

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
JUNE ROSENBERG AND THE	)	DOCKET NO. 07-16
VERMONT STATE COLLEGES	)	
FACULTY FEDERATION, UPV/AFT	)	
LOCAL 3180, AFL-CIO	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On May 3, 2007, the Vermont State Colleges Faculty Federation, UPV/AFT 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 III, VII and XVIII of the collective bargaining contract between the Federation and the Employer for part-time faculty (“Contract”); by not assigning any courses to Rosenberg for the Spring 2007 semester. Grievants contended that the Employer discriminated against Rosenberg due to her union activities, acted in a manner that was arbitrary and capricious, and violated the procedures for assigning courses to part-time faculty.

The Labor Relations Board conducted a hearing on October 4, 2007, in the Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; John Zampieri and James Kiehle. Russell Mills, Federation Grievance Chairperson, represented Grievants. Attorney Nicholas DiGiovanni, Jr., represented the Employer. The Federation and the Employer filed post-hearing briefs on October 18, 2007.

FINDINGS OF FACT

1. The Federation represents a bargaining unit of part-time faculty at the four campuses of the Colleges.

2. The Contract provides in pertinent part as follows:

...

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 shall not be limited to:

1. The right . . . to determine qualifications and criteria in hiring . . . ; to hire, . . . assign . . . employees . . .

B. The application of such management rights in alleged violation of the provisions of this Agreement shall be subject to the provisions of Articles XII and XIII (Grievance and Arbitration).

...

D. No such management right or responsibility set forth or referred to in this article shall be enacted, applied, or implemented in a manner which is arbitrary or capricious or in contravention of the Agreement.

...

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 reason 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.(sic) 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 Exhibit 1)

3. June Rosenberg is a part-time faculty member at Lyndon State College. She has taught at the college since 1993 and, with the exception of one semester when she taught in the Education Department, she has taught courses in the Psychology Department. She has taught 138 total credits. She has not taught since the Fall 2005 semester. She has more seniority than most other part-time faculty members.

4. Rosenberg received a Bachelor of Arts degree in Speech from St. John's University in 1967, and a Master of Arts degree in Speech Pathology/Audiology from Queens College in 1973. Rosenberg is pursuing a doctorate degree in Educational Leadership from Argosy University. Grievance of Rosenberg and VSCFF, 29 VLRB 169, 173 (2007).

5. Rosenberg 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 Introduction to Academic Community course. Rosenberg has not been assigned any courses to teach since the Fall 2005 semester (Colleges Exhibit 6).

6. Rosenberg taught sections of the three-credit 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 6).

7. Rosenberg regularly taught sections of the three-credit 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 6).

8. Rosenberg taught sections of the two-credit Introduction to Academic Community course from the Fall 2003 semester through the Fall 2005 semester. She taught one section in Fall 2003, two sections in Fall 2004, one section in Spring 2005, and two sections in Fall 2005 (Colleges Exhibit 6).

9. Rosenberg 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.

10. Rosenberg filed a grievance concerning her lack of teaching assignments for the Spring 2006 semester. In a decision issued February 12, 2007, the Labor Relations Board determined that the Employer did not violate the provisions of the Contract by not assigning Rosenberg any courses. The Board concluded that the Employer did not violate

the procedures for assigning courses to part-time faculty, and did not discriminate against Rosenberg due to her grievance activities. 29 VLRB 12.

11. Rosenberg filed a grievance concerning her lack of teaching assignments for the Fall 2006 semester. In a decision dated July 19, 2007, the Labor Relations Board sustained the grievance to the extent it concluded that the Employer violated Article XVIII, Section F, of the Contract by not assigning Rosenberg to teach one section of the two-credit *Introduction to Academic Community* course during the Fall 2006 semester. The Board denied the grievance in all other respects. 29 VLRB 169.

12. Donna Dalton has served as the Dean of Academic and Student Affairs at Lyndon since November 2004. Dean Dalton has responsibility for final decisions on course assignments for full-time faculty, part-time faculty and administrators.

13. Among the duties of a department chairperson at Lyndon is the preparation of course offerings, schedules and assignments each semester. The chairperson recommends assignments and offerings to Dean Dalton (Joint Exhibit 1).

14. Each semester, part-time faculty members submit a completed teaching availability form in which they indicate the courses they are interested in teaching and when they are available to teach. On or around August 25, 2006, Rosenberg submitted a completed Teaching Availability form for the Spring 2007 semester. Her completed form indicated that she was “interested in teaching the following course(s)”:

EDU 2110	<i>Intro to Exceptional Populations</i>
EDU 2210	<i>Foundations of Education: Elem &amp; Special Ed</i>
EDU 3020	<i>Education Psychology</i>
EDU 3310	<i>Behavior Management</i>
EDU 3320	<i>Planning &amp; Organization</i>
EDU 4011	<i>Reading Disability</i>
EDU 4720	<i>Student Teaching Seminar</i>
ENG 1052	<i>Exposition &amp; Analysis</i>

ENG 1080	<i>Expository Speaking</i>
INT 1020	<i>Introduction to Academic Community</i>
PSY 1010	<i>Introduction to Psychology</i>
PSY 1040	<i>Human Interaction</i>
PSY 1050	<i>Human Growth &amp; Development</i>
PSY 3050	<i>Child Development</i>
PSY 3070	<i>Abnormal Psychology</i>
PSY 3110	<i>Adulthood &amp; Aging</i>
PSY 3260	<i>Adolescent Development</i>
PSY 6140	<i>Developmental Psychology</i>
SSC 1030	<i>Exploring the Social Sciences</i>

Rosenberg also stated on the availability form that she was interested in teaching “any other appropriate Psychology course”, “Any appropriate Education or Special Ed course, Tests & Measurements”, and “any communication course” (Colleges Exhibit 7).

15. Rhonda Korol, a full-time tenured faculty member in the Psychology Department at Lyndon, has served as Chair of the Social Science Team for the past several years except for the Spring 2005 semester. Among her duties as Chair of the Social Science Team has been to recommend to Dean Dalton the faculty to be assigned to teach the various sections of the course SSC 1030, *Exploring the Social Sciences*.

16. Andrea Luna is the Director of the College Writing Program at Lyndon. Among her duties are to recommend to Dean Dalton the faculty to be assigned to teach the various sections of ENG 1052, *Exposition & Analysis*.

17. Donna Keely is Director of the First Year Experience at Lyndon. She has some oversight responsibilities over INT 1020, *Introduction to Academic Community*.

18. In accordance with practice, Dean Dalton’s administrative assistant forwarded Rosenberg’s teaching availability form to the department chairpersons in the Psychology, Education and English Departments; Korol; Luna; and Keely. After submitting her teaching availability form, Rosenberg did not speak with any of these

persons about her interest in teaching the courses she listed on the form. None of these persons initiated discussion with Rosenberg about the courses. There is no evidence of any scheduling meetings in the departments in which Rosenberg had indicated availability for teaching courses.

19. Rosenberg had previously taught three courses that she specifically listed on the teaching availability form: PSY 1010, *Introduction to Psychology*; PSY 1050, *Human Growth and Development*; and INT 1020, *Introduction to Academic Community*.

20. 11 of the 19 courses specifically listed by Rosenberg were taught only by full-time faculty during the Spring 2007 semester:

EDU 2110	<i>Intro to Exceptional Populations</i>
EDU 2210	<i>Foundations of Education: Elem &amp; Special Ed</i>
EDU 3020	<i>Education Psychology</i>
EDU 3320	<i>Planning &amp; Organization</i>
EDU 4720	<i>Student Teaching Seminar</i>
ENG 1080	<i>Expository Speaking</i>
PSY 1010	<i>Introduction to Psychology</i>
PSY 1040	<i>Human Interaction</i>
PSY 1050	<i>Human Growth &amp; Development</i>
PSY 3050	<i>Child Development</i>
PSY 3070	<i>Abnormal Psychology</i>

(Colleges Exhibits 7, 8).

21. 5 of the 19 courses specifically listed by Rosenberg were not offered during the Spring 2007 semester:

EDU 3310	<i>Behavior Management</i>
EDU 4011	<i>Reading Disability</i>
PSY 3110	<i>Adulthood &amp; Aging</i>
PSY 3260	<i>Adolescent Development</i>
PSY 6140	<i>Developmental Psychology</i>

(Colleges Exhibits 7, 8).

22. One of five sections of INT 1020, *Introduction to Academic Community*, offered during the Spring 2007 semester was taught by a full-time faculty member. One



section was taught by Leo Sevigny, an administrator at the college. The remaining three sections were taught by Donna Keely, Director of the First-Year Experience.

23. The VSC Portal, an intranet system where all job descriptions in the Vermont State Colleges are posted, contains the job description for Keely's position. The job description denotes the position as "Grade 12 Exempt", meaning that Keely is exempt from coverage of the federal Fair Labor Standards Act ("FLSA"). This job description was originally posted on the VSC Portal in February 2006 by Nancy Shaw, Director of Human Resources for the Employer. Keely often works more than 40 hours per week. The Employer does not pay Keely overtime compensation when she works more than 40 hours per week because she is considered exempt from FLSA coverage (Colleges Exhibit 11).

24. During the April 19, 2007, hearing on the previous grievance filed by Rosenberg concerning her lack of teaching assignments for the Fall 2006 semester, the Employer did not introduce into evidence the above job description indicating her position as "exempt". Neither Keely's appointment letter nor the job description for her position introduced into evidence indicated that she is an administrator or that her position is classified as exempt. The content of the job description was substantively identical to Colleges Exhibit 11 discussed above (Grievants' Exhibit 1; 29 VLRB 169, 176).

25. SSC 1030, *Exploring the Social Sciences*, had full-time faculty teaching six of the eleven sections offered during the Spring 2007 semester. The remaining five sections of the course were taught by part-time faculty members Dennis Sweet, Jon Fitch

and Donna Dolan. Sweet, Fitch and Dolan had all taught this course previously. They all had less seniority as part-time faculty members than Rosenberg (Colleges Exhibits 7, 8).

26. *Exploring the Social Sciences* is a core course required of all students. It is an offering of the Social Sciences Department. It is an integrated social sciences course that examines the complex nature of human social processes associated with family and community life. It uses the methods and perspectives of the different disciplines in the social sciences – i.e., anthropology, economics, geography, history, political science, psychology and sociology. It explores different ways in which individual and family relationships are organized and structured; aspects of social stratification within communities; and the global impact of political, economic and cultural factors on the family and community life. It is taught by a social scientist from one of the disciplines (Colleges Exhibit 9).

27. Rosenberg had not previously taught *Exploring the Social Sciences*. Korol received Rosenberg's teaching availability form and was aware that Rosenberg had expressed interest in teaching the course. There were no discussions between Korol and Rosenberg about Rosenberg teaching the course. Korol was aware of Rosenberg's prior experience teaching in the Psychology Department and that Rosenberg had greater seniority as a part-time faculty member than Sweet, Dolan and Fitch. Korol and the Social Science Team determined that Rosenberg was not qualified to teach the course. Included among Korol's reasons were that Rosenberg had not previously taught the course, her academic degrees were not germane to the course, and she did not have a broad background in the social sciences. Korol was aware that Rosenberg had filed previous grievances concerning not receiving teaching assignments. Members of the

Psychology Department discussed grievances filed by Rosenberg in the context of being careful about her rights under the Contract.

28. Fitch previously was a full-time faculty member at Lyndon. He retired after many years of service. He was the “brainchild” of the *Exploring the Social Sciences* course when he was a full-time faculty member and was one of the faculty members that developed the course. Fitch’s full-time faculty service does not count towards determining seniority for appointment to courses as a part-time faculty member. 29 VLRB at 178.

29. Since 1985, Sweet has taught at Lyndon Institute on a part-time and full-time basis. Lyndon Institute is an independent secondary school. He is Social Studies Department Chair, and has taught high school level courses in United States History, Honors United States History, and Consumer Economics. Sweet has a Bachelor degree in Secondary Education from the University of Vermont, and a Master of Education degree from Lyndon State College. He has not taken graduate level courses in the social sciences. Sweet has taught *Exploring the Social Sciences* at least four semesters over two years, and has performed capably teaching the course. 29 VLRB at 178.

30. Prior to the Spring 2007 semester, Dolan had taught twelve sections of the *Exploring the Social Sciences* course from the Fall 2001 semester through the Fall 2006 semester. The course was entitled *Family and Community* prior to the Fall 2006 semester; the name of the course changed to *Exploring the Social Sciences* beginning with the Fall 2006 semester but the course content did not change. Dolan has performed capably teaching the course. During these times, Dolan was an administrator to whom the Employer was permitted under the Contract to give preference in assigning courses.

Dolan was not an administrator at the time assignments were made for the Spring 2007 semester, having left her administrator position in the Fall of 2006 (Colleges Exhibit 12).

31. ENG 1052, *Exposition and Analysis*, had full-time faculty teaching four of the fourteen sections offered during the Spring 2007 semester. The remaining ten sections of the course were taught by part-time faculty members Eileen Riley, Merle Haskins, Denise Brown, Kathleen Gold and William Biddle. All of these faculty members except Riley had either degrees in English and/or are active writers. Riley has a Bachelor degree and Masters degree in Education (Colleges Exhibits 7, 8, 13).

32. *Exposition and Analysis* is a writing course which provides an opportunity for study and practice in the principles of rhetoric, evidence, analysis, exposition and argument as the basis of college-level writing. Students are expected to analyze source material from across the disciplines. The course includes a review of grammar and research process (Colleges Exhibit 9).

33. ENG 1051, *Introduction to Writing*, is a course offered during the fall semester. It is a prerequisite for ENG 1052. Lyndon students are required to successfully complete ENG 1051 and ENG 1052 to graduate. ENG 0030 is a basic reading and writing course offered to first year students who need remedial help before they are ready to take ENG 1051.

34. Three of the part-time faculty members who taught sections of ENG 1052 in the Spring 2007 semester each had taught the course several times previously. Riley had taught eight sections of the course. In addition, Riley had taught six or seven sections of ENG 1051. Haskins had taught two sections of ENG 1052 and a number of sections of

ENG 1051. Biddle had taught five sections of ENG 1052 five times and seven or eight sections of ENG 1051.

35. Gold had taught six sections of ENG 0030. She had not taught ENG 1051 or ENG 1052. Brown had taught two sections of ENG 1051; she had not taught ENG 0030 or 1052.

36. Rosenberg had not previously taught ENG 1030, ENG 1051 or ENG 1052. She taught a graduate level grant-writing course at Lyndon prior to 2001.

37. Writing Program Director Luna and Dean Dalton had conversations concerning Rosenberg's qualifications to teach ENG 1052. They determined that she was not qualified to teach the course. They saw nothing on Rosenberg's resume to indicate that she had taught writing at Lyndon or elsewhere. They also determined that her academic degrees did not make her qualified to teach writing.

### OPINION

We first address Grievants' contention that the Employer violated Article VII of the Contract by failing to assign Rosenberg any courses during the Spring 2007 semester as a result of discrimination against her due to her grievance activities. In cases where employees claim employers 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 failure to assign her courses. 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).

Although the non-assignment of courses occurred following the filing of several grievances by Rosenberg, Grievants have not demonstrated that Rosenberg's grievance activities constituted a motivating factor in the failure to assign her courses. The Employer knew of Rosenberg's protected grievance activities. However, Grievants have not demonstrated that this knowledge resulted in the protected conduct motivating the Employer's assignments decisions. Knowledge alone is not sufficient to demonstrate that protected conduct motivated an adverse action. Grievants have not demonstrated that any of the other factors discussed above providing evidence of animus for protected conduct

existed here. Thus, we dismiss Grievants' claim of discrimination based on her grievance activities.

Grievants further allege that the Employer acted contrary to the procedures for assigning courses to part-time faculty in violation of Articles III and XVIII through not assigning any courses to Rosenberg for the Spring 2007 semester. Grievants claim violations with respect to three courses which Rosenberg specifically indicated a preference for teaching on the teaching availability form : 1) *Introduction to Academic Community*, a course previously taught by Rosenberg; 2) *Exploring the Social Sciences*, a course not previously taught by Rosenberg; and 3) *Exposition & Analysis*, a course not previously taught by Rosenberg. We will discuss each of these cases in turn.

One of the five sections of *Introduction to Academic Community* offered during the Spring 2007 semester was taught by a full-time faculty member. Another section was taught by a person the parties agree was an administrator. According to Article XVIII of the Contract, the Employer has the right to give preference to full-time faculty and administrators prior to offering courses to part-time faculty. Thus, Rosenberg had no contractual right to be assigned these two sections.

Rosenberg's claim to the remaining three sections of the *Introduction to Academic Community* course turns on whether the person who taught these sections, Donna Keely, Director of the First-Year Experience at Lyndon, is an administrator. In a previous grievance filed by Rosenberg, involving course assignments for the Fall 2006 semester, the Board determined that the Employer had not demonstrated that Keely is an administrator. The Board stated in pertinent part:

The Employer asserts that Keely is an administrator. However, neither Keely's appointment letter nor the job classification description for her position

indicate that she is an administrator or that her position is classified as “exempt”. An “exempt” classification means that the position is exempt from coverage of the provisions of the federal Fair Labor Standards Act; a professional staff member of the Employer holding such a position is an administrator. Grievance of VSCFF and Rosenberg, 29 VLRB 12, 27 (2007).

Other job classification descriptions entered into evidence for persons classified as administrators indicate that the employee occupying the position is an administrator or the position is “exempt”. Failing any other specific evidence introduced by the Employer to demonstrate that Keely is an administrator, we conclude by a preponderance of the evidence that the Employer has failed to demonstrate that Keely is an administrator. Grievance of VSCFF and Rosenberg, 29 VLRB 169, 186-87.

The Employer has corrected its failure of proof in the grievance now before us.

The Employer introduced into evidence a job description posted on the Colleges intranet specifically denoting the position occupied by Keely as “exempt”. The Employer did not introduce this job description into evidence during the hearing on the preceding grievance even though the description was applicable during the time period covered by that grievance. The Employer also presented evidence in the grievance now before us demonstrating that the Employer does not pay Keely overtime compensation when she works more than 40 hours per week because she is considered exempt from FLRA coverage. The intranet job description and the other evidence suffice to demonstrate by a preponderance of the evidence that Keely occupies a position exempt from FLSA coverage and, thus, is an administrator. Accordingly, the Employer was entitled to grant Keely preference as an administrator in assignment of courses. Rosenberg had no contractual entitlement to be assigned any sections of the *Introduction to Academic Community* course instead of Keely.

Rosenberg claims entitlement to the other two courses on the basis that sections of these courses were improperly assigned to other part-time faculty members. In situations where the Employer is selecting among available part-time faculty members to teach a



course, Article XVIII, Section F, of the Contract provides that an available teaching assignment shall be offered on the basis of: a) seniority; b) academic qualifications, including teaching ability; c) availability and stated preferences as indicated on the teaching availability form; d) experience in teaching available courses; and e) the curricular needs of the department.

Part-time faculty members Jon Fitch, Dennis Sweet and Donna Dolan taught five sections of the course *Exploring the Social Sciences* during the Spring 2007 semester. Fitch, Sweet and Dolan had all previously taught this course. They all had less seniority as part-time faculty members than Rosenberg.

In applying the standards set forth in Article XVIII, Section F, of the Contract in the grievance filed by Grievants preceding this one, the Board concluded that it was reasonable for the Employer to conclude that Fitch's far superior academic qualifications to Rosenberg for teaching the *Exploring the Social Sciences* course, along with Fitch having previously taught the course, override Rosenberg's greater seniority. 29 VLRB at 188. The Board also determined in that grievance that Sweet's experience in teaching the course took precedence over Rosenberg's seniority when considered together with their similar academic qualifications. 29 VLRB at 188-89. We reach the same conclusions in this grievance.

This leaves a comparison between Rosenberg and Dolan. Prior to the Spring 2007 semester, Dolan had taught twelve sections of the *Exploring the Social Sciences* course from the Fall 2001 semester through the Fall 2006 semester, and had performed capably. Rosenberg had never taught the course. It was reasonable for the Employer to conclude

that Dolan's extensive experience in teaching the course took precedence over Rosenberg's seniority.

In sum, the Employer did not violate Article XVIII of the Contract in making teaching assignments for the *Exploring the Social Sciences* course. The Employer also did not act in an arbitrary or capricious manner in making the assignments in violation of Article III of the Contract.

The remaining course at issue, ENG 1052, *Exposition & Analysis*, had five part-time faculty teaching 10 of the 14 sections of the course. ENG 1052 is a writing course which, along with ENG 1051, must be successfully completed by Lyndon students to graduate. Four of these part-time faculty members – Merle Haskins, Denise Brown, Kathleen Gold, William Biddle – had degrees in English and/or are active writers. Rosenberg does not possess an English degree and is not an active writer.

Haskins and Biddle each had taught ENG 1052 and ENG 1051 multiple times. Rosenberg had never taught an English course at Lyndon, and her experience in teaching a writing course was limited to a grant-writing course she had taught at least six years previously. It was reasonable for the Employer to conclude that the teaching experience of Haskins and Biddle, together with their pertinent academic qualifications, made them far superior candidates to teach ENG 1052 than Rosenberg despite her greater seniority. Rosenberg's seniority cannot override her unsuitable academic qualifications and lack of pertinent teaching experience.

We reach similar conclusions with respect to Brown and Gold. Although Gold had not previously taught ENG 1052 or 1052, she had taught six sections of ENG 0030, a basic reading and writing course offered to first year students who need remedial help

before they are ready to take ENG 1051 and 1052. Brown had not previously taught ENG 1030 or 1052, but she had taught two sections of 1051. It was reasonable for the Employer to conclude that this teaching experience of Gold and Brown, together with their pertinent academic qualifications, made them superior candidates to teach ENG 1052 than Rosenberg. The distinction in academic qualifications and previous pertinent teaching experience override Rosenberg's greater seniority as a part-time faculty member.

Eileen Riley, the remaining part-time faculty member assigned to teach ENG 1052 during the Spring 2007 semester, does not have a degree in English and was not a professional writer. She has a Bachelor degree and Masters degree in Education. However, she previously had taught eight sections of ENG 1052 and six or seven sections of ENG 1051. It was reasonable for the Employer to conclude that this extensive, targeted teaching experience made Riley a superior teaching candidate to teach ENG 1052 than Rosenberg, who lacked such experience, despite her seniority.

In sum, the Employer did not violate Article XVIII of the Contract in making teaching assignments for ENG 1052. The Employer also did not act in an arbitrary or capricious manner in making the assignments in violation of Article III of the Contract.

Thus, we conclude that the Employer did not violate the Contract by not assigning Rosenberg to teach any courses during the Spring 2007 semester, and this grievance is denied.

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 is dismissed.

Dated this 31st day of December, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Edward R. Zuccaro, Chairperson

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John J. Zampieri

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James J. Kiehle