association (“VSEA”) filed a grievance on behalf of Gloria Danforth (“Grievant”). Grievant contends that the Employer violated Articles 5 and 15 of the collective bargaining agreement between the State of Vermont and VSEA for the State Police Unit, effective July 1, 1997 to June 30, 1999 (“Contract”), by requiring her to take two days of annual leave to attend depositions related to a pending grievance she had filed, and by failing to provide her with mileage reimbursement for the depositions. Grievant requests as a remedy restoration of lost leave time and mileage reimbursement for attending the depositions.

The Employer filed a motion to dismiss the grievance on November 18, 1999. Grievant filed a response in opposition to the motion on December 3, 1999. The Labor Relations Board issued an order on January 7, 2000, deferring acting on the motion to dismiss until a pending appeal filed by Grievant concerning her dismissal was decided. The Board has dismissed Grievant’s appeal of her dismissal. Appeal of Danforth, 27 VLRB 153 (2004); 27 VLRB 220 (2004). The Board provided the parties with the opportunity until November 16, 2004, to file any additional briefs on the motion to dismiss. The parties did not file additional briefs.

We first address the issue concerning the Employer requiring Appellant to take two days of annual leave to attend depositions related to her pending grievance. The

Employer contends that this issue is moot due to Grievant's dismissal. The Employer states that Grievant was paid for 180 hours of annual leave at the time of her separation, the maximum amount for which she could be paid at separation under the terms of the Contract. Grievant had a leave balance of 403 hours at the time of her dismissal, and she forfeited the balance in excess of 180 hours. The Employer maintains that the forfeiture of the leave balance in excess of 180 hours renders the annual leave issue moot because the two days annual leave at issue would have been lost at her dismissal along with all other leave hours in excess of 180.

In response to the motion to dismiss, Grievant conceded that this claim was contingent on Grievant's successful appeal of her dismissal. Since Grievant did not prevail in her dismissal appeal, we concur with the Employer that this issue is moot since the leave time at issue would have been lost at her dismissal along with all other leave hours in excess of 180.

This leaves the remaining issue of whether the Employer violated the Contract by failing to provide Grievant with mileage reimbursement for attending the depositions. The Employer contends that the Contract does not provide for mileage reimbursement in such circumstances. Grievant alleges violations of Articles 5 and 15 of the Contract. Grievant has not demonstrated how either of these articles supports her entitlement to mileage reimbursement.

Grievant alleges a violation of Article 5 on the grounds that the Employer's "actions constituted discrimination and retaliation on the basis of gender, and complaint and grievance activities". In responding to the motion to dismiss, Grievant has not set forth any instances in which other members of the State Police were provided mileage reimbursement for attendance at depositions related to pending grievances they had filed.

Absent such evidence, Grievant's allegation of discrimination and retaliation on the basis of gender, and complaint and grievance activities, is without any underlying support.

Article 15 likewise does not support Grievant's claimed entitlement to mileage reimbursement. It provides that employees participating in grievance meetings may do so "during working hours without loss of pay and without charge to accumulated annual leave". It contains no reference to entitlement of employees to mileage reimbursement. Article 47 of the Contract sets forth the standard that employees are entitled to mileage reimbursement "(f)or authorized automobile mileage actually and necessarily traveled in the performance of official duties". Grievant has made no claim that Article 47 was violated, and the article that she contends was violated does not address mileage reimbursement. Thus, Grievant has cited no contractual basis for entitlement to mileage reimbursement for attendance at the depositions.

Based on the foregoing reasons, it is ordered that the motion to dismiss filed by the State of Vermont Department of Public Safety is granted and the Grievance of Gloria Danforth is dismissed.

Dated this 28th day of December, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Edward R. Zuccaro, Chairperson

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Carroll P. Comstock

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Richard W. Park

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Joan B. Wilson