

VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY	)	
FEDERATION, AFT LOCAL 3180,	)	
AFL-CIO	)	
v.	)	DOCKET NO. 85-6
	)	
VERMONT STATE COLLEGES	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 28, 1984, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, ("Federation") filed an unfair labor practice charge against the Vermont State Colleges ("Colleges"). The Federation alleged the Colleges committed an unfair labor practice in violation of 3 VSA §961(5) by issuing a workload policy at Vermont Technical College ("VTC"), without negotiating with the Federation, which significantly increased the workload of VTC faculty and which gave the Academic Dean authority to unilaterally raise or lower class size and to determine what constitutes a fair load. After investigation, the Labor Relations Board issued an unfair labor practice complaint on May 17, 1985, adopting for purposes of the Complaint the allegations contained in the Charge.

A hearing was held before Board Chairman Kimberly B. Cheney and Member James S. Gilson on July 29, 1985. Member William G. Kemsley, Sr., was absent from the hearing and has not participated in the decision. The Federation and the Colleges filed briefs on August 12 and 13, 1985, respectively.

#### FINDINGS OF FACT

1. Article 23, "Workload", of the collective bargaining agreement between the Federation and the Colleges, effective for the period September 1, 1984 to August 31, 1986, provides in pertinent part as follows:

The Federation and the Colleges agree to strive towards a normal individual workload of 24 credit hours or its equivalent per year and to observe that norm in the appointment of new faculty. 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, current practices in the Colleges shall be one of the important elements to be considered. The number of courses and number of different course preparations per faculty member shall remain at the normal and customary number for that department. In making assignments, due consideration shall be given to time devoted to co-curricular activities, such as coaching, direction of student teaching and independent studies, advising student newspapers and clubs, directing dramatic or musical productions, and directing athletic programs. In addition, the faculty agree to post and maintain reasonable office hours, and to participate in the operations of their Faculty Assemblies and committees thereof as the Assemblies may require.

2. Article 17, Section D of the 1984-86 Contract provides:

If there is disagreement, the faculty member and the Dean or appropriate administrative official shall discuss the maximum number of students allowed to register in each course before decision by said dean or other designated official. This said maximum number shall be established within the provisions of Article 23, Workload.

3. On December 3, 1984, VTC President Robert Clarke issued "Administrative Guidelines - Workload Calculations". The Guidelines provided in pertinent part as follows:

1. A person teaching only lecture courses will have a normal load of 12 credit hours.

2. A person teaching lecture and lab courses will have a normal load which falls in the range of 15 to 18 contact hours. Such a load will normally not exceed 12 credit hours.

3. For determining credit hour equivalency, one hour of lecture equals one credit hour and one hour of laboratory equals one-half credit hour.

4. Many factors can be used in determining a fair load. Considerations of these factors will be made by the Academic Dean in consultation with the Department Chair.

5. Maximum and ideal class sizes for categories of courses are:

	<u>Maximum</u>	<u>Ideal</u>
Course in Major	32	28
Electives, Math, Science	36	32
Pre-Tech	24	20
Pre-Tech, Math, Science (2nd semester)	30	26
English and Computer Programming Courses	27	24
English 011	20	18
GE 222	15	13
Learning Dynamics Lab	14	12
Lab in Major	16	16
Science Lab	18	16
Pre-Tech Lab	14	12

... 7. The Academic Dean, in consultation with the Department Chair and the faculty member(s), may raise or lower class size for a specific course in any given semester.

... 10. Faculty may agree to have a greater number of students in their class than the administratively noted maximum.

11. The administrative maximum will normally be strictly followed with only special circumstances causing an over-enrollment.

12. Instructional loads will be determined via an academic year versus any given semester.

(Federation Exhibit 1)

4. Clarke attached a memorandum to the Guidelines upon issuance which provided in pertinent part: "Please note that these are administrative guidelines that were not negotiated and are in accordance with the faculty contract" (Federation Exhibit 1).

5. President Clarke did not negotiate the workload Guidelines with the Federation, nor did the Colleges do so. Clarke formed a faculty

ad hoc committee to come up with recommendations on faculty workload. This committee had no Federation status. The committee did not conduct a study to determine what was current and past practice on the VTC campus with respect to faculty workload, nor was it directed by the President, or given the data, to conduct such a study. The committee issued a final report to Clarke on October 23, 1984. Clarke did not accept all the committee's recommendations when he issued the workload Guidelines. (Colleges Exhibits 4, 5 and 6).

6. Clarke issued the workload Guidelines because of what he perceived as inequitable treatment of some VTC faculty versus other faculty. He viewed the Contract language on workload as nebulous.

7. The terms used in determining faculty workload and their meanings are as follows:

a) Credit hours - This term refers to the credit hours awarded a student for a particular course.

b) Contact hours - Contact hours are the number of hours per week a faculty member is assigned to be in a classroom or laboratory with students. Contact hours differ from credit hours because the number of hours a class or lab meets a week may be greater than the number of credit hours assigned for a course. For example, a lab may meet three hours a week, but a student is only awarded one credit hour for the course.

c) Class size - This term refers to the total number of students enrolled for a particular class or lab.

d) Student load - Student load refers to the total number of students in a given year or semester assigned to an instructor, adding the class size in each class and lab. Under this definition, a student who is taught by an instructor in both a class and a lab would be counted twice.

8. Professor Russell Mills of the VTC General Education Department performed an analysis of course lists for the years 1982-84 to determine whether the maximum class size limits in the President's Guidelines exceeded

class size limits indicated on computer printouts of course offerings for the 1982-84 period. The number of courses and labs where the maxima listed in the Guidelines exceed 1982-84 limits is 77 out of a total of 218 course offerings, or 498 out of a total of 1,114 sections. The number of courses and labs where the maxima listed in the policy are lower than 1982-84 limits is 43, or 204 sections (Federation Exhibit 2). We conclude this evidence suggests, but does not prove, student loads have increased to an excessive extent, but it appears the "norms" may be increasing.

9. The workload Guidelines issued by President Clarke provides a faculty member's normal load would not exceed 12 credit hours a semester or 24 hours a year. During the period 1977 through 1984, prior to the issuance of the workload policy, 55 to 70 faculty members were employed at VTC for any given year. During this period, some faculty worked in excess of 24 credit hours during the academic year. Faculty worked in excess of 24 credit hours as follows:

<u>Year</u>	<u># of Faculty having Assignments in Excess of 24 Credit Hours</u>
1977-78	12
1978-79	6
1979-80	5
1980-81	6
1981-82	6
1982-83	7
1983-84	8

(Colleges Exhibits 7, 7.2)

We conclude on this evidence that the credit hour departure from the norm is not excessive, but because the data does not address student load, it is not persuasive.

10. The workload Guidelines issued by President Clarke provides a faculty member's normal load of contact hours would not exceed 18 hours a semester or 36 hours a year. During 1977-84, prior to the issuance of the workload Guidelines, some faculty had contact hour assignments exceeding 36 hours a year. Faculty had assignments in excess of 36 contact hours as follows:

<u>Year</u>	<u>Number of Contact Hour Assignments Greater than 36</u>
1977-78	6
1978-79	3
1979-80	2
1980-81	4
1981-82	1
1982-83	4
1983-84	1

(Colleges' Exhibits 7, 7.2)

11. The evidence does not indicate whether the faculty members who worked in excess of 24 credit hours or 36 contact hours during an academic year during the 1977-84 period had increased student loads or if they received paid overloads for those assignments.

12. The 1985-86 academic year is the first full academic year after the issuance of the workload Guidelines. Data on credit hours and contact hour assignments of faculty members for the full year will not be available until the 1986 spring semester.

13. The maximum class size in any instance under the workload Guidelines is 36. During the period 1977-84, prior to issuance of the Guidelines, there were instances where class size exceeded 36 (Colleges Exhibit 9). We cannot determine the extent of departure from norms.

14. During the Spring 1985 semester, after the issuance of the workload Guidelines, there were instances where the class size exceeded the maximum limit under the workload Guidelines (Federation Exhibit 2).

15. The normal and customary practice in determining workload in the Electrical Engineering ("EE") and Civil Engineering ("CE") Departments has been to use contact hours. Normal loads in these departments have been 16 contact hours per semester of lecture and lab instruction. A faculty member carrying 18 contact hours would, under

past practice, be paid overload compensation. The workload Guidelines permit the normal load of faculty in these departments to be raised to 18 contact hours without overload pay. In addition, by fixing the credit hour equivalent of labs at one-half credit hour per one hour of lab, the President's Guidelines could weigh the customary workloads of EE Department faculty as much as 20 percent lower than what has been the normal and customary practice. This valuation could result in a potential 20 percent increase in workload for EE faculty with no extra compensation.

16. The normal and accepted upper limits in class size in the EE Department from late 1980 until the issuance of the workload Guidelines were 32 in lectures and 16 in labs for freshmen and 28 in lectures and 14 in labs for seniors. These figures were the normal and accepted upper limits in practice until President Clarke's Guidelines, which established 32 as the maximum class size for lectures and 16 as the maximum for labs. This resulted in an increase in maxima for senior lectures and labs (Colleges' Exhibit 3).

17. Prior to the issuance of the workload Guidelines, the upper limits in the EE Department might be exceeded by a particular instructor for a special case. For example, if a student needed the class to graduate, the faculty member may exceed the limit and let that person in, but these circumstances were exceptional.

18. Prior to the issuance of the workload Guidelines, 14 was the usual and customary limit on senior lab sizes in the EE Department for educational reasons. Normally, a lab would consist of seven set-ups, with two students on each set-up. Three students on a set-up meant the third person's experience and participation was limited. More than seven set-ups made it difficult for the instructor to service all the set-ups properly.

19. Professor Peter Rasmussen of the EE Department performed a workload study for the EE Department, comparing workload in EE for Spring 1985, when the Guidelines were in effect, with the workload in three previous comparable periods: Spring 1984, Spring 1983 and Spring 1982. To obtain a workload figure, Rasmussen multiplied total contact hours in the Department by total student load to obtain a student contact hour product for each period of research. He subtracted out paid overloads and part-time contracts; thus, his figures reflect only normal workload of full-time bargaining unit members. Based on this data, he discovered that workload, as measured by these two components, increased under the new Guidelines by the following percentages:

7.2% over 1984 load;  
18 % over 1983 load;  
12 % over 1982 load.

20. Prior to the issuance of the workload Guidelines, it was the practice of the General Education Department in determining credit hour equivalency for two hours of laboratory to equal one and one-half credit hours. Under the workload Guidelines, two hours of laboratory equal one credit hour (Federation Exhibit 3).

21. Professor Russell Mills of the General Education Department has the following schedule for the Fall 1985 semester: three lecture courses of three hours each and four writing labs of two hours each. Under the workload Guidelines, each lecture course is given three credits and each lab, one credit; giving Mills a total credit hour equivalency of 13 hours. Under the old system this would have been considered the equivalent of 15 credit hours. Mill would have been given three credits for each lecture course and one and one-half credits for each lab. As a result,



Mills must teach 11 credit hours in the Spring for his yearly workload to be weighed as a fulltime load. This means that the workload Guidelines will have resulted in his teaching one additional lecture course per year without being compensated (Federation Exhibit 4).

22. The student load of Professor Nancy Hunt of the General Education Department increased after issuance of the Guidelines. Her student load for semesters predating the Guidelines were as follows:

- Fall 1982: 57 students in three three-credit classes,  
plus three credits for advising the student paper.
- Spring 1983: 61 students in three three-credit classes,  
plus advising paper.
- Fall 1983: 56 students in three three-credit classes,  
plus advising paper.
- Spring 1984: 68 students in three three-credit classes,  
plus advising paper.
- Fall 1984: 44 students in three three-credit classes,  
plus advising paper.

In spring 1985, Hunt had a total student load of 79 students in three three-credit writing courses, plus three credits of assigned extra duties. During this semester, Hunt did not teach a journalism course which she had taught previous semesters. Journalism courses have fewer students than do writing courses.

23. As the student load in writing courses increases, the time which the instructor is able to give each student is decreased; the quality and quantity of instruction are both directly affected by any increases in class size and student load.

#### OPINION

At issue is whether VTC President Clarke committed an unfair labor practice in violation of 3 VSA §961(5) by unilaterally issuing workload Guidelines. Under the State Employees Labor Relations Act (SELRA), it is an unfair labor practice for an employer to refuse to bargain collectively with the employees' representative on terms, tenure or conditions of employment. 3 VSA §902(2), 961(5). All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. 3 VSA §904(a). The unilateral imposition of terms of employment during the time the employer is under a legal duty to bargain in good faith is the very antithesis of bargaining and is a per se violation of the duty to bargain. Burlington Fire Fighters Association v. City of Burlington, 142 Vt. 433, 435-436 (1983). Vermont State Colleges Faculty Federation v. Vermont State Colleges, 138 Vt. 451, 454 (1980). Absent a waiver by either the terms of the contract or by actual negotiation, the Employer has a duty to bargain changes in mandatory bargaining subjects during the term of an agreement. VSEA v. State of Vermont (re: Implementation of 6-2 Schedule at Vermont State Hospital), 5 VLRB 303, 326 (1982).

There is no dispute in this case as to whether the workload Guidelines address terms or conditions of employment. It is clear they do. There also is no issue whether President Clarke negotiated with the Federation concerning the workload Guidelines. It is clear he did not. The question is whether the Guidelines constituted a change in conditions of employment from what has previously existed.

The Federation contends the Guidelines changed workload practice and the meaning of key terms in the workload article of the parties' Contract, Article 23. The Colleges maintain the Guidelines do not increase or seek to authorize an increase in workloads of full-time faculty; that the Guidelines are designed as an administrative tool to facilitate consistent implementation of the workload provisions of Article 23.

Article 23 describes workload in terms of its major component parts of credit hours, contact hours, student load and schedule. The lack of specificity of its provisions in these areas makes it an extremely inadequate guide for determining whether faculty workload has increased contrary to its terms. Limits as to credit hours, contact hours, student load and schedule are established by Article 23 but, with the exception of credit hours for new faculty, they are not numerically quantified or otherwise specific. Contact hours and student loads must not be "excessive"; schedules must not be "unreasonable" and the parties shall "strive" towards a normal individual workload of 24 credit hours "or its equivalent" per year for other than new faculty. The article provides no other guidance except to provide that "current practices in the Colleges shall be one of the important elements to be considered" in determining what is excessive or unreasonable.

Coupled with this lack of specificity, Article 23 contains ambiguity in providing for two different levels of review for determining workload practices. "Current practices in the Colleges" are to be looked at in examining student load, contact hours and schedule but the number of courses and course preparations per faculty member "shall

remain at the normal and customary level for the Department". The Colleges contend Article 23 mandates that any review of workload practices must occur on a college-wide basis, not department-wide. We believe a more accurate interpretation of the Article is that assessment of faculty workloads must consider the "norms" that have existed at each college within each department. Grievance of Brandon, et al., 3 VLRB 396, 404 (1980).

This lack of specificity and ambiguity are productive of conflicting measurements of faculty workload, as is evidenced by testimony and data introduced at the hearing on this matter. There are numerous disputes and grievances before us about the meaning of Article 23. We take official notice of our own docket, where we have six grievances over Article 23 awaiting hearing. In reviewing the workload Guidelines against provisions of Article 23, we adhere to the view we expressed in Grievance of Brandon, supra, at 404, that "(t)he assessment of faculty workloads in view of numerous factors is as testimony revealed difficult, complex and imprecise".

We also note there is a legitimate concern on the Federation's part that the Guidelines may change the norms that existed beforehand and eventually become accepted as the new norm under Article 23. The Federation fears a "ratchet" effect will occur, pushing up faculty workloads. It is reasonable to worry about "ratcheting" because the data base for pre-existing norms is not clear. Hence, the Guidelines will become the "norm", and to the extent workloads are increased by them the meaning of Article 23 will be changed.

In determining whether the Guidelines violated Article 23, we must decide whether workload increase was "excessive". It is clear to us one

meaning of "excessive" workload is not getting paid for work for which you were previously paid. The Guidelines created this result in the Electrical Engineering, Civil Engineering and General Education Department.

In the Electrical Engineering and Civil Engineering Departments, the faculty member carrying 18 contact hours would, prior to implementation of the Guidelines, be paid overload compensation. The Guidelines permit the normal load of faculty in these departments to be raised to 18 contact hours without overload pay. In addition, by fixing the credit hours equivalent of labs at one-half credit hour per one hour of lab, the President's Guidelines could weigh the customary workloads of Electrical Engineering faculty as much as 20 percent lower than what has been the practice. Also, by increasing the normal and accepted upper limits for senior lectures and labs in the Department, the Guidelines created the potential for faculty to have a significantly higher student load without being compensated. Evidence presented at the hearing indicated the workload for Electrical Engineering faculty has in fact increased since implementation of the Guidelines.

The workload Guidelines resulted in General Education Department faculty being granted less credit hours for labs when determining credit hour equivalency than previously existed. This means Department faculty will be required to assume additional lecture or lab duties without being compensated.

It is clear the Guidelines have resulted in an "excessive" workload for at least some faculty members within the meaning of Article 23. Thus, the Guidelines changed past accepted norms for these faculty. This without more is sufficient to constitute unlawful changes in employees' conditions of employment. Since President Clarke changed employees' conditions of

employment without negotiating with the Federation, he committed an unfair labor practice in violation of 3 VSA §961(5). The workload of faculty members is such a fundamental aspect of employment and the nature of measuring workload is so difficult, the parties should negotiate these issues.

The Federation alleges the workload Guidelines further violate 3 VSA §961(5) because they give the Academic Dean authority to unilaterally raise or lower class size and to determine what constitutes a fair load, which is more authority than the Dean is given under Article 17, Section D of the Contract. It is apparent the Guidelines do in fact give the Dean more authority in this regard than does the Contract. The Contract permits the Dean to make a decision on maximum class size which must be within the provisions of Article 23; the Guidelines make no reference to Article 23. This too constitutes an improper unilateral change in conditions of employment.

We turn now to determining what remedy to apply in this case. The Federation requests 1) Vermont Technical College be directed to rescind the workload Guidelines and bargain any workload proposals with the Federation; and 2) faculty teaching more than a normal and customary load be compensated at a rate proportional to their fulltime salaries, retroactive to the beginning of Spring Semester 1985.

We believe it appropriate to order the Guidelines rescinded and order the Colleges to negotiate any proposed changes in workload with the Federation. We concur fully with the following views expressed by the Federation in its brief:

It is much more desirable for the parties to sit down and negotiate differences than to bring them to the VLRB. Workload guidelines that are mutually negotiated and agreed to are much less likely to proliferate grievances... The sane course of action is to share data, define current practices mutually and bargain... differences.

However, we exercise our discretion in remedying unfair labor practices pursuant to 3 VSA §965(d) not to order back pay. Given the flexibility in determining workload allowed by Article 23 and the imprecise nature of calculating workload back pay, we believe it impractical and unnecessary in the context of this unfair labor practice case to award backpay. By this decision, we do not mean to imply backpay may not be part of negotiations. We simply believe the best and most complete remedy to apply is to order the parties to negotiate any workload issues to clear up such a difficult issue and resolve a fundamental aspect of employment.

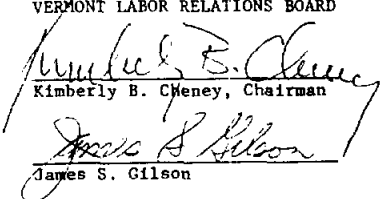
ORDER

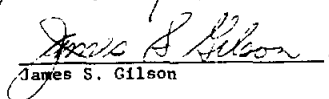
Now therefore, based on the foregoing findings of fact it is hereby ORDERED:

The Vermont State Colleges shall cease and desist from refusing to bargain collectively with the Vermont State Colleges Faculty Federation, VFT, AFT, AFL-CIO, in violation of 3 VSA §961(5), by implementing at Vermont Technical College the Administrative Guidelines-Workload Calculations issued by VTC President Robert Clarke on December 3, 1984, and shall rescind such Guidelines and negotiate any proposed changes regarding faculty workload with the Federation.

Dated this 31<sup>st</sup> day of October, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
James S. Gilson