

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF WILLIAM COTTE)	
AND THE VERMONT STATE)	
COLLEGES FACULTY FEDERATION,)	DOCKET NO. 01-74
AFT LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 30, 2001, William Cotte and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Grievants") filed a grievance alleging that the Vermont State Colleges ("Employer") violated Articles 6, 21, 27, 29, 30, 32, 36 and 43 of the collective bargaining agreement between the Federation and the Colleges, covering full-time faculty of the Colleges, by assigning a full-time teaching load to Lyndon State College faculty member William Cotte but not providing him with the rights and benefits of the full-time faculty agreement. Specifically, Grievants contended that the Colleges violated the agreement by not granting Cotte workload credit for private music study courses he had taught, thus resulting in him not being considered a full-time faculty member.

A hearing was held on July 9, 2002, in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Carroll Comstock and Edward Zuccaro. Attorney Richard Cassidy represented Grievants. Attorney Nicholas DiGiovanni, Jr., represented the Employer. Grievants filed a post-hearing brief on July 23, 2002. The Employer filed a brief on July 25, 2002.

FINDINGS OF FACT

1. The Federation represents two faculty bargaining units in the Vermont State Colleges, one unit of full-time faculty and one of part-time faculty. The collective

bargaining agreement covering full-time faculty is effective from September 1, 1999, to August 31, 2003. The agreement covering part-time faculty is effective from September 1, 2000 to August 31, 2005 (Federation Exhibit 1, Colleges Exhibit 1).

2. Article 24 of the full-time faculty agreement, entitled Workload, provides that the “normal individual workload shall be 24 credit hours or its equivalent per year.” Article 24 further provides that “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 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 XVIII(F) of the part-time faculty agreement provides that “no individual may be assigned more than eleven (11) credits per semester” (Federation Exhibit 1, Colleges Exhibit 1).

3. Since 1990, William Cotte has taught Music at Lyndon State College. At all times, he has been classified and compensated by the Colleges as a part-time faculty member.

4. In the Fall 2001 semester, Cotte taught the following courses: Understanding Music (FPA 141), Experiencing the Arts (GEU 110), Class Instruction in Piano (FPA 243), Community Chorus (FPA 350), Private Study Voice (FPA 345A), and Private Study Piano (FPA 345B). Cotte also conducted independent studies with 5 students that semester (Federation Exhibits 2, 3).

5. The Colleges considered Cotte to be assigned eleven credits during the Fall 2001 semester: three credits each for teaching FPA 141, FPA 243 and GEU 110; and

two credits for teaching GEU 110. The Colleges paid Cotte \$960 per credit for those courses pursuant to the part-time faculty contract. The Colleges did not grant Cotte any workload credits for teaching Private Study Voice and Private Study Piano or for conducting the independent studies.

6. Students receive academic credits for independent studies. They receive one academic credit for Private Study Voice and one credit for Private Study Piano.

7. Pursuant to Article XXI(E) of the part-time faculty agreement, faculty members conducting independent studies receive \$17.50 per hour for time spent with students, up to a maximum of 15 hours per student. Under Article 24(A) of the full-time faculty agreement, faculty members “are compensated at the rate of 20% of one overload credit per student independent study”. The Colleges compensated Cotte for the independent studies he conducted during the Fall 2001 semester according to the \$17.50 hourly rate under the part-time agreement (Colleges Exhibit 1, Federation Exhibit 1).

8. In addition to tuition, students pay a lab fee of \$120 for Private Study Voice and \$120 for Private Study Piano. Neither the full-time faculty nor the part-time faculty agreements make specific reference to faculty compensation for Private Study Voice or Private Study Piano. The Colleges compensated Cotte for his teaching of these courses during the Fall 2001 semester by paying him the entire lab fee of \$120 per student. Cotte taught 9 students in Private Study Voice, and 3 students in Private Study Piano, that semester. He received a total of \$1,440 in compensation for teaching these courses.

9. In the Spring 2002 semester, Cotte taught the following courses: Understanding Music (FPA 141), Experiencing the Arts (GEU 110), Class Instruction in

Piano (FPA 243), Community Chorus (FPA 350), Private Study Voice (FPA 345A), and Private Study Piano (FPA 345B). Cotte also conducted independent studies with 7 students that semester (Federation Exhibits 5).

10. As was the case during the Fall 2001 semester, the Colleges considered Cotte to be assigned eleven credits during the Spring 2002 semester: three credits each for teaching FPA 141, FPA 243 and GEU 110; and two credits for teaching GEU 110. The Colleges paid Cotte \$960 per credit for those courses pursuant to the part-time faculty contract (Federation Exhibit 5).

11. Again, the Colleges did not grant Cotte any workload credits for teaching Private Study Voice and Private Study Piano or for conducting the independent studies during the Spring 2002 semester. The Colleges compensated Cotte for the independent studies according to the \$17.50 hourly rate under the part-time agreement. The Colleges compensated Cotte for his teaching of Private Study Voice and Private Study Piano that semester by paying him the entire lab fee of \$120 per student. Cotte taught 13 students in Private Study Voice, and 8 students in Private Study Piano, that semester. He received a total of \$2,520 in compensation for teaching these courses.

12. Cotte has taught Private Study Voice every semester since 1990, and has taught Private Study Piano every semester since 1993. He has never received workload credit from the Colleges for these courses. The Federation was not aware of the Colleges not granting workload credit for teaching these courses, and was not aware how the Colleges compensated Cotte for teaching these courses (Colleges Exhibit 4).

13. The Colleges most often count the number of student credits for a course to determine a faculty member's workload, considering one student credit as one credit

hour for faculty workload purposes. However, there is not always a direct correlation between student credits and workload credits. Students receive one to three credits for independent studies, while faculty members receive no workload credit and instead are compensated as defined by the collective bargaining agreements and as discussed above. In one of the courses taught by Cotte, Community Chorus (FPA 350), students receive one credit for the course while Cotte has received two credits. There are other exceptions to the general rule that student credits per course parallel workload credits for teaching the course (Federation Exhibits 3, 5, 7).

14. Courses at Lyndon State College generally meet for one to five hours a week, depending on the student credits for the course, for 14 weeks in a semester.

15. Students taking Private Study Voice and Private Study Piano have 12 private 30-minute sessions with Cotte for a total of six hours a semester.

16. Students engaging in independent studies meet with faculty members for variable amounts of time up to 15 hours a semester.

17. Private Study Voice is an elective course offering of one credit in the Lyndon State College catalogue designed to teach students voice techniques. Private Study Piano similarly is an elective course offering of one credit in the college catalogue teaching students techniques to improve their ability to play the piano. Cotte has prepared a course syllabus for each of these courses, although the Academic Dean does not expect Cotte to do this. Cotte prepares in advance to teach these courses (Federation Exhibit 6).

18. In working with students in independent studies, faculty members primarily are engaged in monitoring the work of students rather than instructing them.

There is no course syllabus for an independent study. Instead, students prepare a plan of study that is reviewed and approved by the faculty member and Academic Dean.

MAJORITY OPINION

The issue is whether Lyndon State College faculty member William Cotte carried “24 credit hours or its equivalent” during the 2001-2002 academic year pursuant to Article 24 of the full-time faculty agreement, resulting in him being a full-time faculty member for the year. Grievants contend that Cotte’s teaching responsibilities during the year satisfy the requirement of full-time status. The Employer asserts that Cotte is a part-time faculty member with an insufficient number of workload credits to qualify for full-time status.

Specifically, the difference between the parties is whether Cotte should receive workload credits for Private Study Voice and Private Study Piano courses he taught during the year. If he does, as Grievants contend, he should be considered a full-time faculty member during the 2001-2002 academic year. If he does not, as the Employer contends, Cotte should be considered as a part-time faculty member during the year.

The Board and the Vermont Supreme Court have addressed what constitutes full-time faculty status. In Grievance of Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, 2 VLRB 279 (1978), which was affirmed by the Vermont Supreme Court, 138 Vt. 229 (1980), the Board discounted the importance of areas other than teaching and concluded that, under the collective bargaining agreement, the number of credit hours taught, or their "equivalent", is the determinative indicator of a faculty member's full-time or part-time status. In Grievance of VSCFF (re: Williams), 10 VLRB

92, 97 (1987); *Affirmed* (Unpublished decision, February 2, 1989); the VLRB explained its rationale:

While the Board recognizes the importance of a full-time faculty member's responsibilities in areas other than purely teaching, it would be unreasonable for us to base full-time status on such responsibilities. The fulfillment of such responsibilities is based on the Colleges' prior recognition of an individual as a full-time faculty member. Absent such recognition, an individual should not be denied full-time status for failure to fulfill such responsibilities. This is particularly so where Article 23 of the Contract identifies number of credit hours of teaching responsibility as the primary workload indicator. Under these circumstances, it is reasonable that the assignment of the equivalent of 12 credit hours per semester to an individual be sufficient by itself to consider that individual as a full-time faculty member for that semester.

In determining what work by faculty meets the contractual standard of “24 credit hours or its equivalent”, the Board has indicated in prior cases that this refers to the credit hours received per course by students towards an academic degree or, in the case of courses or labs where students do not receive any credits towards a degree, an amount of credit hours for workload purposes commensurate to the faculty effort required had that course carried student credit hours. Grievance of Brandon, et al, 3 VLRB 399, 404 (1980). Williams, 10 VLRB at 94. However, credit hour equivalency does not extend to curriculum development work, consulting work or summer teaching duties. Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges, 15 VLRB 232 (1992).

Given these precedents indicating that the language of the Contract providing that a normal annual workload for full-time faculty is “24 credit hours or its equivalent” refers partially to the student credit hours in courses taught by faculty members, the Employer has to persuade us that the Employer and the Federation reached agreement to deviate from this norm concerning Private Study Voice and Private Study Piano courses and not

grant faculty workload credits commensurate with the student credits granted for the courses. The parties' treatment of independent studies courses provides some guidance in this regard. The parties have agreed in both the full-time faculty agreement and the part-time faculty agreement to prescribe a separate compensation system for independent studies courses apart from other courses. Both parties agree that faculty members should not be given workload credits for independent studies even though students receive credits for the independent studies.

This indicates that faculty receiving workload credits when students receive credits for a course is not a hard and fast rule. Nonetheless, this does not aid the Employer's case. The parties' treatment of independent studies indicates to us that, when the parties intended to create an exception to the general rule that faculty receive workload credits when students receive credits, they specifically so provided in the agreement. The fact that private study music courses are not referred to in either of the agreements tends to infer there is no agreement by the parties to diverge from the general rule with respect to these courses. This argument is further bolstered by noting that the definition of co-curricular activities that may be factored into determining workload in the full-time faculty agreement includes independent studies, but does not include private music study.

Reading the full-time faculty agreement as a whole, it appears that the parties intended that all forms of compensation be included in the agreement as either credits or independent study. We heard no evidence of other agreed-upon forms of payment. Further, linking amount of pay to source of funds is not a typical form of payment and similar arrangements between the parties were not brought to the Board's attention. If we

were to uphold the Employer, we would be affirming a form of compensation that is not recognized in the agreement and is not, as stipulated to by the parties, a binding past practice. This would have the effect of the Board writing into the agreement a new way of paying faculty. This is more intrusive than clarifying the application of the methods that are cited by the agreement.

Moreover, the characteristics of private study music courses are not sufficiently similar to independent studies to draw parallels between them for faculty workload purposes. They are similar in that both involve one-on-one interaction between student and faculty member, but they have many differences. The most notable difference is that the primary role of a faculty member in private study courses is to provide instruction, while in independent studies it is to monitor the work of students. Also, private study music courses, contrary to independent studies, have specific course content, require advance preparation by the faculty member, and have set times for instruction.

The fact that the Employer consistently has engaged in a practice of not granting faculty workload credit for private study music courses does not result in a conclusion that there is a binding past practice on this issue. The Board has recognized that day-to-day practices mutually accepted by the parties may attain the status of contractual rights and duties, particularly where they are significant, long-standing and not at variance with contract provisions. Grievance of Hanifin, 11 VLRB 18, 27 (1988). There was no mutual agreement by the parties on this issue. The Federation was not aware of the Colleges not granting faculty workload credit for teaching these courses, and was not aware how the Colleges compensated Cotte for teaching these courses. The Employer concedes there is no binding past practice in this case.

The question arises whether a faculty member needs to have a certain minimum number of students taking a private music study course to be granted the one workload credit commensurate with the one credit received by a student for taking the course. 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). The contract provisions must be viewed in their entirety and read together. In re Stacey, 138 Vt. 68, 72 (1980). When viewed in their entirety, the provisions of Article 24 of the full-time faculty agreement indicate a recognition by the parties that contact hours with students, along with student credit hours, are an integral part of workload credit determinations for faculty.

Although it is difficult to provide a precise dividing line on numbers of students a faculty member must have in private study music courses to warrant granting one workload credit to the faculty member, it is apparent that a faculty member must have at least two students enrolled in such course to have sufficient student contact hours and student load to receive workload credit commensurate with the credit received by the student for the course. We conclude this minimum number of students represents a roughly equivalent per credit workload to that of faculty members teaching a typical three-credit course. The most common way faculty work is bundled in three-credit courses is for faculty to meet with students 3 hours per week for 14 weeks for a total of 42 contact hours, or 14 contact hours per credit. A faculty member with two students in a private study music course meets with each student one-half hour per week for 12 weeks, for a total of 12 contact hours. This is comparable to the per credit contact hours for the typical three-credit class.

In sum, we conclude that a faculty member should receive one workload credit for teaching a one credit private study music course provided at least two students are enrolled in the course. In applying that standard to Cotte for the Fall 2001 semester, we conclude that he should receive one workload credit for teaching the Private Study Voice course, and one credit for teaching the Private Study Piano course. This is because Cotte taught 9 students in Private Study Voice, and 3 students in Private Study Piano, that semester. This provides him with two credits in addition to the 11 credits the Employer considered him to be assigned that semester for a total of 13 credits.

We next consider the Spring 2002 semester. The Employer has objected to evidence and arguments presented by Grievants regarding this semester since it concerns work that occurred after the filing of the grievance. We do not agree with the Employer's objections. In cases like this involving continuing grievances where pay practices are involved, it is not necessary for grievants to file repeated grievances over the same issue where the alleged violations are ongoing. It is sufficient to file one grievance to place the employer on notice that the involved pay practice is being contested from that point forward. Grievance of Bagley, et al, 16 VLRB 448 (1993). Thus, we conclude it is appropriate to determine whether Cotte's teaching assignments during the Spring 2002 semester warranted full-time status for that semester.

In examining Cotte's assignments for the Spring 2002 semester, we conclude that he should receive one workload credit for teaching the Private Study Voice course, and one credit for teaching the Private Study Piano course. This is because Cotte taught 13 students in Private Study Voice, and 8 students in Private Study Piano, that semester.

This provides him with two credits in addition to the 11 credits the Employer considered him to be assigned that semester for a total of 13 credits.

In sum, Cotte was assigned a total of 26 credits for the 2001-2002 academic year. Accordingly, the Colleges violated the full-time faculty agreement by not considering him a full-time faculty member for that year and not compensating him as a full-time faculty member.

Richard W. Park, Acting Chairperson

Carroll P. Comstock

DISSENTING OPINION

I dissent from the majority opinion. In order to prevail in this grievance, Grievants must persuade the Board there has been a violation of the full-time faculty collective bargaining agreement. I am not so persuaded. The agreement is entirely silent on this subject. It is apparent that the Federation and the Colleges never jointly considered the issue of the assignment of faculty workload credits for teaching private music study courses, and thus there was no meeting of minds warranting a conclusion that the parties contracted on how to address the issue. There is no reference to private music study courses in the collective bargaining agreements, and no binding past practice concerning the issue. Grievants have not even been able to point to any bargaining history which would support their position.

In the final analysis, I conclude that private music study courses do not fall within the types of courses for which faculty workload credits are provided under the parties' agreement. Although it is true that the norm is to grant faculty workload credits

commensurate with student credits awarded for a course, there are exceptions to this norm. As the evidence indicated, faculty do not receive workload credits for independent studies even though students receive credits for them. Also, in one of the courses taught by Cotte, Community Chorus, students receive one credit for the course while Cotte has received two credits. There are other exceptions to the general rule that student credits per course parallel workload credits for teaching the course.

In order to decide this case, it is necessary to examine the characteristics of the private music study courses compared to other courses offered at the college in order to determine whether the parties intended to grant faculty workload credits for the private study. In my judgment, the private music study courses differ too much from the standard college courses in which faculty workload credits are provided. The most significant barrier to granting faculty workload credit for private study music courses is the private nature of the courses.

Unlike the typical college course in which the involved faculty member must instruct a number of students at the same time, private music study courses involve one-on-one instruction. There is a significant difference in workload associated with class preparation, classroom control, student supervision and student evaluation. I cannot conclude the parties intended to grant faculty workload credit for such courses absent more evidence than exists in this case. The majority opinion recognizes the problem of the private nature of these courses, and creatively attempts to resolve it by concluding that a faculty member must have at least two students taking the private music study course to warrant granting one workload credit to the faculty member. They, however, fail to identify the contract language which supports their position. The shortcoming of

this solution is that it goes beyond our authority to interpret the parties' agreement and instead requires this Board to make the agreement for the parties. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

Edward R. Zuccaro

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is
ORDERED:

1. The Grievance of William Cotte and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, is sustained; and
2. The Vermont State Colleges shall compensate William Cotte retroactively for the Fall 2001 and Spring 2002 semesters at a full-time faculty member's salary, plus benefits he was entitled to under the collective bargaining agreement between the Colleges and the Federation for the full-time faculty bargaining unit, plus interest on the salary at the legal rate of interest of 12 percent per annum computed from the dates Cotte received compensation for the semesters in question; and
3. The parties shall submit to the Board by October 3, 2002, a proposed order indicating the specific amount of back pay and other benefits due Cotte. If they are unable to agree on such proposed order, the parties shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board. If necessary, an evidentiary hearing on these issues shall be held on October 17, 2002, at 9:00 a.m., in the Labor Relations Board hearing room.

Dated this ____ day of September, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Acting Chairperson

Carroll P. Comstock