

Timeliness Requirements

The Board will resolve an issue on the merits if possible unless the collective bargaining agreement requires it to be dismissed on procedural grounds.¹ The leading area where the Board has dismissed grievances on procedural grounds has been if grievances were not timely filed, or issues were not raised or were untimely raised, at earlier steps of the grievance procedure or in the grievance filed with the Board.

Under contracts providing that grievances must be filed within specified times at earlier steps of the grievance procedure, and must include a concise statement of relevant facts and the provision(s) of the contract alleged to be violated, the Board, with the approval of the Vermont Supreme Court, has refused to consider grievances which were untimely filed, or issues which were not raised or were untimely raised, at earlier steps of the grievance procedure.² Generally, there must be specific and timely raising of issues at earlier steps of the grievance procedure or the right to raise the issue is waived.³

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.⁴ The Board

¹ Grievance of Brewster, 23 VLRB 96, 98 (2000). Grievance of Kimble, 7 VLRB 96, 108 (1984). Grievance of Amidon, 6 VLRB 83, 85 (1983).

² Grievances of Aleong, 32 VLRB 218, 241 - 242 (2013), *Affirmed*, 2014 VT 15 2014). Grievance of Benoit, 31 VLRB 237, 249-50 (2011). Grievance of Adams, 23 VLRB 92 (2000). Grievance of Boyde, 18 VLRB 518 (1995); *Affirmed*, 165 Vt. 624 (1996). Grievance of D'Aleo and VSCFE, 4 VLRB 192, 193 (1981); *Affirmed*, 141 Vt. 534, 540 (1982). Grievance of Peck and VSCFE, 139 Vt. 329, 331-332 (1981). Grievance of Ulrich, 12 VLRB 230, 239 (1989); *Affirmed*, 157 Vt. 290 (1991). Grievance of O'Neil and Vermont State Colleges Faculty Federation, AFT Local 3180, AFL—CIO, 3 VLRB 100 (1980).

³ Ulrich, 12 VLRB at 239, 157 Vt. at 293-95. Grievances of Aleong, 32 VLRB at 241-242; *Affirmed*, 2014 VT 15 2014). Grievance of Bagley, et al, 16 VLRB 448, 464 (1993). Grievance of O'Neil, 3 VLRB 100, 103 (1980).

⁴ In re Bushey, 142 Vt. 290, 294 (1982). Grievance of Mason, 16 VLRB 222, 237 (1993).

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.⁵

The Board applied a similar rationale in granting employer motions to exclude employees from grievances filed with the Board when the union first sought to include certain employees in the grievance when it was filed with the Board. The Board relied on the grievance provisions of the applicable collective bargaining agreement as reflecting a recognition that individual grievants need to be identified at the outset of the grievance procedure, thereby providing sufficient notice to the employer and an opportunity for the employer to examine the particular circumstances of an individual at earlier steps of the grievance procedure to possibly resolve it, or the right to seek redress for unidentified employees is waived.⁶

In cases where pay practices were involved and the timeliness of the grievance was at issue, the Board held that the occurrence of the matter giving rise to a grievance was when a paycheck was issued.⁷ In the event that an employee's paycheck is electronically deposited, the Board has concluded that the occurrence of the matter giving rise to a grievance was when an employee received a pay advice indicating the details of the pay period on items such as pay received, hours worked, and overtime compensation.⁸ Also, the Board has held that the "occurrence of the matter" which gives rise to a grievance is not an employee's knowledge of contract

⁵ Mason, 16 VLRB at 237.

⁶ Grievance of VSEA, Perkins, et al, 23 VLRB 67, 76-77 (2000). Grievance of VSEA, Langlois, et al, 36 VLRB 4, 8-9 (2021).

⁷ Grievance of Scanzani, 35 VLRB 122, 123-124 (2019). Grievance of Shine, 21 VLRB 103 (1998). Grievance of Reed, 12 VLRB 135, 143-144 (1989). Grievance of Cole, 6 VLRB 204, 209-210 (1983). Grievance of Byrne, 6 VLRB 1, 8 (1983). Grievance of VSEA on Behalf of Meat Inspectors, 4 VLRB 144 (1981).

⁸ Grievance of Scanzani, *supra*. Grievance of Eynon, 33 VLRB 234, 240 (2015).

provisions entitling an employee to certain benefits, but instead receipt of a paycheck indicating non-payment of the benefits.⁹

The Board has ruled similarly with respect to grievances of University of Vermont employees not covered by collective bargaining agreements. The Board has relied on Section 18.1 of Board Rules of Practice, which provides that “(g)rievances of persons not covered by a collective bargaining agreement . . . shall be heard only after exhaustion of any administrative procedures that may be required by the . . . University of Vermont”. 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.¹⁰ 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.¹¹ Employees act contrary to Board Rules and these important policy considerations by not specifically raising issues concerning alleged violations of rules and regulations when they file grievances with the employer at lower steps of the grievance procedure.¹²

The Board also has dismissed cases where employees bypass earlier steps of the grievance procedure and seek to bring an issue directly to the Board.¹³ Employees may not bypass the grievance procedure because they do not expect to receive a result satisfactory to them.¹⁴ Employees are required to adhere to the

⁹ Grievance of Scanzani, 35 VLRB at 124. Grievance of Pierson, 25 VLRB at 173.

¹⁰ Grievance of Sklar, 19 VLRB 183, 207 (1996). Grievance of Wilson, 33 VLRB 285, 287 (2015).

¹¹ Id.

¹² Id.

¹³ Grievance of McCort, 19 VLRB 319 (1996); *Affirmed*, (Unpublished decision, Sup. Ct. Dock. No. 96-540, 1997). Vermont State Employees’ Association and Barney v. Department of Public Safety, 21 VLRB 224 (1998). Grievance of Wilson, 33 VLRB at 288. Grievance of von Turkovich, 34 VLRB 56 (2017).

¹⁴ McCort, 19 VLRB at 322-325. VSEA and Barney, 21 VLRB at 228. Wilson, 33 VLRB at 288.

requirements of the Contract with respect to filing grievances; failure to do so means they waive the right to grieve issues.¹⁵

Similarly, the Board has declined to resolve issues that were not raised in the grievance filed with the Board pursuant to the Board Rules of Practice, which requires that a grievance contain a concise statement of the nature of the grievance and specific references to the pertinent section of the collective bargaining agreement and/or rules and regulations.¹⁶ The Board will not reach the merits of an issue not raised in the grievance filed with the Board even if it was raised at earlier steps of the grievance procedure.¹⁷

Also, 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."¹⁸ 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.¹⁹ The Board has followed the practice of considering the operative date for a grievance being filed as the day when the employee first files an action with the Board even though it did not conform to the requirements of Board *Rules of Practice* concerning the content of grievances.²⁰

The Board has accepted the validity of a continuing grievance in cases where pay practices were involved and employees initially did not grieve the alleged violations within contractual time limitations, but grieved the alleged violations

¹⁵ Id.

¹⁶ Grievance of United Academics, AAUP/AFT, 35 VLRB 211, 222 (2019). Grievance of Regan, 8 VLRB 340, 364 (1985).

¹⁷ Grievance of Shockley and VSCFF, 5 VLRB 192, 202-203 (1982).

¹⁸ Grievance of Mickel, 33 VLRB 282 (2015). Grievance of Monti, 10 VLRB 246, 249-250 (1987). Grievance of Roy, 147 Vt. 403 (1986).

¹⁹ Grievance of Mason, 15 VLRB 428 (1992).

²⁰ Grievance of Bohannon, 34 VLRB 65, 67-68 (2017).

during the period they were still occurring. The Board held that grievants were permitted to institute grievances over the matter at any time during the period in which the alleged violations were occurring, since there was a new occurrence of the alleged violation every time a paycheck was issued, with the restriction that the grievants waived their right to back pay for all periods prior to the pay period immediately preceding the filing of the grievances.²¹ The Board further recognized a continuing grievance when the issue was the continuing human resource practice of how annual leave accruals are calculated for newly hired employees.²²

To render a grievance timely, the aggrieved employee must demonstrate that at least one alleged violation occurred within the specified timeframe for filing grievances.²³ In limiting the time period for aggrieved employees to receive back pay, the Board has indicated that the purpose of a grievance is to officially bring to the employer's attention a grievable action, and an employer cannot be held financially liable for an action of theirs of which they were never made officially aware was a source of employee dissatisfaction.²⁴

Continuing grievances are not recognized when completed acts are involved such as termination through discharge or resignation, a job transfer, or discontinuance of a particular job assignment.²⁵

Another timeliness issue addressed by the Board is whether to allow grievances filed with the Board to be amended. The Board Rules of Practice permits amendment of grievances as the Board "deems proper".²⁶ In deciding

²¹ Grievance of Eynon, 33 VLRB 234 (2015). Grievance of Cole and Cross, 28 VLRB 345, 367-369 (2006). Grievance of Shine, 21 VLRB 103 (1998). Grievance of Reed, 12 VLRB 135, 143-44 (1989). Grievance of Cole, 6 VLRB 204, 209-210 (1983).

²² Grievance of VSEA (Re: Annual Leave Accruals), 33 VLRB 330 (2016).

²³ Id. Miller v. University of Vermont, 23 VLRB 205, 212 (2000). Grievance of Boyde, 165 Vt. 624, 626 (1996).

²⁴ Grievance of Pierson, 25 VLRB 168, 171-72 (2002). Grievance of VSEA on Behalf of Meat Inspectors, 4 VLRB 144, 154 (1981).

²⁵ Grievance of Boyde, 165 Vt. 624 (1996).

²⁶ Section 12.7, Board Rules of Practice.

whether to permit amendment of grievances, the Board examines whether amendment would prejudice the employer or be disruptive to the orderly and efficient processing of cases by the Board.²⁷

²⁷ Grievance of VSEA, Barnard, et al, 17 VLRB 203, 225 (1994); *Affirmed*, 164 Vt. 214 (1995). Grievance of Rennie, 16 VLRB 1 (1993). Grievance of VSEA (Re: Refusal to Provide Information), 15 VLRB 13 (1992).