

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-343

FEBRUARY TERM, 2004

	} APPEALED FROM:
	}
	} Labor Relations Board
	}
In re Grievance of Terrence Sanville	} DOCKET NO. VLRB #02-49
	}
	}
	}
	}

In the above-entitled cause, the Clerk will enter:

Appellant Terrence Sanville appeals pro se from the Vermont Labor Board's order dismissing his grievance as untimely filed. He raises numerous arguments on appeal. Because we conclude that the Board properly dismissed Sanville's grievance as untimely, we affirm.

Sanville works as a correctional officer for the Vermont Department of Corrections. In February 2000, he was transferred to the Northern State Correctional Facility in Newport, Vermont and promoted to the position of Correctional Officer II. Correctional officers are assigned to work designated zones known as A posts. Officers assigned to work outside of the Northern State facility's perimeter fence are required to carry firearms. The Department discovered through a criminal records check that Sanville had a felony conviction, which made it unlawful for him to possess a firearm under the facility's regulations. In February 2001, the Department sent Sanville a letter informing him that it could not certify him for certain posts because of his criminal record. In June 2001, Sanville inquired about the letter within the Department. Among other things, Sanville requested that he be promoted to avoid the problems posed by his felony record. By October 2001, the Department provided Sanville with a final denial of his request.

In March 2002, Sanville filed a grievance claiming that he had been denied an opportunity for a post assignment despite his seniority in violation of the collective bargaining agreement. When the grievance reached the Vermont Labor Board, the State moved to dismiss it as untimely under the terms of the collective bargaining agreement. After a hearing, the Board granted the State's motion to dismiss. The Board found that the collective bargaining agreement required Sanville to file his grievance A within fifteen workdays of the date upon which [he] could have reasonably been aware of the occurrence of the matter which gave rise to the complaint. The agreement provided that if a grievance was not filed within the contractual time frames, the A matter shall be considered closed. The Board found that the Department's February 2001 letter gave rise to Sanville's complaint. It rejected Sanville's assertion that the grievance was timely because the Department's decision was a continuing act. Thus, because Sanville had not filed his grievance within fifteen days of the February 2001 letter, it was untimely. The Board noted that, even assuming that the grievance was timely, Sanville would have no recourse because the Department would be acting contrary to law if it certified Sanville, a convicted felon, to work in a position that required him to carry a firearm. Sanville appealed.

Sanville argues that it was unreasonable for the Board to dismiss his complaint as untimely because, among other

reasons, it foreclosed his opportunity to challenge A prior harm done to [his] constitutional property rights years earlier.@ He asserts that when he was hired, the Department assured him that his felony conviction would not hinder his career pursuits. He states that through its decision not to certify him for certain posts, the Department deprived him of a property right without due process of law. Sanville raises additional arguments as well, none of which undermine the Board= s conclusion that his grievance was untimely. We have considered all of the arguments raised by Sanville in his brief and find them without merit.

On review, we defer to the Board= s decision, and presume it to be correct and reasonable. In re Madore, 2003 VT 35, & 7, 825 A.2d 12 (mem.). We will not overturn the Board= s decision unless it is shown to be clearly erroneous. Id. The interpretation of a collective bargaining agreement is within the Board= s expertise, and we review the Board= s interpretation with great deference to that expertise. In re V.S.E.A., 164 Vt. 214, 216 (1995).

Sanville has not demonstrated that the Board= s decision is clearly erroneous. As noted above, the Board dismissed Sanville= s grievance after concluding that it was untimely. The Board found that the Department= s February 2001 letter was a A completed act,@ which gave rise to Sanville= s complaint. It rejected Sanville= s assertion that his inability to bid for certain positions represented a A continuing violation.@ The Board explained that, although the consequences of the Department= s decision were continuing, this did not translate into a continuing grievance. The completed act of dismissal also has ongoing consequences, the Board reasoned, yet a continuing grievance is not recognized in dismissal cases. Similarly, the Board concluded, A a continuing grievance is not recognized when a determination is made to not certify an employee to work posts due to a criminal record.@ The Board= s conclusion is sound and entitled to deference. See In re Boyde, 165 Vt. 624, 626 (1996) (mem.) (A It is well settled . . . that completed acts, such as termination through discharge or resignation, a job transfer, or discontinuance of a particular job assignment are not acts of a > continuing nature.= @) (internal quotation marks and citation omitted). We agree that, like a dismissal, or the discontinuance of a particular job assignment, the Department= s decision that Sanville was ineligible for certain posts was a completed act in February 2001. Pursuant to the collective bargaining agreement, Sanville had fifteen days from his receipt of the Department= s letter in which to file a grievance. He did not file a grievance until March 2002, and the Board properly dismissed his grievance as untimely filed. We find no error in the Board= s decision.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice