

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:  
CARL BRANDON

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DOCKET NO. 19-26

MEMORANDUM AND ORDER

The issue to be decided is whether the Labor Relations Board should grant the motion filed by the Vermont State Colleges System (“Employer”) to dismiss this grievance filed by Carl Brandon, Professor at Vermont Technical College (“Grievant”). The Employer filed the motion on August 6, 2019, contending that this grievance should be dismissed as procedurally deficient because: 1) Grievant failed to properly file his Step Two grievance with the Chancellor by not hand-delivering it, or sending it via the U.S. Postal Service, in violation of the collective bargaining agreement; and 2) Grievant failed to serve the Step Three grievance that he filed with the Board on the Employer personally or by mail. Grievant filed a response in opposition to the Employer’s motion to dismiss on September 5, 2019.

Factual Background

The facts pertinent to deciding this motion, which are undisputed, are:

The collective bargaining agreement between the Employer and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO (“Contract”), provides in pertinent part:

...

**ARTICLE 14  
GRIEVANCE PROCEDURE**

...

D. The following steps shall be followed for the processing of grievances:

1. STEP ONE

- a. Within thirty (30) calendar days after the grievant could reasonably have been aware of the alleged violation, or within thirty (30) calendar days after the date of the last special conference . . . if any, held to specifically discuss the matter being grieved, the grievant (or his/her representative) shall hand deliver a written and dated grievance to the President of the

College or his/her designee. If hand delivery is not possible, the grievance shall be sent certified mail, return receipt requested. . .

- b. The President of the College or his/her designee shall arrange a meeting within fifteen (15) calendar days of receipt. . . Within fifteen (15) calendar days of such meeting, a written grievance shall be forwarded by the President of the College or his/her designee to the grievant with a copy to the Federation. The Federation's copy shall be sent to the address specified in the grievance.

## 2. STEP TWO

In the event the grievance is not settled in Step 1, the grievant or his/her representative may present his/her grievance at Step 2 within fifteen (15) calendar days of receipt of the Step 1 answer. At this step the grievance shall be presented in writing to the Chancellor. Within fifteen (15) calendar days of receipt, the Chancellor or his/her designee shall arrange for a meeting among the grievant, a Federation representative and the Chancellor or his/her designee, except as noted in H . . . Within fifteen (15) calendar days of the Step 2 meeting, a written answer to the grievance shall be forwarded by the Chancellor or his/her designee to the grievant with a copy to the Federation. . .

...  
G. Failure of the grievant to comply with the time limitations of the grievance steps set forth in this Article shall preclude any subsequent filing of the grievance. Failure by the administration to comply with the time limitations in this article shall permit the grievance to be processed automatically to the next step.

...  
K. Written communications required as part of the grievance procedure shall either be hand-delivered or sent via U.S. Postal Service, certified mail, return receipt requested.

On April 29, 2019, Grievant emailed two grievances relating to the post-tenure review process to Vermont Technical College President Patricia Moulton. The first grievance related to formulation of a development plan with the Academic Dean. The second grievance related to sharing of student evaluations with the Faculty Evaluation Committee.

Upon receipt of these two emails, President Moulton sent a responsive email to Grievant, stating:

I am writing to confirm receipt of your two emails dated April 29, 2019 . . . The contract provides that an individual faculty member has the right to discuss any concerns or complaints with the President in a special conference. If you wish to meet to discuss the contentions in your emails, please reach out to Michelle Graham to schedule a time to

meet to discuss these two issues with me. Alternatively, if you wish to proceed directly to Step One, the contract provides that a grievance is initiated either by hand-delivering a written and dated grievance to me or by sending it to me by certified mail, return receipt requested.

On April 30, 2019, Grievant emailed a third grievance to President Moulton, contending that the Academic Dean had violated the collective bargaining contract by not meeting with him prior to conducting a classroom observation. President Moulton sent an email response on May 1, 2019, to the April 30 email from Grievant, stating:

I am writing to confirm receipt of your recent email, dated April 30, 2019 . . .

Again, the contract provides that an individual faculty member has the right to discuss any concerns or complaints with the President in a special conference. If you wish to meet to discuss the contentions in your emails, please reach out to Michelle Graham to schedule a time to meet to discuss it with me. Alternatively, if you wish to proceed directly to Step One, the contract provides that a grievance is initiated either by hand-delivering a written and dated grievance to me or by sending it to me by certified mail, return receipt requested.

Grievant hand-delivered the three grievances to President Moulton's office on May 1, 2019. President Moulton met with Grievant and his attorney for a Step One meeting on all three grievances on May 14, 2019. She issued a decision on May 28, 2019, denying all three grievances. Copies of the decision were sent to Grievant, his attorney, and the Federation by email. She also sent a paper copy of the decision by certified mail to Grievant.

On June 5, 2019, Grievant sent three e-mails to State Colleges Chancellor Jeb Spaulding. In the subject line on the three e-mails, Grievant stated respectively: "Step Two Grievance #1", "Step Two Grievance", and "Grievance #3". In the body of the emails, Grievant provided content on "(t)he nature of the grievance", "(t)he provision(s) of the Agreement alleged to have been violated", and "(t)he adjustment or remedy sought".

Grievant did not send any additional written communications to the Chancellor or the Employer other than the emails. He did not hand-deliver the Step Two grievances to the Chancellor and he did not send them by certified mail.

On July 18, 2019, Grievant emailed President Moulton and the Clerk of the Vermont Labor Relations Board a copy of what he termed “the VLRB grievance filed by me today”. The Labor Relations Board received a copy of the grievance by regular mail on July 22, 2019. There is no evidence that Grievant sent a written communication to the Employer on this grievance other than the copy he emailed to President Moulton.

On July 19, 2019, Grievant sent an email to Chancellor Spaulding, attaching a copy of one of his June 5 emails, and stating:

“You never responded to this Step Two grievance request. Was that your intention? To preserve my rights, I have filed with the VLRB, but would be willing to talk with you, instead.”

On July 22, 2019, Chancellor Spaulding sent an email response to Grievant, stating:

Thanks for sending your email dated June 5. I did receive it and the other two as well, but, despite the subject line, I was not aware you meant them as formal requests to move to grievances at Step Two. As I believe you know, the contract provides that: “Written communications required as part of the grievance procedure shall either be hand delivered or sent via U.S. Postal Service, certified mail, return receipt requested.” As far as I am aware, you neither hand-delivered a Step Two grievance to me, nor did you mail a copy to my office. Had we received your Step Two grievance in a timely fashion, we would have addressed it here at the Chancellor’s Office. However, as you have already filed with the Labor Relations Board, the VSC will plan to respond to your complaint before the Board.

### Discussion

We first address the Employer contention that this grievance should be dismissed as procedurally deficient because Grievant failed to properly file his Step Two grievance with the Chancellor by not hand-delivering it, or sending it via the U.S. Postal Service, in violation of the

Contract. Article 14, Section K, of the Contract provides: “Written communications required as part of the grievance procedure shall either be hand-delivered or sent via U.S. Postal Service, certified mail, return receipt requested.”

Grievant concedes that he did not follow this requirement of the Contract, but he contends that this Contract article is obsolete. He bases this claim on the Step One grievance response from President Moulton when she stated that another article of the Contract contained “outdated language” because it “suggests hard copies of student evaluations exist” even though an “electronic system” currently exists for such evaluations. He also downplays the significance of his failure to follow the Contract because Chancellor Spaulding acknowledged that he received the Step Two grievances from Grievant via email. Grievant further contends that the motion to dismiss the grievance should not be granted because the Contract does not mandate dismissal of the grievance for this defect.

The Board will resolve an issue on the merits if at all possible unless the collective bargaining agreement requires 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). One area where the Board has dismissed grievances on procedural grounds has been if grievances were not timely filed at earlier steps of the grievance procedure. Under contracts providing that grievances must be filed within specified times at earlier steps of the grievance procedure, the Board, with the approval of the Vermont Supreme Court, has refused to consider grievances which were untimely filed at earlier steps of the grievance procedure. Grievance of Adams, 23 VLRB 92 (2000). Grievance of Boyde, 18 VLRB 518 (1995); *Affirmed*, 165 Vt. 624 (1996).

In so holding, the Board and Supreme Court have stressed that the collective bargaining contract made the goal of early resolution clearly paramount, and required that in-house resolution

of problems should first be attempted. In re Bushey, 142 Vt. 290, 294 (1982). Grievance of Mason, 16 VLRB 222, 237 (1993). The Board indicated that an employee's failure to grieve issues at earlier steps of a grievance procedure frustrated the desirable goal of early and in-house resolution of problems. Mason, 16 VLRB at 237.

The Board also has relied on Section 18.1 of the Board *Rules of Practice* to dismiss grievances of employees who have not complied with filing requirements at earlier steps of the grievance procedure. Section 18.1 provides:

The Board shall hear and finally determine the grievances brought before it, provided that such grievances are appealed pursuant to the procedures contained in an existing collective bargaining agreement and are filed within 30 days after receipt of notice of final decision of the employer, unless the collective bargaining agreement provides for a different time period. Grievances of persons not covered by a collective bargaining agreement, when permitted by law, shall be heard only after exhaustion of any administrative procedures that may be required by the State of Vermont, the Vermont State Colleges or the University of Vermont, and must be filed within 30 days after receipt of notice of final decision of the employer.

The Board has held that this rule is consistent with the important labor relations policy that employers and employees seek to resolve their disputes internally before invoking the Board's grievance jurisdiction. Grievance of Sklar, 19 VLRB 183, 207 (1996). Grievance of Wilson, 33 VLRB 285, 287 (2015). The Board is not a forum of first resort; the Board becomes involved only when efforts to resolve specific issues in dispute have been made unsuccessfully at earlier steps of the grievance procedure. Id.

In applying these standards here, we conclude this grievance should be dismissed pursuant to Article 18.1 of Board *Rules of Practice* and Article 14, Section K, of the Contract. Article 18.1 of Board *Rules* provide that "(t)he Board shall hear and finally determine the grievances brought before it, provided that such grievances are appealed pursuant to the procedures contained in an existing collective bargaining agreement". Grievant acted contrary to Article 18.1 of Board *Rules*

because he did not appeal his grievances at Step Two of the grievance pursuant to the procedures contained in the Contract providing that “(w)ritten communications required as part of the grievance procedure shall either be hand-delivered or sent via U.S. Postal Service, certified mail, return receipt requested.” Instead, he sent communications concerning his grievance to Chancellor Spaulding by email and neither hand-delivered the grievances nor sent them by U.S. mail.

Grievant does not, and could not persuasively, claim lack of knowledge of this requirement of the Contract. The Vermont Technical College President had informed him twice at Step One of the grievance procedures on these grievances of the contractual requirement to hand-deliver grievances or send them by certified mail, return receipt requested. Grievant elected to disregard this requirement when he proceeded to Step Two of the grievance process.

Grievant’s contention that President Moulton made this contractual requirement obsolete, when she stated at Step One of the grievance process that another article of the Contract contained “outdated language” because it “suggests hard copies of student evaluations exist” even though an “electronic system” currently exists for such evaluations, is not on point. There is no valid comparison between a replaced format for student evaluations and the still existing methods of transmitting written communications by hand-delivering them or sending them by U.S. mail.

Also, we do not concur with Grievant downplaying the significance of his failure to follow the Contract because Chancellor Spaulding acknowledged that he received grievance communications from Grievant via email. This does not negate Grievant electing to disregard contractual requirements in filing grievances. The Chancellor was entitled by the Contract to await a grievance filing complying with the Contract before acting on the grievances.

By failing to comply with the Contract's procedural requirements, Grievant acted contrary to the important labor relations policy that employers and employees seek to resolve their disputes internally before invoking the Board's grievance jurisdiction. He frustrated the desirable goal of early and in-house resolution of problems. The proviso of the Board *Rules of Practice* - that the Board shall hear and finally determine the grievances brought before it if such grievances are appealed pursuant to the procedures contained in the Contract - has not been satisfied. Accordingly, we dismiss the grievance.

Given our conclusion to dismiss this grievance due to Grievant's failure to properly file his grievance at Step Two of the grievance procedure, we do not need to address the Employer's further claim that the grievance should be dismissed because Grievant failed to serve the Step Three grievance that he filed with the Board on the Employer personally or by mail.

Based on the foregoing reasons, it is ordered that the motion of the Vermont State Colleges System to dismiss this grievance is granted.

Dated this 27th day of September 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore  
Robert Greemore

/s/ David R. Boulanger  
David R. Boulanger

/s/ Karen F. Saudek  
Karen F. Saudek