VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 17-04
GENE BOHANNON	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by the State of Vermont Department of Corrections ("State") to dismiss the grievance filed in this matter as untimely filed.

Attorney Charles Martin filed a grievance with the Labor Relations Board on January 26, 2017, on behalf of Gene Bohannon ("Grievant"), stating in its entirety:

> "Please consider this letter as the grievance of Gene Bohannon (sic) the termination of employment dated December 28, 2016 a copy of which is attached to this letter. Also, please provide me a copy or an internet source of the current Board rules for grieving this matter. Thank you for your attention to this matter."

The Labor Relations Board Executive Director sent Martin a letter by fax and email on January 26, 2017: 1) stating that his letter did not conform to the provisions of Board *Rules of Practice* for filing grievances, 2) setting forth the pertinent provisions of the *Rules*, 3) informing him that the Employer would not be required to file an answer to the grievance until it is filed in accordance with the Board *Rules* and that he must file a grievance to conform to Board *Rules* by January 30, 2017.

Martin filed a letter with the Board on February 1, 2017, on behalf of Grievant which complied with the provisions of Board *Rules* concerning the required contents of a grievance. The State filed an answer to the grievance on February 21, 2017, and filed a motion on February 28, 2017, to dismiss the grievance.

The State contends that the grievance should be dismissed because Grievant failed to file his grievance within the 30-day timeframe required by Board *Rules*, the collective bargaining

agreement, and by Board and Vermont Supreme Court precedents. The Employer asserts that the date the grievance should be considered as filed is February 1, when the Board received the second letter from Martin, not January 26, the date the Board received the first letter from Martin.

Grievant filed an Opposition to State's Motion to Dismiss on March 6, 2017. Grievant asserts: 1) the letter which the Board received on February 1, was mailed on January 27, and a delay in mail service is sufficient to excuse a late filing; and 2) the filing received on February 2 is an amendment of the first notice of grievance timely filed on January 26. The State filed a Response to Grievant's Opposition to State's Motion to Dismiss on March 24, 2017.

The Board will resolve an issue on the merits if possible unless the collective bargaining agreement or Board *Rules of Practice* require it to be dismissed on procedural grounds. Grievance of Brewster, 23 VLRB 96, 98 (2000). Grievance of Kimble, 7 VLRB 96, 108 (1984). Grievance of Amidon, 6 VLRB 83, 85 (1983). Grievance of Monti, 10 VLRB 246, 249-250 (1987). A leading area where the Board has considered whether to dismiss grievances on procedural grounds has been whether grievances were timely filed.

The Board has dismissed grievances as untimely filed if they did not meet the requirement of the Board *Rules of Practice* of being "filed within 30 days after receipt of notice of final decision of the employer." Grievance of Monti, supra. Grievance of Roy, 147 Vt. 403 (1986). In one case, the Board permitted an exception to this general rule where an employee sent a grievance to the Board by certified mail five days before the deadline, but it was not received by the Board until the day after the deadline. Grievance of Mason, 15 VLRB 428 (1992).

The threshold determination which the Board needs to make in this case is whether the grievance should be considered as filed on January 26, when the Board received the letter from Grievant's attorney, or on February 1, when the Board received a grievance from Grievant's attorney which complied with the provisions of Board *Rules* concerning the required contents of a grievance. This threshold determination is important because January 26 is less than 30 days after Grievant received notice of the final decision of the Employer that he was dismissed, and February 1 is beyond the 30 days.

The Labor Relations Board has followed the practice of considering the operative date for a grievance being filed as the day when the employee first filed an action with the Board even though it did not conform to the requirements of Board *Rules of Practice* concerning filing of grievances. For example, Chad Burgess filed a grievance with the Board on July 9, 2002, contesting his June 18, 2002, dismissal. The Board Executive Director sent him a letter on July 19, 2002, informing him that the grievance did not conform to Board *Rules of Practice*, and instructing him to "file an amended grievance to conform to Section 18.3 of Board *Rules of Practice* by no later than August 1, 2002." The employee subsequently filed an amended grievance on July 30, 2002. The Board considered the grievance as filed on July 9, 2002 (VLRB Docket No. 02-38). Thus, the action was commenced when the initial document was filed less than 30 days after receipt of final decision of the employer and the complete grievance was filed beyond the 30 days, and the grievance was considered as filed on the date of the initial filing.

Another example is Grievance of Adam Mickel, 33 VLRB 282 (2015). Mickel filed a grievance on July 22, 2015, which did not conform to Board *Rules of Practice*. The Board Executive Director sent him a letter on July 23, 2015, informing him that his grievance did not conform to Board *Rules* and that "you need to file an amended grievance with the Labor

Relations Board by August 3, 2015, indicating the date of your resignation." Mickel filed an amended grievance on August 3, 2015. When the Board subsequently ruled on a motion of the State to dismiss the grievance on timeliness grounds, the Board considered his grievance to have been filed on July 22, not August 3. 33 VLRB at 284.

In applying this precedent here interpreting our *Rules of Practice* of considering the operative date for a grievance being filed as the day when the employee first filed an action with the Board even though it did not conform to the requirements of Board *Rules of Practice* concerning filing of grievances, we conclude that the grievance was timely filed. The letter filed with the Board on January 26, 2017, provided notice that Grievant was filing a grievance over his dismissal. This initial filing is considered the date the grievance was filed for determining whether the grievance was timely filed. Since January 26, 2017, is less than 30 days after Grievant received notice of the final decision of the Employer that he was dismissed, the grievance was filed in a timely manner.

Based on the foregoing reasons, it is ordered that the Motion to Dismiss filed by the State of Vermont Department of Corrections in this matter is denied.

Dated this 15th day of June 2017, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

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Gary F. Karnedy, Chairperson

/s/ Richard W. Park

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Richard W. Park

/s/ Edward W. Clark, Jr.

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Edward W. Clark, Jr.