

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
DR. DAVID MURRAY AND THE)	DOCKET NO. 94-25
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT)	
LOCAL 3180, AFL-CIO)	
GRIEVANCE OF:)	
)	
VERMONT STATE COLLEGES FACULTY)	DOCKET NO. 94-47
FEDERATION, AFT LOCAL 3180,)	
AFL-CIO (RE: DAVID MURRAY))	
VERMONT STATE COLLEGES FACULTY)	
FEDERATION, AFT LOCAL 3180,)	DOCKET NO. 94-48
AFL-CIO and VERMONT STATE)	
COLLEGES)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

This matter involves three cases consolidated for hearing and decision. On May 17, 1994, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation") filed a grievance with the Vermont Labor Relations Board, Docket No. 94-25. Therein, the Federation alleged that the Vermont State Colleges ("Colleges") had violated Articles 3(D), 20(B)(1), 20(C)(4), 20(C)(6), 20(E)(10), and 25 of the collective bargaining agreement between the Federation and the Colleges effective for the period September 1, 1992, to August 31, 1994 ("Contract"), by inclusion of a substantively flawed letter of recommendation on Castleton State College faculty member Dr. David Murray ("Grievant"), authored by Associate Academic Dean Joan Mulligan, in Grievant's personnel file.

On September 7, 1994, the Federation filed a grievance, Docket No. 84-47, alleging that the Colleges had violated Articles 3(D), 7(A), 8, 19(C)(2) and (6), 20(B)(1), 20(C)(4) and (6), 20(E)(9) and (10), 21(J)(3), 24(A), and 25(C) and (G) of the Contract by not reappointing Grievant to a third year of teaching at Castleton, and by removing the Director of Student Teaching position at Castleton, occupied by Grievant, from the faculty bargaining unit and making it an administrative position.

On September 13, 1994, the Federation filed a unit clarification petition, Docket No. 94-48, alleging that the Colleges had violated the Contract by removing the position occupied by Grievant from the faculty bargaining unit and making it an administrative position.

These case were consolidated for hearing. Hearings were held before Labor Relations Board members Louis Toepfer, Acting Chairman; Catherine Frank and Leslie Seaver on January 5 and February 22, 1995. The Federation and Grievant were represented by Attorneys John Pacht and Robert Katims. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. Subsequent to the hearing, the parties filed the March 28, 1995, deposition of Timothy Sturm for consideration by the Board. The parties filed briefs on April 4, 1995.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE 3

A. All the rights and responsibilities of the Vermont State Colleges, which have not been specifically provided for in this Agreement, shall be retained in the sole discretion of the Vermont State Colleges and, except as modified by this Agreement, such rights and responsibilities shall include but not be limited to:

1. The right to . . . determine qualifications and criteria in hiring . . . and layoff situations to be applied in conformance with the provisions of this Agreement . . . to hire, reappoint . . . assign and retain employees in position . . .

3. The right to determine the means, methods, budgetary and financial procedures, and personnel by which the Colleges' operations are to be conducted . . .

D. No such management right or responsibility set forth or referred to in this article shall be enacted, applied or implemented in a manner which is arbitrary or capricious or in contravention of the Agreement.

...

ARTICLE 7

A. The Vermont State Colleges shall continue its policy of maintaining and encouraging full freedom of inquiry, teaching and research. Such academic freedom shall encompass the unconditional freedom of discussion of any material relevant to any course which a faculty member has been assigned to teach and, to this end, there shall be no unreasonable restrictions upon instructional methods.

...

ARTICLE 8

The parties shall not discriminate against any faculty member . . . by reason of . . . sex . . .

ARTICLE 19

C. Recognizing the final determining authority of the President, matters of academic concern shall be initiated by the Faculty Assembly or by the President through the Faculty Assembly which shall consider the matter and respond within a reasonable time. Such matters shall include:

...

2. Curricular policy and curricular structure. Any proposal to abolish course offerings must be considered under the terms of this paragraph.

...

6. The development, curtailment or reorganization of academic programs.

...

ARTICLE 20

B. Performance Areas

The following performance areas shall be considered in the performance evaluation of a faculty member for reappointment . . .

a. Teaching Effectiveness, which shall include the faculty member's:

- (1) Knowledge of the subject matter
- (2) Effectiveness in communicating such knowledge by means or methods such as lecture, discussion, demonstration, laboratory exercise, practical experience, and direct consultation with students.
- (3) Ability to help students think critically and creatively

b. Scholarly and Professional activity . . .

c. Service to College and Community . . .

C. Procedures

. . .

4. The Dean

a. After the (faculty) committee has placed its letter of recommendation into the faculty member's file, the Dean shall review the faculty member for reappointment . . . The Dean shall evaluate the faculty member's work in the performance areas listed in (B) above using, as appropriate, the standards set forth in Article 21, Appointment and Reappointment . . . The Dean's evaluation shall be incorporated into a letter of recommendation . . .

6. The only written material that the . . . Dean may use in conducting the reviews discussed in . . . 4 above and that the President may use in judging the performance of a faculty member is the material placed in a faculty member's personnel file by the appropriate date and those student evaluations not yet entered into the personnel file as provided for in (E), Student Evaluations, below.

. . .

E. Student Evaluations

. . .

9. In assessing teaching effectiveness as provided for in B. above, student evaluations shall only be used in conjunction with other sources of information about a faculty member's teaching such as administrative observations, peer evaluations, and self-evaluations.

10. When any officer of the College assesses the student evaluations of a faculty member in the process of producing a decision on reappointment, promotion or tenure, the criteria employed in such assessment shall be those provided in Article 20 (B)(1)(a).

...

ARTICLE 21

...

J. Reappointment to a Second, Third, and Fourth Year of Service

1. Unless a faculty member's appointment is terminal . . . during his/her first, second, and third years of service, he/she shall be reviewed for reappointment according to the provisions of Article 20 and this article.

2. The President shall decide whether or not a faculty member shall be reappointed to a second, third, or fourth year of service according to the provisions of Article 20 and this Article. In making this decision, the President shall consider only the performance of the faculty member and the faculty staffing needs at the College.

3. In reviewing the performance of the faculty member, the President shall consider all evaluative material as provided in Article 20 (C)(6), consider a faculty member's work in the performance areas listed in Article 20(B)(1) and shall use as the standard for reappointment the faculty member's growth toward tenure and his/her demonstrated potential for meeting the standards for tenure.

4. A decision of the President not to reappoint a faculty member to a second, third, or fourth year of service shall not be subject to the grievance and arbitration provisions of this Agreement unless the faculty member or the Federation claims the decision violates Article 7 (Academic Freedom), Article 8 (Anti-Discrimination), or the procedure for reappointment set forth in this Agreement.

K. Reappointment to Fifth and Sixth Years of Service

...

4. Should the President decide not to reappoint a faculty member to fifth and sixth years of service, the written notification of non-reappointment . . . shall contain reasons for the non-reappointment.

5. The decision of the President not to reappoint a faculty member to fifth and sixth years of service shall not be subject to the grievance and arbitration provisions of this Agreement unless the faculty member or the Federation claims that the decision is unreasonable or arbitrary or based on erroneous reasons or material or that the decision violated Article 7 (Academic Freedom), Article 8 (Anti-Discrimination), or the procedures for reappointment set forth in this Agreement.

...

ARTICLE 24

A. The normal individual workload shall be 24 credit hours or its equivalent per year . . . (F)aculty shall not be required to teach an excessive number of contact hours, assume an excessive student load, or be assigned an unreasonable schedule . . . In making assignments, due consideration shall be given to time devoted to co-curricular activities, such as advising, coaching, direction of student teaching and independent studies, advising student newspapers and clubs, directing dramatic or musical productions, and directing athletic programs . . .

ARTICLE 25

...

C. Except for student evaluations as provided for in Article 20, Faculty Evaluation, the faculty member shall have the right to grieve the insertion in his/her personnel file of any item or material which he or she alleges to be untrue or inaccurate.

...

G. The only written material that the College shall use for evaluation, merit review, promotion, reappointment, tenure, or to support disciplinary action contemplated against a faculty member shall be that contained in his/her personnel file.

...

(Joint Exhibit 1)

2. Castleton State College is a member institution of the Vermont State Colleges. Among its academic programs, Castleton has a student teaching program designed for Education majors who plan on becoming licensed to teach. The program is administered through the College's Education Department and is also monitored by the State of Vermont Department of Education. The State has issued detailed regulations on the licensing of teachers, including regulations governing the approval of teacher preparation programs such as the one at Castleton (Colleges Exhibit 37).

3. Prior to the 1994-95 academic year, the student teaching program at Castleton was based in the Education Department and administered by a full-time faculty member who served as Director of Student Teaching. Prior to the 1973 unionization of full-time faculty within the Colleges, Professor Leonard Johnson carried out this role. He continued to perform these duties until his retirement in 1988. Professor James Phillipi then served as Director of Student Teaching, until he was denied tenure and left the College in 1992. In August, 1992, the College hired Dr. David Murray ("Grievant") to serve as Director of Student Teaching.

4. The student teaching program usually involves 60-75 students per year. Students qualify for the program by maintaining a 3.0 GPA or being certified as eligible by the Dean. The student chooses a semester of his or her senior year to do student teaching. Usually, the student will have two separate assignments of approximately half a semester each.

5. The Director of Student Teaching was responsible for merging student preferences on where they would like to teach with available placement sites. The Director worked with principals in various schools to obtain placement sites. Some

schools do not accept student teachers from Castleton, either because of dissatisfaction with prior handling of student placement by the College or because of a decision to accept student teachers from another college. In addition to Castleton, two other colleges in the area - Green Mountain College and the College of St. Joseph - have student teaching programs. The Director of Student Teaching had the responsibility to develop additional placement sites.

6. Once a student is placed, he or she works with the cooperating teacher (i.e., the teacher in the school of placement) and a faculty member from the Castleton Education Department. The Castleton faculty member is responsible for supervising the student during the student teaching experience. State regulations require that the supervising faculty member "intensely observe and advise the student at least once every ten (10) teaching days" (Colleges Exhibit 37, p.27).

7. The Director of Student Teaching received release time of up to six credits per semester to administer the Student Teaching program. The Director's remaining time was spent teaching Education Department courses, including the courses Student Teaching I and II and the Student Teaching Seminar.

8. The Director of Student Teaching held a nine month contract appointment like other faculty, but on occasion would receive a supplemental contract for summer work associated with the position.

9. The Director of Student Teaching also performed a licensure function. This involved reviewing each individual student's record, determining if the student was qualified for teaching licensure in Vermont, and making appropriate recommendations on student candidates (Colleges Exhibit 18).

10. Leonard Johnson, who was Director of Student Teaching from some point prior to 1973 to 1988, was a faculty member at all times relevant. He was an able administrator of the Student Teaching program, and effectively supervised the Education Department faculty members who were responsible for supervising the students in the field.

11. When Professor Johnson retired, he was replaced by James Phillipi. Professor Phillipi was a non-tenured faculty member, and served as Director from 1988 to 1992. During the period Professor Phillipi was Director, Castleton Academic Dean Joseph Mark received some complaints from area schools about lax supervision of the students by the supervising faculty members. Virginia Larrabee, Chairperson of the Education Department during that time, also expressed these concerns to Dean Mark.

12. Following Professor Phillipi's departure, the College hired Grievant in the Fall of 1992 to serve as Director of Student Teaching. Grievant was hired as an assistant professor in a tenure track position. During the period Grievant served as Director of Student Teaching, there was no job description for the position (Federation Exhibits 2, 3).

13. During Grievant's first semester, Dean Mark received a complaint from the principal of the Fair Haven Grade School about the lack of appropriate student supervision by John Duval, an Education Department faculty member (Colleges Exhibit 11).

14. In December, 1992, Grievant wrote a mid-year report relating to his responsibilities as Director of Student Teaching. In this report, Grievant detailed the

efforts he had taken to develop relationships between the College and the schools, and between the College and Vermont and New York education officials. He also discussed his scholarship achievements and his teaching efforts. Grievant also reported that, "over all, the supervision of student teaching went well". Despite this overall assessment, more than half of Grievant's eight page report consists of detailing problems which he perceived in the Student Teaching program. Included among the problems mentioned by Grievant were: a) the "dysfunctional" nature of the Castleton Education Department; b) the failure of Education Department faculty to provide input to him on a "competency-based student teaching handbook"; c) a "lack of respect for the seriousness of his requests" for clerical support; d) "an attempt" undertaken by individuals in the Education Department "to undermine the request of student teacher candidates for placement in New York state schools"; and e) concerns about inequities in assigning faculty to supervise student teachers (Colleges Exhibit 12).

15. Grievant's teaching was rated positive consistently by his students, peers, and the associate deans who observed his classes (Federations Exhibits 4, 6, 9-11c, 14, 14a, 22).

16. In Grievant's first year at Castleton, he expanded placements of student teachers in public schools, particularly into New York where some Castleton students resided.

17. The Retention, Promotion and Tenure Committee ("RPT Committee") recommended that Grievant be reappointed to a second year (Federation Exhibit 6). Academic Dean Joseph Mark concurred in that recommendation, and President Lyle

Gray reappointed Grievant. The written recommendation by Dean Mark, dated February 26, 1993, stated that Grievant "has shown himself to be a knowledgeable, competent teacher who has generally earned the liking and respect of his students", and noted that Grievant "has remained active in conducting professional research and publishing the results". Dean Mark also stated:

I am seriously concerned about the College's student teaching program and will expect to see a marked improvement in our relationship with cooperating schools in the coming year. It is particularly important that the Director of Student Teaching provide guidance and training to those college faculty and cooperating teachers who supervise our student teachers, and that he have regular contact with teachers and building principals at the schools where we place our students.

(Colleges Exhibit 14)

18. Grievant wrote to Dean Mark on March 9, 1993, in response to the Dean's recommendation. Grievant's memorandum stated in pertinent part:

I would . . . ask that you clarify in writing, your perceptions of what my roles and responsibilities would be in regards to "providing guidance and training to college faculty and cooperating teachers who supervise our student teachers". It is common practice in teacher education programs for cooperating teachers to take their lead from the college supervisor assigned to supervise student teachers at respective schools and to act as a liaison between that school and the college. In most cases, these college supervisors hold terminal degrees in the field, and therefore, should have the competence to assume the responsibilities of student teacher supervision with a minimum amount of guidance and training. Further, these supervisors should have a minimum of three years of school level teaching experience as well as being certified in education. Under the present contract, the best I could provide is collegial support, as the college supervisors at Castleton are my peers.

(Colleges Exhibit 15)

19. In a March 16, 1993, memorandum, Dean Mark informed Grievant that he would like to meet with him to discuss "this past year and the one ahead".

Grievant did not respond to this memorandum quickly, and on April 7, 1993, Dean Mark again wrote Grievant about a meeting, and suggested that Radha Bhatkal, Chairperson of the Education Department, and Professor Robert Forest, a longtime faculty member in the Department, join the meeting (Colleges Exhibits 16, 17).

20. The meeting occurred on April 20, 1993. Dean Mark indicated at the meeting that cooperating teachers in the Student Teaching program wanted more guidance as to their responsibilities, and that Castleton faculty had not been fulfilling their duties in terms of supervision of students. Grievant indicated that he could not supervise the faculty as he was their colleague, and that the faculty should know what to do.

21. On May 24, 1993, at the end of his first year, Grievant wrote to Dean Mark complaining about Judith Meloy, another Education Department faculty member. Professor Meloy had designed, and distributed, a student teacher questionnaire which Grievant described as "an attempt to undermine my responsibility " as Director of Student Teaching, as well as an "outright violation of my academic freedom". Grievant stated that the survey "may also continue to perpetuate the dysfunctional image of the (Education) Department". Grievant contended that this was an unauthorized attempt to evaluate the student teacher program. Dean Mark spoke with Education Chair Bhaktal concerning this issue. Dean Mark also met separately with Professor Meloy on this matter (Colleges Exhibit 19).

22. During his first year, Grievant developed and edited a newsletter, entitled Practicumly Speaking, designed to promote collaborative ventures with

public schools. After the first edition of the newsletter was published, Dean Mark wrote Grievant a memorandum offering his "(c)ongratulations on a wonderful first issue", and stating (t)his is a very fine piece which obviously took a lot of planning and effort" (Federation Exhibit 8).

23. In his annual report following his first year, Grievant detailed his teaching effectiveness, scholarship and professional achievement, and college and community service. He also noted a continuing problem with Education Department faculty, stating:

Being responsible for peer supervision of the student teaching seminar and the student teaching clinical component, it was very difficult to encourage other faculty members to follow my recommendations and established policies. For example, when I developed a common evaluation form to be used in student teaching so I would have similar data to compare to identify student progress, 4 field supervisors disregarded the instrument and each used their own . . . In most cases, the same department members did not wish to travel to on-site locations and some resented involvement with student teaching. Some faculty contradicted my directives for completing assignments. These assignments were particularly important because the portfolios were required for our state accreditation review. These greatly reduced the possibility of students (to) have a positive professional semester. Personal agendas aside, we should be planning for successful experiences for each and every one of our students.

(Colleges Exhibit 20)

24. In the Summer of 1993, Grievant had a supplemental contract under which he taught two courses and performed duties as Director of Student Teaching. The supplemental contract for Director of Student Teaching duties set forth that Grievant would perform "the equivalent of approximately one month of full-time work". During that summer, among duties performed by Grievant were revising the student teaching handbook (Federation Exhibits 9, 15, 19; Colleges Exhibit 18).

25. During the 1993-94 academic year, Dean Mark assumed the role of Interim President. The functions of the Academic Dean were carried out that year by Associate Deans Joan Mulligan and John Larkin.

26. During the Fall 1993 semester, Education Department Chair Bhatkal wrote a letter to the RPT Committee supporting the reappointment of Grievant to a third year and Grievant's request that he be promoted to Associate Professor. During the semester, Department Associate Chair Forest wrote a letter to Interim President Mark supporting the promotion of Grievant to Associate Professor (Colleges Exhibit 22, Federation Exhibit 9).

27. On December 20, 1993, the RPT Committee recommended that Grievant be reappointed to a third year. The Committee concluded that Grievant's teaching was "polished, professional, and of high quality", and that his scholarship and professional activity was "distinguished" (Colleges Exhibit 23).

28. On January 4, 1994, following a problem with first semester grades not being processed in time for student teachers, Education Chair Bhatkal wrote to Interim President Mark, requesting clarification of the role of Director of Student Teaching. Dr. Bhatkal wrote that the incident over who was responsible for not getting the grades in on time raised the following questions:

1. Is the position of Director of Student Teaching quasi-administrative or purely a faculty position?
2. What are his responsibilities?
3. What are the responsibilities of the Chair in relation to student teaching?
4. What are the guidelines with reference to student teaching placements and supervision?
5. Whom does he report to?
6. What are the lines of communication between the Director of Student Teaching and the Chair / Faculty / Secretary?

7. How does he utilize his release time of 6 hours?

...

Unless the role of the Director of Student Teaching is clearly defined, the roles of the faculty and the Chair too will remain ambiguous making it impossible to hold any one of us accountable for incidents which affect students, and the college in the long run.

I strongly suggest that we give a clear job description to the Director of Student Teaching . . .

(Colleges Exhibit 24)

29. In January, 1994, the Education Department completed, and Interim President Mark reviewed, a self-study done as part of the process for continuing approval of the College's licensure program. This included results of a survey the Department had sent to cooperating teachers, school administrators and Castleton Education Department alumni which covered years prior to Grievant arriving at Castleton, as well as the period Grievant was at Castleton. The analysis of the statistical summary of the "free response" answers to a question on the weaknesses of the Castleton student teaching program stated:

In conclusion, lack of supervision of student teachers was clearly the most frequently mentioned weakness. Communication and collaboration issues around student teaching as well as interest in some classroom management skills for students were not mentioned as often, but together ranked a barely differentiated second and third.

(Colleges Exhibits 34, 35)

30. In a January 21, 1994, memorandum which Grievant sent to Acting Academic Dean John Larkin responding to the Education Department's internal survey on student teaching, Grievant stated:

(T)he real focus should be on faculty assuming their responsibilities for the supervision of student teachers in their charge and making the appropriate site visits, since this is where the real problems lie.

(Colleges Exhibit 27)

31. In a February 1, 1994, "Recommendation by the Academic Dean", Associate Dean Joan Mulligan recommended that Grievant be reappointed to a third year. In her summary comments, Dean Mulligan stated:

It is with serious reservation that I recommend Dr. Murray for reappointment. The reservations are based on the continuing difficulties with the student teaching program which constitutes a very large part of Dr. Murray's responsibilities . . . Then Academic Dean, Dr. Joseph T. Mark, in his letter of reappointment on February 26, 1993 stated: "I am seriously concerned about the College's student teaching program and will expect to see a marked improvement in our relationship with cooperating schools in the coming year." It doesn't seem that this improvement has taken place .

..

(Colleges Exhibit 29)

32. The recommendation of Dean Mulligan contained several inaccurate and misleading statements concerning Grievant's teaching effectiveness. Dean Mulligan indicated that students were quite critical of Grievant's student teaching seminars in the Spring and Fall of 1993. In fact, the student evaluations of these seminars generally were positive. Dean Mulligan made it appear that many students in the seminars expressed the opinion that they had not received the information they needed, objectives and assignments were unclear, and that there was a lack of organization. To the extent such comments appeared, they were isolated and not representative of the attitudes of most students. Dean Mulligan suggested that many students questioned the "validity of the system" relative to the student teaching seminar. Such a statement is not supported by any of the comments of students on the

student evaluations. The only comment remotely close is made by one student questioning the validity of a weekly seminar given all the time students had to put into student teaching. Further, while Dean Mulligan quoted one student as stating "student teaching is in a mess", she failed to note that the same student stated that this was not the fault of Grievant and Grievant was doing a "great job" (Colleges Exhibit 29, Federation Exhibits 14, 23I, 23K).

33. On February 7, 1994, Grievant sent Interim President Mark a lengthy rebuttal to Dean Mulligan's recommendation. In the rebuttal, Grievant attacked Dean Mulligan's critical statements on his teaching effectiveness and expressed disagreement with her comments on his work as Director of Student Teaching. With respect to his Director responsibilities, Grievant's rebuttal provided in pertinent part as follows:

In terms of my role as Director of Student Teaching, Associate Dean Mulligan's comments are totally inaccurate and, in fact, reflect a great deal of ignorance on her part in regards to the role of the Director . . . Number one, my major role and my contractual role are that of a **faculty member** (emphasis in original) . . . This position is that of a clinical faculty member and in no way should it be construed as having the authority to manage fellow faculty members . . . No faculty on this campus, including department chairs, are empowered to exercise authority over their fellow faculty . . . Even to this date, I still do not have in writing final evaluations for student teachers, which are required by the state, from several faculty members . . . I would like to reiterate, however, that it is not my responsibility to direct fellow faculty members to meet their obligations . . .

My responsibilities as Director of Student Teaching are as a faculty member. I am not responsible for the actions of my fellow faculty members. The problems that exist in student teaching are directly attributed to other faculty not respecting the written policies and directives relating to student teaching and not carrying out their responsibilities in regards to supervising students assigned to them . . .

.

(Colleges Exhibit 30)

34. Interim President Mark gradually came to believe that the best solution for the Castleton Student Teaching program would be the creation of an administrative position outside the faculty bargaining unit. He concluded that the person in such a position could better provide the supervision of Education Department faculty than could a faculty member. He concluded that no one was exercising the necessary quality control functions over the supervision of student teachers, and that Grievant was unwilling to exercise proper supervision over faculty. He met with senior members of the Education Department - Professors Bhatkal, Meloy, Duval - to discuss whether the Director of Student Teaching position should be restructured. At the meeting, Interim President Mark expressed his concern that the College's ability to place students was being affected, and that the situation needed to improve. He indicated to those present at the meeting that he was considering not reappointing Grievant and changing the Director of Student Teaching position from a faculty position to an administrative position.

35. President Mark had no discussions with Grievant concerning changing the Director of Student Teaching position from a faculty position to an administrative position.

36. On March 1, 1994, Interim President Mark notified Grievant that he would not be reappointed to a third year. The notification contained no reasons for the action (Colleges Exhibit 31).

37. Ultimately, Interim President Mark did not base his nonreappointment decision on Grievant's performance. He believed that Grievant's teaching

effectiveness was adequate for a second year faculty member, and that Grievant had met the criteria for scholarship and professional activity, and college and community service. Instead, he decided as a matter of addressing the staffing needs of the College that the duties of Director of Student Teaching should not be handled by a faculty member. He created a new position of Director of Field Experience/Licensure Officer, a 12 month administrative position. The recommendation of Dean Mulligan did not play a role in Interim President Mark's decision to not reappoint Grievant.

38. The job description for the Director of Field Experience/Licensure Officer position generally contains the same components as the Director of Student Teaching position except for the following characteristics of the new position: a) 12 month position, instead of a 9 month position; b) reports directly to the Academic Dean; c) in addition to student placement in the Student Teaching program, coordinates the Early Involvement Program, which involves sophomores and juniors spending some time in the schools; d) teaching courses is not required necessarily, although teaching a course may be done (Colleges Exhibit 32).

39. An announcement of the new Director of Field Experience/Licensure Officer position was posted on the Castleton campus. Grievant did not apply for the position.

40. The person hired as Director of Field Experience/Licensure Officer taught a Student Teaching Seminar during the 1994-95 academic year, and supervised student teachers.

41. The position of Director of Student Teaching does not exist at the other member institutions of the Vermont State Colleges. At Lyndon State College,

the co-Chairs of the Education Department coordinate the student teaching program. Performance, evaluation or disciplinary issues are the responsibility of the Academic Dean. Lyndon's student teaching program is about half the size of the Castleton program.

OPINION

We need to reach decisions on three issues in this matter: 1) whether the Colleges violated the Contract by the inclusion in Grievant's personnel file of Dean Mulligan's recommendation on Grievant's reappointment, 2) whether the Colleges violated the Contract by not reappointing Grievant to a third year of teaching service, and 3) whether the Colleges violated the Contract by eliminating the faculty position of Director of Student Teaching and replacing it with the newly created administrative position of Director of Field Experience/Licensure Officer. We will discuss each of these issues in turn.

Inclusion of Dean Mulligan's Recommendation in Grievant's Personnel File

In Docket No. 94-25, Grievant and the Federation contend that the inclusion in Grievant's personnel file of the February 1, 1994, letter of recommendation for Grievant's reappointment by Dean Mulligan violated Article 25(C) of the Contract. Article 25(C) provides in pertinent part that a faculty member "may grieve the insertion in his/her personnel file of any item or material which he or she alleges to be untrue or inaccurate".

Should the grievant prevail through the grievance procedure, the inaccurate or untrue submission is removed from the personnel file. Grievance of McHenry and VSCFF, 4 VLRB 236, 246 (1981). If portions of a document contained in a personnel file are untrue or inaccurate, the entire document should be removed if the untrue or inaccurate portions discredit the faculty member. Id. at 247-48.

Although Dean Mulligan recommended that Grievant be reappointed, portions of her letter of recommendation contained untrue and inaccurate statements. As detailed in Finding of Fact No. 32, the recommendation contained several inaccurate and misleading statements critical of Grievant's teaching effectiveness. It does not reflect an accurate portrayal of student evaluations of Grievant's teaching effectiveness, misrepresents and distorts comments expressed by students on student evaluations in courses Grievant taught, and makes it appear that many students made critical comments of Grievant's teaching when such comments were isolated and not representative of the attitudes of most students. The untrue and inaccurate statements in the Dean's letter significantly discredited Grievant's teaching effectiveness. The letter of recommendation should be removed from Grievant's personnel file.

Nonreappointment of Grievant

In Docket No. 94-47, the Federation alleges that the decision of the Colleges to not reappoint Grievant to a third year of teaching at Castleton State College violated the Contract. Our review of a decision of a President not to reappoint a faculty member to a third year of service is limited, as Article 21(J)(4) provides that such decisions "shall not be subject to . . . arbitration . . . unless the faculty member or the Federation claims the decision violates Article 7 (Academic Freedom), Article 8 (Anti-Discrimination), or the procedure for reappointment set forth in this Agreement".

The evidence does not support a conclusion that the Colleges violated either the Academic Freedom or Anti-Discrimination articles of the Contract. Although Grievant claimed at times that his academic freedom was being violated, the Colleges placed no restrictions on Grievant's instructional methods or otherwise interfered with his teaching of courses, and did not restrict his research. Further, Grievant's claim that he was discriminated against based on his gender was not developed at the hearing, as there was no evidence presented to support such a claim.

This leaves the remaining question whether the Colleges violated the "procedure for reappointment" set forth in the Contract. The Federation claims that the Colleges violated reappointment procedures because the nonreappointment decision of Interim President Mark was not based upon the performance of Grievant or the faculty staffing needs of the Colleges. The Federation bases this claim of procedural violation on Article 21(J)(2), which states that "in making (the

reappointment) decision, the President shall consider only the performance of the faculty member and the faculty staffing needs at the College".

We believe that this claim of the Federation reads too much into the meaning of "procedure for reappointment", which we conclude is limited to ensuring that there is adherence to the mechanics of the reappointment procedure such as entering materials in the faculty member's personnel file, meeting deadlines for evaluations, recommendations and decisions; and meeting notice requirements. By asking us to go beyond the mechanics of the procedure and analyze the substantive reasons underlying the President's decision, the Federation is requesting that we do something which the Contract permits us to do only in examining claims of violations of academic freedom or anti-discrimination provisions.

Our conclusion in this regard is supported by case law precedents and provisions of the Contract when read as a whole. Defined dismissal procedures, although generous beyond the due process requirements that bind an agency, are binding and must be scrupulously observed. Nzomo v. Vermont State Colleges, 136 Vt. 97, 100 (1978). This principle has been applied specifically in State Colleges faculty reappointment and tenure decisions. Id. Grievance of Burrill, 1 VLRB 386, 395-96 (1978). VSCFF and Peck v. Vermont State Colleges, 139 Vt. 329, 332-33 (1981). The cases where this principle has been applied have involved issues relating to the mechanics of the reappointment procedure, such as placement of faculty and administration evaluations/recommendations of the involved faculty member in the faculty member's personnel file, adherence to time deadlines in the reappointment process, and compliance with notice provisions. Id. This procedural due process

principle has not been extended to embrace the substantive reasons underlying the President's decision.

If we were to accept the Federation's contention, we would be acting contrary to the rule of contract construction that a contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. In re Grievance of VSEA On Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980). Article 21(K) of the Contract provides that the President does not have to give reasons for nonreappointment until deciding not to reappoint a faculty member to a fifth year of service. At this point, the Contract provides for the first time that the President's decision is "subject to . . . arbitration . . . (if) the faculty member or the Federation claims that the decision is unreasonable or arbitrary or based on erroneous reasons". The appropriate inference to draw from this inclusion of these standards of review in the Contract for the first time is that such standards of review cannot be applied by the Board in any reappointment decisions prior to the fifth year.

In Swett and the VSCFF v. Vermont State Colleges, 141 Vt. 275 (1982), the Vermont Supreme Court, in affirming a decision of the Board, 4 VLRB 98 (1981); interpreted contract language providing that "written notice of reasons" did not have to be given to State Colleges faculty until "after the third full year of service". 141 Vt. at 277. The Court stated:

Under the plain language of the agreement the presumption of renewal for faculty with less than three years is terminated upon proper written notification and nothing more. As long as notice is properly given the college has total discretion in such renewal decisions. To hold otherwise is to ignore the distinction made in the contract . . .

Because we hold that the collective bargaining agreement grants the president complete discretion in reappointment decisions

for faculty with less than three years of service, we need not reach the issue of whether the decision was arbitrary. Id. at 277-78.

Although the language of the Contract in this case has differences from the contract in the Swett case, the principles of Swett apply here when adjusted to the applicable provisions of the Contract. Since the Contract here requires no written reasons for nonreappointment being given prior to fifth year reappointment decisions, the President has total discretion in pre-fifth year reappointment decisions, provided there is no violation of academic freedom or anti-discrimination provisions, or the procedure for reappointment.

The Federation essentially is claiming that the President's decision was arbitrary, unreasonable, or based on erroneous reasons because the Contract requires the President to base a decision only on Grievant's performance and faculty staffing needs, and the President's decision was not based on Grievant's performance and faculty staffing needs. The discretion given the President by the Contract in this third year reappointment decision, however, leaves us without authority to review such an allegation until fifth year reappointment decisions. Article 21(K)(5). Swett, 141 Vt. at 278.

In sum, we reject the Federation's contention that the President violated the "procedure for reappointment" within the meaning of Article 21(J)(4) of the Contract. Further, we note that the inclusion in Grievant's personnel file of Dean Mulligan's recommendation containing untrue and inaccurate statements does not affect the validity of the President's nonreappointment decision because Dean Mulligan's recommendation did not play a role in the President's decision. Thus, we

conclude that the Colleges did not violate the Contract in not reappointing Grievant to a third year of teaching service.

Conversion of Director of Student Teaching Position to Administrative Position

In Docket Nos. 94-47 and 94-48, the Federation contends that the unilateral decision by the Colleges to convert the Director of Student Teaching position at Castleton from a faculty position to an administrative position violated the faculty governance provisions of the Contract. Article 19 of the Contract provides that, "(r)ecognizing the final determining authority of the President, matters of academic concern shall be initiated by the Faculty Assembly or by the President through the Faculty Assembly". Matters of academic concern are defined in pertinent part to include the "development, curtailment or reorganization of academic programs". Article 19(C)(6). The Federation contends that the conversion of the Director of Student Teaching from a faculty position to an administrative position constituted a substantial reorganization of the academic program of Student Teaching, and thus the Colleges violated Article 19(C)(6) by taking such action without allowing the Faculty Assembly an opportunity to consider the matter.

The Colleges contend that Article 19(C)(6) has not been violated because the Student Teaching program has not been reorganized, added to or deleted from in any way. The Colleges maintain that the program is basically functioning the same way it always had, with the exception of the managing role of the new Director. The Colleges support this position by noting that students are still placed in the sites, supervised by faculty and cooperating teachers, and take the same courses. The

Colleges also point to the lack of evidence that the requirements for students, or workload for faculty, have changed.

We disagree with the Colleges that the Student Teaching academic program has not been reorganized. The program previously was directed by a faculty member within the Education Department, and now is directed by an administrator reporting directly to the Academic Dean. The Colleges have taken responsibilities traditionally and historically performed by a faculty member within the Education Department for more than 20 years, and unilaterally removed such responsibilities from the faculty bargaining unit. Although the newly created administrative position contains some duties previously not performed by the faculty member serving as Director of Student Teaching, it is evident that the bulk of duties performed under the new position are the same as performed by the faculty member serving as Director of Student Teaching.

These include developing and maintaining relationships with superintendents, principals, and cooperating teachers; training cooperating teachers and Castleton Education Department faculty; merging student preferences on where they would like to teach with available placement sites; overseeing supervision of student teachers; teaching Student Teaching seminars; and coordinating grading. The Colleges violated the faculty governance provisions of the Contract here by removing these areas of faculty responsibilities from the faculty bargaining unit without first allowing the Faculty Assembly to consider the matter.

Thus, we conclude that the Colleges violated Article 19(C)(6) of the Contract by reorganizing the academic program of Student Teaching, in converting the

Director of Student Teaching position from a faculty position to an administrative position, without allowing the Faculty Assembly an opportunity to consider the matter.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The grievance in Docket No. 94-25 is SUSTAINED, and the Vermont State Colleges shall remove from the personnel file of Dr. David Murray ("Grievant") the February 1, 1994, recommendation for Grievant's reappointment by Castleton State College Associate Dean Joan Mulligan;
2. The grievance in Docket No. 94-47 is DENIED to the extent it contests the decision of Castleton Interim President Joseph Mark to not reappoint Grievant to a third year of teaching service at Castleton; and
3. The grievance in Docket No. 94-47 is GRANTED to the extent it challenges the conversion of the Director of Student Teaching position at Castleton from a faculty position to an administrative position, the unit clarification petition in Docket No. 94-48 is GRANTED, and the Vermont State Colleges shall provide the Faculty Assembly at Castleton with the opportunity to consider the Colleges' proposed removal from the faculty bargaining unit of duties performed by the faculty member serving as Director of Student Teaching.

Dated this 19th day of May, 1995, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer, Acting Chair

Catherine L. Frank

Leslie G. Seaver