

VERMONT LABOR RELATIONS BOARD

IN RE: GRIEVANCE OF THE VTC CHAPTER )  
OF THE VERMONT STATE COLLEGES )  
FACULTY FEDERATION, AFT LOCAL )  
3180, AFL-CIO )  
v. ) DOCKET NO. 79-43S  
VERMONT STATE COLLEGES )

FINDINGS OF FACT, OPINION AND ORDER  
ON EMPLOYER'S MOTION TO DISMISS

Statement of the Case

On June 18, 1979, the Vermont Technical College Chapter of the Vermont State Colleges Faculty Federation (hereinafter "Grievant") filed a petition with the Vermont Labor Relations Board. The petition alleged the Vermont State Colleges (hereinafter "Employer") had violated Article XXIX of the collective bargaining agreement between the parties by assigning workloads in excess of twenty-four hours per academic year to six faculty members.

The Employer filed an answer to the petition on June 29, 1979, denying the alleged contract violation resulting from its actions. Furthermore, in the Employer's answer, the Colleges moved to dismiss the petition, contending the original grievance was not timely filed.

A hearing was held before Members Kimberly B. Cheney, William G. Kemsley, Sr. and Robert H. Brown on September 13, 1979. The Federation was represented by Stephen T. Butterfield, VSCFF Grievance Chairperson. The Employer was represented by Attorney Nicholas DiGiovanni, Jr. Evidence relative to the timeliness of the grievance as well as the action being grieved was presented at the hearing.

#### FINDINGS OF FACT

1. The Vermont State Colleges Faculty Federation is the duly certified collective bargaining representative of the faculty bargaining unit of all the Vermont State Colleges.

2. The Grievant is a local chapter of the Federation, subject to the collective bargaining agreement between the Colleges and the Federation.

3. The collective bargaining agreement in effect at the time of the original grievance, the December 18, 1976 agreement between the Federation and the Colleges, has been filed with this Board and is incorporated herein for the purpose of findings of fact.

4. Grievant alleges violations of Article XXIX "Workload" of the agreement between the parties, by the Employer's assignment of workloads in excess of twenty-four hours per academic year to six faculty members.

5. Article XXIX, in pertinent part, states:

"The Federation and the Colleges agree to strive towards a normal individual workload of 24 credit hours or its equivalent per year and to observe that norm in the appointment of new faculty. For the duration of this Agreement, however, faculty shall not be required to teach an excessive number of contact hours, assume an excessive student load, or be assigned an unreasonable schedule. In determining what is "excessive" or "unreasonable" under this paragraph, current practices in the College shall be one of the important elements to be considered. The number of courses and number of different course preparations per faculty member shall remain at the normal and customary number for that department....."

6. Grievant's witness, Walter Granter, has been employed at Vermont Technical College for thirteen years, is a member of the faculty bargaining unit and has served as a delegate to the VTC Chapter of the Federation Faculty Assembly and as the chapter grievance counsellor.

7. One function of the chapter grievance counsellor in policing the agreement between the parties is to ascertain whether there are any "workload" violations at the beginning of each semester. The Grievant's practice in determining faculty workload has been to request information of the administration relative to workloads within three to six weeks of the start of a semester.

8. In determining grievable violations of Article XXIX, the grievance counsellor analyzes workload data to determine the presence of three conditions: 1) an excessive number of contact hours (i.e. teaching hours, reflected in course credit hours); 2) an excessive student load; and/or 3) an otherwise unreasonable schedule.

9. The workload condition being grieved in this case is excessive contact hours for six new faculty members only.

10. On March 14, 1979, Grievant first requested workload information from the Employer, approximately eight weeks after the start of the 1979 Spring semester. (Grievant's Exhibit #1).

11. On March 28, 1979, a step one grievance was filed by the grievance counsellor, alleging excessive workload conditions under the "twenty-four credit hour rule" only. (Grievant's Exhibit #3).

12. On April 17, 1979, the Employer denied the step one grievance on the basis of non-compliance with the grievance procedure timeliness requirement. (Grievant's Exhibit #4).

13. Article XIX "Grievance Procedure" of the agreement between the parties sets forth the timeliness requirements, stating in relevant part:

"The grievance must be presented in writing and receipted by the appropriate college representative within thirty (30) calendar days following the time at which the Grievant could have reasonably been aware of its occurrence." (Section 3, step one B.)

14. Information on estimated individual class teaching loads (contact hours) was available to the Grievant in early December by contacting department heads who received a schedule of courses to be offered in the 1979 Spring semester on December 8, 1978. (Employer's Exhibit #2).

15. "Block Schedules" (Employer's Exhibit #1), informing all faculty of the courses scheduled, instructors assigned and class meeting times, were available before January 16, 1979, the commencement of the Spring semester.

16. The number of individual faculty contact hours assigned is determined by referencing the classes assigned in the "Block Schedules" with the May 1978 VTC College Bulletin which lists the number of credit hours for each course. (Employer's Exhibit #3).

17. Few changes are made to the "Block Schedules" after classes have begun.

18. In order to determine the number of contact hours taught by "new faculty", the grievance counsellor would need to inquire of only four people -- the department heads of the new faculty who would have had the necessary data before January 16, 1979.

#### OPINION AND ORDER

The Employer's motion to dismiss raises the question of whether the grievance was submitted in compliance with the grievance procedure timeliness requirements.


The Grievant presented testimony that would have us conclude the grievance was timely, claiming that the identification of grievable conditions during the first month of the semester was "impossible". Changes in the course schedules attributable to students transferring from one class to another and changes in enrollment the Grievant argues, cannot be determined until approximately six weeks into the new semester. It is at this point, "after the dust has settled", that "workload" conditions are determined and, if necessary, subsequent grievances are filed.


The Employer, on the other hand, in filing a motion to dismiss the grievance on the grounds it was not submitted within the 30-day requirement, maintains the Grievant had ample opportunity to identify grievable conditions relative to new faculty workloads. While conceding that data necessary to determine other "workload" aspects (such as student load and overall reasonableness of scheduling) may not be available at the start of classes, the Employer argues information relative to contact hours is available before classes start and is generally not subject to change. In this case, testimony revealed that course schedules indicating contact hours for each new faculty member were probably available in December and certainly available by January 19, 1979. In order to determine whether any contract violations relative to new faculty workload existed, the Grievant needed only to inquire of four department heads.

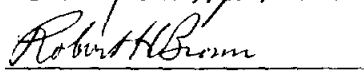
Based on the limited scope of the grievance issue relating as it does to "new faculty" only, and the relative ease of obtaining the necessary facts to determine if a grievable condition existed, we grant the motion to dismiss on the basis of noncompliance with the timeliness requirement. In our opinion, the Grievant could have contacted the four department heads of the seven affected employees to become aware of any possible contract violation any time from January 1st to the 19th. Inasmuch as a grievance must be presented and received by the College within 30 days following the time at which the grievant could have reasonably been aware of its occurrence, the March 28, 1979 filing date was not timely.

Therefore, for all the foregoing reasons, this grievance is hereby ORDERED DISMISSED, this 21<sup>st</sup> day of September 1979 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Kemsley, Sr., Member

  
Robert H. Brown, Member