VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 20-27
MARC ABBEY, et al.	)	

DECISION ON THE MOTION TO ALTER, AMEND, OR MODIFY JUDGMENT FILED BY THE STATE OF VERMONT

The State of Vermont Department of Corrections ("State" "Employer") has filed a V.R.C.P. Rule 59 motion to alter, amend, or modify the November 9, 2021, Vermont Labor Relations Board ("Board") Order sustaining the Grievance filed by the VSEA. A motion to alter or amend "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." N. Sec. Ins. Co. v. Mitec Elecs., Ltd., 2008 VT 96, ¶ 44, 184 Vt. 303, 321 (internal quotations and citation omitted). A motion to alter or amend falls within the discretion of the Board. The Motion repeats arguments raised and addressed below and does not demonstrate a manifest error of law or fact in the Board decision. The Board, therefore, denies the motion.

The Grievance alleged the State, violated Article 19 of the Collective Bargaining Agreement ("CBA") when it removed the competitive recruitment posting for the Corrections Services Specialist I ("CCSI") position at the Northern State Correctional Facility ("NSCF") before the expiration of the posting duration requirement, ten (10) workdays, and administratively appointed an employee to the position.

To resolve the Grievance, the Board reviewed the requirements and language of Article 19, determined the language was clear and unambiguous and enforced its terms which required the posting remain in effect for ten days. The Board sustained the Grievance because the State failed to maintain the posting for ten days as required by Article 19.

The State concedes that the issue of contract interpretation is a question of law to be decided by the Board. State's Motion at 7. As with other contracts, "[a] labor agreement will be interpreted by the common meaning of its words where the language is clear." *In re Cronan*, 151 Vt. 576, 578 (1989) (quotations omitted), cited in, In re Rosenberg, 2010 VT 76, ¶ 13, 188 Vt. 598, 601. The Board recited the language of Article 19, the relevant contract provision and determined after review of the clear and unambiguous language the meaning of its terms. Having determined the language of the CBA Article 19 was clear and unambiguous, the Board was required to apply its terms, which it did. See In re Kelley, 2018 VT 94, ¶ 14, 208 Vt. 303, 308. The State did not challenge the meaning of the terms, but rather argued about its application. Resorting to external or parol evidence, and issuing factual findings thereon, was neither required nor allowed after the Board determined the language of Article 19, was clear and unambiguous. See In re Rosenberg, 2010 VT 76, ¶ 15, 188 Vt. 598, 601(holding consideration of extrinsic evidence of past practices may not proceed where there has been no finding of ambiguity first).

The State argues the Board should have identified the source of authority that prevents or prohibits Management from changing its mind once it has posted a position for competitive recruitment. State's Motion at 8. The State answers this question in the next sentence of its brief. The State concedes that Management can control the workforce and change its mind as it sees fit, "except to the extent that it is prohibited by the CBA." Id. The CBA Article 19 dictates the timing and method for posting once management decides to post a position for competitive recruitment. The ten-day posting requirement is a minor infringement that the State has chosen

to bargain away in the CBA. The Board cannot disrupt the intent of the parties and rewrite the language of Article 19 to justify the State's actions here. See Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

The State's arguments regarding Article 66 are also unavailing. The inapplicability of Article 66 does not render the Board's interpretation of Article 19 inconsistent or in conflict with Article 66. Article 66 does not apply to this case, because the person ultimately hired had not received a notice of layoff. The Board was not required, therefore, to delve into the various legal arguments of the State as to why Article 66 changed the meaning and application of the clear and unambiguous language of Article 19. The State urges the Board to make factual findings on issues that were not material or probative of the Grievance. That the Board did not accept or find the State's arguments persuasive does not render its decision erroneous.

Contrary to the State's argument, the Board decision enforces the CBA, promoting fairness, predictability, and reasonable results. Employees and the State can rely on the fair and consistent application of the CBA terms. The State was a party to the CBA and agreed to the language used to draft Article 19. If the State is prejudiced by or is otherwise not satisfied by the enforcement of the unambiguous contract language, it can choose different language and modify the CBA in a subsequent contract.

For the reasons stated above, it is ordered that the State's Motion to Alter, Amend, or Modify the November 9, 2021, Board Order sustaining the Grievance filed by the VSEA, is denied.

Dated this 31st day of March, 2022, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

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Robert Greemore

/s/ Karen D. Saudek

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Karen D. Saudek

/s/ David Boulanger

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David Boulanger