

VERMONT LABOR RELATIONS BOARD

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| VERMONT STATE COLLEGES FACULTY |) | |
| FEDERATION, AFT LOCAL 3180, |) | |
| AFL-CIO |) | |
| |) | DOCKET NO. 86-22 |
| v. |) | |
| |) | |
| VERMONT STATE COLLEGES |) | |

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 26, 1986, the Vermont State Colleges Faculty Federation, AFT Local 3180 ("Federation"), filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board seeking an election to determine whether certain "part-time (adjunct) faculty" employed by the Vermont State Colleges ("Colleges") wished to be added to the full-time faculty unit currently represented by the Federation.

In response, the Colleges took the position 1) the part-time faculty are excluded from the definition of "employee" under the State Employee Labor Relations Act ("SELRA") and thus are excluded from its coverage; and 2) alternatively, if they do meet the definition of "employee", they do not share a community of interest with full-time faculty sufficient to be included in the same unit with them.

Hearings were held on November 6 and 13, 1986, before Board Members Louis A. Toepfer, Acting Chairman; William G. Kemsley, Sr., and Catherine L. Frank for the purpose of ascertaining 1) whether and which part-time faculty meet the definition of "employee" under SELRA and 2) whether it is appropriate to add part-time faculty to the

current full-time faculty unit. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. Federation representatives Christine Ariel and Richard Sanders represented the Federation.

The Colleges filed a brief on December 1, 1986. The Federation filed no post-hearing brief. In reaching its decision, the Board also considered pre-hearing briefs filed by the Colleges and Federation.

FINDINGS OF FACT

1. The Federation has represented a unit of full-time faculty and ranked librarians (currently numbering approximately 235) since 1973. The unit covers the four main campuses at Castleton State College, Johnson State College, Lyndon State College and Vermont Technical College.

2. Full-time faculty are hired by the Colleges pursuant to an appointment process which involves a) formal advertisement for the position after consultation between the dean and the department faculty; b) review of all applications by the dean and then by the departmental committee; c) interviews by the dean and the departmental committee; d) formal recommendations to the president who makes the final decision as to appointment.

3. Full-time faculty are hired initially with a one-year contract. Reappointment for such faculty to future years is presumed unless written notice of non-reappointment is received by March 1 of the first three years. In the fourth year, a faculty member receives notice by April 1 that his/her fifth year will be his/her last or that the College will award a two-year contract covering the fifth and

sixth year of service. In the sixth year, a faculty member is reviewed for tenure, and by May 1 of that year, the faculty member is either awarded tenure or notified that his/her seventh year will be the last year of service.

4. Tenure means the right of a full-time faculty member to continuing employment unless dismissed for cause.

5. Each year during a full-time faculty member's non-tenured period, the faculty member is evaluated based upon the three broad performance areas of teaching effectiveness, scholarly and professional activity, and service to college and community. The evaluation procedure consists of self-evaluation, peer evaluation,

salary is around \$26,000. In addition to salary, full-time faculty receive the following benefits: life insurance, long-term disability insurance, accidental death benefits, survivor's benefits, retirement policy and medical/dental coverage (Colleges' Exhibit 10).

10. In addition to the full-time faculty, each of the four colleges hire adjunct faculty to cover certain specialty courses, extra sections of commonly-offered courses and other specific instructional needs. Adjunct faculty generally teach in the same classrooms as full-time faculty and may teach the same course as full-time faculty. The hours of the day they teach cover the same range as full-time faculty. Students pay the same cost per credit hour whether adjunct or full-time faculty teach the course.

11. The number of adjuncts hired by each institution varies each semester and from year to year.

12. Adjunct instructors are hired for a semester at a time to teach a specific course or courses. Most teach either one or two three-credit courses in a given semester. All teach less than 12 credits per semester.

13. Adjuncts sign individual contracts of employment which confirm an instructional assignment for a period not to exceed one semester. Each adjunct contract contains specific language which provides as follows, or words to this effect:

This is a temporary assignment for the period specified and does not confer the rights and benefits of a regular faculty appointment. Further, the College reserves the right to cancel any course if enrollments by the end of the second week of classes are considered insufficient to justify the costs of the course.

(Federation Exhibits 1, 3 and 4;
Colleges' Exhibits 9 and 11)

14. While it has not happened frequently, the various colleges have cancelled adjunct courses, and with it the contract of the adjunct, due to insufficient enrollments.

15. Adjunct contracts are not renewed. For those adjuncts who have worked more than one semester, they receive a new contract for each new assignment. Adjuncts are not presumed rehired for the next semester if they receive no notification to the contrary. There is no presumption of reappointment as there is for full-time faculty.

16. The hiring process for adjuncts is less involved and less formal than that for hiring full-time faculty. Generally, each college keeps a pool of adjuncts from which they can draw when needed to fill course needs. A person may be hired as an adjunct simply by a phone call from the academic dean or involved department chair and no detailed screening or interview process is involved.

17. While new full-time faculty are hired in most occasions months in advance, adjuncts generally sign contracts shortly before the semester begins and, on occasion, even after the semester begins. Some adjuncts are not notified, verbally or otherwise, of their hiring until the time the semester commences because the need for adjuncts is sometimes not determined until final student enrollments are set, registration for courses has been completed and offers of overload to full-time faculty have first been made. In other cases, where the need to hire adjuncts is known well in advance, adjuncts are verbally notified by the department during the previous semester that they will be hired to teach the following semester. In those cases, the adjuncts act on such assurances and prepare to teach the course before receiving contracts.

18. Adjunct faculty are paid in accordance with a system-wide trustee policy which allows each institution to pay between \$400 and \$500 per credit. At Lyndon, all adjuncts, regardless of past service, are paid \$400 per credit. At Johnson, all but two adjuncts are paid \$1,200 per course (\$400 per credit). At Vermont Technical College and Castleton, adjuncts with longer service receive somewhat more money per course. Other than this payment, adjuncts receive no other benefits or compensation.

19. Adjuncts do not carry rank, are not eligible for promotion, are not eligible for tenure, are not entitled to increased job security due to seniority and receive no special preference when applying for full-time vacancies. If an adjunct becomes a full-time faculty member, he or she receives no credit for prior service as an adjunct for seniority purposes although adjunct service may be taken into consideration when determining salaries.

20. Adjuncts are required to consult with students on matters dealing with the specific course or courses they teach. Some adjuncts consult with students before or after class. Other adjuncts have offices to use and voluntarily keep office hours to see students. Adjuncts are not required to keep office hours. In some cases, adjuncts do not have offices.

21. Adjuncts are not required to publish, engage in research or perform any scholarly activity as a condition of employment. They are not expected to engage in any college or community service. They are not expected to assist during course registration. They are not required per se to have a required minimum degree to teach. Some adjuncts participate in department meetings. Some adjuncts have participated in developing the curriculum for new courses.

22. In most cases, the performance of adjunct instructors is not formally evaluated by the administration or by the faculty. Students complete evaluations on the courses adjuncts teach.

23. Most adjunct faculty members are employed elsewhere in addition to their teaching responsibilities. Some adjuncts are employed by the Colleges in other full-time or part-time positions in addition to their teaching responsibilities.

24. The regularity with which persons are employed as adjuncts varies greatly. Some adjuncts teach one course and never teach again. Others teach more than one course over a period of time and then discontinue teaching. Other adjuncts teach one or more courses during one or both semesters of each academic year. Others teach during one or more semesters for an academic year or years, do not teach for a year or years, then resume teaching at some subsequent point (Colleges' Exhibits 2 through 8).

OPINION

The issues before the Board are 1) whether and which adjunct faculty meet the definition of "employee" under SELRA, and 2) if at least some of the adjuncts are "employees" under SELRA, whether it is appropriate to add the adjuncts to the existing full-time faculty bargaining unit or place them in a separate unit.

The Federation proposes that certain, but not all, adjuncts should be added to the full-time faculty unit. Specifically, the Federation proposes that regular part-time faculty who teach less than 12 credit hours per semester in the undergraduate curriculum who have

taught at least two consecutive semesters, and for eligibility purposes are currently teaching this semester, or who have taught sequentially (e.g., fall-fall, spring-spring) on a regular basis for at least two semesters should be placed in the unit. The Federation would exclude from the unit persons otherwise employed by the Colleges on a full-time basis as administrators, managers, supervisors or field supervisors for interns.

The Colleges contend adjuncts do not fit the definition of State employees under SELRA because they are temporary employees and thus excluded from SELRA's coverage. Alternatively, the Colleges contend that if adjuncts are employees, they do not share a community of interest with full-time faculty sufficient to be in the same unit with them and should not be allowed a separate unit.

We first consider whether adjunct faculty meet the definition of State employee in 3 VSA §902(5) which provides in pertinent part:

"State employee" means any individual employed on a permanent or limited-status basis by the State of Vermont, or Vermont State Colleges, including permanent part-time employees...

The Federation contends that those adjuncts with a reasonable expectation of continued employment are employed on a "limited status basis" within the meaning of this definition. "Limited status" is nowhere defined in SELRA and it is our task to ascertain whether the phrase is sufficiently broad to include adjunct faculty.

It is undisputed by the parties this phrase does not include temporary employees and that temporary employees are not otherwise "employees" as defined by the Act. Clearly, that is the case. While SELRA does not explicitly list temporary employees of the Colleges as

excluded from the definition of "employee", it does explicitly exclude temporary employees otherwise employed in State government. 3 VSA §902(5)(a). 3 VSA §311. Grievance of McCluskey, 7 VLRB 359, 360 (1984). There is no compelling reason to conclude the legislature intended to include State Colleges temporary employees within this definition and exclude counterparts in State government. Logically, if one group of temporary employees is not "limited status" or otherwise employees as defined by the Act, then the same is true for another group of temporaries, absent any specific language to the contrary.

The most logical construction of the phrase "limited status" is that the legislature intended to grant employee status to a category of employees retained on a less-than-permanent, but more-than-temporary, basis. The meaning of temporary employees necessarily refers to those individuals with no reasonable expectation of continued employment. Permanent status refers to employment in a permanently-established position with no expectation under normal circumstances that employment will cease. It follows that employment on a limited-status basis refers to individuals who have a reasonable expectation of continued employment for at least a limited time period and have more than just a tenuous employment relationship. One group of Colleges' employees covered under this meaning is full-time non-tenured faculty.

Under this meaning, it is also evident some adjunct faculty are employed on a limited-status basis, while other adjuncts are temporary. We conclude that adjunct faculty who meet the following requirements are employed on a limited-status basis: 1) employed for

at least three semesters, or who currently are in their third teaching semester, 2) teach at least six credit hours per academic year, 3) notwithstanding the first two requirements, adjuncts who have not taught during one academic year, past or present, meet the definition of limited status provided they otherwise regularly teach at least six credit hours per academic year and have been employed for at least three semesters, or who are currently in their third teaching semester; and 4) are not otherwise employed by the Colleges in a full-time position as an administrator or manager.

We note that we are not persuaded by the Colleges' argument that the legislature intended to include only permanent part-time employees in the definition of employee since that grouping of employees is explicitly mentioned as covered under the definition in 3 VSA §902(5). By so providing, the legislature simply covered one group of part-time employees but did not preclude other part-time employees from being included under the definition.

Thus, we conclude *some adjuncts meet the definition of "employee"* under SELRA. We now consider whether it is appropriate to add the adjuncts to the existing full-time faculty bargaining unit. 3 VSA §941(g) provides three statutory criteria the Board shall take into consideration in determining the appropriateness of a collective bargaining unit. Two of the criteria - authority of governmental officials at the unit level to take positive action on matters subject to negotiations and whether overfragmentation of units will result - are not at issue. The central issue is whether adjuncts and full-time faculty share a community of interest. SELRA directs us to take into consideration the "similarity or divergence of the interests, needs

and general conditions of employment of the employees to be represented". 3 VSA §941(f)(2). Although community of interest is not susceptible to precise definition or mechanical application, the Board has applied the following factors enumerated by the National Labor Relations Board to be considered in determining community of interest:

(A) difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

In applying those factors here, we conclude a sufficient community of interest exists between those adjuncts we have concluded are "employees" under SELRA and the full-time faculty. The central overriding function of both adjuncts and full-time faculty is teaching the same students in an undergraduate curriculum at the same work site during the same hours.

Obviously, there are significant differences among the employees. Their method of compensation and level of benefits differ. Full-time faculty spend more time and have a broader scope of responsibility beyond teaching than do adjuncts. They also operate within a more structured and regulated environment with respect to appointment and reappointment to their positions. They are directly involved in governance while adjuncts have no such involvement. Their qualifications may somewhat differ.

However, the limited group of adjuncts we believe appropriate to add to the faculty unit have demonstrated a serious, sustained commitment to the teaching profession by their extended teaching

service. While their commitment is not on par with the full-time faculty, their central function of furthering the education of students is generally the same. They teach the same subjects, interact with the same students, experience similar classroom conditions, interact with one another and have common departmental supervisors. These common interests override differences among them and are sufficient to warrant their inclusion in the same bargaining unit.

Before concluding, we first discuss questions of representation which must be addressed. First, the Board has made no determination whether a sufficient percentage of the above-described adjunct faculty have signed signature cards indicating they wish to be represented by the Federation; that is, whether the requisite 30 percent showing of interest has been met. Now that the Board has determined the appropriate bargaining unit, that issue must be decided. The procedure for resolving that issue is contained in the Order.

Second, assuming the Federation does meet the requisite showing of interest, eligibility to vote questions concerning the subsequent secret ballot election must be addressed. We believe it appropriate that only those above-described adjunct faculty who have taught or are teaching in the current academic year shall be eligible to vote. Further, in the election two determinations must be made: 1) whether employees wish to be organized into the approved bargaining unit, and 2) whether employees wish to be represented by the Federation. 3 VSA §941(e) and (g). In re Liquor Control Department Non-Supervisory Employees, 135 Vt. 623, 625-626 (1978). We believe it appropriate that full-time faculty and ranked librarians, along with the adjunct faculty, vote on the first question. This is because all employees

affected should be involved in the determination whether they wish to be organized into such a unit. The ballots of adjuncts will be counted separately from the ballots of full-time faculty and ranked librarians. The majority of ballots in each group must vote for the unit in order for the unit to be approved. However, only adjunct faculty should vote on the second question concerning representation since the full-time faculty and librarians have earlier indicated they wish to be represented by the Federation and no question of representation exists concerning them.

ORDER

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

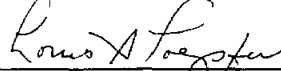
1) The addition of adjunct faculty employed by the Vermont State Colleges who meet the following requirements to the existing bargaining unit of full-time faculty and ranked librarians employed by the Colleges is appropriate: 1) employed for at least three semesters, or who currently are in their third teaching semester, 2) teach at least six credit hours per academic year, 3) notwithstanding the first two requirements, adjuncts who have not taught during one academic year, past or present, meet the definition of limited status provided they otherwise regularly teach at least six credit hours per academic year and have been employed for at least three semesters, or who are currently in their third teaching semester; and 4) are not otherwise employed by the Colleges in a full-time position as a manager or administrator.

2) The Vermont State Colleges and Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO shall cooperatively compile a list of adjunct faculty who meet the above requirements, provided that the list shall not include any adjunct faculty member who has not been employed during the current academic year. Such list shall be submitted to the Labor Relations Board by February 6, 1987. The Board shall review such list against authorization cards submitted by the Federation for the purpose of determining whether the Federation has met the 30 percent showing of interest as required by statute. The Federation shall have until February 26, 1987, to submit any additional authorization cards; and

3) if the requisite showing of interest is met, the Board shall conduct a secret ballot election pursuant to 3 VSA §941(e) and (g), on such date as the Board shall order, to 1) determine whether the full-time faculty, ranked librarians and above-described adjunct faculty desire to be organized into the above bargaining unit; and 2) determine whether the above-described adjunct faculty wish to be represented for exclusive bargaining purposes by the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, or no union.

Dated this 22nd day of January, 1987, at Montpelier, Vermont.

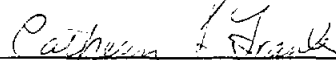
VERMONT LABOR RELATIONS BOARD



Louis A. Toepfer, Acting Chairman



William G. Kemsley, Sr.



Catherine L. Frank