

## **Practices and Procedures in Resolving Grievances**

### **A. Filing A Grievance**

If employees are covered by a collective bargaining agreement, employee grievances filed with the Board must have been appealed pursuant to the procedures contained in an existing collective bargaining agreement and must be filed with the Board within 30 days after receipt of notice of final decision of the employer, unless the collective bargaining agreement provides for a different time period.<sup>1</sup> Grievances of persons not covered by a collective bargaining agreement, when permitted by law, are heard by the Board only after exhaustion of any administrative procedures that may be required by the employer, and must be filed within 30 days after receipt of notice of final decision of the employer.<sup>2</sup> The grievant must serve a copy of the grievance on the employer.<sup>3</sup>

The grievance may be filed on the form specified by the Board. The grievance does not need to be filed on such form, however, if it contains the contents specified in the form. In practice, most grievances are not filed on the form. Among the required contents of the grievance is to state the “pertinent section or sections of the collective bargaining agreement, if applicable, or the pertinent rule(s) or regulation(s) which are alleged to be violated”. The most common mistake in the filing of grievances is failure to cite the specific agreement provisions or rules and regulations which have been violated. This results in the need to amend the grievance, thus delaying the Board processing of the grievance.

The Board may permit amendment of a grievance as the Board “deems proper”.<sup>4</sup> In deciding whether to permit amendment of grievances, the Board

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<sup>1</sup> Section 18.1, Board Rules of Practice.

<sup>2</sup> Id.

<sup>3</sup> Section 12.3, Board Rules of Practice.

<sup>4</sup> Section 12.7, Board Rules of Practice.

examines whether amendment would prejudice the employer or be disruptive to the orderly and efficient processing of cases by the Board.<sup>5</sup>

## B. Answer to Grievance

The Employer is required to file an answer within 20 days after service of the grievance, unless the Board extends the time within which the answer needs to be filed.<sup>6</sup> Failure to file a timely answer may have significant implications, as such failure may be deemed by the Board under Board Rules to constitute an admission of the material facts alleged in the grievance and a waiver by the party of an evidentiary hearing, leaving a question or questions of law, alleged contract violation(s), or alleged violation(s) of a rule or regulation to be determined by the Board.<sup>7</sup>

In two cases, the Board invoked this provision of the Rules to deem that the employer's failure to file a timely answer constituted an admission of the material facts alleged in the grievance, and the waiver of an evidentiary hearing. The circumstances were that the grievant demonstrated prejudice, and the processing of cases by the Board was adversely affected, because of the employer's untimely answer.<sup>8</sup>

In filing an answer, the employer is required to admit or deny each specific allegation contained in the grievance or indicate a lack of knowledge or information

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<sup>5</sup> Grievance of McIsaac, 26 VLRB 1 (2003). Grievance of Moye and VSCFF, AFT Local 3180, AFL-CIO, 25 VLRB 106 (2001). Grievance of Laughlin, 21 VLRB 161, 166-167 (1998). Grievance of Petty, 20 VLRB 44, 53-54 (1997). Grievance of VSEA, West and Cray, 18 VLRB 461, 478-479 (1995). Grievance of VSEA, Barnard, et al, 17 VLRB 203, 225 (1994). Grievance of Rennie, 16 VLRB 1, 2-4 (1993). Grievance of VSEA (re: Refusal to Provide Information), 15 VLRB 13 (1992).

<sup>6</sup> Section 18.4, Board Rules of Practice.

<sup>7</sup> Section 18.6, Board Rules of Practice.

<sup>8</sup> Grievance of Liese, 24 VLRB 67, 68 (2001). Grievance of VSEA (Re: Refusal to Provide Information), 15 VLRB 13, 16-18 (1992).

sufficient to form a belief. An allegation in the grievance not specifically denied in the answer, unless the party asserts that it is without knowledge or information thereof sufficient to form a belief, will be deemed admitted by the Board.<sup>9</sup>

The Board may permit amendment of an employer answer to a grievance. In deciding whether to permit amendment of employer answers, the Board examines whether amendment would prejudice the employee or union, or be disruptive to the orderly and efficient processing of cases by the Board.<sup>10</sup>

### C. Informal Intervention

The Board may informally intervene in the pending case in various ways between the time the employer files an answer to the grievance and the grievance hearing occurs before the Board. Board staff may meet with the parties in informal status conferences or pre-hearing conferences to explore informal settlement of the grievance, discuss discovery issues, clarify issues, and/or seek to narrow the issues. Also, if both parties request the Board to appoint a grievance mediator to assist in resolving the grievance, then the Board may appoint a qualified individual to mediate the dispute.<sup>11</sup> Further, Board staff may explore with the parties the possibility of stipulating to facts and requesting a decision by the Board without an evidentiary hearing.<sup>12</sup>

If there is no stipulation of facts, the grievance is not informally resolved, and the grievance is not otherwise dismissed pursuant to a motion, the grievance is heard by a three-member panel of the Board. Grievance hearings are more informal than unfair labor practice hearings in that they are not governed by the Rules of Evidence.

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<sup>9</sup> Section 18.5, Board Rules of Practice.

<sup>10</sup> Grievance of Lawrence, 17 VLRB 360, 368 (1994).

<sup>11</sup> Section 18.8, Board Rules of Practice.

<sup>12</sup> Section 18.7, Board Rules of Practice.

This is based on statutory language which provides the following with respect to Board grievance hearings: "unless both parties concerned request that it be formal, hearings shall be informal and not subject to the rules of . . . evidence of the courts of the state."<sup>13</sup> After the parties are provided with an opportunity to file post-hearing briefs, the Board deliberates and issues written findings of fact, opinion and order.

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<sup>13</sup> 3 V.S.A. §928(b).