

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE COLLEGES)	
STAFF FEDERATION/VERMONT)	DOCKET NO. 93-26
STATE EMPLOYEES' ASSOCIATION)	
(RE: CASTLETON STATE COLLEGES)	
TECHNICAL SERVICES LIBRARIAN))	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 22, 1993, the Vermont State Colleges Staff Federation ("Federation") filed a grievance against the Vermont State Colleges ("Colleges"). The Federation alleged that the Colleges had violated Article 3, Section 5, and Article 27, Section 1, of the collective bargaining agreement between the Colleges and the VSCSF ("Contract") by assigning the duties of the Castleton State College Cataloger position, which position was in the bargaining unit represented by the Federation, to a newly created Technical Services Librarian position which was not included in the bargaining unit represented by the Federation.

On November 22, 1993, the Vermont State Employees' Association ("VSEA") filed a Notice of Appearance. This was shortly after VSEA had succeeded the Federation as the exclusive bargaining representative of employees in the bargaining unit pursuant to a representation election conducted by the Board.

Hearings were held on May 5 and 12, 1994, before Vermont Labor Relations Board Members Charles McHugh, Chairman; Louis Toepfer and Leslie Seaver in the Board hearing room in Montpelier. Attorney Benjamin Smith represented the Colleges.

Jonathan Sokelow, VSEA Legal Counsel, represented VSEA. At the hearing, VSEA moved to amend the grievance to further allege that Article 3, Section 2, of the Contract had been violated. The Colleges did not object to the amendment, and the Board allowed the amendment.

VSEA filed a post-hearing brief on June 9, 1994. The Colleges filed a post-hearing brief on June 10, 1994.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

Article 2 - Recognition

1. The Vermont State Colleges recognizes the Federation as the exclusive bargaining representative . . . for all full-time, part-time, and limited status non-faculty of the Vermont State Colleges (Castleton State College, Johnson State College, Lyndon State College, Vermont Technical College), excluding the Chancellor, College Presidents, Deans, Business Managers, and all management, supervisory, confidential, professional and temporary employees.

. . .

Article 3 - Management Rights

. . .

2. All management rights referred to in Section 1 above shall include, but not be limited to, the right:

. . .

f) to establish new jobs;

. . .

Management rights also include, but only after first giving the Federation notice and the opportunity to bargain, the right:

. . .

to change job content and classify and reclassify;

. . .

5. In appropriate circumstances as determined by the Vermont State Colleges, other employees, including

professional, managerial, supervisory, or confidential employees, as well as students and volunteers, may perform work usually done by employees in the bargaining unit, provided the performance of such work does not result in the displacement of any bargaining unit employee. The fact that a bona fide, professional employee, manager, confidential employee, supervisor, student or volunteer also does a regular amount of bargaining unit work, will not result in that employee's inclusion in the bargaining unit. Under no circumstances will any employee be paid for work performed by such other professional employee, manager, confidential employee, supervisor, student or volunteer.

. . .

Article 27 - Classification System

1. The position classification system effective January 1, 1990 shall remain in full force and effect.

. . .

(Colleges Exhibit 1).

2. The Colleges maintain libraries at Johnson State College, Castleton State College, Lyndon State College and Vermont Technical College. Each library has a staff operating under the direction of a Library Director.

3. In 1989, the Colleges adopted a new classification system. Since that time, Donna Russo, Colleges Administrator of Human Resources, has been primarily responsible for administering the classification system. Russo has been responsible for evaluating new positions, reviewing and reevaluating existing positions, writing position descriptions, and assigning job grades for every non-faculty position in the Colleges. She has developed 250-300 job descriptions during that period.

4. Numerical job grades are assigned for positions under the classification system. There has not been a firm numerical job grade at which positions have ceased being included in the

bargaining unit represented by the Federation . However, with a few exceptions, Grade 10 and higher positions generally have been excluded from the bargaining unit as either management, supervisory or professional positions (Colleges Exhibit 2).

5. After the classification system was in place, a Library Committee was established to address concerns among some library employees that they were not adequately classified within the system. The Committee reviewed and recommended changes in the classification of library positions. Among the persons on the Library Committee were Russo and Jean DeVoe, then Federation President.

6. One of the exceptions to Grade 10 positions generally being excluded from the bargaining unit is the position of Cataloger, which is classified at Grade 10 and is included in the bargaining unit. The position was approved for classification at Grade 10 by the Library Committee in early 1990 after a request for an upgrade of the position from Grade 9 had been made by the Castleton State College Cataloger, Mildred Murray (Colleges Exhibits 13, 19).

7. The basic functions of the Cataloger position are to oversee and carry out the processing and cataloging of books and other library materials, maintain the library bibliographic records in the card catalog, and maintain the integrated library automation system. The minimum qualifications for the position are listed on the position description as: "Bachelors degree in an appropriate discipline with a Masters degree preferred plus two years of relevant technical library training or experience,

or a combination of education and experience from which comparable knowledge and skills are acquired" (Colleges Exhibit 13).

8. On March 14, 1989, the Federation filed a unit clarification petition with the Board (Docket No. 91-23). Therein, the Federation challenged the exclusion of "Librarian I" positions from the bargaining unit represented by the Federation. The filing of the petition led to discussions between the Federation and the Colleges regarding various library positions, including the Cataloger position which each College had in their respective libraries (Colleges Exhibit 3).

9. The Federation and the Colleges were able to resolve the unit clarification issues, and the pending unit clarification matters before the Board were withdrawn. On June 6, 1991, Russo sent a letter to Federation President DeVoe, which provided in pertinent part:

This letter is to confirm the agreement we discussed on May 15 . . . in regards to unit clarification.

We reviewed four positions and the recommendations we arrived at are as follows:

Librarian I, LSC	-	To be removed from the Unit because of the professional nature of the work performed.
Printing Services Supervisor, JSC	-	To be removed from the Unit because of the professional work performed and the supervision of a Unit member.
Coordinator of Computing Services, JSC	-	To be removed from the Unit because of the professional work performed.
Catalogers, CSC, JSC, LSC, VTC	-	To remain in the Unit. New hires will be subject to review for eligibility.

I am pleased that we were able to discuss and resolve the Unit Clarification issues. This completes the last step in implementing the new VSC Personnel System. I believe all positions are now categorized correctly for Unit eligibility. In the future, we will negotiate any new positions or changes in existing positions that may make Unit eligibility questionable. We will continue to assign new positions to the Unit as appropriate.

. . .

(Colleges Exhibit 5).

10. On June 14, 1991, Devos wrote "OK" on her copy of Russo's letter, signed her name underneath the "OK", and returned it to Russo. This represented the Federation's acceptance of the terms of the agreement set forth by Russo (Colleges Exhibit 5).

11. At the time the Federation and the Colleges reached the agreement on Catalogers remaining included in the bargaining unit, the parties discussed protecting the incumbent Catalogers so they could remain represented by the Federation. The agreement that new hires would be subject to further review reflected a recognition by the parties that the duties of the Cataloger position had evolved over time, and that the technical expertise, training and specialized education increasingly required of Catalogers may result in newly hired catalogers having advanced degrees and being professional employees.

12. At the time the agreement on Catalogers remaining in the bargaining unit was reached, Mildred Murray was the Cataloger at the Castleton State College library. She had been at the Castleton library for nearly twenty five years. Murray did not have a Bachelors degree.

13. Murray was responsible for copy cataloging. This involves cataloging a book or other materials in a library's collection which already have been originally cataloged by another source, such as the Library of Congress. Another broad category within the field of cataloging is original cataloging, which involves cataloging material which has not been previously cataloged elsewhere. This requires the use of professional judgment as to appropriate materials to catalog. Murray did not do original cataloging. This was done by Suzanne Gallagher, who performed professional tasks for each of the libraries in the Colleges system. Murray spent most of her time cataloging library materials, maintaining the card catalog and on-line database, and planning and implementing an automated system (Colleges Exhibit 21).

14. In early 1992, Murray announced her plan to retire. For several months, she reduced her hours to half-time, before retiring at the end of 1992. During this transition period, Ellen Gill, who was a Library Specialist/LTA II, Grade 7, began assuming some of Murray's duties, particularly in copy cataloging. Gill also continued to perform the duties which she had done previously.

15. As a result of these increasing responsibilities, the Federation requested that Gill's position be reclassified. Russo did an on-site audit of the position, and recommended that the position be upgraded from a Grade 7 to a Grade 9. The Colleges upgraded the position to that of Library Specialist/LTA III, Grade 9 ((Colleges Exhibits 6, 7, 8, 16).

16. Upon the retirement of Murray, the Castleton Library Director, Patrick Max, decided that Murray should be replaced by a professional librarian with more and different expertise than required of the Cataloger position. Max sought this change to adapt to the evolving nature of the discipline of cataloging; that cataloging increasingly required greater technical expertise, training and specialized education. At the time, the Castleton Library was in the minority of college and university libraries in that cataloging was being done by an employee without professional education and certification. Max sought a person with a Masters degree in Library Science with the technical expertise to manage the library's technical services department, and who could play a leadership role regarding changes in technology. Max sought an individual with broad knowledge of computers and library systems.

17. This led to the creation of the position of Technical Services Librarian, Grade 11. The minimum qualifications for the position are listed on the position description as: "Masters degree in library science with a second masters degree preferred plus two to four years of relevant technical library training or experience, or a combination of education and experience from which comparable knowledge and skills are acquired". The position was classified as professional, and was not included in the bargaining unit represented by the Federation (Colleges Exhibit 9).

18. The minimum qualification for a professional librarian is a Masters degree in Library Science from an accredited graduate program.

19. In early 1993, the Colleges hired Detlev Pansch to fill the Technical Services Librarian position. At the time of his hire, Pansch had a Masters degree in Library Science, and substantial computer and library experience.

20. Upon Murray's retirement, the Colleges did not fill the Cataloger position held by her, and the position has remained vacant from that time until the present.

21. The Technical Services Librarian has overall management responsibilities over cataloging, acquisitions and government documents. The Technical Services Librarian also supervises the technical staff of the library, as well as a number of work study students, and represents the library on college committees (Colleges Exhibit 9).

22. The Technical Services Librarian does original cataloging, and oversees the copy cataloging at the library. In the technological areas of computers and automation, the Technical Services Librarian is the resident expert and plays a leadership role. Specifically, the Technical Services Librarian has evaluated new products, made recommendations on computer systems acquisitions, provided technical assistance to library staff, and played the key role in the library responding to technological changes (Colleges Exhibit 9).

23. The position descriptions for the Cataloger position and the Technical Services position share many similar duties and responsibilities. In practice, Pansch, the Technical Services Librarian, performs some of the duties previously performed by

Mildred Murray. Some of Murray's other duties are being performed by Gill, particularly with respect to copy cataloging, and some of her duties are not being performed by anyone. In addition to performing some of the duties previously performed by Murray, the Technical Service Librarian performs many duties which were not the responsibility of Murray. These include management of government documents, management of acquisitions, original cataloging, leadership on technical issues, and more extensive involvement on College committees (Colleges Exhibits 9, 13).

24. Prior to leaving the Cataloger position vacant, and creating and filling the Technical Services Librarian position, the Colleges did not notify the Federation. Notice to the Federation came after the fact, in a letter from Russo to then Federation President Judy Cleary on January 11, 1993. That letter provided in pertinent part:

. . . (I)n 1991 . . . we did agree to leave the current Catalogers within the unit, but as positions came open to review duties and responsibilities with respect to eligibility for the staff unit. Recent action at CSC to upgrade the Cataloger position to Technical Services Librarian was in line with this agreement.

We will continue to review Cataloger positions in conjunction with the needs at each college.

(Grievant Exhibit 3)

OPINION

At issue is whether the Colleges have violated Article 3, Section 2, and/or Article 3, Section 5, of the Contract in leaving the Cataloger position at the Castleton State College library vacant upon the retirement of the incumbent of that position, and creating and filling the new position of Technical Services Librarian.

We first address the alleged violation of Article 3, Section 2, of the Contract. This contract section provides that "management rights . . . include, but only after first giving the Federation notice and the opportunity to bargain, the right . . . to change job content and classify and reclassify". Grievant contends that the Colleges violated this contract provision by leaving the Cataloger position vacant, and creating and filling the Technical Services Librarian position, which position included some of the duties previously performed by the Cataloger, without providing notice and an opportunity to bargain to the Federation.

We conclude that Article 3, Section 2, of the Contract is not applicable to this matter. This contract provision applies when the Colleges are contemplating changing the job content of a particular position beyond that contained in the existing job description for the position, or where the job description for a position does not adequately reflect the duties actually being performed by the employee in that position. Grievance of Marcotte, 9 VLRB 143, 152-55 (1986). Grievance of Birchard and

VSCSF, 10 VLRB 192 (1987). Grievance of VSCSF, 12 VLRB 176 (1989); Affirmed, 157 Vt. 645 (1991).

It does not extend to the circumstances of the case before us, where the Colleges left one position vacant, and created and filled a separate position. Article 3, Section 2, is implicated only when changes are contemplated, or made, within an existing position which are beyond the existing position description; thereby raising the question whether the existing compensation and classification for the position is inadequate. It is not implicated when a non-bargaining unit position is created which includes some of the duties of a vacant bargaining unit position. Then, there is no "change" in the "job content" of the bargaining unit position pursuant to Article 3, Section 2. Thus, such provision has no bearing in this matter and has not been violated by the Colleges.

Grievant next contends that the Colleges violated Article 3, Section 5, of the Contract. This provision provides in pertinent part:

In appropriate circumstances as determined by the Vermont State Colleges, other employees, including professional, managerial, supervisory, or confidential employees, as well as students and volunteers, may perform work usually done by employees in the bargaining unit, provided the performance of such work does not result in the displacement of any bargaining unit employee.

Grievant contends that this provision has been violated under the circumstances of this case because, while the Contract contemplates a situation where non-bargaining unit employees may perform bargaining unit work in addition to such work being

performed by bargaining unit members, it does not sanction or allow the replacement of bargaining unit members with unrepresented employees.

The Colleges contend that there has been no violation of this contractual provision because no bargaining unit employee was actually displaced in this matter. The Colleges point to the fact that the involved bargaining unit employee, Mildred Murray, had retired from the Cataloger position, and therefore there was no displacement of an employee when the Cataloger position was left vacant. The Colleges also refer to the management right, recognized in Article 3, Section 2, to "establish new jobs." The Colleges contend that Article 3, Section 5, was intended to safeguard against adverse consequences to an existing employee represented by the Federation, and there were no such adverse consequences in this case.

In interpreting Article 3, Section 5, such provision must be considered together with the contractual provision recognizing management's right to establish new jobs. It is important to keep in mind the evident policies underlying such provisions. It is apparent that the applicable contract provisions were designed to recognize that the Colleges need flexibility to adjust to changing circumstances, while also recognizing the competing interest of preventing the dilution of the bargaining unit. In any case applying these provisions, such as the case before us, those competing interests must be fairly balanced.

In balancing those interests here, we conclude that the Colleges have not violated Article 3, Section 5. In deciding to

leave the Cataloger position vacant, and creating and filling the Technical Services Librarian position, the Colleges reasonably were adapting to the evolving nature of the discipline of cataloging; that cataloging increasingly required greater technical expertise, training and specialized education. The decision to hire a professional employee with a Masters degree in Library Science with the technical expertise to manage the library's technical services department, and who could play a leadership role regarding changes in technology, reflected a desirable management objective to respond to a change in circumstances.

On the other hand, the interests of the bargaining unit were adversely affected. A bargaining unit position was left vacant by the Colleges' action. However, no existing bargaining unit employee was adversely impacted by the Colleges' action. Further, the professional (and thus unrepresented) Technical Services Librarian position is, on balance, substantially different than the represented Cataloger position. The Technical Services Librarian assumed many duties of greater skill and expertise than required of the Cataloger. It is true that some work previously done by the represented Cataloger was transferred to the unrepresented Technical Services Librarian. Nonetheless, other work of that position was transferred to another bargaining unit position, the Library Specialist/LTA II. As a result, the employee in that position received an upgrade and a pay increase. Thus, while the bargaining unit suffered some detriment, some benefit also was realized.

Also, the action by the Colleges was not inconsistent with the agreement reached by the Colleges and the Federation a few years earlier on Catalogers. The parties essentially agreed to protect the bargaining unit status of the incumbent Catalogers, while recognizing that changing circumstances may result in persons having advanced degrees being newly hired into a position with cataloging functions and being professional employees. Although the Colleges' action in this case was not an inevitable result of the parties' agreement, it was contemplated as a possibility and was not inconsistent with the agreement.

In sum, on balance we conclude that the interests of the Colleges to have flexibility to adjust to changing circumstances outweighs the competing interests of preventing the dilution of the bargaining unit under the circumstances of this case. Thus, we conclude that there has been no violation of Article 3, Section 5, of the Contract.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that this grievance is DISMISSED.

Dated this 26th of August, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer

/s/ Leslie G. Seaver

Leslie G. Seaver