

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
UNITED ACADEMICS, AAUP/AFT)	DOCKET NO. 03-36
and DAWN SAUNDERS)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 28, 2003, United Academics, AAUP/AFT (“Union”), filed a grievance on behalf of itself and University of Vermont Professor Dawn Saunders alleging that the University of Vermont (“Employer”) violated Articles 5 and 14 of the collective bargaining agreement between the Employer and the Union, effective February 6, 2003, to June 30, 2005 (“Contract”), by terminating Saunders’ appointment at the end of the fall 2003 appointment. Grievants allege that Article 14 of the Contract required that her appointment be for a period of two years, ending August 31, 2005. Grievants further allege that this action was taken in part due to animus against Saunders due to her Union activities in violation of Article 5 of the Contract.

The Labor Relations Board conducted a hearing on December 11, 2003, in the Board hearing room in Montpelier, before Board Members Edward Zuccaro, Acting Chairperson; Carroll Comstock and John Zampieri. Attorney Richard Cassidy represented Grievants. Attorney Joseph McConnell represented the Employer. Grievants filed a brief on February 9, 2004. The Employer filed a brief on February 11, 2004.

FINDINGS OF FACT, OPINION AND ORDER

1. Effective February 6, 2003, the Employer and the Union entered into the first collective bargaining contract covering full-time faculty following the Labor Relations Board certifying the Union as exclusive bargaining representative in May 2001

subsequent to an election conducted by the Board. The Contract provides in pertinent part as follows:

**ARTICLE 5
ANTI-DISCRIMINATION**

1. The University and the Union, to the extent of their respective authority and responsibility, agree not to discriminate against a faculty member with respect to the application of this agreement because of . . . affiliation or membership or non-membership in the Union, or other unlawful criteria as those terms are defined under applicable law.
- ...

**ARTICLE 14
APPOINTMENT AND REAPPOINTMENTS WITHOUT TENURE**

2. An **Officer of Instruction** may be appointed by the University as follows:
 - a. Lecturer and Senior Lecturer A lecturer will initially be appointed for a term of one year and may be reappointed in the University's sole discretion for an additional term of one year. At the conclusion of two years of consecutive service at the University as a bargaining unit lecturer, or as a visiting faculty member, or a combination of years thereof in such ranks, if the University in its discretion decides to reappoint the lecturer, the University will appoint the lecturer to a term contract of two years. Any further lecturer appointments shall also be for two years. For the first two appointments as a lecturer, no further notice shall be required of the expiration of such employment beyond the original appointment letter itself. Once a unit member receives a two year appointment as a lecturer, he or she shall be notified no later than March 1 of the second year of any such appointment as to whether or not it will be renewed.
- ...

**ARTICLE 26
DURATION**

Except as otherwise provided herein, this Agreement shall be effective from the date of ratification, February 6, 2003 and shall continue in full force and effect until midnight June 30, 2005 . . .

(Joint Exhibit 2)

2. During Contract negotiations, the Employer and Union agreed to negotiation groundrules. One of the groundrules provided:

When agreement is reached on a given Article of the contract, the Article shall be initialed and dated by the spokesperson indicating tentative agreement. No such tentative agreement shall be binding or effective until complete and final agreement is reached on all items and has been ratified by the respective constituency and/or authorized officials of the parties. The Article shall then be closed to further negotiations unless mutually agreed to be reopened. (Employer Exhibit 50)

3. The Officers' Handbook of the University provides in pertinent part:

...
209.4 Visiting Appointments. The visiting titles are reserved for the full or part-time appointment of a temporary nature, ordinarily involving persons from other institutions. Initial appointments are made for periods of one or two years and may be renewed on an annual basis to a maximum of six years.

...
222.10 An appointment may be made on a temporary basis to fill a special need or to meet unexpected enrollment pressures. A temporary appointment does not carry with it any expectation of reappointment beyond the original appointment period. Officers on a temporary appointment will have the same rights and privileges as other Officers of Instruction with the exception of eligibility for tenure and sabbatical leave and the right to any notice of nonreappointment. Accumulated time spent as a temporary officer will not count toward eligibility for tenure or sabbatical leave.

...
(Joint Exhibit 1)

4. Saunders received a Ph.D. in Economics from the University of Massachusetts at Amherst in 1994. Prior to the fall of 1995, Saunders taught economics courses at Champlain College, College of St. Joseph in Vermont and the University of Massachusetts (Union Exhibit A-3).

5. The University of Vermont appointed Saunders to a part-time position in the fall of 1995 to teach economics courses. Although Saunders was not "visiting" from another college or university, Saunders requested the "Visiting Assistant Professor" title and rank as opposed to that of "Lecturer". The University granted her request. She had

full-time contracts to teach economics courses at UVM in the spring of 1996 and the fall of 1996 as a visiting assistant professor. She taught economics courses at UVM as visiting assistant professor during the 1997-98, 1998-99, 1999-2000, 2000-2001, 2001-2002 and 2002-2003 academic years. Saunders was in non-tenure track positions throughout her employment at UVM (Union Exhibits A-2 and A-9).

6. During the 1999-2000 academic year, Saunders became involved in an organizing campaign by the Union to represent full-time faculty at UVM. She attended Union meetings and engaged in organizing activities. Saunders is married to Roy Vestrich, a professor at Castleton State College and President of the United Professions of Vermont, parent organization of the Union. Vestrich was integrally involved in the union organizing drive at UVM.

7. The Union and the United Professions of Vermont are part of the American Federation of Teachers (“AFT”) and the American Association of University Professors (“AAUP”). Saunders was interviewed in the spring semester of 2001 by a reporter for the journal “On Campus”, an AFT publication distributed to AFT members. An article by the reporter on the UVM organizing drive was on the first page of the March 2001 edition of “On Campus”. Saunders was quoted in the article as taking issue with priorities of the Employer, and her picture was on the first page of the journal. This issue of “On Campus” was distributed on the UVM campus (Union Exhibit A-10).

8. The Labor Relations Board conducted an election among full-time faculty at UVM in April 2001. The faculty voted to be organized into a full-time faculty bargaining unit and to be represented for exclusive bargaining purposes by the Union. Shortly after the election, Saunders became a member of a Union committee developing

proposals for an initial collective bargaining contract between the Union and the Employer.

9. Professor Jane Knodell was Economics Department Chair during the 2001-2002 and 2002-2003 academic years. Prior to becoming Chair, Knodell was active in the Union organizing campaign. In the fall of 2001, Saunders became a member of the Union negotiation team for an initial collective bargaining contract. She and other members of the negotiation team received release time to work on the negotiations. Saunders told Knodell that she would need to be released from one of her scheduled courses for the spring 2002 semester due to her negotiation responsibilities. Knodell was upset to hear this since she would need to find a replacement to teach the course and it created scheduling difficulties for her.

10. In late August or early September 2001, Saunders submitted an application for a one-year research sabbatical beginning in the fall of 2002. In the academic year preceding the submission of the application, Professor Abu Rizvi, then Economics Department Chair, discussed with Saunders the possible availability of a sabbatical.

11. There was a dispute during the 2001-2002 academic year whether Saunders, as a visiting assistant professor, was eligible for a sabbatical. Joan Smith, Dean of the College of Arts and Sciences; John Bramley, Provost (the senior academic officer at UVM); and Interim President Edwin Colodny, took the position that Saunders was not eligible for a sabbatical pursuant to provisions of the Officers' Handbook. Saunders filed a grievance over the issue. The UVM Faculty Grievance Committee concluded that "sections 209.4 and 222.10 of the Officers' Handbook clearly withhold consideration for

sabbaticals from temporary faculty, including visitors.” However, the Committee sustained the grievance, determining that Saunders reasonably concluded from her discussions with Rizvi that UVM had a policy of treating visiting faculty as eligible for sabbaticals and that she was harmed by reliance on the assumption that she was eligible for a sabbatical. The Grievance Committee recommended that Saunders be granted a paid leave during the spring 2003 semester to work on a research project. By letter dated May 16, 2002, Interim President Colodny concurred in the recommendations made by the Grievance Committee (Employer Exhibits 14 – 16, 19, 22, 23; Union Exhibits B-23 and B-24).

12. Chair Knodell, Dean Smith and Provost Bramley sent a letter dated August 16, 2002, to Saunders. The letter provided in pertinent part:

We are pleased to offer you the position of Visiting Assistant Professor in the Department of Economics at the University of Vermont. This appointment will be .83 FTE for the academic year 2002-03 at an annual salary of \$30,980. As a member of the faculty bargaining unit, your compensation may be altered as a result of collective bargaining negotiations currently taking place between the United Academics and the University. In addition, your terms and conditions of employment are also subject to change as a result of such negotiations. The academic year is defined as beginning one week before the registration period in the fall and extending one week beyond Commencement in the spring. This appointment is temporary, for a one-year period only. At the end of this appointment you will have served six consecutive years as a Visiting Assistant Professor. In keeping with the *Officers' Handbook* (Section 209.4), you will not be eligible for reappointment in the rank. Further, this appointment does not carry with it any expectation of reappointment.

In addition to the terms and conditions in this letter of appointment, faculty are subject to Departmental, College and University policies, including policies appearing in the *Officers' Handbook*. By virtue of your appointment, your status also places you in a faculty bargaining unit represented by a union, United Academics.

If your decision is to accept the position as stated above, please indicate your acceptance by signing a copy of the appointment letter and returning it to the Dean. . .

(University Exhibit 24)

13. Saunders signed a copy of the appointment letter and returned it to Dean Smith. Prior to signing the letter, Saunders wrote the following statement immediately after the first paragraph of the letter ending with “expectation of reappointment”: “These last two mentioned terms and conditions of employment are also subject to change as a result of negotiation.” (University Exhibit 24)

14. In September 2002, the Employer and Union reached an impasse in contract negotiations and sought the services of a mediator. The Union scheduled a press conference to discuss the impasse. Saunders was one of the three faculty members who were Union spokespersons at the conference. The other two faculty members were tenured. Local television stations aired parts of the press conference. Saunders appeared on television. A public access television channel taped the press conference in its entirety and aired it various times. Chair Knodell, Dean Smith and Provost Bramley all were aware of Saunders’ active role in the Union.

15. Saunders completed an application for professional development leave in early September 2002 and informed Knodell that she wished to move the leave from the spring of 2003 to the fall of 2003. In an October 4, 2002, letter to Dean Smith, Knodell stated: “I am strongly in favor of approving this change in date both from the point of view of Prof. Saunders’s own work plan and from the point of view of impact on the department (Prof. Saunders is scheduled to teach a large section of principles in the Spring 2003 semester).” (Employer Exhibits 25, 26).

16. In a letter dated October 8, 2002, Dean Smith informed Knodell that she approved of the deferral of leave “from Spring, 2003 to Fall, 2003, especially since this

will permit a better teaching schedule in your department”. Dean Smith erroneously made a decision, rather than a recommendation to Provost Bramley, concerning the deferral of the leave. The Provost has the ultimate authority to approve such a deferral.

17. Provost Bramley sent Saunders a letter dated November 26, 2002 which provided:

After careful consideration of your request for deferral of your upcoming semester-long leave, I must decline the request. I do so on the grounds that, if the leave were deferred, your current contract as a Visiting Professor, which ends in May 2003, will expire prior to the commencement date of the leave.

Please advise your department chair and Dean whether you nonetheless wish to take the leave otherwise scheduled for spring semester 2003 (Employer Exhibits 27, 28; Union Exhibits C-1, C-2).

18. The Union objected to the Provost’s decision. Dean Smith sent a memorandum dated January 8, 2003, to Provost Bramley which provided:

John, as you know, Dr. Saunders’ leave presents some difficulties, since she would like to take it in Fall 2003 rather than this Spring, the time she originally requested. The difficulty is straightforward. Dr. Saunders has no contract for employment with the University in Fall 2003. Might I suggest the following?

Dr. Saunders be offered a contract for full-time employment during Fall 2003. This contract will specify that she will be immediately released from any teaching obligation during the Fall 2003 semester and instead be placed on a one-semester research leave. As is our custom, it will also specify that the contract implies no guarantee of future employment.

If this meets with your approval, could you let me know at your earliest convenience? (Employer Exhibit 32)

19. Provost Bramley responded to Dean Smith by memorandum dated January 13, 2003, stating:

I have received your memo of January 8, 2003, regarding Dr. Saunders’ leave of absence. The willingness of the College of Arts and Sciences to provide an appointment as Lecturer to Dr. Saunders for the Fall of 2003 does now permit the alteration of the schedule for the leave of absence. I approve the Lecturer position for the Fall of 2003 and the amendment of the LOA from Spring 2003 to Fall

2003. The salary and benefit costs associated with this LOA will be the responsibility of the College of Arts & Sciences.

However, I regard it as regrettable that this proposal was not forthcoming from the College at an earlier stage. It was the absence of any College commitment beyond the end of the Spring semester that had prevented a satisfactory resolution being achieved much earlier. (Employer Exhibit 33, Union Exhibit C-5)

20. Provost Bramley sent a copy of his January 13 memorandum to Saunders. Saunders received the copy prior to February 6, 2003. Saunders did not receive a letter from the Employer offering her a teaching position for the fall 2003 semester. Saunders previously had received a letter offering her a teaching position for all the semesters she taught at UVM (Employer Exhibits 2 – 8, 10 – 12, 24).

21. Provost Bramley had the authority to make discretionary decisions on appointments, including single semester appointments, as the senior academic officer at the University.

22. The Union and the Employer achieved tentative agreement on a collective bargaining contract on January 17, 2003. Both the Union and Employer ratified the contract and it became effective February 6, 2003 (Union Exhibit C-8, Joint Exhibit 2).

23. By letter dated March 5, 2003, Saunders informed Provost Bramley that she was “pleased to acknowledge your approval of my appointment to the position of Lecturer for the Fall of 2003.” She referred Provost Bramley to Article 14, Section 2a of the Contract (set forth above in Finding of Fact No. 1), and stated: “I will expect to return to teaching in the Spring of 2004 as a continuing lecturer under the Agreement.” (Employer Exhibit 36, Union Exhibit C-10)

24. Provost Bramley responded with a letter to Saunders dated March 14, 2003. The letter provided:

I approved your one semester appointment as a Lecturer by the College of Arts and Sciences for the Fall of 2003 as a means to accommodate your request to defer a previously approved research leave from spring semester 2003 to fall semester 2003. I did so inasmuch as the deferral met the staffing needs of your department as well as those of your expressed request.

Any appointment beyond Fall 2003 is a matter for the department and College to determine based upon academic needs. By this letter, I therefore refer your question about any appointment following expiration of your leave to your department chair. (Employer Exhibit 40, Union Exhibit C-11)

25. Knodell sent Saunders a letter dated March 28, 2003, that provided:

I am in receipt of a copy of Provost Bramley's letter to you of March 14, 2003. Please be advised that, based on our departmental needs, your appointment will terminate at the end of fall semester 2003 and we do not anticipate offering you an appointment for the spring 2004 semester.

I thank you for your service to date and wish you a productive leave during fall semester. (Employer Exhibit 41, Union Exhibit C-13)

26. During the 2003-2004 academic year, the Economics Department had a reduced need for non-tenure track faculty to teach courses from previous years due to having more tenure track faculty available to teach the same number of total courses. There were three non-tenure track faculty in the Department during the 2001-2002 academic year and two such faculty during the 2002-2003 academic year. Knodell determined that there was a need for only one non-tenure track faculty member for the 2003-2004 academic year, and planned to have that person teach econometrics and economic methods courses. The Economics Department recruited for the position both within and outside the Department. Saunders did not apply for the position. Sanders previously had not taught econometrics and economic methods courses. The Employer ultimately hired Nancy Brooks for the position. Brooks was a Lecturer with the Economics Department who had previously resigned from a tenure track position at UVM. She had previously taught economic methods and econometrics. Brooks was a

member of the Union. She had not been active in the Union organizing drive (Employer Exhibits 37 – 39).

27. The Union filed a grievance with Knodell on behalf of Saunders on April 4, 2003, alleging: 1) that Provost Bramley's March 14, 2003, letter violated Article 14, Section 2 of the Contract, and 2) that the decision not to reappoint Saunders to a two year contract violated Article 5 of the Contract. The grievance was denied at each step of the grievance procedure preceding filing a grievance with the Board (Employer Exhibits 42 – 48; Union Exhibits C-15, C-20, C-28, C-33).

28. Saunders was elected grievance officer for the Union in 2003.

29. During the 2000-2001 academic year, the Employer newly hired two persons as visiting assistant professors in the Economics Department. Each was paid \$45,000 annually. Neither one was active in the Union organizing drive. Saunders was paid \$35,548 for that year as a full-time faculty member . During the 2001-2002 academic year, the Employer newly hired a person as a visiting assistant professor in the Economics Department and paid him between \$42,000 and \$44,000 for the year. He was not active in the Union. Saunders was paid \$37,325 as a full-time faculty member that year. There is a phenomenon of “salary compression” present in higher education, including at UVM, where faculty hired earlier may be paid less than faculty hired later due to market forces (Employer Exhibits 11, 12).

30. During the 2000-2001 and 2001-2002 academic years, Saunders shared office space with another faculty member. Saunders did not complain about the shared space during those years. There was one desk in the office. The visiting assistant

professors newly hired these years each had their own offices. Saunders received her own office space in October 2002 after she discussed her shared space situation with Knodell.

OPINION

The issue before the Board is whether the Employer violated Articles 5 and 14 of the Contract by terminating Professor Dawn Saunders' appointment at the end of the fall 2003 appointment. Grievants allege that Article 14 of the Contract required that her appointment be for a period of two years, ending August 31, 2005. Grievants further allege that action was taken against her in part due to animus against Professor Saunders due to her Union activities in violation of Article 5 of the Contract.

We first address the alleged Article 14 violation. Article 14 provides that, once a visiting faculty member has two consecutive years of service, "if the University in its discretion decides to reappoint the lecturer, the University will reappoint the lecturer to a term of two years". Grievants allege that the Colleges violated this provision by reappointing Saunders to teach only the fall 2003 semester even though Professor Saunders had more than two consecutive years of service as a visiting faculty member at the time of her reappointment.

The Employer contends that the decision to provide a one-semester appointment to Professor Saunders for the fall 2003 semester is not governed by the Contract. This is because, the Employer maintains, the Contract was not in effect at the time the appointment action was taken in January 2003.

Article 26 of the Contract states that "except as otherwise provided herein, this Agreement shall be effective from the date of ratification, February 6, 2003 and shall continue in full force and effect until midnight June 30, 2005". A contract will be

interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). 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). Accordingly, the Contract was not applicable to the decision of the Employer to provide Professor Saunders a one-semester appointment for the fall 2003 semester if the decision occurred prior to the effective February 6, 2003 date of the Contract. In that case, Grievants' contention that the Employer violated Article 14 of the Contract would fail.

The Employer contends that the appointment decision occurred January 13, 2003, when Provost Bramley approved the appointment of Professor Saunders to a Lecturer position in the Economics Department for the fall 2003 semester and the amendment of the leave requested by Professor Saunders from the spring 2003 semester to the fall 2003 semester. Grievants contend to the contrary that Provost Bramley did not indicate that he was approving only a one-semester appointment until his March 14 letter to Professor Saunders, at which point he left open the issue of a longer appointment by deferring to the needs of the Economics Department and the College of Arts and Sciences. Grievants maintain that it was not until March 28, 2003, that Professor Saunders was told by Economics Department Chair Knodell that her appointment would terminate at the conclusion of the fall 2003 semester.

In considering the context in which developments occurred, we conclude that the Employer's decision to provide Professor Saunders a one-semester appointment for the fall 2003 semester occurred on January 13, 2003. When Provost Bramley approved on that date the appointment of Professor Saunders to a Lecturer position in the Economics

Department for the fall 2003 semester, he was doing so in the context of accommodating a request by Professor Saunders, consistent with the wishes of Chair Knodell, to defer her professional development leave from the spring 2003 semester to the fall 2003 semester. Provost Bramley's January 13, 2003, memorandum did not reflect a traditional appointment of a temporary faculty member to teach at the University. Instead, it represented a creative solution to an unique situation of accommodating the desires of a temporary faculty member in a terminal appointment and her department chairperson to defer the faculty member's leave to a time after the member's employment was originally scheduled to end. The unique nature of the appointment explains why Professor Saunders did not receive the traditional letter of appointment. Provost Bramley had the authority to make the discretionary appointment he did here without any further action being necessary.

Grievants' attempts to convert later communications from Provost Bramley and Chair Knodell, communications that postdated the effective date of the Contract, as actions that are subject to a contractual Article 14 claim are not persuasive. Contrary to Grievants' claim, Provost Bramley indicated that he was approving only a one-semester appointment prior to his March 14, 2003 letter to Professor Saunders. He did so in his January 13, 2003, memorandum by linking approval of a one-semester appointment in the fall 2003 semester with the requested deferral of Professor Saunders' leave to that semester.

His March 14, 2003, letter was a response to Professor Saunders' letter to him in which she stated: "I will expect to return to teaching in the Spring of 2004 as a continuing lecturer under the Agreement." Provost Bramley simply reiterated in the March 14 letter

what was conveyed in the January 13, 2003, memorandum; that he approved the one semester appointment for the fall of 2003 as a means to accommodate the request to defer Professor Saunders' leave from the spring 2003 semester to the fall 2003 semester. He was not taking any action different than he had in the January 13 memorandum, but rather was refuting a claimed expectation of continued employment by Professor Saunders. Grievants are requesting that we conclude that a response by the Employer, which refutes an unsolicited communication from Professor Saunders asserting a right that does not exist, constitutes an action of the Employer triggering an actionable grievance under the Contract. It would be illogical to draw such a conclusion.

Similarly, Grievants cannot rely on Chair Knodell's March 28, 2003, letter as the trigger point for an Article 14 claim. In her March 28 letter, Chair Knodell, like Provost Bramley, was refuting a claimed expectation of continued employment by Professor Saunders. She was not communicating for the first time the Employer's decision to provide Professor Saunders a one-semester appointment for the fall 2003 semester. Provost Bramley had indicated in his January 13 memorandum that Professor Saunders' temporary appointment was limited to the fall 2003 semester.

Given our conclusion that the Employer's decision to provide Professor Saunders a one-semester appointment for the fall 2003 semester occurred on January 13, 2003, we dismiss Grievants' contention that Article 14 of the Contract was violated. The decision was not governed by the Contract since it predated the effective February 6, 2003, date of the Contract.

Grievants also contend that the Employer violated Article 5 of the Contract by discriminating against Professor Saunders due to her union activity. In grievances where

employees claim the employer took action against them for engaging in union activities, the Board employs the analysis used by the United States Supreme Court set forth in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977): 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. Then 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 (1982). Grievance of Roy, 6 VLRB 63 (1983). Grievance of Cronin, 6 VLRB 37 (1983). Grievance of Danforth, 22 VLRB 220 (1999).

Professor Saunders actively engaged in the protected conduct of union activity. She was active in the Union's organizing drive leading to the election of the Union as the representative of UVM full-time faculty. She also was a member of the Union committee responsible for developing proposals for an initial collective bargaining contract between the Union and the Employer. Further, she was on the Union negotiation team for an initial contract.

Grievants must demonstrate that this union activity was a motivating factor in a decision of the Employer during the period that the Contract was in effect. Thus, the claim of Grievants that the January 13, 2003, appointment decision constituted discrimination against Professor Saunders based on her union activity is not grievable. As elaborated above, the decision was not governed by the Contract since it predated the effective February 6, 2003, date of the Contract.

The Article 5 contention of discrimination based on union activity would be grievable only to the extent that the Employer took an adverse action against Professor

Saunders concerning further teaching appointments during the effective period of the Contract that was distinct from the January 13, 2003, appointment decision. This is because a necessary prerequisite to a valid claim of discrimination for protected activities is that an adverse action has occurred. Grievance of McCort, 18 VLRB 446, 455-58 (1995). Grievances of Murray, 19 VLRB 40, 56-57 (1996); *Affirmed* (Unpublished decision, Supreme Court Docket No. 96-237, 1997).

Provost Bramley's March 14, 2003, letter and Chair Knodell's March 28, 2003, letter do not constitute such distinct adverse actions. They were announcing no actions different than had been taken with the January 13, 2003, appointment decision, but simply refuting a claimed expectation of continued employment by Professor Saunders. As discussed above, a response by the Employer, which refutes an unsolicited communication from Professor Saunders asserting a right that does not exist, does not constitute an action of the Employer triggering an actionable grievance under the Contract.

The only distinct appointment decision of the Employer during the effective period of the Contract that is in evidence is the decision to hire a person other than Professor Saunders for a non-tenure track position in the Economics Department for the 2003-2004 academic year. This did not constitute an adverse action against Professor Saunders. A necessary element of a conclusion that an adverse action occurred would be that Professor Saunders had applied for the position. However, she did not apply for the position.

In sum, Grievants have not demonstrated that the Employer took an adverse action against Professor Saunders during the period that the Contract was in effect. Thus,

we dismiss their contention that the Employer violated Article 5 of the Contract by taking action against Professor Saunders due to her union activities

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of United Academics, AAUP/AFT and Dawn Saunders is dismissed.

Dated this 23rd day of March, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Acting Chairperson

Carroll P. Comstock

John J. Zampieri