

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
TOM DAVIS and the VERMONT)	DOCKET NO. 97-45
STATE COLLEGES)	
FACULTY FEDERATION,)	
AFT, VFT, LOCAL 3180)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 16, 1997, the Vermont State Colleges Faculty Federation, AFT, VFT, Local 3180 ("Federation") filed a grievance with the Vermont Labor Relations Board on behalf of Tom Davis and the Federation. Therein, the Federation alleged that the Vermont State Colleges ("Colleges") violated Articles 3 and 36, and Appendix C, of the collective bargaining agreement between the Federation and the Colleges, effective for the period September 1, 1994 to August 31, 1997 ("Contract"), by denying tuition remission at the University of Vermont to a bargaining unit member for his daughter's tuition at the University of Vermont while she was still attending high school.

On July 25, 1997, the Colleges filed an answer, and moved to dismiss the grievance. On August 22, 1997, the Federation filed a memorandum in Opposition to the Colleges' Motion to Dismiss and a Cross Motion for Summary Judgment. On September 19, 1997, the Colleges filed a Response to the Federation's Motion for Summary Judgment. On January 30, 1998, the Vermont Labor Relations Board denied the Motion to Dismiss and the Motion for Summary Judgment.

On April 2, 1998, a hearing was held in Montpelier, Vermont before Vermont

Labor Relations Board Members Catherine L. Frank, Chairperson; Carroll P. Comstock and Richard W. Park. Attorney Joseph P. McConnell represented the Colleges. Federation Grievance Chairperson Timothy Miles Sturm represented Grievants. The parties filed post hearing briefs on April 27, 1998.

FINDINGS OF FACT

1. Article 36 of the Contract states in pertinent part:

ARTICLE 36

TUITION BENEFITS

- A. Full-time faculty and their immediate families may enroll in courses offered by the Vermont State Colleges without payment of tuition for such courses. "Immediate family" is defined as including . . . dependent children . . .
...
 - C. Upon acceptance by the University, children . . . of any full-time faculty member of the Vermont State Colleges may enroll in courses at the University of Vermont without payment of tuition, under the terms of the Tuition Remission Agreement between the Vermont State Colleges and the University of Vermont, dated June, 1967, as amended on November 26, 1991 (see Appendix C). The Vermont State Colleges shall notify the Federation of any change in such agreement no later than 15 days after such change (Federation Exhibit 1).
2. Appendix C of the Contract states in pertinent part:

APPENDIX C

...
Children . . . of any full-time employee of one institution eligible for tuition remission of that institution may attend the other institution without payment of tuition, provided:
...

- (2) that said student is pursuing an acceptable course of study leading to an undergraduate degree, and
- (3) that the student began his/her college education prior to age 21 . . . (Federation Exhibit 1).

3. The Federation represents faculty members employed by the Colleges at the four campus based institutions of Castleton State College, Johnson State College, Lyndon State College, and Vermont Technical College.

4. Employees covered by the Contract who seek tuition remission for dependents attending the University of Vermont initially make such request to their Dean or College President. The Dean or President forwards the request to the Vermont State Colleges Chancellor. The Chancellor's office verifies that the employee is a full time employee and that the dependent is the employee's "immediate family". The Dean, President or Chancellor then forwards the request to the University of Vermont Personnel Director.

5. The University of Vermont Personnel Department determines whether a student meets its standards for tuition remission. The Department applies the same standard to dependents of University of Vermont employees as it does to dependents of eligible employees of the Colleges.

6. At all times relevant, Ron Frey was the University of Vermont Personnel Director and Lee Stewart was the Assistant Personnel Director. Stewart has worked at the University for approximately 23 years. He has been Assistant Personnel Director since 1988.

7. At least since 1988, the University has interpreted the provision of the reciprocity agreement which requires that the student be "pursing an acceptable course of study leading to an undergraduate degree" to mean that the student is a matriculating student accepted into a degree program at the University. In practice, this means a student has applied for admission into an undergraduate degree

program, been accepted, attended orientation, selected courses and been assigned a faculty advisor.

8. There is no admission requirement for an individual to take courses at the University. A high school student can take courses at the University. However, a high school student cannot be enrolled at the University, and a high school student has not been considered by the University to be pursuing an acceptable course of study leading to an undergraduate degree while they are still in high school. Assistant Personnel Director Stewart has never known the Personnel Department to waive the tuition for dependents of University employees who are enrolled in University courses while still in high school. Similarly, Stewart has never known the Personnel Department to waive tuition for dependents of Vermont State Colleges' employees who are enrolled in University courses while still in high school.

9. It has been the practice of the Vermont State Colleges to give bargaining unit members tuition remission for courses their dependents have enrolled in at any of the Vermont State Colleges while the dependents are still in high school under Article 36(A) of the Contract.

10. Donna Russo is the Colleges' Administrator of Human Resources. It came to Russo's attention in 1993 that there was confusion among some employees regarding the University's application of the tuition waiver standards. She discussed the situation with Frey and on August 31, 1993, sent a memorandum to the Colleges' Deans of Administration, Presidents and the Chancellor. The memorandum stated in pertinent part:

There has been some confusion about the UVM tuition waivers as revised in

1991. As agreed with UVM, children . . . may be eligible for the tuition waiver, whether or not they are full-time students, as long as the course of study normally leads to an undergraduate degree. The confusion has been in determining whether the student is matriculating in a degree program, taking prerequisite courses prior to declaring a major, or simply taking courses with no expectations of achieving a degree. In many instances the student has not yet made a determination about his or her course of study. All of this makes it difficult for UVM and the VSC to approve tuition waivers.

After discussion with Ron Frey, Director of Personnel, from UVM, we have agreed that regardless of the student's status, he or she must take the step of formally enrolling at the Institution. This in turn would lead to the student being appointed an advisor who could guide the student and speak on behalf of the student to verify eligibility for the waiver.

Therefore, in the future, we should monitor requests for tuition waivers at UVM and advise employees or their dependent children that they must take the step of enrolling and discussing their status with an advisor to be eligible for waiver . . . (Colleges' Exhibit 1).

11. This memorandum did not reflect a different standard or change from the standards applied by the University since at least 1988. The purpose of the memorandum was to clarify the University's standards for the Colleges' personnel responsible for forwarding full time eligible employee requests to the Chancellor - Deans and Presidents - and was not distributed to bargaining unit members.

12. Employees often call Russo and ask if they are eligible for tuition remission for their dependent high school students taking courses at the University. Russo always informs them that such remission is not available while they are still attending high school.

13. Tom Davis is a full time professor at Vermont Technical College. His daughter Emily, who is under the age of 21, applied in the Fall of 1996, during her senior year of high school, for early admission to the University of Vermont. She was notified of her acceptance in December 1996.

14. During the Fall of 1996, Ms. Davis took a course at Vermont Technical College. Davis received a tuition remission for this course.

15. Ms. Davis enrolled in a three credit course for the Spring 1997 semester at the University of Vermont prior to her graduation from high school. Davis applied for tuition remission for his daughter's course. On March 7, 1997, Vermont Technical College President Robert Clarke forwarded Davis' request to the University of Vermont Department of Personnel.

16. The University of Vermont Department of Personnel applied the standards it applies to such tuition remission requests and determined that Davis was not eligible for tuition remission. On March 14, 1997, Stewart sent a letter to President Clarke which stated in pertinent part:

...

At the University of Vermont we do not consider a first year student as matriculated until the beginning of the semester following acceptance. In the case of Ms. Davis, her first semester of matriculation is the Fall of 1997 and therefore she would not be eligible for tuition remission.

In addition, we do not authorize tuition remission for part time student dependents. At the University, dependent children of faculty and staff must be full-time students unless medically not able to pursue full time studies. We make this statement in the Officer and Staff handbooks and affirm the student's status at the time tuition remission is requested (Federation Exhibit 5).

17. In a March 20, 1997 letter to Vermont State Colleges Chancellor Charles Bunting, Davis expressed his disagreement with this decision. On April 9, 1997, Bunting responded to Davis' letter and stated that he was not in a position to override the University's decision. He indicated that Davis' daughter would be eligible for tuition remission when she enrolled in the Fall (Federation Exhibit 7).

18. Davis' daughter enrolled at the University in the Fall 1997, and Davis received tuition remission for the course she took during the Fall 1997 semester.

OPINION

At issue is whether the Colleges violated the Contract when Professor Tom Davis was denied tuition remission for a course which his daughter took at the University of Vermont while she was still attending high school. The Federation first contends that Appendix C of the Contract is clear and unambiguous in providing that, if a dependent is eligible for tuition remission at the "sending" institution, then tuition for that dependent will be remitted at the "receiving" institution. Since Professor Davis' daughter was eligible for tuition remission at the Vermont State Colleges, the Federation contends that she was entitled to tuition remission for her University of Vermont course.

A contract will be interpreted by the common meaning of its words where the language is clear. *Id.*, at 71. If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Swett v. Vermont State Colleges, 141 Vt. 275 (1982). Extrinsic evidence under such circumstances is inadmissible as it would alter the understanding of the parties embodied in the language they chose to best express their intent. Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981).

However, resort to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language is appropriate if sufficient ambiguity exists in the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Where the disputed language is sufficiently ambiguous, it is the

duty of judicial or quasi-judicial bodies to construe a contract so as to ascertain the true intention of the parties. Grievance of Gornuso, 150 Vt. 139, 143 (1988). In such circumstances, it is appropriate to look to the extrinsic evidence of past practice and bargaining history to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract. Grievance of Majors, 11 VLRB 30, 35 (1988).

In applying these standards to this case, we disagree with the Federation that Appendix C of the Contract clearly and unambiguously provides that, if a dependent is eligible for tuition remission at the “sending” institution, then tuition for that dependent will be remitted at the “receiving” institution. Appendix C states that a dependent of a “full-time employee of one institution eligible for tuition remission of that institution may attend the other institution without payment of tuition, provided . . . that said student is pursuing an acceptable course of study leading to an undergraduate degree”. This means that a dependent eligible for tuition remission at the “sending” institution will not necessarily be eligible for tuition remission at the “receiving” institution unless the additional requirement exists that a dependent is “pursuing an acceptable course of study leading to an undergraduate degree” at the receiving institution.

This case thus turns on whether Professor Davis' daughter was “pursuing an acceptable course of study leading to an undergraduate degree” at the University of Vermont at the time she took the course at the University for which tuition remission is being sought. There is sufficient ambiguity as to the meaning of “pursuing an acceptable course of study leading to an undergraduate degree” to require an

examination of the University's past practice in interpreting this provision.

The un rebutted evidence is that the University since at least 1988 has consistently interpreted this provision to require that the student is a matriculating student accepted into a degree program at the University. In practice, this means a student has applied for admission into an undergraduate degree program, been accepted, attended orientation, selected courses and been assigned a faculty advisor. Although a high school student can take courses at the University, a high school student has not been considered by the University to be pursuing an acceptable course of study leading to an undergraduate degree while the student still is in high school. There was no evidence that the University has waived the tuition for dependents of University employees who are enrolled in University courses while still in high school, or for similarly situated dependents of Vermont State Colleges' employees. We note that, if we were to accept Grievants' position in this matter, the result would be that dependents of Vermont State Colleges' employees would be granted greater tuition remission benefits at the University than the dependents of the University's own employees.

The Federation contends that the Colleges violated Article 36 of the Contract, which requires the Colleges to "notify the Federation of any change" in the tuition remission agreement between the University of Vermont and the Colleges "no later than 15 days after such change". The Federation alleges that the Colleges violated this provision by entering into a side agreement in 1993 with the University, which expanded eligibility criteria beyond that listed in Appendix C, without notifying the Federation of such changes.

We disagree with the Federation that the Colleges and University changed their tuition remission agreement in 1993. The Colleges' Administrator of Human Resources issued a memorandum that year providing clarification to Colleges' administrators of the University's tuition remission standards, but this memorandum did not reflect any different standards than had been applied by the University since at least 1988.

In sum, we conclude that the Vermont State Colleges did not violate the Contract when Professor Tom Davis was denied tuition remission for a course which his daughter took at the University of Vermont while she was still attending high school.

ORDER

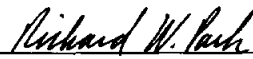
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Tom Davis and the Vermont State Colleges Faculty Federation, AFT, VFT, Local 3180, is DISMISSED.

Dated this 11th day of June, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Carroll P. Comstock


Richard W. Park