

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 18-53
JOHN SCANZANI)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by the State of Vermont ("State") to dismiss this grievance. On November 20, 2018, the Vermont State Employees' Association ("VSEA") filed a grievance on behalf of Vermont Department of Labor employee John Scanzani ("Grievant") alleging that the State violated Article 28 of the collective bargaining agreement between the State and the VSEA for the Non-Management Unit, effective for the period July 1, 2016 to June 30, 2018 ("Contract"), by denying Grievant holiday pay for Memorial Day, May 28, 2018.

On December 10, 2018, the State filed a motion to dismiss this grievance because Grievant failed to file a timely Step III grievance pursuant to Article 15(4)(a) and (b) of the Contract. VSEA filed an opposition to the motion to dismiss on December 26, 2018.

Article 15 of the Contract contains the following provisions pertinent to resolving this motion to dismiss:

...

4. GENERAL PROVISIONS

(a) Grievances may be initiated at . . . Step III if the subject matter of the grievance is clearly beyond the control of the agency, department or institution head.

(b) Grievances initially filed at . . . Step III shall be submitted within fifteen (15) workdays of the date upon which the employees could reasonably have been aware of the occurrence of the matter which gave rise to the grievance.

...

The pertinent facts necessary to decide this motion are as follows: Grievant did not receive holiday pay for Memorial Day, May 28, 2018. The non-payment of holiday pay for May 28, 2018, was reflected in Grievant's pay advice dated June 21, 2018. Grievant had access to the

pay advice via the VTHR online system by June 21, 2018. VSEA submitted a Step III grievance on behalf of Grievant on September 4, 2018, contesting the non-payment of holiday pay.

The State contends that this grievance must be dismissed pursuant to Article 15, Section 4(b), of the Contract because Grievant did not submit his Step III grievance within 15 workdays of the date upon which he reasonably could have been aware of the occurrence of the matter which gave rise to the grievance. VSEA asserts that the Board should deny the motion to dismiss and instead should grant Grievant a hearing to allow him to present evidence on whether his delay in checking his pay advice was reasonable.

The Board will resolve an issue on the merits if 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). 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, 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 Sileski, 25 VLRB 282 (2002). Grievance of Pierson, 25 VLRB 168 (2002). Grievance of Adams, 23 VLRB 92 (2000). Grievance of Boyde, 18 VLRB 518 (1995); *Affirmed*, 165 Vt. 624 (1996).

In past 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. 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). 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. Grievance of Eynon, 33 VLRB 234, 240 (2015).

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 provisions entitling an employee to certain benefits, but instead receipt of a paycheck indicating non-payment of the benefits. Grievance of Pierson, 25 VLRB at 173.

We conclude, consistent with these precedents, that Article 15(4)(d) of the Contract requires that this grievance be dismissed. The occurrence of the matter giving rise to the grievance was when the pay advice was issued on June 21, 2018, indicating that Grievant did not receive holiday pay for the May 28, 2018, Memorial Day holiday. The occurrence of the matter giving rise to the grievance was not the date Grievant checked his pay advice, but instead receipt of the pay advice indicating non-payment of holiday pay. Grievant could have been reasonably aware of the occurrence of the matter giving rising to his grievance on June 21, 2018, and his failure to file a Step III grievance until well beyond 15 workdays after this date results in his grievance being untimely filed.

Based on the foregoing reasons, it is ordered that the State of Vermont's motion to dismiss this grievance is granted, and the Grievance of John Scanzani is dismissed.

Dated this 5th day of April, 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Alan Willard

Alan Willard

/s/ David R. Boulanger

David R. Boulanger