VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 83-27
WARREN KIMBLE	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 19, 1983, the Vermont State Colleges Faculty Federation, AFT Local #3180, AFL-CIO ("Federation") filed a grievance with the Vermont Labor Relations Board on behalf of Professor Warren Kimble ("Grievant"). The grievance alleged the Vermont State Colleges ("Colleges") violated Articles 20,22 and 38 of the collective bargaining agreement between the Federation and the Colleges effective for the period September 1, 1982 - August 31, 1984 ("Agreement") by evaluating Grievant for tenure in his eighth year of full-time service with the Colleges, since the Agreement provides faculty members must be evaluated for tenure in their sixth year of full-time teaching service. The grievance requested Grievant's tenure evaluation and subsequent tenure denial be rescinded, and that the Colleges recognize Grievant as a tenured faculty member. Alternatively, if the Board finds that presumption of tenure cannot be sustained, the grievance requests the Federation and Grievant be made whole for any and all damages caused by the Colleges' procedural error in failing to observe contractually agreed-upon deadlines for evaluating and notifying Grievant of his tenure status.

A hearing was held before the full Board on December 6, 1983. The Colleges were represented by Attorney Paul Sutherland. Dr. Stephen Butterfield, Federation Grievance Chairperson, represented Grievant.

Requested Findings of Fact and Memoranda of Law were filed by the Federation and the Colleges on December 27, 1983, and January 3, 1984, respectively. A Reply Brief was filed by the Colleges on January 9, 1984. No reply brief was submitted by the Federation.

FINDINGS OF FACT

1. Grievant was first employed by Castleton State College ("Castleton" for the 1971-72 academic year as a full-time Instructor of Art (Grievant's Exhibit 1). Grievant took the teacher's oath required of every new full-time faculty member.

2. Grievant was placed on half-time schedule and compensation for Fall 1972 and served full-time for the Spring semester of 1973. Thereafter, from Fall 1973 through Spring 1977, Grievant taught every semester at half-time. The half-time appointments differed from normal part-time employment in these respects: Grievant was paid half of a full-time salary plus fringe benefits, whereas normal part-time employment pays $900 per course, without benefits. In addition, Grievant performed duties normally expected of full-time faculty, such as advising students, attending faculty meetings, serving on committees and holding office hours. Normally, part-timers are not obligated to perform these duties. Grievant's service to the College, on either full or half-time appointments, was uninterrupted from 1971 through the 1977 Spring semester (Grievant's Exhibits #2-10).

3. Grievant was not on a leave of absence during the break in his full-time teaching service which occurred in Fall 1972 and from Fall 1973 through Fall 1977, and did not request a leave of absence.

4. Grievant was included as a faculty bargaining unit member in 1973 and voted in the election of a collective bargaining agent for that unit in 1973. Grievant voted on the ratification of every collective bargaining agreement negotiated by the Federation and the Colleges, and was a member of the Federation, from 1973 through 1983.

5. In July, 1977, Grievant was hired as a full-time faculty member for the entire 1977-78 academic year. In the letter informing Grievant of his appointment, Castleton President Donald Wilson informed Grievant: "Continued professional development and accomplishment will be expected of you, including the completion of your Master's Degree by June of 1979". The Colleges provided Grievant with a copy of the current collective bargaining agreement and administered the Teacher's Oath to him upon his appointment (Grievant's Exhibit 11, Colleges' Exhibit L).

6. For the period from Fall, 1977, through Spring, 1983, Grievant received continuous one-year appointments as a full-time faculty member at Castleton (Grievant's Exhibits 11, 14, 15, 17, 18, 21).

7. On October 4, 1977, Castleton Academic Dean William Feaster informed Grievant that he was "(s)cheduled for review this year... for 1st year reappointment." (Grievant's Exhibit 12).

8. In the Fall, 1977, Grievant informed Dean Feaster that he would like to be considered for promotion to assistant professor for the following reasons:

> 1. This is my seventh year at CSC; 2 1/2 years as a full-time faculty member and 4 1/2 at half-time.
>
> 2. Article XXV, Promotion - Automatically during a faculty member's third year at the rank of instructor in accordance with Article XXII. I have been an instructor for seven years.
>
> (Grievant's Exhibit 12)

9. At the time Grievant applied for promotion, the Colleges' Administrative Policy and Criteria on Promotion required a minimum of three years teaching in preceding rank with the Colleges prior to being promoted to Assistant Professor (Colleges' Exhibit Q). However, the Colleges had then and have now a practice of allowing "early" promotion at times; that is, promoting faculty who had not met the minimum number of years requirement in preceding rank (Grievant's Exhibit 12).

10. The Castleton Committee on Promotion, Retention and Tenure recommended by a January 31, 1978, letter to Castleton President Donald Wilson "the early promotion of (Grievant) from Instructor to Assistant Professor". The Committee stated:

> In view of the fact that (Grievant) has already taught at Castleton part or full-time since 1971, it would seem appropriate that this request be favorably reviewed since it is supported by much positive input.
>
> (Grievant's Exhibit 13)

11. On March 4, 1978, Castleton Academic Dean William Feaster recommended the reappointment of Grievant and "early" promotion to Assistant Professor. In his letter of recommendation, Dean Feaster referred to Grievant as "First Year Faculty" and stated he had encouraged Grievant to pursue a Master's Degree, preferably a Master's of Fine Arts Degree. Feaster's recommendation suggested Grievant's letter of appointment indicate that the "completion of a Master's Degree, preferably an M.F.A., is necessary for continued promotion and the granting tenure" (Colleges' Exhibit E).

12. The Committee's January 31, 1978, recommendation and Dean Feaster's March 4, 1978, recommendation were placed in Grievant's personnel

file. Grievant reviewed the contents of his personnel file on November 8, 1979 (Colleges' Exhibit D).

13. By November 8, 1979, at the latest, Grievant knew or should have known the Colleges considered his 1977 appointment to be a first-year appointment placing him on the tenure track (Grievant's Exhibit 12, 13; Colleges' Exhibit E).

14. President Wilson approved the promotion of Grievant to Assistant Professor and his reappointment. The letter of reappointment given to Grievant by Wilson for the 1978-79 academic year did not indicate the completion of a Master's Degree was necessary for the granting of tenure (Grievant's Exhibit 14).

15. At some point during the Spring Semester, 1978, Dean Feaster, in a discussion with Grievant, informed Grievant of his need to earn a Master's Degree in order to be granted tenure. Grievant informed Feaster he was searching for the right place to matriculate (Colleges' Exhibits F, I).

16. On February 12, 1979, Grievant, in a letter to President Wilson and Dean Feaster, informed them he had been "rigorously investigating all possible MFA and MA programs for the past year and a half", but that none of the programs were feasible. Grievant further stated:

> I will certainly investigate the possibility of the availability of faculty development funds as you suggested.
>
> I am greatly relieved to know that you agree that I have done everything to comply with your desire that I get the MFA by 1980; but at this time, this seems an impossibility.
>
> (Colleges' Exhibit K)

17. On March 27, 1980, Castleton President Thomas Meier awarded Grievant $1,725 from the faculty development fund. The letter from

President Meier so informing Grievant provided:

> This grant is made to support your efforts to obtain the Master of Fine Arts degree from Goddard College. The completion of your degree is a high priority both for you and the institution and I trust this award will give you the needed impetus to finish your work.
>
> (Colleges Exhibit H)

18. Grievant informed President Meier on April 1, 1980, he was accepting the award (Colleges' Exhibit H).

19. At some time during the Spring Semester, 1980, but prior to March 27, 1980, President Meier and Academic Dean Rose Marie Beston told Grievant, during a discussion with him, of the need for him to obtain a Master of Fine Arts degree in order to be granted tenure. President Meier and Dean Beston stressed to Grievant during this meeting that the purpose of giving Grievant faculty development funds was that he obtain a Master's Degree in order that he be granted tenure.

20. At an art show Grievant had at Castleton, which may have been in 1980, one of the pieces of art he did was a painting entitled "Monotony". The painting was modeled after the game "Monopoly". The painting had a "Meier Avènue" and a "Beston Place" and the "player" had to get past Meier Avenue and Beston Place in order to get tenure.

21. On December 31, 1980, and March 15, 1982, Dean Beston circulated to all faculty, via campus mail, a 10-year faculty staffing plan. These documents are labeled "Tenure Decision" and lists Grievant's name under "Spring 1983". Grievant did not receive or see this plan (Colleges' Exhibit B, C).

22. On August 14, 1981, Dean Beston recommended Grievant for reappointment. In the recommendation, Dean Beston stated: "Does not

possess an appropriate terminal degree; was informed by me in an interview in March 1980 that he must have an MFA in order to fulfill this one minimum criterion for tenure" (Grievant's Exhibit 19). This recommendation was placed in Grievant's personnel file.

23. None of the documents referred to above informing Grievant of the need for a terminal degree explicitly state when he would be reviewed for tenure or whether he would be credited for the years 1971-73.

24. Counting the 1971-72 academic year and the 1973 Spring Semester, Grievant's sixth full-time year at Castleton was completed in the Fall Semester of 1981. He was not informed by the Castleton Administration during this year that he had been granted or denied tenure, or that his seventh year was his last.

25. In 1981, the Vermont Council on the Arts had a position open up for which Grievant may have been eligible. Grievant did not apply for the position.

26. In 1981, Grievant was aware there was a specific procedure at Castleton for review of faculty members for tenure. Grievant is not aware of any specific faculty members who were tenured without undergoing this review.

27. Grievant did receive a reappointment letter on July 10, 1981, for the 1981-82 Academic Year from President Meier (Grievant's Exhibit 18). The reappointment letter was the same form letter as those sent to tenured faculty. There is nothing in the reappointment letter used for tenured facutly to distinguish it from the untenured appointments.

28. A recommendation by Associate Academic Dean Donald Wharton, dated January 26, 1982, that Grievant not be promoted to Associate

Professor, contained the following statement: "(Grievant) has been told (by Dean Feaster in 1978 and by Dean Beston in 1980) that he must have the terminal degree in his field in order to meet the criteria for promotion and tenure" (Colleges' Exhibit M). This recommendation was placed in Grievant's personnel file.

29. Grievant reviewed the contents of his personnel file on March 23, 1982 (Colleges' Exhibit D).

30. On August 20, 1982, in recommending Grievant for reappointment, Dean Beston stated: As he begins his sixth year of teaching at Castleton, (Grievant) should prepare himself for tenure consideration by: 1. Completing the terminal degree in his field, an MFA..." (Colleges' Exhibit P). Dean Beston's recommendation was placed in Grievant's personnel file.

31. On October 14, 1982, Dean Beston informed Grievant that he was "(s)cheduled for review this year for...tenure" (Grievant's Exhibit 22).

32. By letter dated October 18, 1982, Grievant requested of Dean Beston that the tenure review initiated October 14, 1982, be withdrawn. Grievant stated:

> My sixth year of full-time teaching service was completed in May 1981, or Dec. 1981, depending on whether we count 1972-73 as a full year or a single semester (my position is that it counts as a full year). As I was not informed at the end of that year that my seventh year at Castleton was my last, I assumed that I was tenured. To review me at this time is therefore untimely, and I respectfully request that the review initiated Oct. 14 be withdrawn.
>
> (Grievant's Exhibit 23)

33. On October 29, 1982, Dean Beston informed Grievant by letter that she was denying his request. Dean Beston informed Grievant:

> "Your initial full-time appointment for tenure purposes was 1977-78. While you did work at the college since 1971, that prior service, consisting mainly of part-time work, does not count toward tenure. This is true even though you did some limited full-time work in 1971 and 1973 as well, since, for one thing, you were never reappointed into full-time work after such service"
>
> (Grievant's Exhibit 24).

34. An August 14, 1981, recommendation for reappointment of Grievant by Dean Beston dates Grievant's original appointment as August 16, 1971 (Grievant's Exhibit 19). Two recommendations by Associate Dean Wharton, on January 26, 1982, and August 11, 1982, (Colleges' Exhibits M, O), one by Dean Beston, on August 20, 1982 (Colleges' Exhibit P), and one by Dean Feaster on March 4, 1978 (Colleges' Exhibit E), date Grievant's original appointment as August 29, 1977. All of these recommendations were placed in Grievant's personnel file.

35. The 1982-83 Castleton State College Bulletin, an official Castleton publication, lists all full-time faculty with their original year of appointment. This catalog lists Grievant's original year of appointment as 1971 (Grievant's Exhibit 26).

36. The 1982-84 Agreement between the parties provides for a salary scale, on which faculty are given points for years of full-time service to the Colleges. Early in 1982, a joint Committee of Federation and Vermont State Colleges representatives examined faculty claims for points and detemined how many points would be awarded to each faculty member. Grievant was awarded points on this scale for his full-time service in 1971-72 and Spring 1973; his current salary is based on these points.

37. On March 28, 1983, President Meier informed Grievant that, after review of Grievant for tenure at all appropriate levels on campus,

he would not be granted tenure, stating "(T)he reason for the denial of tenure is that you did not meet the criteria of academic credentials and professional growth as required in the VSC Adminstrative Policy on Tenure." (College's Exhibit J).

38. Grievant has never obtained a Master's of Fine Arts degree.

39. At the time of the hearing on this matter, Grievant was 48 years old. In December, 1981, Grievant was 46.

40. Grievant contends that he is less employable at age 48 than he was in December, 1981, at age 46; that the most logical place for him to seek employment would be at a secondary school which would be less likely to hire him now relative to 1981 because of his advancing age and accumulating experience. Grievant maintains most school districts would be required by contract to place him at the top of their salary scale because of his experience and academic credits in excess of a Bachelor's degree and they would be more likely to hire younger teachers with less experience. Based upon a preponderance of the evidence, we are unable to conclude secondary schools would not have discretion in giving Grievant credit for his prior experience and academic credits and determining where he would be placed on a salary scale.

41. The Agreement provides, in pertinent part, as follows:

> ARTICLE 20
> APPOINTMENT, REAPPOINTMENT AND REVIEW
>
> ...Reappointment is presumed unless there is a written notification of non-reappointment no later than (a) March 1 of the first year of service, (b) December 15 of the second year of service, (c) September 1 of all succeeding years, or unless the appointment is terminal.

ARTICLE 22

TENURE

> ...The Colleges may grant tenure in accordance with the following: during a faculty member's sixth year of full-time teaching service with the Colleges and after consideration of the evaluation of the faculty member in accordance with the provisions of Article 19, Faculty Evaluation, a College shall notify the faculty member that the next year (his/her seventh) is his/her last one-year appointment or that he/she is tenured.

ARTICLE 38

UNPAID LEAVES OF ABSENCE

> Faculty taking unpaid leave of absence shall retain rank, tenure status, and credit for years of service for purposes of promotion, tenure, salary, layoff and early retirement. While on unpaid leave of absence, faculty shall not be credited with any time of service for purposes of promotion, tenure, sick leave or early retirement.

42. President Meier interprets the sixth-year provision of Article 22 of the Agreement to mean six consecutive years of full-time teaching service unless the faculty member has been granted an unpaid leave of absence pursuant to Article 38 of the Agreement. He has made no exception to this interpretation in the five years he has been president.

OPINION

A. Timeliness of Grievance

Before reaching the merits of this dispute, we first decide whether this grievance should be dismissed on timeliness grounds, as maintained by the Colleges.

It is Grievant's position that his one and one-half years of full-time teaching service at Castleton prior to 1977 should have been included by Castleton in determining when he would be reviewed for tenure, and that therefore the sixth year tenure review process should have been completed by May or December, 1981. Grievant maintains that when he was not informed by these dates that he was not going to receive tenure, he assumed he was tenured.

The Colleges contend that if Grievant is taken at his word, and it is accepted that he really did expect to be reviewed for tenure in 1981, it necessarily follows that he had a clear obligation to grieve in 1981 the fact that he was not scheduled for review when he thought he should have been. The Colleges base their argument on the contractual provision which requires that grievances be brought "within thirty (30) calendar days after the grievant could reasonably have been aware of the alleged violation". Article 14(c), Agreement between Colleges and Federation effective May 15, 1981 - August 31, 1982. If Grievant really did expect to be reviewed for tenure in 1981, the Colleges maintain he should have grieved under this section when it became apparent no review was forthcoming, and his failure in this regard should result in dismissal of the grievance.

We do not believe Grievant had an affirmative duty to grieve in such a situation. An employee is not required to file a grievance if doing so will put him/her in a worse position. A grievance is defined as an "expressed dissatisfaction... with aspects of employment, or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation". 3 VSA §902(14). Thus, if an employee is not dissatisfied with a situation, s/he has no affirmative duty to grieve it.

The Colleges took no action in 1981 with which Grievant was dissatisfied. Grievant would have placed himself in a worse situation in 1981 if he grieved lack of a tenure review. The Colleges had warned Grievant he would need a terminal degree in order to receive tenure. He had no such degree in 1981, and the longer it took the Colleges to review him for tenure, the more advantageous it was for him. More time was given to him to receive his degree.

Further, we will resolve an issue on the merits if at all possible unless the Contract requires it to be dismissed on procedural grounds. Grievance of Gordon Amidon, 6 VLRB 83, 85 (1983).

B. Merits

Grievant alleges violations of Articles 20, 22 and 38 of the present collective bargaining agreement between the parties, effective September 1, 1982 - August 31, 1984, and contends he should be presumed tenured. Grievant maintains that he was evaluated for tenure in his eighth year of full-time teaching service with the Colleges, in violation of Article 22 which provides faculty members shall be reviewed for tenure in their sixth year of full-time teaching service and notified

that the next year (his/her seventh) is his/her last one-year appointment or that s/he is tenured. Since he was neither evaluated during his sixth year nor notified that year that tenure was denied, and since Grievant employment was carried beyond the seventh year, Grievant contends he should be presumed tenured because Article 20 provides reappointment is presumed unless otherwise notified.

An issue of contract interpretation is involved in this dispute: whether Grievant's one and one-half years of full-time teaching service prior to 1977 should have been counted by the Colleges toward the six-year waiting period for tenure. Grievant contends they should have been counted. Grievant maintains that nowhere in the Agreement does it say that these six years must be contiguous, and if the parties had intended that the six years must be contiguous, they would have negotiated language which used the word 'contiguous'. The Colleges interpret the Agreement to provide that, absent a leave of absence granted pursuant to Article 38 of the Agreement, the tenure review should occur in the sixth year of full-time continuous service.

Whatever may be the correct interpretation of the Contract, it is clear that no action by the Colleges, in reviewing Grievant for tenure in 1982-83 rather than 1981, prejudiced him in any way. In fact, the Colleges' actions were advantageous to him; particularly if a procedural error will by some alchemy be converted into a terminal degree: a proposition we have steadfastly resisted. Grievance of McDonald, 4 VLRB 280, 282 (1981).

Grievant was clearly on notice of the Colleges' intent to place him on the tenure track with his employment in 1977. Soon after beginning his Fall 1977 semester, the Academic Dean informed Grievant by letter

that he was "(s)cheduled for review this year... for first year reappointment" (Grievant's Exhibit 12). Communications in early 1978 initiated by the Castleton Committee on Promotion, Retention and Tenure and the Academic Dean recommended the "early" promotion of Grievant from Instructor to Assistant Professor (Grievant's Exhibit 13, Colleges' Exhibit E). "Early" promotion was a practice of promoting faculty who had not met the minimum three year requirement in preceding rank. These documents were placed in Grievant's personnel file and he should have seen them when he reviewed them in early 1979. Through these documents, Grievant knew or should have known the Colleges considered his 1977 appointment to be a first-year appointment placing him on the tenure track.

In any event, Grievant had never been explicitly told his pre-1977 years of service would be credited to him in determining the timing of a tenure review, quite the reverse. The Contract does not entitle him to assume those years would be credited. Whatever the meaning of Article 38 of the Contract, it, together with Article 22, provides a mechanism for determining how non-contiguous years of service are going to be treated in tenure review. Those articles clearly imply crediting of non-contiguous service is discretionary with management, and put a person, situated as Grievant was, on notice that inaction to clarify his status was perilous.

Nonetheless, Grievant maintains he should be presumed tenured by default as of 1981 because the Colleges failed to notify him of tenure denial in the sixth year and he was evaluated and reappointed beyond the seventh year. We disagree with Grievant for two reasons.

First, Grievant was notified numerous times prior to 1981 that he would not be able to obtain tenure without a terminal degree. When Greivant was appointed to full-time service in 1977, President Wilson informed him that completion of his Master's Degree was expected by June, 1979. During the Spring Semester, 1978, Dean Feaster, in a discussion with Grievant, informed Grievant of his need to earn a Master's Degree in order to be granted tenure. Subsequently, Grievant informed Feaster he was looking into Master's Degree programs in which to enroll. During the Spring Semester, 1980, President Meier and Dean Beston told Grievant, during a discussion with him, of the need for him to obtain a Master of Fine Arts degree in order to be granted tenure, and gave Grievant Faculty Development Funds for that purpose.

Given these numerous warnings, it is simply not credible for Grievant to presume he was tenured in 1981 when he did not have the terminal degree. Also, Grievant cannot claim ignorance of the tenure review process. In 1981, Grievant was aware there was a specific procedure at Castleton for review of faculty members for tenure, and he was not aware of any faculty members who were tenured without undergoing this review. He created an art work modeled after the the game "Monopoly", in which a faculty member had to get by "Meier Avenue" and "Beston Place", in reference to the Castleton President and Academic Dean, in order to be granted tenure.

Second, the Agreement does not permit tenure by default. In Article 22, the Agreement clearly provides the only way to receive tenure is "after consideration of the evaluation of the faculty member in accordance with the provisions of Article 19, 'Faculty Evaluation'." It is evident Grievant did not undergo an evaluation for tenure pursuant to Article 19 until Academic Year 1982-83.

Grievant points to Article 20 for the proposition that all reappointment, including tenure, is presumed always unless otherwise notified by specific dates, and accordingly he had a right to presume tenure when he was not notified on September 1, 1981, or at the latest December 15, 1981, that his seventh year was his last. In construing a contract, the contract provisions must be viewed in their entirety and read together. In re Stacy, 138 Vt. 68, 72 (1980). Standing alone, Article 20 might lend some credence to the interpretation Grievant gives it. However, when viewed together with Article 22, a clear intent by the parties to require a tenure review before tenure is granted is evident.

Grievant also cites Sawyer v. Mercer, 594 SW 2nd 696 (Tenn. Supreme Ct., 1980), as precedent for his presumption of tenure position. In Sawyer, the Court awarded a faculty member tenure although no affirmative action was taken by the college to grant tenure. However, under the contract in Sawyer, the faculty member was to get tenure at the expiration of a four-year probationary period, unless notified during the second semester of the fourth year that he was not to continue as a teacher. The Agreement before us is distinguishable from the Sawyer contract because tenure can only be granted if the Colleges take the affirmative action of conducting a tenure review. In Sawyer, no affirmative action by the college was required for a faculty member to be tenured.

Accordingly, we conclude Grievant's claim to presumption of tenure cannot be sustained.

C. Remedy

The Federation requests that if the claim to presumption of tenure cannot be sustained, the Federation and Grievant be made whole for any

and all damages caused by the Colleges' procedural error in failing to observe contractually-agreed-upon deadlines for evaluating and notifying Grievant of his tenure status.

Defined dismissal procedures, although generous beyond the due process requirements that bind the agency, are binding and must be scrupulously observed. David Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97 (1978). In fashioning a remedy for due process violations, our primary considerations are to make the grievant whole - to restore him/her to the position s/he would have been in but for the due process error - and to enforce compliance with all provisions of a collective bargaining agreement to discourage disregard of negotiated provisions. Vermont State Colleges Faculty Federation and Peck v. Vermont State Colleges, 139 Vt. 329 (1981), 4 VLRB 334 (1981). Grievance of McDonald and Vermont State Colleges Faculty Federation, 4 VLRB 280 (1981).

However, no actions of the Colleges resulted in harm to Grievant. Any mistakes they may have made in delaying his review for tenure were advantageous to him; giving him additional time to obtain a terminal degree which he had been warned he needed in order to be granted tenure. Grievant attempted to establish harm by contending he was less employable in 1983 than 1981. However, he did not demonstrate such harm by a preponderance of the evidence.

Further, unlike Vermont State Colleges and Michael Peck, 4 VLRB 334 (1981), it is not evident the Colleges were disregarding negotiated provisions by not reviewing Grievant for tenure in 1981. Here there is a bonafide question raised by Grievant over interpretation of the Agreement regarding the timing of the tenure review. However, Grievant

was consistently put on notice by the College administrators of an interpretation unfavorable (at least in hindsight) to him. Accordingly, this is not an instance where we believe it appropriate to enforce provisions of a collective bargaining agreement by awarding monetary damages. Grievance of Shockley and the Vermont State Colleges Faculty Federation, 5 VLRB 192, at 205 (1982).

Procedural shortcomings cannot be substituted for terminal degrees unless clearly prejudicial to the faculty member. Burrill v. Vermont State Colleges, 1 VLRB 386 (1978). No prejudice is evident here.

ORDER

Now, therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

> The Grievance of Warren Kimble and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO is DISMISSED.

Dated this 2 day of March, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson