

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
JUNE ROSENBERG AND THE)	DOCKET NO. 06-10
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT,)	
UPV LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 7, 2006, the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO (“Federation”) filed a grievance on behalf of itself and June Rosenberg, a part-time faculty member at Lyndon State College. The Federation alleged that the Vermont State Colleges (“Employer”) violated Articles VII and XVIII of the collective bargaining contract between the Federation and the Employer for part-time faculty, effective September 1, 2000 to August 31, 2006 (“Contract”); by not assigning any courses to Rosenberg for the Spring 2006 semester. The Federation contended that the Employer discriminated against Rosenberg due to her union activity and violated the procedures for assigning courses to part-time faculty.

The Labor Relations Board conducted a hearing on October 19, 2006, in the Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Richard Park and John Zampieri. Russell Mills, Federation Grievance Chairperson, represented Grievants. Attorney Nicholas DiGiovanni, Jr., represented the Employer. The Federation and the Employer filed post-hearing briefs on November 16 and 20, 2006, respectively.

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 or against any applicant for employment in positions in the faculty by reasons of age, race, creed, marital status, color, sex, religion, national origin, citizenship, union activity, political activity, sexual orientation, or membership or non-membership in the Federation.

...

ARTICLE XVIII SEMESTER APPOINTMENTS AND ASSIGNMENTS

...

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 is interested in teaching.

...

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 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. Two (2) 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. Part-time faculty shall accumulate seniority at each campus based upon the number of credits taught at that campus. The starting date for calculating this number of credits shall be the Fall semester for 1986. After a seniority list is developed and distributed, any part-time faculty may grieve factual errors in the list and such matters are arbitrable.

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.

...

(Joint Exhibits 1, 1A)

2. The Employer issued a “Personnel Handbook for Administrators and Administrative Staff” effective July 1, 2001. The Handbook provided working conditions for administrators and administrative staff. It contained the following definition of “administrators/administrative staff”: “Employees appointed to a classified Vermont State Colleges position, which is exempt from bargaining unit representation, as determined by the Vermont Labor Relations Board. Designation as ‘administrator’ or

‘administrative staff’ employee appears in individual appointment letters” (Colleges Exhibit 19).

3. The term “administrator” as used in the Handbook described all professional staff members of the Employer who were exempt from coverage of the provisions of the federal Fair Labor Standards Act. The term “administrative staff” as used in the Handbook described administrative employees of the Employer who were not exempt from coverage of Fair Labor Standards Act provisions.

4. On May 8, 2002, the Labor Relations Board certified the Vermont State Colleges United Professionals as the exclusive bargaining bargaining representative of all full-time and regular part-time professional, administrative and technical employees at the four campus-based colleges of the Vermont State Colleges. A list of positions covered by the certification was attached as an appendix to the Board's Order of Certification. Donna Dolan, identified as “Caseworker, Reachup,” was included as an employee in the bargaining unit at Lyndon State College (Colleges Exhibit 18, Labor Relations Board Docket No. 01-47).

5. The Employer and the Vermont State Colleges United Professionals negotiated a collective bargaining agreement effective April 15, 2005 to June 30, 2007 for the professional, technical and administrative employees bargaining unit. This agreement recognizes in Article 20 that a member of the bargaining unit may enter into a separate contract with the Employer to perform work outside of their job description (Colleges Exhibit 18).

6. June Rosenberg is a part-time faculty member in the Psychology Department at Lyndon State College. She has taught at the college since 1993. She is the

most senior part-time faculty member in the Psychology Department. She taught between 6 and 10 credits a semester from the Spring of 2001 through the Fall of 2005. During this period, she taught the Introduction to Psychology course, the Human Growth and Development course, and the Academic Community course (Colleges Exhibit 4).

7. Rosenberg taught sections of the Introduction to Psychology course on several occasions from the Spring 2001 semester through the Fall 2005 semester. She taught one section in Spring 2001, one section in Spring 2004, one section in Fall 2004, one section in Spring 2005, and one section in Fall 2005 (Colleges Exhibit 4).

8. Rosenberg regularly taught sections of the Human Growth and Development course from the Spring 2001 semester through the Fall 2005 semester. She taught one section in Spring 2001, one section in Summer 2001, two sections in Fall 2001, two sections in Spring 2002, one section in Summer 2002, three sections in Fall 2002, two sections in Spring 2003, one section in Summer 2003, two sections in Fall 2003, one section in Spring 2004, one section in Fall 2004, one section in Spring 2005, and one section in Fall 2005 (Colleges Exhibit 4).

9. Rosenberg has filed prior grievances against the Employer. She 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. She filed a grievance over not receiving a teaching assignment in the Summer of 2001, a grievance that was ultimately resolved in her favor. She filed a grievance concerning her assignments for the Spring 2002 semester which was decided by the Labor Relations Board in a 2-1 decision holding that Rosenberg had been discriminated against because of her previous grievance activities. 25 VLRB 253 (2002). The Employer appealed this

decision to the Vermont Supreme Court, and the Court reversed the Board in a decision issued May 5, 2004. 176 Vt. 641. Rosenberg has not filed any grievances between 2002 and the filing of the grievance now before us (Federation Exhibits 12, 13).

10. Ronald Rossi, a full-time tenured faculty member in the Psychology Department, was team leader for the Introduction to Psychology course taught in the department. In the Spring 2004 semester, Rossi called a meeting of all faculty members in the department who were teaching the Introduction to Psychology course to discuss developing consistency among faculty members in how the course was taught. Rosenberg attended the meeting as a faculty member who taught the course. At the time of the meeting, Rossi was not aware of the Vermont Supreme Court decision on Rosenberg's grievance.

11. Lori Werdenschlag, a full-time tenured faculty member in the Psychology Department, has taught at Lyndon for 15 years. She is a member of the Federation. She served for six years on a College-Federation working group on faculty development issues, and was co-chair of a College-Federation academic retreat in 1997. She was Department Co-Chair during the 2004-2005 academic year with Rossi, and was Department Chair during the 2005-2006 academic year. In the Spring of 2004, and at all times subsequent, Werdenschlag was team leader for the Human Growth and Development course. As team leader, Werdenschlag was responsible for overseeing the course and ensuring consistency between sections of the course.

12. In the Spring of 2004, Werdenschlag and Rosenberg discussed textbooks to be used in the Human Growth and Development course. Rosenberg mentioned a book by author Laura Berk that she considered a very good text. Werdenschlag agreed but told

Rosenberg that it would not be used in the Human Growth and Development course because another text by Berk was being used in an upper level course, and there was a need to expose students to various styles and perspectives.

13. Rosenberg chose the Berk text for the section of the Human Growth and Development course that she was teaching in the Fall 2004 semester. When Werdenschlag discovered this, she wrote Rosenberg a letter, dated September 20, 2004, indicating her concern that Rosenberg used this text and “completely disregarded” the conversation they had the previous spring. In the letter, Werdenschlag also stated that “the growing inconsistency among our introductory sections” was identified during the “Policy 101 Review” of the Psychology Department during the past year as a problem for the department to work on correcting. Werdenschlag stated: “(W)e need to be more collaborative and work on reestablishing consistency across our sections. Though you have stated that you have been too busy in the past when I have suggested that all of us ‘human development’ folks get together, I am hoping you will prioritize and reassess the need to be inclusive in this process. I’d like to suggest that you, Ron (as co-chair), and I attempt to meet between now and October 5 to begin discussing ways to improve our consistency” (Colleges Exhibit 6).

14. The Policy 101 Review mentioned by Werdenschlag in her letter referred to curriculum reviews of each academic department required by the Vermont State Colleges Board of Trustees every five years. In 2004, psychology departments throughout the Colleges system underwent Policy 101 review. The Lyndon State College Policy 101 Review Report noted several areas for improvement, including a

recommendation that “the department should develop processes to ensure course consistency between full- and part-time instructors” (Colleges Exhibit 7).

15. Rosenberg did not contact Werdenschlag and Rossi after receipt of the September 20, 2004, letter to set up a meeting. Neither Werdenschlag nor Rossi contacted Rosenberg after September 20, 2004, to set up a meeting.

16. In November 2004, Rosenberg was informed by her students that the college bookstore had refused to buy back textbooks that the students were using in the Human Growth and Development course. When Rosenberg spoke to the bookstore manager, she was informed that Werdenschlag and Patricia Shine, another full-time faculty member of the Psychology Department, had told the bookstore to cancel the book order that Rosenberg had made for the following semester. The matter was ultimately resolved when Rosenberg’s book order was honored.

17. During the first part of the Fall 2004 semester, there was a vacancy in the Lyndon Dean of Academic and Student Affairs position. Donna Dalton started as Academic Dean in November 2004. In January 2005, Co-Chairs Werdenschlag and Rossi met with Dean Dalton. Dean Dalton recommended that another letter be sent to Rosenberg setting forth concerns that Werdenschlag and Rossi had with Rosenberg. Werdenschlag and Rossi drafted a letter and sent it to Dean Dalton for her review. Dean Dalton suggested revisions in the letter. The five full-time faculty of the Psychology Department signed and sent a letter to Rosenberg dated March 14, 2005, which provided in part:

The Psychology Department is concerned that you have ignored the written request (September 20, 2004 letter) to meet with the department chairs to discuss persistent problems in the classes you teach for the department and your

continuing rejection of the request to use the text chosen by the department for all Human Growth and Development sections.

There are five serious concerns the department would like to address. First, faculty both within and outside the psychology department are reporting that students coming from your sections of Human Growth and Development and Introduction to Psychology are not adequately prepared for their upper level course work. . . They are less prepared than students who had other instructors. . .

Second, students who fail one of our introductory courses with another instructor retake the courses with you and receive A's and A+'s. . .

Third, and of significant concern, other campus programs are dropping the Psychology Department's introductory courses from their major requirements due to the inadequate preparation of students coming from your sections. They have cited your name specifically. The Secondary Education Program dropped Human Growth and Development from its requirements last spring due to the unprepared students they were receiving from your sections. The Education Department has similar plans this spring.

Fourth, when multiple sections of the same course are taught, and the course is a pre-requisite and requirement for major programs, texts should be chosen in consultation with the department and department chairs. Your individual text selection continues to interfere with one of the department's upper level courses.

Fifth, for the past several years the department and the academic dean have received an increasing number of complaints from students. One of the most consistent complaints involves you not covering material from the text in class, but using the text as a basis for your exams. . . Additionally, students have complained about favoritism in the classroom. International students have reported feeling singled out and put down for their nationalities. Complaints also are reflected in your student evaluations. While some students are very enthusiastic about your classes, there have been an increasing and consistent number of negative evaluations as well. We urge you to reread your evaluations, take into consideration the comments, and consider what steps you might wish to take to improve your teaching.

In sum, we are not seeing evidence that you are effectively teaching the knowledge of Human Growth and Development and Introduction to Psychology to our students. While a portion of the students really enjoy you and your classes, there is also a portion that now consistently complains about your effectiveness to communicate the necessary knowledge in class. Students from your sections are not advancing with the appropriate foundational skills needed to prepare them for their upper level courses of study. It is disappointing that you have not accepted offers to discuss tensions and concerns and to accept invitations to participate in collaborative meetings for Human Growth and Development. We are concerned

about your ability to meet our program needs. The co-chairs of the department would like to meet with you to discuss and identify the next steps. We request a meeting before the end of March.
(Colleges Exhibit 15)

18. Rosenberg responded to this letter with a March 21, 2005, letter to Rossi. Rosenberg questioned why she was not approached about concerns expressed in the letter and questioned when she had ever ignored requests to meet to discuss “tensions and concerns”. Rosenberg asked Rossi to advise her when the department meeting occurred where her teaching performance was evaluated by peers, and questioned why she was not invited to the meeting. She also requested to review the specific student complaints made against her so that she may have the opportunity to respond to them. Rosenberg questioned the accuracy of the statements in the March 14 letter that other departments had changed their requirements due to her teaching, stated that such statements were “accusatory” and “defamatory”, and asked to be provided “copies of the written complaints that lead to these decisions”. She concluded by stating: “After you provide the requested information, so that I may understand the basis for the evaluation and accusations, I will be happy to meet with you to discuss it” (Colleges Exhibit 16).

19. Rosenberg did not receive a response to her March 21, 2005, letter, and did not receive the information that she requested in her March 21, 2005, letter. No meeting occurred among Rosenberg, Werdenschlag and Rossi as a result of the March 14 and 21 letters. There was a “special conference” on the letters pursuant to Article XII of the Contract which provides in pertinent part: “Any individual faculty member or group of faculty members shall have the right to discuss any concerns/complaints with the President of the College or his/her designee and to have such matters considered in good faith in a ‘special conference’ . . .” As a result of the special conference that Rosenberg

and her Union representative had with the college president, the March 14, 2005, letter was removed from Rosenberg's personnel file.

20. On April 27, 2005, the Peer Review Committee of Lyndon State College submitted a report on Rosenberg's teaching evaluations to the Dean of Academic Affairs.

The report provided as follows:

June Rosenberg has accumulated 193 credits at LSC and is a member of the Psychology Department at Lyndon State College. Performance was evaluated from the end of the semester evaluations according to the Agreement in place.

Evaluations were taken from six semesters during the years 2002, 2003 and 2004. The courses used for evaluations were Human Growth and Development, Introduction to Psychology and Academic Community.

Of the six semesters evaluated five of them had virtually 100 percent positive comments. Most notable are comments such as, "June understands when a student is confused and when to repeat material". Many students also commented that they finally understood APA style.

During the spring of 2003 there were also many constructive comments such as "I appreciated being able to resubmit my work to correct errors." That was the only semester some negative comments were made and mostly concerned the testing procedures, either that the tests were too difficult or had material not related to the class. By the Fall of 2004 those comments were non-existent once again.

June Rosenberg has not only been a long term member of LSC psychology department but has made a positive impact on a lot of students. Several students commented that the class should always be taught by June and that they looked forward to taking another class with her. LSC is fortunate to have instructors like June Rosenberg who impact our students in the beneficial manner that she does. (Federation Exhibit 18)

21. Most of the 417 student evaluations for classes taught by Rosenberg from Spring 2002 through Fall 2005 were positive. There were some negative comments on several evaluations to the effect that Rosenberg "singled out" some students and "picked on" them, favoring certain students, and using the text as a basis for tests but not discussing the text in class. The bulk of negative student evaluations and comments

occurred in two sections of Human Growth and Development taught by Rosenberg in the Spring 2003 semester, and a section of Introduction to Psychology taught by Rosenberg in the Spring 2005 semester (Federation Exhibit 20, Colleges Exhibits 8 – 14).

22. The Psychology Department had six full-time faculty teaching during the 2005-2006 academic year. In addition, there were five part-time faculty members, including Rosenberg, who taught in the Fall 2005 semester. Three part-time faculty members taught during the Spring 2006 semester. Further, Donna Dolan, Coordinator of the College's Reach Up Program, and Associate Dean Leo Sevigny taught courses for the department during the year.

23. The Reach Up Program for which Dolan was coordinator is a grant-funded program assisting single parents who are students to independently provide for themselves. Dolan provided support services to these non-traditional students in basic skills assessment, life skills management, community resources, transition issues and employment goals. The position held by Dolan was classified as an "exempt" position, meaning that she was exempt from coverage of the provisions of the federal Fair Labor Standards Act. Dolan was a member of the professional, administrative and technical employees bargaining unit represented by the Vermont State Colleges United Professionals during the 2005-2006 academic year (Federation Exhibit 3, Colleges Exhibit 1).

24. Dolan regularly taught sections of the Introduction of Psychology course from the Spring 2001 semester through the Spring 2006 semester. She taught one section in Spring 2001, one section in Summer 2001, two sections in Fall 2001, two sections in Spring 2002, two sections in Fall 2002, two sections in Spring 2003, one section in Fall

2003, one section in Spring 2004, one section in Summer 2004, one section in Fall 2004, one section in Spring 2005, one section in Fall 2005, and two sections in Spring 2006 (Colleges Exhibit 2).

25. On or around August 3, 2005, Rosenberg submitted a completed Teaching Availability form for the Spring 2006 semester. She indicated on the form that she preferred Tuesday and Thursday teaching time slots. In completing a section on the form providing "I am interested in teaching the following course(s):"; Rosenberg indicated that she was interested in teaching the Introduction to Psychology and Human Growth and Development courses (Colleges Exhibit 5, Federation Exhibit 7).

26. Among the duties that Werdenschlag had as Psychology Department Chair during the 2005-2006 academic year was the preparation of course offerings, schedules and assignments. She recommended assignments and offerings to Donna Dalton, Dean of Academic and Student Affairs. Werdenschlag received no directives from Dean Dalton concerning who to assign to particular courses. Dean Dalton did not scrutinize every assignment when she received recommendations from department chairs but generally reviewed course schedules to ensure there was a proper distribution of courses at times of the day and days of the week. Werdenschlag completed a first draft of her recommended assignments and schedule for the Spring 2006 semester by September 26, 2005, a second draft by October 17, and a final draft by October 24.

27. Werdenschlag sent an e-mail message to part-time faculty of the Psychology Department on September 25, 2005. It provided in pertinent part:

. . . we are in the process of putting together the schedule for Spring 2006. . . Please be aware that due to new full-time faculty and administrative hires, some sections of courses that historically have been available to part-timers may not be available this spring. Do keep in mind that what happens in one semester is not an

indication of what will happen (be available) in another semester, and that we will continue to keep you in mind. Further, the administration is putting pressure on us to spread out the schedule, with an emphasis on more MWF, evening and weekend classes. The TTh 11:00 a.m. and 1:30 pm time slots are overbooked campus-wide, so it is not likely that we will be able to accommodate any part-timers during these time slots (this is also an issue for the full-time faculty). . . (Federation Exhibit 8)

28. The number of sections of the Introduction to Psychology course offered in the Spring of 2006 was reduced from previous semesters from four sections to three sections. There were two reasons for this reduction. First, Dean Dalton had announced at a meeting with department chairpersons in September 2005 that she would be looking closely at department course offerings to reduce unnecessary sections of courses to save money. The second reason for the reduction in the number of sections was that students in the General Education program were now being given more options to meet requirements and fewer students needed to take Introduction to Psychology.

29. One of the Introductory of Psychology sections was assigned to Ronald Rossi, a full-time faculty member who had regularly taught this course as part of his normal full-time workload. The other two sections were assigned to Donna Dolan. She had expressed an interest in teaching two sections of this course (Colleges Exhibit 3, Federation Exhibit 11).

30. The number of sections of the Human Growth and Development course offered in the Spring 2006 semester was reduced from previous semesters from four to two sections. Similar to the Introduction to Psychology course, reasons leading to the reduction included the budget necessity of cutting sections and the increased options for General Education students.

31. One of the Human Growth and Development courses was assigned to Lori Werdenschlag. She had routinely taught this course as part of her full-time faculty workload and served as team leader for the course. The other section was assigned to Associate Dean Leo Sevigny (Colleges Exhibit 3, Federation Exhibit 11).

32. Werdenschlag sent Rosenberg a letter dated October 3, 2005, that provided:

Thank you so much for teaching Human Development and Introduction to Psychology for us this fall. Unfortunately, in Spring 2006, all sections of Human Development and Introduction to Psychology will be taught by full-time faculty in the department and administrators/staff. However, we will keep you in mind in the future.

(Federation Exhibit 9)

33. In response to this notification from Werdenschlag, Rosenberg sent Werdenschlag an October 3 e-mail asking Werdenschlag to inform her “as to who (full-time faculty, administrators/staff) will be teaching each of the sections of PSY 1010 Introduction to Psychology, and PSY 1050 Psychology of Human Growth and Development during the Spring 2006 semester.” Werdenschlag responded to Rosenberg’s e-mail that day and informed her who would be teaching the courses (Colleges Exhibit 20, Federation Exhibit 10).

34. Rosenberg did not teach any courses in the Spring 2006 semester.

OPINION

Grievants contend that the Employer violated Articles VII and XVIII of the Contract by not assigning any courses to June Rosenberg, part-time faculty member at Lyndon State College, during the Spring 2006 semester. Grievants contend that the Employer acted contrary to Article XVIII by violating the procedures for assigning

courses to part-time faculty, and violated Article VII by discriminating against Rosenberg due to her grievance activities.

We first address the alleged violation of Article XVIII. In the grievance filed with the Board, Grievants alleged that this article was violated because the Employer assigned Donna Dolan, rather than Rosenberg, to teach two sections of the Introduction to Psychology course. The Employer contends that assigning the sections to Dolan rather than Rosenberg was permitted pursuant to Article XVIII, Section E, which provides that “(t)he College reserves the right to given preference . . . to individual administrators prior to offering courses to part-time faculty”. Grievants contend that Dolan was not an “administrator” qualified for the scheduling preference.

Grievants have not demonstrated that the Employer acted contrary to the Contract by considering Dolan as an administrator. The un rebutted evidence indicates that the term “administrator” has been used historically to describe all professional staff members of the Employer exempt from coverage of the provisions of the federal Fair Labor Standards Act. There is no evidence of any bargaining history between the Federation and the Employer or any practices that have resulted in a change to the meaning of this term. This means that when the parties negotiated the provisions of the part-time faculty contract at issue herein, “individual administrators” referred to any professional staff members of the Employer exempt from coverage of the Fair Labor Standards Act. Since Dolan was classified as such an exempt employee, then she was an “administrator” within the meaning of Article XVIII, Section E, of the Contract, and qualified for the scheduling preference.

Grievants attempt to avoid this conclusion by contending that Dolan did not qualify for scheduling preference because she was a part-time employee. Grievants have presented no evidence to support a conclusion that the parties intended to make any distinction between part-time and full-time administrators in negotiating the provisions of Article XVIII, Section E, of the Contract. The Board will not read terms into a contract unless they arise by necessary implication. In re Stacey, 138 Vt. 68, 71 (1980). There is no such implication here.

Grievants have further contended in their post-hearing brief that the Employer violated Article XVIII of the Contract by assigning Dolan and two part-time faculty, Jon Fitch and Dennis Sweet, rather than Rosenberg, to teach sections of a Family and Community course. We reject this contention for two reasons. First, Grievants did not make this allegation in the grievance filed with the Board. The allegations in the grievance were limited to the Introduction to Psychology course sections assigned to Dolan, and made no reference to the Family and Community course. Second, in completing the teaching availability form for the Spring 2006 semester, Rosenberg did not indicate that she was interested in teaching the Family and Community course even though she was specifically directed on the form to indicate the courses she was interested in teaching. Given these circumstances, there is no basis by which we can conclude that the Employer violated Article XVIII of the Contract with respect to assigning sections of the Family and Community course.

In sum, Grievants have not established that the Employer violated Article XVIII of the Contract by not assigning Rosenberg any courses during the Spring 2006 semester. We turn to addressing Grievants' remaining allegation that the Employer violated Article

VII of the Contract by discriminating against Rosenberg due to her grievance activities through not assigning her courses this semester.

In cases where employees claim the employer took action against them for engaging in protected activities, the Board employs the analysis used by the United States Supreme Court 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).

Rosenberg engaged in the protected conduct of grievance activities. Grievants must demonstrate that this protected conduct was a motivating factor in the Employer's decision to dismiss her. The factors the Board reviews in determining whether protected conduct constituted a motivating factor in an employer's adverse action against an employee are: 1) whether the employer knew of the protected activities, 2) whether a climate of coercion existed, 3) whether the timing of the action was suspect, 4) whether the employer gave protected activity as a reason for the decision, 5) whether the employer interrogated the employee about protected activity, 6) whether the employer discriminated between employees engaged in protected activities and employees not so engaged, and 7) whether the employer warned the employee not to engage in such

activity. Ohland v. Dubay, 133 Vt. 300, 302-303 (1975). Horn of the Moon Workers Union v. Horn of the Moon Cafe, 12 VLRB 110, 126-27 (1988).

Grievants have not demonstrated that Rosenberg's grievance activities constituted a motivating factor in the decision to not assign her any courses during the Spring 2006 semester. The Employer knew of Grievant's protected grievance activities. However, knowledge alone is not sufficient to demonstrate protected conduct motivated an adverse action. Many of the other factors to be reviewed in determining whether the Employer was motivated by Rosenberg's protected grievance activities can be addressed summarily. The Employer did not give Rosenberg's grievance activities as a reason for not assigning her course. The Employer did not interrogate Rosenberg about these activities, or warn her not to engage in them. Grievants have presented no evidence of Rosenberg being treated differently than employees not engaged in grievance activities.

The timing between protected activities and the adverse action by an employer is a significant factor. Here, Rosenberg's most recent grievance activities prior to the course assignments at issue herein involved a grievance she filed concerning assignments for the Spring 2002 semester. Given the length of time between Rosenberg's grievance activities and the Spring 2006 semester course assignments at issue here, we conclude that the timing of the course assignments is not suspicious. The longer the time period between the adverse decision and the protected activity, the more attenuated causation becomes. In re Grievance of Rosenberg and Vermont State Colleges Faculty Federation, AFT, UPV, Local 3180, AFL-CIO, 176 Vt. 641, 644 (2004). In such cases, there must be some facts other than chronology alone to suggest that the timing of the employer's decision was suspicious. Id.

Grievants contend that timing of the non-assignment of courses in the Spring 2006 semester was suspicious because it represented the culmination of discriminatory treatment of Rosenberg resuming after the Vermont Supreme Court issued a decision in May 2004 reversing a Board majority decision holding that Rosenberg had been discriminated against based on her grievance activities through the Spring 2002 course assignments. Grievants have not presented persuasive evidence indicating any connection between the Supreme Court decision and treatment of Rosenberg.

After the Supreme Court decision, Rosenberg received course assignments for the next three semesters that were consistent with past assignments. It is true that there were tensions between Rosenberg and full-time faculty in the Psychology Department, particularly Lori Werdenschlag, subsequent to the Supreme Court decision. However, we conclude that these tensions were unrelated to Rosenberg's grievance activities and arose primarily due to personality conflicts separate from Rosenberg's grievance activities.

This leaves discussion of the remaining factor of whether a climate of coercion existed in this case. Grievants have not demonstrated any link between Rosenberg's grievance activities and the climate that existed in the workplace, and thus we conclude that there was no climate of coercion resulting in any way from Rosenberg's grievance activities. Grievants have not demonstrated that any of the factors providing evidence of animus for protected conduct existed here. Thus, we dismiss Grievants' claim of discrimination based on grievance activities.

Our conclusion in this regard should not be construed as endorsement of the treatment of Rosenberg by full-time faculty in the Psychology Department. It is evident that significant tension exists between Rosenberg and others in the Psychology

Department. It is likewise apparent that fault for the deleterious relationship does not lie solely with Rosenberg.

The full-time faculty sent a March 14, 2005, letter to Rosenberg in which they are critical of Rosenberg because she “ignored the written request (September 20, 2004 letter) to meet with the department chairs to discuss” concerns. This criticism of Rosenberg was unfair. The cited September 20 letter, from Department Co-Chair Lori Werdenschlag, provided: “I’d like to suggest that you, Ron (as co-chair), and I attempt to meet between now and October 5”. Given the way the letter was framed, it was just as incumbent on Werdenschlag and co-chair Ron Rossi to attempt to set up a meeting with Rosenberg as it was on Rosenberg. Nonetheless, neither Werdenschlag nor Rossi contacted Rosenberg after September 20 to set up a meeting. The failure to attempt to communicate with Rosenberg, and then criticize Rosenberg when she did not attempt to set up a meeting, is more indicative of seeking to find fault with an employee than genuinely attempting to address concerns with that employee. It does not promote constructive workplace relations.

Also, the March 14, 2005, letter from Psychology Department full-time faculty to Rosenberg contained extensive criticism of Rosenberg’s teaching effectiveness, including students’ views as to her effectiveness. This criticism upon objective review is overstated and presents a distorted picture of Rosenberg’s performance. The letter states: “While some students are very enthusiastic about your classes, there have been an increasing and consistent number of negative evaluations as well.” This statement is refuted by a report of the Peer Review Committee of Lyndon State College which, after reviewing student evaluations for the previous six semesters, concluded: “Of the six semesters evaluated

five of them had virtually 100 percent positive comments.” Our review of the student evaluations in question results in an overall picture much closer to that of the Peer Review Committee than that portrayed in the March 14 letter from full-time Psychology Department faculty.

Grievants have not demonstrated that this unfair treatment of Rosenberg stemmed in any part from her grievance activities, and thus we dismiss the alleged violation of Article VII of the Contract. There are tensions and personality conflicts evident between Rosenberg and others in the department, but the evidence simply does not support a conclusion that her grievance activities caused such problems. It is also apparent that Rosenberg bears some responsibility for the deleterious relations with department colleagues. Nonetheless, it would be more constructive for Rosenberg’s full-time colleagues to genuinely seek to resolve concerns they have with Rosenberg rather than overstate her deficiencies, distort her performance and unfairly cast blame on her.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of June Rosenberg and the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO, is dismissed.

Dated this ____ day of February, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Richard W. Park

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