

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
ESTHER SWETT AND THE)	DOCKET NO. 80-56
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT)	
LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 29, 1980, the Vermont State Colleges Faculty Federation (hereinafter "Federation") filed a petition with the Vermont Labor Relations Board on behalf of Esther Swett (hereinafter "Grievant"). This grievance concerns the non-reappointment of Grievant, a first-year faculty member, to the position of Instructor of Nursing at Castleton State College. Grievant alleges that the Vermont State Colleges (hereinafter "Colleges") violated the collective bargaining agreement negotiated by the parties (hereinafter "Agreement") and the Colleges' rules and regulations in failing to reappoint her.

A hearing on this matter was held December 18, 1980, in the Board hearing room in Montpelier. Members Kimberly B. Cheney and Robert H. Brown were present. Grievant was represented by Federation Grievance Chairperson Stephen T. Butterfield. Counsel Paul K. Sutherland represented the Colleges. Briefs were filed by the Colleges and the Federation on January 15 and 16, 1981, respectively.

FINDINGS OF FACT

1. On March 19, 1979, Castleton State College advertised a job vacancy for a full-time Instructor of Nursing. Qualifications were listed as "a Bachelor's Degree in Nursing and a Master's Degree required".

(Grievant's Exhibit #1)

2. Grievant held a Bachelor of Arts Degree in Nursing and a Master's Degree in Education.

3. Grievant applied for the position and was hired on May 1, 1979.

4. Article XXIII, Agreement, reads in part:

Applications for employment to fill full-time positions shall go to the Dean or designated administrator, who after preliminary evaluation shall forward all applications to the appropriate divisional or departmental committee... Applicants shall be interviewed by the divisional or departmental committee, and the Dean, and all recommendations shall be forwarded to the President.

5. Grievant was never interviewed by the Academic Dean, William Feaster.

6. In the letter appointing Grievant, President Donald Wilson stated:

"Your appointment will begin on August 26, 1979, and end following Commencement 1980". (Grievant's Exhibit #3)

7. Article XXIII, Agreement, states that upon initial appointment, the notice of employment shall include: "...If applicable, a statement that the appointment is terminal."

8. No such statement accompanied the notice of employment sent to Grievant. Thus, we find that her appointment was not terminal within the meaning of Article XXIII.

9. The Nursing Department at Castleton State College administers both an associate and baccalaureate program.

10. Grievant's contract did not specify that she was hired to teach in either the associate or baccalaureate programs within the Nursing Department.

11. In fact, Grievant taught only courses in the Associate Degree Nursing Program; specifically, the introductory course, Fundamentals of Nursing.

12. Thomas Meier became President of Castleton State College in the Fall of 1979; Rose Marie Beston became Academic Dean in January, 1980.

13. Article XXIII, Agreement, specifies the procedure required for notifying a first year faculty member that his/her contract shall not be renewed. The procedure requires written notification of non-reappointment no later than March 1 of the first year of service.

14. There is no requirement that reasons for non-reappointment be given after one year of service.

15. On February 26, 1980, Grievant received written notification of her non-reappointment from President Meier (Grievant's Exhibit #4).

16. Subsequent to her receipt of notice of non-reappointment, Grievant asked President Meier the reasons for her non-reappointment. President Meier informed Grievant that the reason he did not reappoint her beyond her first year as an Instructor in Nursing was that she did not have her Master's Degree in Nursing.

17. President Meier felt that a Master's Degree in Nursing was important for two reasons:

- a. It represented a high level of training for an instructor, particularly in clinical aspects of nursing, from which nursing students would clearly benefit.
- b. It was considered an indication of program quality by the National League of Nursing to whom Castleton State College would be looking for accreditation of its Baccalaureate Nursing Program.

18. Castleton State College does not have an accredited Baccalaureate Nursing Degree Program.

19. The current lack of an accredited Baccalaureate Nursing Program is considered by President Meier and Dean Beston to be a serious deficiency in the current academic offerings of Castleton State College. Both feel that an accredited Baccalaureate Nursing Program is necessary to upgrade the academic standards and offerings of the College.

20. It is a primary goal of both President Meier and Dean Beston that Castleton State College obtain accreditation for its Baccalaureate Nursing Program at the earliest possible date.

21. Curriculum planning for accreditation in the Baccalaureate Nursing Program began under the direction of Dean Beston shortly after she assumed her position as Dean in January, 1980.

22. There were, in February of 1980, nine faculty in the Department of Nursing at Castleton State College. Of those nine, there were six, including Grievant, who did not have Master's Degrees in Nursing. Of those six without Master's Degrees, only two, Grievant and Maureen Brancley, were untenured. Ms. Brancley, along with Grievant, was notified of her non-reappointment by President Meier in February, 1980.

23. Under Article XXIV, Agreement, tenured faculty are entitled to continuing employment unless dismissed for cause.

24. By failing to reappoint Grievant and Ms. Brancley, President Meier took advantage of the only opportunity he had, short of creating new positions within the Department of Nursing, to make room for new faculty members in Nursing who could better meet the requirements of accreditation for the Baccalaureate Nursing Program.

25. Grievant's position as instructor in the Department of Nursing has been filled by Ruth Blauer. Ms. Blauer does have a Master's Degree in Nursing.

26. President Meier alone has the authority to make reappointment decisions at Castleton State College. Although he is required to receive and consider the recommendations of his Academic Dean and faculty committee, all final decisions on reappointment are his individual responsibility.

27. In President Meier's first year in office as President of Castleton State College, there were nine cases of first year faculty members in which a decision of whether to reappoint or not had to be made. Of those nine cases, only five were reappointed, and all five had terminal degrees in their respective fields. Since he has become President, President Meier has reappointed no faculty member who did not have a terminal degree.

OPINION

Interview at Time of Appointment

The first issue before us is whether Article XXIII (2), Agreement, was violated by the Colleges. This article provides that applicants for employment shall be interviewed by the Dean. Grievant was not interviewed by the Dean before she was hired. The Federation contends this contractual violation caused Grievant harm in this case. They reason that had Grievant been interviewed by the Dean at the time of hire, she would have had the opportunity to question him about possible future changes in the degree requirements for the job. The Federation alleges that by not giving her this opportunity, and by not informing her that degree requirements may be changed, the Colleges hired her under false pretenses; they advertised for one qualification and then imposed another.

We find this argument by the Federation lacks merit on two counts. First, if Grievant was concerned that the lack of an interview left her unknowledgeable about what would be expected of her in order to be

reappointed, she should have grieved the contract violation as soon as her appointment became effective. Article XIX, Agreement, provides that "complaints must be registered within 30 calendar days...following the time at which the complainants could have reasonably been aware of the existence of the situation created by the College which is the basis of the complaint." Grievant could have been reasonably aware that she was entitled to an interview by perusing the contract, which she was given at the time of her appointment.

Second, even if an interview had been given, nothing said there about future degree requirements would have given her vested rights beyond those contained in the one year appointment letter. The nature of a one-year appointment is such that there is an implied recognition that the Colleges have the right to change the standards faculty must meet in order to be reappointed. We see nothing in the contract which explicitly or impliedly limits the Colleges' right not to reappoint a person, or to change the job qualifications. Grievant was not hired by fraudulent means. She was given the one-year job as it was advertised, nothing more, nothing less.

Non-Terminal Appointment

The Federation argues that because Grievant's appointment was not terminal, she was entitled to presume that, if she performed well and if the position remained in existence, her contract would be renewed. This argument extends well beyond the actual contractual language.

Article XXIII, under the section entitled Reappointment, states in part:

"Reappointment is presumed unless there is written notification of non-reappointment no later than (a) March 1 of the first year of service... In all cases of non-reappointment, written notice of reasons shall be given after the third full year of service."

The College is thus required to notify the first-year faculty member of non-reappointment. The distinction between a terminal appointment as referred to in Article XXIII and Grievant's status, then, is the requirement that notice of non-reappointment be given. Giving of that notice ends the presumption of re-hire. Moreover, the employer is not required to supply written notice of the reasons for non-reappointment. If the Grievant's position were correct, we expect the parties would negotiate some provision requiring reasons to be given if a "presumed" re-appointment was not made. The intent of the parties is clearly to allow the President full discretion in reappointment decisions of first and second-year faculty. Given this contract language, we find that Grievant was not entitled to presume reappointment if she performed well, but only to presume reappointment unless given a timely notice to the contrary.

Consideration of Effective Teaching

Article XXII, Agreement, reads in part:

Evaluations of faculty shall be used for the purpose of improving instruction and to aid in determining whether a faculty member shall be promoted, reappointed, non-reappointed, or tenured. Effective teaching should be the most important element, but other factors, such as availability to students, professional development, additional contributions to the College, and contributions to professional organizations, should also be considered.

The Federation argues that the language of this Article implies a major responsibility on the College's part to give priority to effective teaching in considering whether or not to reappoint a faculty member. The Federation also cites the Faculty Handbook (Joint Exhibit #2) which states:

"Teaching is recognized as the most important activity to be considered in the evaluation process." (page 3)

The Federation argues that the Colleges violated both Article XXII, Agreement, and the Faculty Handbook by imposing possession of a terminal degree in nursing as a requirement for her reappointment. They contend that this requirement is unrelated to effective teaching in a Fundamentals course such as that taught by Grievant.

We find that the Colleges did not violate either the Agreement or the Handbook concerning this matter. The Agreement and the Handbook clearly provide that effective teaching is the most important element to be considered in the evaluation process.

We agree with the Federation that effective teaching should be given predominant weight in performance evaluations. But evaluations are not the exclusive determinant of faculty legal rights to job security. The type of appointment, as in this case, may be more significant. The evaluation must measure the individual's performance, but that measure may be used for a variety of purposes. As our Supreme Court noted in Vermont State Colleges Faculty Federation and Michael Peck v. Vermont State Colleges ___ Vt ___, evaluations may be important to non-reappointed instructors in finding employment elsewhere. Moreover, if an instructor were given a bad evaluation based on great weight given to non-teaching factors, that negative assessment would violate the Agreement. An instructor is entitled to a performance evaluation stressing teaching effectiveness, not something else. Such an evaluation may be an invaluable aid to further employment. It does not, however, guarantee reappointment.

The President, in reappointment decisions of first and second-year faculty, must use the evaluations of the faculty members in determining

whether s/he is to be reappointed. However, given the nature of such appointments, the President has discretion to consider factors beyond the effective teaching of an instructor in a particular course and to make decisions based on the academic offerings and standards of the College as a whole. In the case before us, President Meier was under no obligation to rehire Grievant no matter how highly her teaching effectiveness was rated.

We do not find that the Colleges have discriminatorily applied a "rule". The Handbook, in fact, does not state what criteria will be employed in reappointment cases short of tenure. The President, by virtue of the silence of the Handbook and Agreement, is given full discretion in what criteria he will employ in his decision-making. Apart from the fact that the Handbook is silent on the terminal degree issue and hence we cannot find a "rule" that was arguably violated, there is no evidence before us that President Meier reappointed anyone in Spring, 1980 without a terminal degree. Nine instructors were up for reappointment that Spring; the five who were reappointed all had terminal degrees. Thus, we find no discriminatory application of a rule.

ORDER

For the foregoing reasons, it is hereby ORDERED that the grievance of Esther Swett and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, be dismissed.

Dated this 24th day of February, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


Robert H. Brown

*Approved by
Sup. Ct.
June 82*