

VERMONT LABOR RELATIONS BOARD

IN RE:)	
)	
GRIEVANCE OF JOYCEANNE ROLL)	
)	
v.)	DOCKET NO. 79-35S
)	
VERMONT STATE COLLEGES)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On June 5, 1979, Stephen T. Butterfield of the Vermont State Colleges Faculty Federation filed a petition with the Vermont Labor Relations Board on behalf of Joyceanne Roll (hereinafter "Grievant") under 3 V.S.A. §926(a)(1). The petition alleges the Colleges' (hereinafter "Employer") failure to consider Grievant's request for a development grant under Part IV of the Vermont State Colleges Staff Handbook on the grounds the loan/grant program had never been funded constitutes a violation of 3 V.S.A §902(14) and the rules and regulations of the Employer.

On June 18, 1979, the Employer filed its answer to the petition, denying that the refusal to approve the loan/grant constituted either a violation or discriminatory application of the Vermont State Colleges rules and regulations.

On September 13, 1979, a hearing on this matter was held before the Vermont Labor Relations Board. Members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown were present. Representing

the Employer was Peter R. Hicks, Esq. The Grievant was represented by Stephen T. Butterfield.

Briefs were filed by the Grievant and the Employer on September 26, 1979, and September 27, 1979, respectively.

FINDINGS OF FACT

1. Grievant has been employed as a secretary in the nursing department at Castleton State College for approximately six years, and as such is classified as a full-time staff employee of the Vermont State Colleges.

2. As a full-time staff member of the Vermont State Colleges, Grievant is subject to the Vermont State Colleges Staff Handbook (Joint Exhibit #1) of January 23, 1976, as amended November 1, 1978. Included in the Handbook are personnel policies and rules and regulations governing conditions of employment for staff employees.

3. The VSC Staff Handbook is published by the Employer, approved by the VSC Board of Trustees and is distributed to employees through the various college administrations.

4. On February 5, 1979, Grievant submitted a request for consideration of a loan/grant pursuant to Part IV of the VSC Staff Handbook.

5. The section of the applicable VSC Handbook provision pertinent to this case is as follows:

"Development grants and loans are made to employees from available funds for the joint benefit of the employee and the Vermont State Colleges system."
(Joint Exhibit #1 at 9)

The remainder of the provision language is in evidence at pages 9-13

of Joint Exhibit #1, and is admitted as a finding of fact.

6. No funds enabling loan/grants pursuant to Part IV of the VSC 1977 and 1978 Handbooks were budgeted by the Vermont State Colleges Board of Trustees for the 1977-78 and 1978-79 fiscal years.

7. On February 22, 1979, President Wilson of Castleton State College wrote a letter informing the Grievant he was not able to grant her request on the grounds that no money had been budgeted for the program, and was not likely to be budgeted until such time as the "System" (Vermont State Colleges) received "more adequate funding". (Joint Exhibit #4)

8. Robert Bruce, Business Manager at Castleton State College, testified as to why the Employer included the loan/grant section in the 1977 and 1978 VSC Handbooks. Involved in the decision to include the language of Section IV in the 1977 Handbook, Mr. Bruce testified that although there was no money available at that time to fund the program, it was the Employer's intent to have the language in place in the event funds became available in the future.

9. On March 23, 1979, Ms. Roll initiated the grievance procedure pursuant to Part III G of the VSC Staff Handbook (Joint Exhibit #1 at 6-7), grieving the denial of her application for a staff development loan/grant. As a remedy, she sought sufficient funding to make the program operational in general and approval of her application in particular. (Joint Exhibit #5)

10. Grievant properly presented her grievance to the appropriate Employer staff members, culminating in the receipt of a final determination by the college president on May 28, 1979, denying her request. (Joint Exhibits #5-10)

OPINION

In this grievance, we are required to decide two issues: first, is the denial of a staff development loan/grant because of the Employer's failure to implement a Handbook provision a grievable action; and second, is the Grievant entitled to a development loan/grant as a matter of law.

These issues arise because in the absence of a collective bargaining agreement there is a Staff Handbook, published by the Employer, which states in pertinent part:

"Development grants and loans are made to employees from available funds for the joint benefit of the employee and the Vermont State Colleges system." (Joint Exhibit #1 at 9)

Under the authority of # V.S.A §926 and §928(b)(1), the Grievant alleges the Employer's actions, in failing to make such grants available, constitute a grievable condition pursuant to 3 V.S.A. §902(14) which defines a grievance as:

"... an employee's, group of employee's, or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors." (Emphasis added.)

The employer argues and we agree, that absent a collective bargaining agreement, the applicable section of the definition of a grievance in 3 V.S.A §902(14) in this case is the underlined portion of the statute. Therefore, to establish a case under the statute, the Employer maintains the Grievant must prove: 1) she has exhausted internal grievance procedures; and 2) the discriminatory application by an Employer of a rule or regulation. Again, we concur.

It is conceded by all parties that no money has been allocated to fund this provision and the Grievant's application for a loan/grant was denied after Grievant properly followed internal grievance procedures. Nonetheless, we dismiss this grievance because we believe that the pertinent Handbook provision clearly specifies that the approval of staff development loan/grant requests is dependent upon the availability of funds allocated for that purpose. Without the funds, the provision is inoperable the condition of its availability unmet.

Despite the eventual dismissal of this grievance, we hold that the allegation contained within does constitute a grievable condition, and will first deal with the Employer's treatment of this issue. We reject the Employer's contention that if all similarly situated employees are treated alike by an employer's unilateral refusal to apply a rule, no discrimination would occur. The Employer relies on the Supreme Court's ruling in David Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97 (1978), in arguing this extraordinary proposition. In Nzomo, the Court held "discrimination" under 3 V.S.A § 902(14) to be the ". . . unequal treatment of individuals in the same circumstances under the applicable rule. . ." Nzomo, supra at 102.

We would be reluctant to hold that by denying a benefit from all entitled employees, an employer could preclude the use of the grievance procedure on the premise all employees were treated equally under the rule. For example, suspecting employees of abusing bereavement leave benefits provided in Part VI B(6) of the VSC Staff Handbook, the Employer informs staff that all future requests for such leave

will be denied until further notice. We doubt seriously that the unilateral denial of a benefit to all entitled employees would escape the scrutiny of discrimination. Compare for example, Grievance of James Harrison, 2 VLFB 171 at 181 (Dkt #79-6S, 1979), which relies on In Re: Barcomb, 132 Vt. 225 at 232 (1974), for the proposition that the application of a rule in a way contrary to Legislative purpose constitutes discrimination.

For the purposes of this case, we believe the Court in Nzomo has implied that total failure to apply any rule constitutes discrimination:

" . . . It is clear to us that the rules as written in the Castleton Handbook are binding on the defendant, that they have not been modified by past conduct, and that the defendant has failed to apply these rules in the plaintiff's case. This without more is sufficient to require a finding of discrimination which constitutes a grievance under 3 V.S.A. §926." (Emphasis added) Nzomo, supra at 102-103.

In stating the purpose of the State Employees Labor Relations Act, the Legislature intended the Act provide for, among other things, "orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other." 3 V.S.A. §901. We find a grievance provision to be such a peaceful procedure, as opposed to a suit for a breach of contract in court.

Our task now is to treat the merits of this case: is the Grievant entitled to a development loan/grant as a matter of law.

The Grievant would have us view this issue in the context of contract law. Essentially, Grievant argues: 1) the VSC Staff Handbook sets forth a program for which no money has been appropriated; 2) the inclusion of the loan/grant program for the purpose of staff

professional development in the VSC Staff Handbook constitutes "a promise of job benefits to employees"; and 3) the program and procedures established in Part IV, "Administrative/Staff Development Grants and Loans", is part of "an authentic composite of rules, regulations, and policies for staff employees" and is part of the contract of employment between VSC staff and the Employer.

In considering the Grievant's arguments, again we look to Nzomo wherein a staff handbook was discussed in the context of contract law. In Nzomo, our Court relied entirely on the VSC Staff Handbook in setting forth the plaintiff's rights regarding dismissal procedures. We conclude that the Court's finding regarding the binding nature of the college rules and regulations as written in the Staff Handbook is an essential part of the employment contract.

Unfortunately, however, we do not find in the "Administrative/Staff Development Grants and Loans" provision a promise of a benefit or an inducement for employment sufficient to bind the Employer. There is no evidence admitted that the Grievant relied on the provision as a condition of accepting employment. Rather, the staff loan/grant provision is a contingency, stated in a conditional way:

"Development grants and loans are made to employees from available funds for the joint benefit of the employee and the Vermont State Colleges System." (VSC Staff Handbook, Part IV, Section 1, Joint Exhibit #1 at 9)

While we agree with that portion of the Grievant's argument that contends the VSC Staff Handbook is part of the contract of employment between VSC staff and the Employer, that conclusion does not remove the fact that the "Administrative/Staff Development Grants and Loans"


provision is a conditional promise only. The Employer, without Legislative appropriation, is powerless to operate the program.

Therefore, we are inclined to agree with the Employer and conclude no breach of contract or noncompliance with an Employer rule has occurred. The language of the program provision and testimony regarding the intent of including the program in the Handbook indicate that development grants and loans would be effected only when funds were available. The fact that the program never became operative, based on the unavailability of funds, compels the dismissal of this grievance.

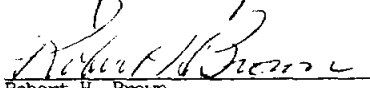
ORDER

Based on the foregoing reasons, it is hereby ORDERED that this grievance be dismissed and is DISMISSED this 18th day of October, 1979, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney


William G. Kemsley, Sr.


Robert H. Brown