

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF JUNE ROSENBERG	)	
AND THE VERMONT STATE	)	DOCKET NO. 02-8
COLLEGES FACULTY FEDERATION,	)	
AFT, UPV LOCAL 3180, AFL-CIO	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 15, 2002, June Rosenberg and the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO (“Grievants”) filed a grievance alleging that the Vermont State Colleges (“Employer”) violated Articles VII and XVIII of the collective bargaining agreement between the Federation and the Colleges covering part-time faculty of the Colleges, effective September 1, 2000 to August 31, 2005 (“Contract”) by not following the procedures for assigning courses to part-time faculty members and discriminating against Rosenberg on the basis of union activity in the assigning of courses to her for the Spring 2002 semester.

A hearing was held on August 15, 2002, in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Carroll Comstock and John Zampieri. Attorney Nicholas DiGiovanni, Jr., represented the Employer. Russell Mills, Federation Grievance Chairperson, represented Grievant. The parties filed post-hearing briefs on August 29, 2002.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE VII  
ANTI-DISCRIMINATION

The parties shall not discriminate against any faculty member . . . by reason of . . . union activity . . .

ARTICLE XVIII  
SEMESTER APPOINTMENTS AND ASSIGNMENTS

A. All part-time faculty appointments and assignments will be made by the appropriate administrator at each College. All appointments shall be made on a semester or summer basis. No appointments shall create any right, interest or expectancy in any further appointments beyond its specific term, except as otherwise provided in this article.

B. 1. In planning appointments and assignments for forthcoming semesters, the College shall distribute a teaching availability form to each part-time faculty member . . . by October 15 for the spring semester appointments and assignments. The teaching availability form shall request the part-time faculty member to provide the following:

a) availability by days of the week and times of the day to teach in the forthcoming semester. The part-time faculty may also indicate preference as to which days of the week and times of the day he/she would like to teach, as well as other relevant considerations.

b) indication of courses which the part-time faculty member is interested in teaching.

. . .

4. It shall be the responsibility of each part-time faculty to return the course availability form to the appropriate administrator not later than three (3) weeks after the distribution dates indicated in B(1) above.

. . .

6. It is understood that the distribution and receipt of a teaching availability form by part-time faculty does not obligate the College in any way to provide an appointment or a particular assignment to the part-time faculty member.

. . .

8. The teaching availability forms will be sent to and considered by the department chairperson or other appropriate administrator in establishing department schedules. In addition, part-time faculty may consult with the department chairperson regarding department scheduling for an upcoming semester, and if the department holds a meeting to discuss scheduling, part-time faculty shall be free to attend and to participate. The employer will notify the part-time faculty of such scheduled meetings in a timely fashion.

...

D. The College shall consider the information provided by the part-time faculty on the teaching availability form in planning for semester assignments.

E. The College reserves the right to give preference to full-time faculty for teaching courses on an overload basis or to individual administrators prior to offering courses to part-time faculty.

F. Except as provided in Section E and Section H, and except that no individual may be assigned more than eleven (11) credits per semester . . (t)wo available teaching assignments with a minimum of six (6) credits per semester shall be first offered to bargaining unit members on the basis of seniority as defined in (G) below and on the basis of:

1. The academic qualifications of the part-time faculty, including teaching ability.
2. The availability and stated preferences of the part-time faculty as indicated on the teaching availability form.
3. Experience in teaching available courses.
4. The curricular needs of the department.

G. The term “seniority” as used in this Article shall be based upon the number of credits taught by part-time faculty at a particular campus-based college within the VSC . . .

H. In addition to the normal non-unit assignment of courses that may occur consistent with this article, the Colleges may offer assignments to individuals without following the procedures above. Such assignments shall be limited to individuals with exceptional qualifications or expertise or in extraordinary circumstances.

...

(Grievants Exhibit 1)

2. Since 1993, June Rosenberg has been a part-time faculty member at Lyndon State College. She is in the part-time faculty bargaining unit represented by the Federation, and is a member of the Federation. She teaches in the Psychology Department. Over the years, she has taught a number of courses in the Psychology Department, including Introduction to Psychology, Human Development, Abnormal Psychology, Introductory Special Education, and Psychology of Persuasive Grant

Writing. She has taught most semesters since 1993. Rosenberg has the most seniority of any part-time faculty member in the Department.

3. Rosenberg lives in Montgomery, Vermont. In good weather, it takes her approximately 1 hours and 15 minutes to travel from her home to Lyndon.

4. At all times relevant, Ronald Rossi has been Co-Chair of the Lyndon State College Psychology Department. He has been a faculty member for 27 years. He is a member of the full-time faculty bargaining unit represented by the Federation. As Department Co-Chair, he reports to Dean of Academic Affairs Michael Fishbein. Rossi's duties as Co-Chair include the coordination of requests from department faculty for schedule preferences, development of a department schedule and recommendation of the schedule to the Academic Dean (Employer Exhibit 1).

5. The Psychology Department has four to six full-time faculty members, and four to seven part-time faculty, in any given semester.

6. In recent semesters, Rosenberg has typically taught two courses, Introduction to Psychology (PSY 101) and Human Development (PSY 120). In the Spring 2001 semester, Rosenberg taught one section of Introduction to Psychology for three credits, from 1:30 p.m. to 4:00 p.m. on Wednesday, and one section of Human Development for three credits, from 4:30 p.m. to 7:00 p.m. on Wednesday (Grievants Exhibit 3).

7. In February 2001, Rossi and Rosenberg had a discussion in which Rossi indicated that he wanted to discuss her assignments for the next academic year. Rossi told Rosenberg that her anticipated schedule would be two sections of Human Development each semester, meeting on Wednesday. Rossi asked Rosenberg whether she was willing

to commit to that schedule. Rosenberg indicated she was willing to make that commitment. There was no written schedule prepared at that time for either semester.

8. During this discussion, Rosenberg asked Rossi about Summer 2001 courses. Rossi indicated that courses already were set, and that Rosenberg was not being offered any courses. Rossi indicated that Sarah Cresser, a part-time faculty member with less seniority than Rosenberg, had been assigned to teach Human Development. Rosenberg asked Rossi why Cresser was offered the course since she had less seniority than Rosenberg. Rossi indicated that seniority did not apply to summer courses.

9. Rosenberg subsequently filed a grievance due to the assignment of the summer course to Cresser. Rossi was aware of Rosenberg's filing of the grievance. The ultimate outcome of the grievance was that Rosenberg received the assignment of the Human Development course that had been assigned to Cresser. Rossi was not involved in the grievance process.

10. In the Fall 2001 semester, Rosenberg taught two sections of Human Development, each for three credits. One section met from 1:30 p.m. to 4:10 p.m. on Wednesday. The other section met from 4:30 p.m. to 7:10 p.m. on Wednesday. This schedule was consistent with her February 2001 discussion with Rossi (Grievants Exhibit 4).

11. Rossi and the Psychology Department began working in the second week of September on scheduling courses for the Spring 2002 semester. First, the preferences of full-time faculty and administrators were considered as they are given priority in making course assignments. Then, available part-time faculty were considered to complete the Department schedule. Rossi spoke with other part-time faculty members to

determine their course preferences prior to discussing course preferences with Rosenberg. Rossi did not attempt to contact Rosenberg by e-mail or telephone to ascertain her scheduling preferences.

12. There are two student constituencies for whom courses must be balanced in the schedule. The first is the traditional campus students for whom daytime scheduling is the norm, with three credit courses typically meeting two or three times a week. The other is the non-traditional students, who work during the day and prefer courses offered on one day a week at later times, such as a three-hour course on one evening. Academic Dean Michael Fishbein issued guidelines to departments during the 2001-2002 academic year emphasizing the need for more courses to be spread out over multiple class periods during the week, rather than offered in longer single blocks, to allow traditional students more selections from course offerings. He also issued guidelines encouraging departments to have more of the General Education courses offered in the evening start no earlier than 5:30 p.m. as a convenience to non-traditional students.

13. Two courses to be offered by the Psychology Department during the Spring 2002 semester that freshmen students could take without a prerequisite were Human Development and Introduction to Psychology. These courses were General Education courses. Rossi desired to have some sections of these courses offered in “traditional” daytime time slots. The two sections of Introduction to Psychology to be offered that semester were going to be taught by Donna Dolan, an administrator. Since Dolan worked in her administrative position on a full-time basis during the day, she could only teach courses during the evening. She was scheduled to teach one section of the course on Tuesday evening from 4:30 p.m. to 7:10 p.m., and the other section on

Wednesday evening from 4:30 p.m. to 7:10 p.m. Dolan had indicated a preference to start the course at 4:30 p.m. Rossi never asked Dolan whether she could teach the course with a starting time of 5:30 p.m. (Grievants Exhibit 6, Employer Exhibit 5).

14. Three sections of the Human Development course were to be offered during the Spring 2002 semester. Professor Werdenschlagl, a full-time faculty member, was scheduled to teach one section on Tuesdays and Thursdays from 1:30 to 2:50 p.m. This left two sections of Human Development. Subsequent to receiving input from others in the Psychology Department, Rossi decided to offer one of the two sections in an evening time slot, meeting once a week. He also decided the evening course would begin at 5:30 p.m., rather than at 4:30 p.m. as it previously had been scheduled. Rossi decided to offer the remaining section on Monday, Wednesday and Friday from 9:00 a.m. to 9:55 a.m. (Grievants Exhibit 6, Employer Exhibit 5)

15. Rosenberg spoke with Rossi about the Spring 2002 schedule during the last week in September. Rosenberg told Rossi that she was interested in the same schedule as she had received for the Fall 2001 semester, teaching two sections of the Human Development course on Wednesday. Prior to this discussion, Rosenberg assumed based on her February 2001 discussion with Rossi that her Spring 2002 schedule would be identical to her Fall 2001 schedule. Rossi informed Rosenberg of the decision to offer one of the two sections in a once a week, evening time slot beginning at 5:30 p.m., with the other section to be offered during the daytime on multiple days per week. Rossi informed Rosenberg that these decisions were made consistent with the guidelines issued by Dean Fishbein.

16. Rosenberg protested this schedule and asked Rossi to reconsider. Rossi said there was a Psychology Department scheduling meeting the following Thursday, and indicated he would bring up Rosenberg's desire to teach two sections of the course on Wednesday. Rosenberg chose to not attend the meeting. Rosenberg was not aware of the provision of Article 18, Section B(8) of the Contract that she was "free to attend and participate" in the scheduling meeting.

17. At the Psychology Department meeting in early October, Rossi discussed Rosenberg's preference to teach two sections of the Human Development course on Wednesday. There was no change to the Human Development course offerings as a result of the meeting. Rossi spoke with Rosenberg the following week about the Spring 2002 schedule. During this discussion and at other times, Rosenberg presented suggestions as to how the Department could alter the schedule. She suggested that she could teach in one of the time slots offered to Donna Dolan, and that Dolan could teach during the daytime. Rossi rejected this suggestion. Rosenberg suggested that the daytime Human Development course meet on Monday and Wednesday. Rossi told her that this did not fit within the scheduling grid. There were two other psychology courses, Introduction to Human Services (PSY 242) and Psychology of Exceptional Children (PSY 330), that were offered during the day on Monday and Wednesday (Grievants Exhibit 6, Employer Exhibit 5).

18. When Rosenberg questioned Rossi as to why she could not teach the Human Development sections "back to back" on Wednesday, Rossi indicated that she could not teach consecutive courses. If Grievant had been assigned to teach a section of the Human Development course on Wednesday preceding her 5:30 p.m. course, and the



section was scheduled to meet just on Wednesdays, it would have conflicted with two psychology courses meeting from 1:30 to 2:50 p.m. on Wednesdays, Introduction to Human Services (PSY 242) and Psychology of Exceptional Children (PSY 330). Rosenberg mentioned to Rossi that another part-time faculty member of the Department, Noreen Williams, who had less seniority than Rosenberg, was scheduled to teach two sections of Human Sexuality (PSY 220) consecutively on Thursday, from 3:00 p.m. to 5:40 p.m. and 6:00 p.m. to 8:40 p.m. Rossi responded that this was the only day the faculty member was available due to her full-time employment. Human Sexuality was a General Education course. (Grievants Exhibit 6, Employer Exhibit 5).

19. On October 9, 2001, Rosenberg completed her teaching availability form for the Spring 2002 semester. She indicated that she preferred to teach “Wednesday all day into evening”. She also stated: “If I could teach three courses I would be willing to be on campus 2 days. Otherwise the present schedule is preferable” (Employer Exhibit 3).

20. On October 16, 2001, Rossi sent a memorandum to Rosenberg by e-mail providing:

There are two sections of Human Development available for the spring semester. One is being offered on Wednesdays from 5:30-8:10 PM (the administration has requested that evening classes, particularly those that support the general education program, begin no earlier than 5:30).

The other section is being offered on Mondays, Wednesdays, and Fridays from 9:00-9:55 AM. Please let us know if you are available/interested in teaching one or both of these sections. The Intro sections I mentioned have been picked up by Donna who, according to the Dean, has priority because she has full-time administrative status (Grievants Exhibit 5).

21. On October 23, 2001, Rosenberg informed Rossi that she would accept both teaching assignments (Employer Exhibit 4).

22. In working the scheduled assignments during the Spring 2002 semester, Rosenberg generally made four roundtrips per week between home and the Lyndon campus. Even though she was scheduled to be on campus three days a week, on Wednesdays she generally made two roundtrips. She left campus after her 9:00 – 9:55 a.m. class to return home, and returned to campus for her 5:30 p.m. class. She did not make two roundtrips if traveling conditions were difficult because of the weather.

23. In addition to the grievance now before us for decision, and the grievance Rosenberg filed concerning not being assigned a course during the Summer of 2001, Rosenberg filed a grievance in 1996 concerning her seniority not being fully recognized for purposes of determining salary. The grievance was settled in 1997 prior to a Board hearing. Rossi was not involved in the 1996 grievance.

#### MAJORITY OPINION

Grievants allege that the Employer violated Articles VII and XVIII of the Contract by not following the procedures for assigning courses to part-time faculty members, and discriminating against Lyndon State College part-time faculty member June Rosenberg on the basis of union activity, in the assigning of courses to Rosenberg for the Spring 2002 semester.

We first address Grievants' claim that Article XVIII of the Contract was violated. Grievants first contend in this regard that Article XVIII, Section B(8) was violated because Grievant was not notified of a Psychology Department scheduling meeting. The Contract section at issue provides: "(I)f the department holds a meeting to discuss scheduling, part-time faculty shall be free to attend and to participate. The employer will notify the part-time faculty of such scheduled meetings in a timely fashion."

We disagree with Grievants that this provision was violated. The department scheduling meeting at issue occurred in early October of 2001. Department Co-Chair Ronald Rossi informed Rosenberg in a discussion with her in late September that there was a Psychology Department scheduling meeting the following Thursday. This constitutes timely notification to a part-time faculty meeting of a department scheduling meeting, as the Contract requires. The fact that Rosenberg did not attend the meeting was a matter of choice, and does not indicate a contract violation.

Grievants' second allegation of a violation of Article XVIII is that the Employer acted contrary to Section F of that article by assigning courses to less senior faculty before Rosenberg was assigned any work for the Spring 2002 semester. Section F provides that "(t)wo available teaching assignments with a minimum of six (6) credits shall be first offered to bargaining unit members on the basis of seniority" and other considerations. We cannot conclude that a violation of this section occurred given that the Employer ultimately assigned Rosenberg two courses carrying a total of six credits for the Spring 2002 semester.

We next address Grievants' contention that the Employer discriminated against Rosenberg on the basis of union activity in the assigning of courses to her for the Spring 2002 semester. Where employees claim management took action against them for engaging in protected activities, the Board has determined that it will employ the analysis used by the United States Supreme Court: once the employee has demonstrated his or her conduct was protected, she or he must then show the conduct was a motivating factor in the decision to take action against him or her. If this is established, the burden shifts to the employer to show by a preponderance of the evidence it would have taken the same

action even in the absence of the protected conduct. Grievance of Sypher, 5 VLRB 102, 129 (1982). Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977).

Rosenberg was engaged in protected conduct through her grievance activities. In determining whether her protected conduct was a motivating factor in the Employer's assigning of courses to Rosenberg for the Spring 2002 semester, we examine the following factors set forth in Sypher, 5 VLRB at 131: whether the employer knew of the employee's protected activities; whether the timing of the adverse action was suspect; whether there was a climate of coercion; whether the employer gave protected activities as a reason for the decision; whether the employer interrogated the employee about protected activities; whether the employer discriminated between employees engaged in protected activities and employees not so engaged; and whether the employer warned the employee not to engage in protected activities.

The Employer knew of Rosenberg's protected grievance activities. The timing of the Employer providing Rosenberg with an undesirable course schedule was suspect given that it occurred during the Fall semester immediately following her successful pursuit of a grievance concerning her Summer teaching schedule. The suspect nature of the course schedule is further indicated by the schedule being contrary to what Rossi had indicated in a discussion he had with Rosenberg in February 2001 prior to her initiation of the grievance.

There was no climate of coercion. Although Rosenberg testified that the atmosphere changed in the department after her grievance and colleagues avoided looking at her when she walked by them, this would not be sufficient to demonstrate a

climate of coercion. Also, the Employer did not give Rosenberg's grievance as a reason for the action, did not interrogate her about these activities, and did not warn her not to engage in grievance activities. Nonetheless, it is unusual for such overt characteristics of discrimination to exist, and in this case it is most probative to examine whether Rosenberg was treated in a discriminatory manner compared to other faculty members who did not engage in grievance activities.

We conclude that such discrimination did occur. The evidence indicated that accommodations were made for preferences of other faculty members that were not made for Rosenberg. Another part-time faculty member in the department with less seniority than Rosenberg was allowed to teach both of her three credit courses in their entirety on the same day of the week as a convenience to her, while Rosenberg was denied this opportunity.

When Rosenberg suggested that an available daytime Human Development course meet on Monday and Wednesday, rather than on three days, Rossi told her this did not fit within the scheduling grid. However, there were two other psychology courses that were offered during the day on Monday and Wednesday.

Also, evening classes for another department member teaching two General Education evening courses were scheduled to begin at 4:30 p.m. consistent with that person's preferences. This was despite guidelines from the Academic Dean encouraging departments to have more of the General Education courses offered in the evening start no earlier than 5:30 p.m. as a convenience to non-traditional students. Yet Rossi cited the Dean's guidelines as the basis for scheduling Rosenberg's evening class to begin at 5:30 p.m.

Taken as a whole, this evidence indicates there were significant efforts to accommodate preferences of other department members while such efforts were noticeably absent in Rosenberg's case. There was no obligation by Rossi and the Psychology Department to accommodate all of Rosenberg's preferences. However, the failure to make any accommodations to her while other department members were accommodated, taken together with the timing of the undesirable schedule given to Rosenberg, leads us to conclude that Rosenberg's grievance over her Summer 2001 schedule was a motivating factor in her Spring 2002 schedule.

This being established, the burden shifts to the Employer to show by a preponderance of the evidence it would have taken the same action even in the absence of the protected conduct. The Employer points to the absence of any provisions in the Contract providing that part-time faculty members will be given preference in course assignments; instead Article XVIII, Section E provides that the Employer "reserves the right to give preference to full-time faculty for teaching courses on an overload basis or to individual administrators prior to offering courses to part-time faculty". The Employer also relies on the Academic Dean issuing guidelines to departments during the 2001-2002 academic year emphasizing the need for more courses to be spread out over the week, rather than offered in single blocks, to allow traditional students more selections from course offerings. He also issued guidelines encouraging departments to have more of the General Education courses offered in the evening start no earlier than 5:30 p.m. as a convenience to non-traditional students. The Employer contends that the course schedule offered Rosenberg was consistent with these guidelines.

We recognize that the Employer has the right to subordinate the preferences of part-time faculty members to those of full-time faculty and administrators. We also do not quarrel with the Psychology Department seeking to conform its actions to the guidelines issued by the Dean. These considerations lead us to conclude that the Employer would not have given Rosenberg her desired schedule of teaching both of her three credit courses in their entirety on Wednesday even if she had not pursued her grievance over the Summer 2001 teaching schedule.

However, it does not follow from this conclusion that the Employer would have given Rosenberg the identical schedule it did give her even if she had not pursued her grievance. It is striking to us that no accommodations were made to Rosenberg's preferences. The Employer has not presented persuasive evidence that some adjustments could not have been made to Rosenberg's schedule, either through time changes or a reduction in the amount of days she needed to be on campus, to make her schedule more convenient. The Dean's guidelines were fully applied to Rosenberg, but were not applied to other members of the department. The Employer has not provided persuasive rationale for such a disparity of treatment, and we conclude the Employer would have made some accommodations to Rosenberg if not for her grievance activities. Thus, we conclude that the Employer discriminated against Rosenberg on the basis of her grievance activities, in violation of Article VII of the Contract, in the assigning of courses to her for the Spring 2002 semester.

In determining a remedy for this violation, we are seeking to make Rosenberg "whole". To make an employee whole is to place the employee in the position he or she would have been in if the Contract had not been violated. Grievance of Lowell, 15 VLRB

291, 339-40 (1992). Grievance of Sherbrook, 13 VLRB 359, 361 (1990). Grievants request that Rosenberg be paid travel time, and reimbursed for mileage, for three extra round-trips she made per week because her requested schedule was not accommodated. Such a remedy would make Rosenberg more than whole because, as we concluded above, the Employer would not have given Rosenberg her desired schedule of teaching both of her three credit courses in their entirety on Wednesday in the absence of her grievance activities.

We cannot grant a precise “make-whole” remedy under the circumstances. The most appropriate remedy is one that seeks to approximate the adverse effect of the contract violation on Rosenberg. In this case, we conclude that remedy is grant her mileage reimbursement for one of the additional weekly round-trips she had to make for each week of the Spring 2002 semester.

This reflects a recognition that, in the absence of discrimination against Rosenberg due to her grievance activities, she would have made more round-trips per week than she would have preferred but she would not have made as many as she did. We are aware that the Contract does not provide for employees receiving mileage reimbursement for their daily commute. However, in this case it is an appropriate remedy to account for Rosenberg making more commuting trips than she should have because of the Employer’s violation of the Contract.

---

Carroll P. Comstock

---

John J. Zampieri



### MINORITY OPINION

I concur with my colleagues that the Employer did not violate Article XVIII of the Contract, but dissent from their conclusion that the Employer discriminated against Rosenberg on the basis of her grievance activities in the assigning of courses to her for the Spring 2002 semester.

I agree with the Employer that this case involves a faculty member who did not like her schedule but has no legitimate basis under the Contract to contest it. The exercise of course scheduling each semester is a difficult one, involving multiple moving parts. The availability, preferences and skills of faculty and administrative teaching staff must be taken into account, but the needs of both the traditional and non-traditional student populations need to be the primary objective of scheduling. The Psychology Department performed this exercise in a responsible manner consistent with the requirements of the Contract.

Rosenberg had ample opportunity to make her preferences known during the process of scheduling courses and assignments. She had discussions with the Psychology Department Co-Chair in late September and early October. She was able to state her disagreements with preliminary assignments he was making and offer suggestions for a more favorable schedule. She completed an availability form that was considered in the course scheduling process. She was aware of a department scheduling meeting in early October, and chose not to attend. Given these numerous opportunities to make her views known on scheduling, Rosenberg cannot credibly claim that she did not have sufficient input into the scheduling process.

I appreciate that Rosenberg was dissatisfied that her schedule did not closely fit her preferences, but this was the unfortunate result of a process in which Rosenberg, as a part-time faculty member, was third of three interests. The Employer has part-time faculty to provide flexibility to meet service needs, not to add further challenges to scheduling. Preferences are to be considered, but are not to control the process. Prior assignments are not mentioned as a planning criterion. The Employer exercised the right to give preference to full-time faculty and administrators in course assignments over the preferences of part-timers like Rosenberg. Rosenberg's schedule also resulted from the Psychology Department conforming its actions to the guidelines issued by the Dean providing for traditional students having more selections from course offerings and non-traditional students having more convenient course times.

I disagree with the majority that Rosenberg was treated in a discriminatory manner compared to other faculty members who did not engage in grievance activities. It was true that another part-time faculty member in the department with less seniority than Rosenberg was allowed to teach both of her three credit courses in their entirety on the same day of the week, while Rosenberg was denied this opportunity. However, this resulted from the other faculty member only being available to teach that one day due to the demands of her full-time job. Rosenberg did not have a comparable situation.

The fact that Rosenberg was required to teach one of her classes on three days a week also does not indicate discriminatory treatment, even though other department members had schedules where their classes met only once or twice a week. The Employer did not want too many psychology-related courses offered during competing time periods, and the involved department members were not part-time faculty. Grievants

simply have not demonstrated that Rosenberg was improperly singled out in this regard once her part-time status, needs of traditional students and scheduling difficulties involving multiple, moving parts are taken into account.

Also, the fact she was required to teach her evening class at 5:30 p.m., whereas other department members were allowed earlier starting times, does not indicate discrimination. One such arrangement involved an administrator who finished her administrative duties at 4:30 p.m. The evidence indicates that the thrust of Rosenberg's stated scheduling preferences at the time scheduling decisions were being made involved a desire to come to campus as few days as possible, and was not focused on the starting times of her classes. Given this, I do not find differences in starting times of classes to be a significant factor in the discrimination claim.

In sum, I conclude that Grievants have not demonstrated that Rosenberg's grievance activities were a motivating factor in the Employer's assigning of courses to Rosenberg for the Spring 2002 semester. The Employer's knowledge of the grievance activities, and the timing of the course assignments shortly after Rosenberg had successfully prevailed in a grievance, are not sufficient to demonstrate improper motive. I do not find persuasive the examples of discriminatory treatment offered by Grievant. They often involve treatment of faculty members in a separate bargaining unit who are legitimately being given preferential treatment. No other factors relevant to showing improper motive apply.

Before concluding, I have two other observations relevant to Grievants' discrimination claim. The first is to emphasize that scheduling decisions in the Psychology Department were not made just by Co-Chair Ronald Rossi, but instead

resulted from a collaborative decision of members of the department. Grievants focused their attention on the actions of Rossi to support their discrimination claim, inappropriately minimizing the fact that a group decision was involved and providing no evidence or arguments as to why a group of faculty represented by a union would discriminate against another faculty member for grievance activity.

The second observation is that where Rosenberg chooses to live should not become the Employer's problem. In this case, Rosenberg received the amount of teaching assignments – six credits - she could claim entitlement to under the Contract. An issue arose because Rosenberg lives far from campus and had to travel to campus more often than she would have preferred. If Rosenberg lived near her workplace, we would have no grievance. The Employer cannot control where an employee lives, and should not be held liable due to the employee's choice of residence. The actions of the employer created a substantial inconvenience for the employee, which should not be confused with a valid grievance.

---

Richard W. Park, Acting Chairperson

## ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of June Rosenberg and Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO, is sustained to the extent indicated in the Majority Opinion and is denied in all other respects; and the Vermont State Colleges shall provide mileage reimbursement to Rosenberg at the prevailing state rate per mile for one of the weekly round-trips between her home and the Lyndon State College campus that Rosenberg made for each week of the Spring 2002 semester.

Dated this \_\_\_\_ day of October, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

---

Carroll P. Comstock

---

John J. Zampieri