

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	DOCKET NO. 85-45
)	
VERMONT STATE COLLEGES)	
STAFF FEDERATION, VFT,AFT)	
LOCAL 4023, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 18, 1985, the Vermont State Colleges Staff Federation, VFT,AFT Local 4023, AFL-CIO ("Federation") filed a grievance with the Vermont Labor Relations Board. The Federation alleged the Vermont State Colleges ("Colleges") violated Article III, Section 2 of the collective bargaining agreement between the Federation and Colleges ("Contract") by failing to notify the Federation of a reduction in the bookstore clerk position at Lyndon State College from 12 months per year to 11 months per year. The Federation also alleged the Colleges violated the Vermont State Employees Labor Relations Act because the Act requires that reduction in force procedures shall be bargained.

A hearing was held before the full Board on May 23, 1986. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. Peter Konkle, Staff Representative of the Vermont Federation of Teachers, AFT, AFL-CIO, represented Grievant.

Grievant and the Colleges filed briefs on June 6 and 9, 1986, respectively. The Federation filed a reply brief on June 20, 1986. The Colleges filed no reply brief.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

Article 3 Management Rights

...2. (M)anagement rights...shall include, but not be limited to, the right: ...to determine or change shifts, starting and quitting times and numbers of hours worked, after first giving the Federation notice and an opportunity to bargain; ...to organize, enlarge, reduce or discontinue, a function, position or department in a manner which shall not be inconsistent with the lay off provisions of this Agreement ...

Article 17 Layoff

...2. In the event of a lack of work situation, the employees of the affected classification of the affected College, and the Federation President, shall be notified in writing as soon as the lack of work situation is identified.

- a) Notification shall activate this article.
- b) Specific cause for the lack of work situation shall be stated.
- c) The number of positions to be laid off, or hours to be reduced, shall be listed.

3. The following shall be the sole procedure for layoff or reduction in hours:

- a) The Federation shall be granted ten (10) working days from receipt of notification of a lack of work situation to propose alternative actions, in writing, to the College President.
- b) Immediately following the receipt of such written proposals, the College President shall have five (5) working days to respond to such alternative proposals.
- c) Immediately following the period specified in (b) of this Section, employees may offer the following alternatives:
 1. Voluntary entrance into layoff status;
 2. Voluntary reduction of hours;

3. Voluntary entrance into combined or shared-time positions.

- d) The College's refusal to accept suggestions made under b) or c) above, with respect to alternatives to layoff, shall not be subject to the grievance and arbitration provisions of this Agreement.
- e) Written notice of layoff or reduction in hours shall be sent to affected employees, no later than forty (40) calendar days prior to such layoff or reduction in hours. The 40-day time requirement stated herein shall begin to run upon notification to the employees under Section 2 above.

2. Prior to July 1985, Lyndon State College employed a fulltime, twelve-month per year bookstore clerk, which was a staff bargaining unit position.

3. Up until July 26, 1985, that position was held by Jane Flood. On July 9, 1985, Mrs. Flood notified the Colleges that she was resigning her position effective July 26.

4. For reasons of efficiency and economics which are not being challenged for purposes of this case, the Colleges decided to reduce the position of Bookstore Clerk to an eleven month position. The Colleges posted the position in accordance with the collective bargaining agreement.

5. On August 21, 1985, Elvira Wainwright was appointed to the position.

6. In deciding to reduce the position from a twelve to an eleven month position, the Colleges did not consult with the Federation, nor did it follow the procedure of the layoff article.

7. No employee suffered a reduction of pay or benefits as a result of the Colleges' action.

8. The job duties of the position did not change.

9. Clive Vari, Lyndon State College President, sent Laurel Stanley, President of the Federation Chapter at Lyndon State College, a copy of the appointment letter hiring Wainwright (Exhibit 3).

10. In October, 1984, the College posted a position vacancy for Security Worker 1. The position was posted as a 30 hour per week position. The previous incumbent of the position had worked 37½ hours per week.

11. The College did not consult with the Federation at the time it reduced the hours of the position of Security Worker 1.

12. The position was subsequently filled. President Vari sent a copy of the employment letter to Janice LaPine, Local Grievance Officer for the Federation (Employer's Exhibit 11).

13. The Federation did not grieve the action of the College with regard to reducing the hours of the security worker position.

14. At Castleton State College, the Business Manager normally notifies the Federation President when a reduction in hours is being considered.

OPINION

In the grievance filed with the Board, the Federation alleged the Colleges violated the following portion of Article 3, Section 2, of the Contract by failing to notify the Federation of a reduction in the Bookstore Clerk position at Lyndon State College from 12 months per year to 11 months per year:

(M)anagement rights ... shall include, but not be limited to, the right: ... to organize, enlarge, reduce or discontinue a function, position or department in a manner which shall not be inconsistent with the lay off provisions of this Agreement.

We think the action taken here "reduced" a position, in a way consistent with Article 17 (Layoff).

A contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. In re Grievance of VSEA on Behalf of Certain Phase-Down Employees, 139 Vt. 63, 65 (1980). In reviewing Article 17 as a whole, it is evident the purpose of it is to protect incumbent employees when a lack of work situation occurs but does not apply when no incumbent is affected.

Here, the Colleges reduced the Bookstore Clerk position from 12 months to 11 months when the position was vacant. No incumbent employee was affected and, accordingly, the Colleges had no obligation to notify the Federation and provide the Federation an opportunity to submit alternative proposals pursuant to Article 17. The layoff article is not triggered when a position is reduced and no incumbent employee is affected by the decision.¹

For the first time at the hearing before the Board, the Federation contended the reduction of the Bookstore Clerk

¹We note that each party submitted evidence on past practice to support its position as to the meaning of the contract language. The contract language being clear in our view, we do not find the past practice evidence helpful in deciding this case.

position activated that portion of Article 3, Section 2, which establishes a management right "to determine or change shifts, starting and quitting times and number of hours worked, after first giving the Federation notice and an opportunity to bargain." The Federation contends the reduction of the position to 11 months constituted a change in the "number of hours worked," thus triggering the Colleges' bargaining obligation.

We consider this issue untimely raised. The grievance filed with the Board does not allege the Colleges violated the "number of hours" clause by its action. Section 23.3 of the Board's Rules of Practice provides the notice of grievance filed with the Board shall contain a concise statement of the nature of the grievance and specific references to the pertinent sections of the collective bargaining agreement. The grievance did not comply with these requirements in relation to a claim the "number of hours" clause was violated. Thus, the Colleges were not on timely notice this was an issue and the Federation is precluded from raising it as an issue. Grievance of Shockley, 5 VLBB 192, 202-203 (1982). In re Grievance of Bushey, 142 Vt. 290 (1982).

Even assuming the issue was timely raised, we find no contractual violation. The language concerning number of hours does not apply to the reduction of a position from 12 to 11 months. "Number of hours worked" must be read in the context of the clause in which it appears - "shifts, starting and quitting times and number of hours worked" - which, when considered as a whole, refers to daily terms and conditions of employment. It is

clear that "number of hours worked" refers to workday hours and not the overall hours of the calendar year.

In the grievance filed with the Board, the Federation alleged that, through the reduction of the bookstore position, the Colleges violated 3 VSA §904(a)(6) by not bargaining reduction in force procedures. The Federation did not argue at the hearing or in its brief that this section was violated, so we deem the contention waived. In any event, the Colleges did not violate §904(a)(6) by its action. The Colleges were simply exercising a contractual right reserved to the Colleges by the parties and had no statutory or contractual obligation to bargain the reduction of the Bookstore Clerk position.

ORDER

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

The Grievance of the Vermont State Colleges Staff Federation, VFT, APT Local 4023, AFL-CIO, is DENIED.

Dated the 3rd day of July, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

Catherine L. Frank