

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
VERMONT STATE COLLEGES)	DOCKET NO. 81-2
FACULTY FEDERATION, AFT)	
LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION, ORDER

Statement of Case

On January 8, 1981, the Vermont State Colleges Faculty Federation (hereinafter "Federation") filed a petition with the Vermont Labor Relations Board alleging the Vermont State Colleges (hereinafter "Colleges") violated Articles I, III, and VI of the collective bargaining agreement effective May 1, 1979 - September 1, 1980 (hereinafter "Agreement") between the Federation and the Colleges by failing to place Janet Thorn, reference librarian at Lyndon State College, in the faculty bargaining unit rather than the staff bargaining unit.

A hearing was held April 23, 1981, in the Board hearing room in Montpelier. William G. Kemsley, Sr. and James S. Gilson were present for the Board. Chairman Kimberly B. Cheney did not take part in the proceeding. The Federation was represented by Stephen T. Butterfield. Attorney Nicholas DiGiovanni, Jr. represented the Colleges.

Briefs were filed by the Federation and the Colleges on May 14 and 15, 1981, respectively.

FINDINGS OF FACT

1. On December 18, 1973, the Vermont State Employees' Labor Relations Board certified the Federation as the exclusive bargaining agent for all full-time teaching faculty and ranked librarians employed by the Colleges. The composition of the unit has not been amended at any time (Article 1, Agreement).

2. At that time, there were two librarian positions in the faculty unit at Lyndon State College (hereinafter "Lyndon"). These were the Head Librarian and the Public Services/Reference Librarian. Suzanne Gallagher was the Public Services/Reference Librarian and carried the academic rank of Instructor.

3. In 1976, Gallagher was promoted to Assistant Professor. She retained her position as Public Services/Reference Librarian and remained there until 1978.

4. In 1978, the Head Librarian resigned and Gallagher took over the duties of Head Librarian. During the 1978-79 Academic Year, she performed the duties of both Head Librarian and Public Services/Reference Librarian. This arrangement was temporary. Gallagher agreed to perform the dual duties for a one-year period.

5. In 1979, the Vermont State Colleges Staff Federation, also affiliated with the Vermont Federation of Teachers, was certified as the representative of "all non-faculty employees", excluding managerial, confidential, supervisory, and professional employees at the Colleges.

6. Gallagher was on leave the 1979-80 Academic Year. During her absence, Janet Thorn, who had been working as a Cataloguer (a staff bargaining unit position not carrying academic rank), became Acting

Head Librarian. For that year, she was in the faculty bargaining unit and held academic rank (See Grievance of Janet Thorn, 3 VLRB 346).

7. During 1979-80, Laurel Stanley served as Reference Librarian. She did not have academic rank. During that year, she was a member of the staff bargaining unit. No claim was ever made that she should be included in the faculty bargaining unit.

8. On July 8, 1980, Lyndon President Janet Murphy wrote Thorn:

This letter is to inform you of your return to the staff of the College. You will be classified as a staff member effective September 1, 1980... Your new title is Chief Staff Librarian with the associated responsibilities of the position.

Grievant's Exhibit #6

9. The position of Chief Staff Librarian had not existed prior to July 8, 1980.

10. Beginning in July, 1980, the Colleges and the Staff Federation negotiated a system-wide classification plan covering all employees represented by the Staff Federation. This system was negotiated between July and December of 1980. Until the completion of negotiations, each College used a variety of "local" titles for different positions. "Chief Staff Librarian" was one such local title.

11. On July 11, 1980, Lyndon advertised in the help wanted section of the Caledonia Record for "Reference Librarian, staff position. Starting Date: September 1, 1980." (Grievant's Exhibit #8).

12. On July 19, 1980, Linda Sherbrook applied to Lyndon State College for employment in the Library (Grievant's Exhibit #10).

13. On August 6, 1980, Sherbrook was informed by Janet Thorn, then Acting Head Librarian of the Lyndon Library:

Thank you for applying for our reference opening. Because of the professional nature of the job, we have given the position to a person within our staff with more specifically appropriate library experience.

14. Suzanne Gallagher returned to her position as Head Librarian September, 1980.

15. During Academic Year 1980-81, Laurel Stanley continued to serve as Reference Librarian at Lyndon.

16. On September 5, 1980, Lyndon Academic Dean James Graby acknowledged that Janet Thorn had "voluntarily agreed to provide certain public service activities in the Library". He further informed her that in her capacity as Chief Staff Librarian, she "will undertake such duties as may be delegated from time to time by Ms. Gallagher." (Grievant's Exhibit #5).

17. The duties performed by Janet Thorn during Academic Year 1980-81 included some of the duties formerly performed by the Public Services/Reference Librarian. In this position, she did not carry an academic rank.

18. The Head Librarian is the only Librarian position at Lyndon recognized by the Colleges as belonging to the faculty bargaining unit.

19. The relevant portions of the Agreement are as follows:

Article I: Recognition

The Vermont State Colleges recognizes the Federation as the exclusive bargaining agent for all full-time teaching faculty and ranked librarians employed by the Colleges...

Article III: Definitions

The term 'rank' as used in this Agreement means anyone of the four academic ranks of Instructor, Assistant Professor, Associate Professor, and Professor. These ranks apply to all librarians included in the bargaining unit equally with all classroom faculty.

Article VI: Management Rights

1. A. The right to classify and reclassify personnel, except that no faculty member's title shall be changed without his consent, which shall not be withheld unreasonably, and that assignment of faculty members to non-supervisory duties or job titles not in existence at the time of the election of the collective bargaining agent shall not be used to remove the employee and/or the job title from the unit.

OPINION

The Federation alleges that the failure of the Colleges to award Janet Thorn faculty status when she was reassigned following completion of her one-year tenure as Acting Head Librarian violated the Agreement by removing her and the position she was assigned to from the bargaining unit.

Article VI, Agreement provides:

Assignment of faculty members to non-supervisory duties or job titles not in existence at the time of the election of the collective bargaining agent shall not be used to remove the employee and/or the job title from the unit (emphasis added).

First, the Federation contends Janet Thorn was a faculty member and, thus, the assigning of her to a staff position upon completion of her term as Acting Head Librarian was a violation of the Agreement as it removed her from the faculty bargaining unit.

Article I, Agreement, defines the faculty unit as "all full-time teaching faculty and ranked librarians..." Article III, Agreement, defines "rank" as "anyone of the four academic ranks of Instructor, Assistant Professor, Associate Professor, and Professor.

We do not find Janet Thorn to be a ranked librarian and thus a member of the faculty unit. Thorn carried no academic rank prior to Academic Year 1979-80. Thorn was a ranked librarian the year she

served as Acting Head Librarian (1979-80). Grievance of Janet Thorn and the Vermont State Colleges Faculty Federation, AFT Local #3180, AFL-AFL-CIO, 3 VLRB 346 (1980). She was, however, in the Head Librarian position clearly on a temporary basis. It was understood by all parties that Suzanne Gallagher would resume the position upon return from her leave of absence. When Thorn completed her appointed term as Head Librarian, her designated academic rank ended also. The academic rank went with the position, not the person. She no longer enjoyed faculty status and the Colleges did not violate the Agreement by reassigning her to a staff position.

The Federation further contends that in the position she was reassigned to, "Chief Staff Librarian", Thorn, in fact, performed the duties the Public Services/Reference Librarian had historically performed, and that since the Public Services/Reference Librarian position was a faculty unit position, Thorn should be awarded faculty status. Thus, the Federation alleges the Colleges have violated Article VI, Agreement, by changing the job title and removing the position from the faculty unit. It is argued the duties of the respective positions are the same, only the job titles differ.

We cannot accept this argument for two reasons. First, the duties performed by Thorn as "Chief Staff Librarian" included some of the duties formerly performed by the Public Services/Reference Librarian, but the evidence presented does not indicate that she performed all or most of the duties formerly done by the Public Services/Reference Librarian. Second, while the Public Services/Reference Librarian position at one time had been included in the faculty unit, the time to grieve

its removal from the unit had long since passed. The Agreement provides grievances must be filed within 30 calendar days following the time at which the complainant(s) could have reasonably been aware of the existence of the situation created by the College which is the basis of the complaint. The faculty unit actually lost a position back in 1978 when Suzanne Gallagher assumed the dual duties of Head Librarian and Public Services/Reference Librarian. One faculty member assumed duties previously held by two faculty members. If Article VI was violated, it was at that time and should have been grieved then.

For the foregoing reasons, we do not find the Colleges violated the Agreement by placing Janet Thorn in the staff bargaining unit rather than the faculty unit.

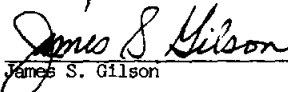
ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, the grievance of the Vermont State Colleges Faculty Federation, AFT Local #3170, AFL-CIO, is ordered DISMISSED and is DISMISSED.

Dated this 18th day of June, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


William C. Kemsley, Jr.


James S. Gilson