

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
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RICHARD MOYE AND THE	)	DOCKET NO. 01-21
VERMONT STATE COLLEGES	)	
FACULTY FEDERATION, AFT	)	
LOCAL 3180, AFL-CIO	)	

MEMORANDUM AND ORDER

In this grievance concerning whether the Vermont State Colleges violated the collective bargaining agreement by not granting Lyndon State College faculty member Richard Moye an early promotion to full professor, the issue now before the Labor Relations Board is whether to grant two motions filed by Grievants to amend the grievance.

On July 13, 2001, Grievants filed a motion to amend the grievance to add an allegation that the Colleges' actions in denying early promotion to Moye violated Article 8 of the collective bargaining agreement. Article 8 provides:

The parties shall not discriminate against any faculty member or against any applicant for employment in positions in the faculty by reason of age, race, creed, marital status, color, sex, sexual orientation, religion, national origin, citizenship, union activity, political activity, or membership or non-membership in the Federation.

On August 10, 2001, the Colleges filed a response to the motion to amend, contending that the Board should deny the motion to amend because Grievants have merely invoked Article 8, without explaining how a protected status or activity listed in Article 8 has been implicated. In the alternative, the Colleges contend that the Board should demand a more definite statement from the Federation regarding the nature of the alleged violation.

Grievants filed a supplemental memorandum in support of the motion to amend on August 15, 2001. Therein, Grievants state that the Colleges have violated the provision of Article 8 prohibiting discrimination based on political activity. They assert that the President and Dean of Lyndon State College, in denying Moye's application for early promotion, acted not on the merits of his application, but rather in response to Moye's opposition to the administration. Grievants assert that it was the President's and Dean's antipathy to his political activism within Lyndon State College that lies at the root of the present grievance.

On September 20, 2001, Grievants filed a second motion to amend the grievance to add an allegation that the Colleges' actions in denying early promotion to Moye violated Article 7 of the collective bargaining agreement, the academic freedom article of the agreement. Grievants contend that the Colleges' denial of early promotion constituted discrimination due to Moye's exercise of academic freedom through public criticism of the Lyndon State College administration.

On October 11, 2001, the Colleges filed a response to the second motion to amend, contending that the Board should deny the motion. The Colleges relied upon the same reasons set forth in its opposition to the first motion to amend. The Colleges contend that, absent a specific allegation regarding what the alleged protected statements made by Moye were and how they implicated the article protecting academic freedom, the Board should deny the second motion to amend. In the alternative, the Colleges contend that the Board should demand a more definite statement from the Federation regarding the nature of the alleged violation.

Section 12.7 of the Labor Relations Board Rules of Practice permits amendments of grievances as the Board “deems proper”. In deciding whether to permit amendment of the grievance, the Board examines whether amendment would prejudice the employer or be disruptive to the orderly and efficient processing of cases by the Board. Grievance of Barnard, 17 VLRB 203, 225 (1994).

In applying these standards to the pending motions to amend, we conclude that the motions should be granted. The Colleges opposed the motion based on the alleged failure of Grievants to sufficiently articulate how Articles 7 and 8 of the agreement were violated. Grievants cured any deficiencies that may have existed in this regard concerning the alleged violations of Article 8 through the supplemental memorandum they filed in support of the first motion to amend. This eliminated any doubt that Grievants are asserting that the Colleges have violated the provision of Article 8, prohibiting discrimination based on political activity. Specifically, they allege that article was violated when Moye’s application for early promotion was denied because of Moye’s opposition to the Lyndon State College administration.

Similarly, Grievants’ second motion to amend sufficiently articulated the basis for the claim that Article 7 was violated. Grievants asserted that the Colleges violated Article 7, concerning academic freedom, by denying early promotion to Moye due to Moye’s exercise of academic freedom through public criticism of the administration.

Given these definite statements by Grievants regarding the nature of the alleged violations, we cannot conclude that granting the motions to amend would prejudice the Colleges or disrupt the processing of this case. The parties currently are involved in the

discovery process, and the alleged claims of discrimination based on political activity and exercise of academic freedom can be fully explored by the Colleges through discovery.

Based on the foregoing reasons, it is hereby ordered that Grievants' motions to amend this grievance are granted.

Dated this 30th day of November, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Catherine L. Frank, Chairperson

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Carroll P. Comstock

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Richard W. Park

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John J. Zampieri

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Edward R. Zuccaro