

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT,)	DOCKET NO. 07-5
UPV LOCAL 3180, AFL-CIO (RE:)	
COURSE COMPENSATION FOR)	
PART-TIME FACULTY))	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 1, 2007, the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO ("Federation") filed a grievance, alleging that the Vermont State Colleges ("Employer") violated Article 21 of the collective bargaining agreement between the Federation and the Employer covering part-time faculty by assigning part-time faculty to teach overloaded courses without appropriate compensation. The Federation requests as a remedy that part-time faculty who were assigned students beyond the maximum class size in the fall 2006 semester be compensated at the rate of 1/5 credit for each additional student enrolled in a class once the class size reached the maximum class size plus 15% or 4 more students, whichever is less.

On August 8, 2007, the parties filed a stipulation of facts and agreed to have the Labor Relations Board decide this matter on the basis of the stipulated facts and legal arguments of the parties. This agreement by the parties eliminated the need to have a hearing before the Board. The parties filed memoranda of law on August 23, 2007. The following findings of fact constitute the facts stipulated to by the parties.

FINDINGS OF FACT

1. The collective bargaining agreement covering part-time faculty provides
in pertinent part:

...

ARTICLE III MANAGEMENT RIGHTS

A. All the rights and responsibilities of the Vermont State Colleges, which have not been specifically provided for in this Agreement, shall be retained in the sole discretion of the Vermont State Colleges and, except as modified by this Agreement, such rights and responsibilities shall include but not be limited to:

1. The right to direct employees . . . to determine standards for work and the class schedule within any limitations of this Agreement . . .
2. The right to take such action as necessary to maintain the efficiency of the Colleges' operation within the limits of this Agreement . . .

ARTICLE XXI SALARY AND RATES OF PAY

...

- E. Effective September 1, 1999, faculty who conduct independent studies shall be compensated at the rate of \$17.50 per hour for each meeting with the students up to a maximum of fifteen (15) hours.
- F. Part-time faculty shall be allotted credit for a given course taught or assignment performed which is equal to the number of academic credits or workload credits allotted to a full-time faculty member for the same course or similar work.

2. The Federation and Employer are parties to a collective bargaining agreement covering full-time faculty of the Employer. The full-time faculty agreement provides in pertinent part:

...

ARTICLE 24
WORKLOAD

A.1 The normal individual workload shall be 24 credit hours or its equivalent per year. Overload work shall be compensated at the following minimum rates:

September 1, 2004

Instructors/Assistant Professors	\$725 per credit
Associate Professor	\$775 per credit
Professors	\$825 per credit

September 1, 2005

Instructors/Assistant Professors	\$775 per credit
Associate Professor	\$825 per credit
Professors	\$875 per credit

September 1, 2006

Instructors/Assistant Professors	\$825 per credit
Associate Professor	\$875 per credit
Professors	\$925 per credit

...

For the duration of this Agreement, however, faculty shall not be required to teach an excessive number of contact hours, assume an excessive student load, or be assigned an unreasonable schedule. In determining what is “excessive” or “unreasonable” under this paragraph, the maintenance of academic quality, current practices in the Colleges and the needs and best interests of the students and the Colleges shall be three of the important elements to be considered. . . In making assignments, due consideration shall be given to time devoted to co-curricular activities, such as advising, coaching, direction of student teaching and independent studies, advising student newspapers and clubs, directing dramatic or musical productions, and directing athletic programs. . .

A.2. It is understood that in situations as noted below a college may assign, with proper notification and prior to the close of the designated add period, a faculty member up to 15% or 4 or more students, whichever is smaller, over the maximum for a given course, understanding that this shall not be considered a permanent increase in class maximum and provided further that the College does not do so on regular basis. If the College wishes to exceed 15% or 4 student limit, it will provide additional compensation or workload adjustments for the faculty member as provided for in this article. It is also understood that some courses may have maximum limits which have been based on legitimate concerns for safety,

workstation access or other pedagogical restrictions and/or concerns such as the availability of course materials, and that an increase of 15% or 4 students would not be reasonably possible. In such case, the faculty member and the Dean or his/her designee will negotiate what accommodations, if any, might be made to best meet the needs of the students.

Compensation for students beyond the agreed to limits ("limits" being defined as class maximum plus 15% or 4 more students) will be at the rate of 20% of one overload credit per additional student.

At his/her discretion, the faculty member may, with the approval of the Dean, deem it would be in the best interests of students to elect to forego a portion of or the entire overload compensation in favor of banking the students at a one to one ratio so that a lowly enrolled course taught by the faculty member would not be canceled. The bank may be used to offset enrollments in the current semester and/or may be maintained for a period of no more than three subsequent semesters.

A.3. A faculty member who teaches an independent study shall be compensated for such independent study at the rate of 20% of one overload credit per student independent study. It is understood that any such independent study must be approved by the Dean.

...

3. The language in the part-time contract in Article XXI, Section F, became effective September 1, 1992.

4. The language in the full-time contract in Article 24, Section A.2, became effective September 1, 1999.

5. Prior to the time that the language in the part-time contract in Article XXI, Section F, was negotiated, some part-time faculty had received fewer teaching credits than full-time faculty for the same teaching assignments at the same college. For example, at Vermont Technical College, a full-time faculty member was credited with one and one-half credits for teaching a two-hour writing lab, whereas a part-time faculty member was credited with only one credit for teaching the same writing lab. Beginning

September 1, 1992, part-time faculty were credited with one and one-half credits for teaching this lab, the same as full-time faculty.

6. At the time that Article XXI, Section F, of the part-time contract was negotiated, neither full-time faculty nor part-time faculty received additional compensation or additional credit for teaching courses enrolled above the maximum class sizes.

7. There is no record of any regular practice of part-time faculty being given additional compensation or additional credit for teaching courses enrolled above the maximum class sizes, either before or after the negotiation of the language in Article 24, Section A.2 of the full-time faculty contract.

8. Since the negotiation of the language in Article 24, Section A.2 of the full-time faculty contract, some full-time faculty have received overload credits for overenrolled courses as provided in that section.

9. In the spring semester of 2007, at least two part-time faculty taught courses for which full-time faculty would have received overload credits because of the numbers of students enrolled, but the part-time faculty did not receive any additional compensation or additional credit.

10. The Employer and the Federation agree that under the language of Article XXI, Section F of the part-time agreement, part-time faculty receive the same number of credits as full-time faculty for teaching normally-enrolled sections of courses. The only matter at issue is whether part-time faculty members receive extra credit or compensation for courses on the same basis as full-time faculty when part-time faculty class enrollments fall within the definition of over-enrollment under the full-time agreement.

OPINION

The Federation alleges that the Employer violated Article XXI, Section F, of the collective bargaining agreement covering part-time faculty by assigning part-time faculty to teach overloaded courses without appropriate compensation. Article XXI, Section F, provides:

Part-time faculty shall be allotted credit for a given course taught or assignment performed which is equal to the number of academic credits or workload credits allotted to a full-time faculty member for the same course or similar work.

The Federation contends that this contract language binding the Employer to pay part-time faculty at the same credit rate as full-time faculty for the “same course or similar work” results in a requirement to pay part-time faculty additional compensation for overloaded courses. This is because, the Federation asserts, the full-time faculty contract provides for a payment of “20 percent of one overload credit per additional student” once a specified threshold above the maximum class size is reached. Accordingly, the Federation contends that the Employer is obliged to pay part-time faculty 20 percent of one overload credit per additional students for courses whose enrollments exceed the threshold described in the full-time faculty contract; otherwise, part-time faculty are not being allotted the same number of credits as full-time faculty for the same course or similar work.

The Employer contends that the part-time faculty contract is clear and unambiguous on the effect of class enrollments on additional compensation; that there is no effect and there is no linkage in the part-time faculty contract to the full-time faculty contract on that subject. The Employer asserts that, contrary to the position of the Federation, full-time faculty do not receive extra “credit” for teaching highly-enrolled

classes; rather, the full-time contract offers extra compensation to full-time faculty for the credits already being taught in the event of overloaded classes. Ultimately, the Employer contends, the amount a part-time faculty member is paid for a course under the part-time faculty contract is based strictly on the number of credits taught without increased pay for higher class sizes.

A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 72 (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). Extrinsic evidence under such circumstances is inadmissible as it would alter the understanding of the parties embodied in the language they chose to best express their intent. Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981).

The Board will not read terms into a contract unless they arise by necessary implication. In re Stacey, 138 Vt. at 71. The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts; not to make or remake them for the parties, or ignore their provisions. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

However, resort to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language is appropriate if sufficient ambiguity exists in the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). Where the disputed language is sufficiently ambiguous, it is the duty of judicial

or quasi-judicial bodies to construe a contract so as to ascertain the true intention of the parties. Grievance of Gorruso, 150 Vt. 139, 143 (1988).

In applying these rules of contract interpretation to this case, the meaning of “credits” as used in Article XXI, Section F, of the part-time faculty contract is not clear and unambiguous on its face. We conclude that sufficient ambiguity exists to warrant resort to custom or usage concerning the meaning of “credits” to inform our interpretation of Article XXI, Section F, of the part-time contract.

The meaning of “credits” established by custom or usage as applied to the workload of faculty members at the Vermont State Colleges can be ascertained by a review of prior decisions of the Board. “Credits” refer to the credit hours received per course by students towards an academic degree or, in courses or labs where students do not receive any credits, an amount of credit hours for workload purposes commensurate with the faculty effort required had the course or lab carried student credit hours. Grievance of Brandon, et al, 3 VLRB 399, 404 (1980). Grievance of VSCFF (Re: Williams), 10 VLRB 92, 97 (1987); *Affirmed*, (Sup.Ct. Doc. No. 87-84, unpublished decision, February 2, 1989). Grievance of Cotte and VSCFF, 25 VLRB 154 (2002).

This applied definition of “credits” leads to our determination that the parties intended Article XXI, Section F, to mean simply that a part-time faculty member would receive the same number of credits for a course, lab or other assignment that a full-time faculty member would receive for the same or similar course, lab or other assignment. For example, if a full-time faculty member receives three credits for teaching a three credit course and one and one-half credits for a lab, a part-time faculty member would receive the same number of credits for the same or similar work.

The practice of the parties since Article XXI, Section F, was negotiated support this conclusion. Prior to the time that the language was negotiated, some part-time faculty had received fewer teaching credits than full-time faculty for the same teaching assignments at the same college. For example, at Vermont Technical College, a full-time faculty member was credited with one and one-half credits for teaching a two-hour writing lab, whereas a part-time faculty member was credited with only one credit for teaching the same writing lab. After Article XXI, Section F, was negotiated, part-time faculty were credited with one and one-half credits for teaching this lab, the same as full-time faculty.

Article XXI, Section F, of the part-time contract is silent on, and has no applicability to, the issue whether part-time faculty receive additional compensation if they teach courses that have an overload of students. We disagree with the Federation that the provision of Article 24, Section A.2, of the full-time faculty contract allotting faculty a payment of “20 percent of one overload credit per additional student”, once a specified threshold above the maximum class is reached, requires the Employer to make the same payment to part-time faculty when the courses they teach have enrollments that exceed the threshold described in the full-time faculty contract.

The Federation contends that, if such payments are not made to part-time faculty, they are not being allotted the same number of “credits” as full-time faculty for the same course or similar work. However, Article 24, Section A.2, of the full-time contract does not result in full-time faculty receiving extra “credit” for teaching highly enrolled classes. It involves extra pay for credits already being taught rather than the awarding of extra credits. The payment of the monetary value of “20 percent of one overload credit per

additional student” represents simply the method agreed to by the parties to calculate the extra payment.

The parties to the full-time contract already had provided in Article 24, Section A.1, for the payment to full-time faculty “per credit” if their workload for a particular year exceeded the “normal individual workload” of “24 credit hours or its equivalent”. When they negotiated in Article 24, Section A.2, over the different issue of additional payment a full-time faculty member would receive for teaching an overloaded number of students in a course, the parties latched onto a percentage of the payment for an overload credit negotiated in Article 24, Section A.1 simply as a method to pay for an overloaded course. In so doing, the parties were not providing that full-time faculty would receive extra “credit” for teaching an overloaded course.

In addition, there is no record of any regular practice of part-time faculty being given additional compensation or additional credit for teaching courses enrolled above the maximum class sizes, either before or after the negotiation of the language in Article 24, Section A.2 of the full-time faculty contract. The absence of any evidence of such a practice further supports a conclusion that the parties to the part-time contract did not intend that part-time faculty receive additional compensation for overloaded courses.

In sum, the Federation has not established that the Employer violated Article XXI, Section F, or any other provision of the part-time faculty contract by assigning part-time faculty to teach overloaded courses without appropriate compensation. Thus, this grievance is dismissed.

ORDER

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

Dated this 18th day of October, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

James J. Dunn, Acting Chairperson

John J. Zampieri

Leonard J. Berliner