

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	DOCKET NO. 87-3
)	
CAROL ROGERS AND THE)	
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT)	
LOCAL #3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 12, 1987, the Vermont State Colleges Faculty Federation, AFT Local #3180, AFL-CIO ("Federation") filed a grievance on behalf of the Federation and Carol Rogers. The grievance alleged that the Vermont State Colleges ("Colleges") had violated Article 8, Anti-Discrimination, of the collective bargaining agreement between the Colleges and the Federation, in failing to appoint Rogers to a full-time faculty position within the Math Department at Vermont Technical College ("VTC"), by discriminating against Rogers on the basis of her sex and Federation membership/activity.

Hearings were held before Labor Relations Board Members Charles McHugh, Chairman; Catherine Frank and Dinah Yessne on October 15, November 9, and December 4 and 8, 1987. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. Attorney Michael Schein represented Grievants. Requested Findings of Fact and Memoranda of Law were filed by the Colleges and the Federation on December 29 and 30, 1987, respectively.

Findings of Fact

1. VTC is a member of the Colleges and is a two year technical college located in Randolph Center, Vermont.
2. The Federation is the exclusive bargaining representative for all full-time teaching faculty and ranked librarians employed by the Colleges. [Joint Exhibits 1 & 2, Article 2(A)]
3. The contracts between the Federation and the Colleges in effect from September 1, 1984 through August 31, 1986, and from September 1, 1986 through August 31, 1988, both provide in relevant part, as follows:

ARTICLE 3

MANAGEMENT RIGHTS

A. All of the rights and responsibilities of the Vermont State Colleges, which have not been specifically provided for in this Agreement, shall be retained in the sole discretion of the Vermont State Colleges and, except as modified by this Agreement, such rights and responsibilities shall include but shall not be limited to:

1. The right to ... determine qualifications and criteria in hiring ... to hire ... employees

ARTICLE 8

ANTI-DISCRIMINATION

The parties shall not discriminate against any faculty member or against any applicant for employment in positions in the faculty by reason of age, race, creed, marital status, color, sex, religion, national origin, citizenship, union activity, political activity, or membership or non-membership in the Federation. (Joint Exhibits 1, 2)

4. Harry Miller has served as Academic Dean at VTC since the Fall of 1983. Robert Clarke has served as VTC President since July 1984.

5. VTC has not adopted an affirmative action plan. Under President Clarke, VTC has had the stated objective of seeking to

attract women applicants for faculty positions to the college. However, once a women applies for a position she competes on equal terms with male candidates. No preferences are given.

6. Technology-oriented institutions such as VTC traditionally have had more difficulty than liberal arts colleges in recruiting women as students and faculty. At the time Clarke became President, the percentage of full time faculty at VTC who were women was 12%. In an effort to attract more female applicants, Clarke had VTC join the National ID Program for female faculty, a women's support group which acts as a networking organization for job searches, and the American Association of University Women, a group which works on the concerns of female faculty.

7. Dean Miller is a member of the Women in Engineering subcommittee of the American Society of Engineering Educators and accordingly, he received a brochure regarding "do's and don'ts for traditionally male engineering faculty", a list of suggestions to men to help eliminate discrimination toward women. Dean Miller sent the brochure to all faculty in 1985. (Colleges Exhibit 23)

8. In January of 1986, Dean Miller also distributed to all faculty an essay written by a VTC student which, he indicated in an accompanying memorandum, "describes the sense of isolation and self-consciousness that women at VTC inevitably feel ... "I hope that it will enhance your sensitivity to the issues that women on our campus feel". (Colleges Exhibit 24)

9. In 1984, Dean Miller and Judy Stephany, then the sex equity consultant for the State Department of Education, were co-chairs of a major conference concerning women going into the technology

professions. The conference was organized in the Summer of 1984 with Dr. Sally Ride giving the Keynote address. Some forty presentations and workshops were set up emphasizing technical careers for women. Several hundred persons were in attendance. Following a second conference, the Dean and the President developed and wrote a grant proposal to the state Department of Education to establish a permanent Women in Technology program. The grant was approved for a three year period and is still in effect. It has been the fiscal responsibility of VTC to hire a full-time coordinator for the program.

10. Women in Technology Program activities have included conferences at St. Michael's, presentations to schools, brochure publication, and organizing "shadow days" where seventh and eighth grade girls are brought on campus to introduce them to the technologies and watch the female faculty.

11. Up to the time of the Math Department vacancy in question here, President Clarke during his tenure had hired fourteen full-time faculty of whom three were women (22%). No women applied for some of the faculty vacancies for which men were selected. Seven of Clarke's eleven administrative appointments during this same period went to female candidates (64%). Two of the three female faculty hired filled positions formerly held by men. There have been two women up for tenure at VTC during President Clarke's term in office. Both were awarded tenure.

12. The percentage of adjunct faculty and full-time tenure track faculty at VTC whom have been women during the period September 1983 through September 1986 are as follows:

Percentage of Women

	<u>Adjunct Percentage</u>	<u>Full-time Tenure-Track Percentage</u>
Sept. 1983	57.14%	11.9%
Sept. 1984	46.67%	9.4%
Sept. 1985	57.89%	10.5%
Sept. 1986	33.33%	10.9%

(Grievants' Exhibit 21)

13. At various times during this period, Dean Miller referred to adjunct faculty at VTC as the "faculty wives program." This referred to the fact that many adjunct faculty were wives of the full-time faculty members at VTC.

14. Carol Rogers was first hired as an adjunct faculty member at VTC in the Math Department for the Fall 1980 semester to teach one course. From the Spring 1982 semester through the Spring 1986 semester, Rogers served as an adjunct faculty member in the Math Department during all but one semester, except that she was on a full-time temporary contract for the 1984-85 academic year.

15. Adjunct faculty members receive lower pay per course than do full-time faculty and receive no benefits. They have no job security and have no voice in the administration of the college. They are given no preference at VTC for vacancies which arise in full-time positions. Adjuncts receive no preference on course selection. They are hired to teach particular courses that the full-time faculty do not want to teach or courses where heavy enrollments lead to a need to add extra sections.

16. The Math Department at VTC is considered a support department to the other departments on campus in that students cannot major in math, but instead take math courses as part of their degree requirements in other disciplines. The courses offered by the Math Department are as follows:

MA 001 and MA 002 - Trade Math These two courses are remedial level courses and are part of a new one year certificate program in buildings and construction trades. The certificate program is vocational in nature and the two math courses are highly elementary and geared toward the vocational student.

MA 021, MA 022, MA 023 All three of these courses are considered remedial level, pre-tech courses. Students entering VTC in a pre-tech program will need three years to graduate instead of two, and the math courses are designed for these students who have insufficient skills to handle college level math. No credits are awarded for these courses.

MA 030 - Introduction to Computers This course is offered in the Fall for building and construction trades students. Some 20-25 students take it each year. It carries no credit and deals with highly introductory matters.

MA 101 - Tech-Math This is the required basic math course which most students take, with MA 102 being a modified version for electrical students.

MA 104 - Math for Business Basic course designed for students in business related majors.

MA 105 - Principles of Math A required course for Agriculture-Business Department students. Popularly called "Ag-Math", the course while carrying credits and not considered remedial, is quite basic, covering very elementary concepts.

MA 106 - Calculus This course is required for all engineering technology students and is offered every semester. Students must take Tech-Math as a prerequisite.

MA 108 - Computer Software and Programming This course teaches the language of BASIC and is designed as an introductory course in the fundamentals of programming.

MA 110 - Pascal The Pascal course is an elective course, offered once a year and generally about 10-13 students take the course each year. Considered a second language course, Pascal can only be selected after the student has taken the 108 BASIC course.

MA 112/113 - Ada Programming Required of the Computer Technology program students but elective for others.

MA 202 - Computer Operating Statistics Designed for Computer Technology students.

MA 204 - Calculus II An upper level calculus course.

MA 205 - Computer Programming for Business.

MA 208 - Cobol Programming Another type of computer language.
(Grievants' Exhibit 13)

17. Any course with a "0" prefix is a remedial course. These courses are designed to bridge the gap between high school and college by reviewing and reinforcing concepts that should have been mastered in high school. If students are in need of these courses, they must complete them before entering VTC's degree program. MA 101, MA 102, MA 105 and MA 108 are lower-level math courses. These are freshman-level courses for credit.

18. By the conclusion of the 1986 Spring semester, Rogers had taught 16 math courses at VTC. Ten of the courses were remedial courses and five were lower-level courses. The remaining course was MA 106, Calculus. (Grievants' Exhibit 2)

19. Student ratings of Rogers' performance as an instructor were consistently high. The student evaluation form contains the following statement requiring response: "The instructor is enthusiastic about the subject matter and teaching in general. Please comment." Each student was allowed to write a comment, and to circle the following responses: 4 = Strongly Agree, 3 = Agree, 2 = Disagree, 1 = Strongly Disagree, 0 = N/A. Student evaluations for two remedial courses taught by Rogers in Fall 1985 and Spring 1986 were examined. In one section, Rogers received sixteen "4s," two "3s," and no "2s" or "1s." In the other section, she received thirteen "4s" and no other scores. The following comments were made in these two classes relating to Rogers' enthusiasm:

"She's a spaz"
"A real fireball"
"To say the very least!!!"
"Definitely"
"Always has a smile"
"Very into it."
"Rogers is very enthusiastic in which [sic] she gets her

point across"
"VERY"
"She has a positive attitude that makes the class go easier"
"Very enthusiastic"
"Bubbles with math energy"
"Always!"
"Very enthusiastic"
"Very enthusiastic"
"Very enthusiastic"

(Grievants' Exhibit 4)

20. Rogers also was highly-rated as a teacher by faculty committees and the VTC administration. (Grievants' Exhibits 1.25-1.30)

21. Rogers was appointed as a full-time faculty member on a temporary basis for the Fall 1984 Semester to replace a faculty member on sabbatical. She was appointed to the position too late to be included in the college catalogue. Dean Miller failed to introduce Rogers to the student body at convocation in Fall 1984 when he was introducing all full-time faculty. This was an oversight on his part.

22. During the Fall 1984 Semester, President Clarke had a series of dinners and desserts at his house for the VTC full-time faculty and spouses. He organized these by inviting all full-time faculty of a given department together to a particular get-together. The purpose was for he and his wife to become acquainted with faculty and spouses. Rogers attended the electrical department's get-together as a spouse. Rogers' husband was a full-time faculty member of that department. Clarke did not invite Rogers to the Math Department dessert because she had been at the electrical department function and because she was not a tenure track faculty member.

23. On December 19, 1984, Dean Miller offered Rogers a full-time temporary contract for the Spring, 1985 semester, consisting of 15 credit hours, with no overload pay. Rogers refused to accept the contract without overload pay because she learned that Donald

Nevin, a tenured faculty member, was teaching 17 credit hours that Spring semester, and was being paid overload pay for each credit hour over 12. Accordingly, Rogers demanded equal pay, involving overload pay for three credit hours. Dean Miller agreed to this. A dispute remained, however, because Dean Miller intended to make the offer contingent on adequate enrollment, but failed to state this condition in his offer. On January 9, 1985, Dean Miller told Rogers enrollments had dropped and she would not have a full-time contract. On January 10th, he offered her an adjunct contract. Rogers hired a lawyer and informed Dean Miller and President Clarke that it was her position that she had a valid and binding offer and acceptance of a full-time contract, and therefore she would not sign the part-time contract. After a dispute over whether Rogers was entitled to a special conference with the President pursuant to the Federation-Colleges contract, Rogers' attorney was preparing to seek an injunction to prevent VTC from requiring Rogers to sign the contract when the parties agreed to meet. Ultimately, a computer error in enrollments was discovered, enabling VTC to give Rogers a full-time contract.
(Grievants' Exhibits 1.22-1.24)

24. This contract dispute resulted in friction between Rogers and Dean Miller, and a lessening of cordiality between them.

25. At various times while she was an adjunct faculty member, Rogers requested of Dean Miller and John Knox, Chairperson of the Math Department, that she be assigned some higher level courses so that she would not lose her ability to teach a wide range of courses. She did not request that she not be assigned lower level and remedial courses, and she always carried out such assignments with enthusiasm and a high level of professional competence. Knox believed that Rogers was

"stepping out of her place" as an adjunct faculty member by asking to teach higher level courses. Knox indicated to Dean Miller that Rogers was being combative and aggressive with respect to this issue.

26. During academic year 1984-1985, when Rogers was a full-time temporary instructor, she showed up a few minutes late for a math department meeting because she had been at an aerobics class. The meeting had not yet started, but Byron Angell, a tenured Math Department faculty member, scolded her by telling her that her responsibility was not to be in aerobics but to be at the meeting. A few minutes later, Paul Calter, a tenured Math Department faculty member, walked in from the same aerobics class. No one said a word to him about being late.

27. In the Fall, 1985 semester, Rogers met with Dean Miller to discuss prospects for finding full-time employment with VTC. At that meeting, Dean Miller told Rogers that knowledge of a second computer language was necessary to be seriously considered for any full-time tenure-track position in the VTC math department. At that time Rogers had knowledge of one computer language - BASIC. As the result of her discussions with Dean Miller, Rogers took the Pascal Computer Programming Course offered at VTC and received an "A" for the course. In the judgment of Rogers' instructor for the course, Rogers was capable of teaching Pascal programming with sufficient lead time.
(Grievants Exhibit 1.3)

28. On December 5, 1985, Rogers entered the faculty lounge at VTC. Nevin then came in carrying a box. Walter Granter, a tenured Math Department faculty member, began pointing back and forth between Rogers and the box while laughing, and urged Nevin to show her what was inside, saying that it was the new computer mascot. Rogers opened

the box and at first just saw a creature with a beard. She said she "didn't get it," and Nevin said he guessed you had to be full-time to "get it." Rogers lifted up the beard and realized it was a male doll with a large erect penis. She left the lounge humiliated and embarrassed.

29. Rogers later that day informed Nevin and Granter that their actions were vulgar and unprofessional. Rogers' husband spoke to Dean Miller about the incident. Miller informed Nevin and Granter that their behavior was inappropriate and understood that they were going to apologize to Rogers for the incident.

30. In the VTC faculty lounge, Rogers has been subject to comments about her legs, told that "we were just waiting for you to make coffee," and about her laugh told that "if you were a man, I'd tell you you sound like a jackass."

31. In the Spring of 1986, the Math Department consisted of six full-time faculty: John Knox, Robert Wonkka, Paul Calter, Byron Angell, Walter Granter, and Donald Nevin. Knox was Department Chairperson. In late April of 1986, Granter announced his retirement effective at the conclusion of that semester, thus creating a vacancy for the 1986-87 academic year. This was to be the first vacancy in the Math Department in twelve years. President Clarke authorized that the position be filled.

32. The hiring process generally involves the President, the Academic Dean and a Faculty Committee, primarily but intentionally not entirely comprised of full-time faculty in the involved Department. When a position opens up, an advertisement is drafted, posted and sent to various publications. Following initial screening of applicants by

both the Committee and the Dean, finalists are invited to the campus for interviews. After all finalists are interviewed, the Committee gives its recommendations to the Dean. The Dean in turn makes his own recommendation to the President, sending with it the faculty committee's recommendation as well. The President makes the final decision on appointment after considering all recommendations.

33. By the time of the Math Department vacancy, President Clarke and Dean Miller had participated in fourteen hiring decisions on full-time faculty. In all cases, both the President and the Dean concurred with the recommendation of the particular faculty search Committee. Subsequent to the hiring decision in dispute herein, the Dean and President disagreed with one Faculty Committee recommendation and hired another person.

34. Dean Miller wrote an advertisement for the math vacancy which was posted at the Colleges, and then published in several Vermont newspapers. Before posting it, Dean Miller showed the advertisement to Knox for his review and comment. The advertisement provided in pertinent part:

"Duties include teaching classes, curriculum development, participation in faculty and student affairs, and professional development. Masters degree and teaching experience required, industrial experience desirable. Candidates must be able to teach remedial and technical mathematics, calculus, and computer programming in BASIC, knowledge of a second language (Pascal, Ada, COBOL) is highly desirable." (Grievants' Exhibit 6)

35. The Faculty Search Committee for the 1986 math vacancy was initially selected by Knox. The persons selected, in addition to Knox, who acted as Chair of the Committee, were Byron Angell, Robert Wonkka, Donald Nevin, all from the Math Department, and Harry Wirtz of the Civil Engineering Department. Dean Miller made the final decision

to formally appoint these individuals to the Faculty Committee. No woman faculty member was sought for inclusion.

36. Faculty search committees are primarily made up of members of the involved Department. It is not unusual to have a representative from another department on the Committee, particularly where there is some curriculum nexus between the departments.

37. Rogers applied for the vacant Math Department position.
(Grievants' Exhibit 1.1, 1.2)

38. Based on the applications received, the Committee and the Dean concurred that four individuals should be considered finalists and invited to the campus for an interview: Floyd McPhetres, Carol Rogers, Marvin Krupinsky and Elizabeth Gambler. President Clarke suggested to the Dean that a fifth finalist be added, since normally five finalists are interviewed for new positions. Dean Miller selected Jane Bracken as a fifth candidate; the Committee agreed and she was added to the list of finalists.

39. During the search process, Knox specifically recruited two individuals for the job, both women. One was Elizabeth Gambler, a high school teacher, whom Knox had known for some time. The other was a person recommended to Knox by Dean Miller, Markie Trainer, a department chairperson in the Math Department at the Rutland High School. Knox called both women and invited them to apply. Trainer declined because she had already signed a contract at Rutland for the upcoming year. Gambler did apply and was selected as a finalist. However, just prior to being interviewed, Gambler withdrew her name from consideration.

40. Krupinsky had a Masters Degree in Civil Engineering and a Masters Degree in Mathematics. He had been teaching mathematics for

the past six years at Lyndon State College and recently had been denied tenure. (Colleges Exhibit 12)

41. Bracken had a Bachelors Degree and a Masters Degree in Mathematics. At the time of her application, she was employed by General Electric in Burlington as a Programmer/Analyst. Her teaching experience was limited to one Business Statistics course at Champlain College in Spring, 1986. (Grievants' Exhibits 17, 18)

42. McPhetres holds a Bachelors Degree in Physics from the University of Vermont and a Masters Degree, majoring in Teaching Math, from the University of Illinois. McPhetres had been a high school teacher of mathematics for 36 years at the time of his application, including 23 years as chairman of the Math Department at Hartford High School in White River Junction. He had taught several Math courses as an adjunct instructor at Castleton State College, the Community Colleges of Vermont and the University of New Hampshire (School for Lifelong Learning) during his career, as well as teaching special courses in math for the Vermont Department of Labor and Industry. McPhetres received the "Outstanding Vermont Teacher Award" from University Of Vermont in October, 1982 and then received the "Outstanding Vermont Mathematics Teacher Award" from Sigma Xi in 1984. He had experience on the high school level in curriculum development.
(Grievants' Exhibit 5.1, 5.2)

43. McPhetres was well-qualified to teach the remedial math courses, Tech-Math Courses and Ag-Math Courses offered by VTC. While McPhetres had not taught calculus previously, he would have been able to do so with minimal preparation time. McPhetres learned the BASIC computer language on a mainframe computer in the 1960's, and taught it at times as part of other subjects until 1973. He had not taught

BASIC since then and has never taught it on micro-computers, which is the way it is taught at VTC. As of the date of the hiring decision in dispute herein, he was not ready to teach VTC's BASIC course, MA 108. He would have needed about 50 hours of self-study with the micro-computer to sufficiently refresh himself to the point where he could teach BASIC. McPhetres has no knowledge of a second computer language.

44. At the time of her application, Rogers held a Bachelors Degree, majoring in Mathematics, and a Masters Degree in Education from the University of Delaware with additional graduate credits beyond that. She had 30 graduate credits in Mathematics. After leaving the University of Delaware and prior to being employed as an adjunct at VTC, Rogers spent eleven years as a secondary school math teacher and one year as an editor in mathematics with Houghton-Mifflin Publishing Company. She was the author of one book, Test Bank, published by Prentice-Hall and was under contract with Prentice-Hall to co-author with Paul Calter a book entitled Introduction to Technical Mathematics. She had experience on the high school and college level in developing curriculum, including developing a remedial Pre-Ag-Math course for use at VTC. (Grievants' Exhibits 1.1, 1.2)

45. As of the date of the hiring decision herein, Rogers was well-qualified to teach the remedial math courses, Tech-Math courses and Ag-Math courses offered by VTC. She had taught calculus at VTC and at the high school level. She had taught VTC's BASIC course, MA 108 - Computer Programming - three times at VTC. She knew a second computer language and was able to teach VTC's Pascal Course with sufficient lead time.

46. Once the finalists were selected, the Dean set up an interview schedule for June 17 and 18. Krupinsky and McPhetres were scheduled for the 17th; Bracken and Rogers for the 18th. The four finalists each met with the Dean, the Faculty Committee and the President in separate interviews.

47. At his interviews, Krupinsky indicated that, if hired, he wanted either a tenured position or a five year contractual commitment.

48. During his interviews on June 17, McPhetres was asked how he felt about teaching remedial math courses. McPhetres indicated to the Dean and to the Committee that he preferred to teach remedial courses; that he preferred teaching students with learning disabilities more than students who learned more easily. When told by the Committee that, if hired, he would be teaching Ag-Math, he expressed enthusiasm. McPhetres indicated that he was seeking a challenge at that stage of his career and that he was interested in teaching only another 5-6 years. McPhetres indicated that he could teach the BASIC computer course as long as he had access to a micro-computer that summer to refresh himself and prepare to teach the course.

49. When Rogers was interviewed by Dean Miller on June 18th, the Dean greeted Rogers with the remark: "Today is ladies' day, yesterday was men's day." Dean Miller asked Rogers what she thought needed changing at VTC. She focused on three things: (1) greater flexibility in the Math Department so that a wide variety of courses could be taught by different instructors; (2) more female faculty as role models for the female students VTC wanted to recruit; and (3) a need to revise the Pre-Technical Math curriculum so that it was distinct

from and simpler than the Technical Math curriculum given to freshmen for credit. Dean Miller did not ask Rogers if she would be interested in or enthusiastic about continuing to teach lower level and remedial courses. Rogers asked Dean Miller whether the fact that she was a faculty spouse would have any effect on her chances. He indicated no, but went on to explain that it can be a problem because if you lose one faculty member, you automatically lose two. The Dean assured Rogers that would not be a problem in her case, due to her established ties in the community. In concluding that interview, as well as her interview with the Committee and President Clarke, Rogers encouraged her interviewers to review her personnel file and her student evaluations. Dean Miller was familiar with the contents of Rogers' student evaluations and personnel file prior to making his recommendation herein.

50. After meeting with the Dean, Rogers interviewed that day with the Faculty Committee consisting of Knox, Wonkka, Angell and Wirtz. Nevin was unavailable for the interviews of candidates and did not participate in Committee deliberations. Rogers' interview before the Committee started with Wirtz asking Rogers to explain how she approached the teaching of her courses. Wonkka then asked if Rogers would need special scheduling because of her children. The Rogers had requested special scheduling in the early 1980s when their children were infants, but they had made no such requests after 1983. Rogers replied that no special scheduling would be required. Angell next asked Rogers if she was seeking a full-time tenure-track position. She replied that she was. Angell next referred to the part of Rogers' cover letter which stated that VTC needed "more full-time faculty

women to serve as role models for our young women students." (Grievants' Exhibit 1.1) Angell asked Rogers to explain this comment. Rogers indicated that women students were having a problem coping in a male-dominated environment. Angell told Rogers: "I don't see that in my classes, that must be your problem." Knox, Wonkka and Angell discussed the Ag-Math curriculum for a lengthy period of time without including Rogers in the discussion. Wonkka noted that little needed to be done to the course since it had been recently rewritten. Rogers asked whether they were seeking an Ag-Math teacher, or an all-purpose math teacher. She was assured that they were seeking an all-purpose math teacher. Rogers volunteered to take the Ag-Math textbook with her on vacation to work on the course curriculum. Wonkka then said that he guessed he was "old-fashioned," but that Rogers had used too many "I's" in her cover letter, and he also pointed out a typographical error. The Committee asked Rogers no direct questions concerning her interest or enthusiasm for teaching lower level and remedial math courses. Knox did not review Rogers' personnel file and student evaluations during the selection process for this position, although he was aware that Rogers had received good student evaluations on her teaching performance in remedial courses and good student evaluations in general. Wonkka did not review Rogers' personnel file or student evaluations. Other Committee members did not testify in this matter and it is unclear whether they reviewed Rogers' personnel file or student evaluations.

51. During the interview process, McPhetres was not asked about special scheduling, the amount of "I's" used in his cover letter or whether he was seeking a full-time tenure-track position. A

comparison of cover letters of McPhetres and Rogers indicates that Rogers used proportionately fewer "I's than did McPhetres. McPhetres was not told in the interview process that day was "men's day" for interviews and no discussion occurred among Committee members from which he was left out.

52. In Rogers' subsequent interview with President Clarke that day, Clarke asked Rogers to review her employment history at VTC. Clarke did not ask Rogers any direct questions about her interest or enthusiasm for teaching lower level math courses. He asked if she had applied for any other jobs, and she told him she knew there was a high school teaching job open in Montpelier, but that a friend of hers was applying and she did not want to compete with her. President Clarke told her of a math vacancy at the junior high level in Bethel.

53. Jane Bracken also was interviewed that day by the Dean, the Committee and the President. When Dean Miller interviewed Bracken, he mentioned that VTC was a "male-dominated environment," and questioned whether she would be comfortable working in such an environment. Dean Miller asked Bracken if she would be comfortable teaching in front of a room full of 18 year-old boys. He told her the VTC Math Department was made up of mostly older men who were set in their ways. The Dean told Bracken about the type of curriculum the College had, the courses in the Math Department and the types of students at VTC. He also asked her about her views on teaching Ag-Math and what areas she was capable of teaching in general. Bracken indicated that she would teach Ag-Math willingly but would prefer to teach calculus. Bracken indicated to Dean Miller that she was uncertain of her career plans,

that she was just exploring the possibility of teaching and also was considering a move to Boston.

54. In Bracken's interview with the Committee, Bracken had the impression the Committee was not concerned whether the qualifications mentioned in her resume were accurate.

55. Following the last interview, the Committee deliberated for almost two hours comparing the candidates as measured against the essential question of who could best meet the needs of the department. Bracken was eliminated relatively early in the deliberations due generally to her uncertainty about career plans and her inexperience in teaching, and Krupinsky was eliminated due to his demand for either a tenured position or a long term contractual commitment. The final deliberations centered on Rogers and McPhetres, whom the Committee members felt were very close candidates. The Committee members discussed that one of the Math Department weaknesses was that Department Faculty members did not like to teach remedial courses and Ag-Math courses and that McPhetres was very enthusiastic about teaching such courses. The Committee concluded that Rogers was not enthusiastic about teaching the remedial and lower-level courses because she had indicated prior to the application process that she wanted to teach some higher-level courses. The Committee concluded that McPhetres' lack of a second computer language was not crucial because there were several faculty members available to teach computer courses. Rogers' personality became a concern during the Committee deliberations. Committee members were concerned that Rogers was a person who "comes up fighting" and that they may lose "harmony" in the

Department if Rogers was appointed. In the final analysis, the Committee unanimously recommended that McPhetres be appointed.

56. Knox verbally informed Dean Miller that the Committee had concluded that the Math Department had a great need for someone to fill a void in the remedial area and that McPhetres' greater enthusiasm than Rogers' in this area tipped the balance in favor of McPhetres. The Committee wrote a memorandum to Dean Miller on June 19, confirming that McPhetres was their top choice. (Colleges Exhibit 16)

57. Dean Miller deliberated on the committee's recommendation. He eliminated Krupinsky and Bracken from consideration for the same reasons as had the Committee. Dean Miller concluded that Rogers and McPhetres were both highly qualified candidates. Dean Miller decided to recommend the appointment of McPhetres. On June 27, 1986 he forwarded his written recommendation to the President, stating:

"The recommendation is based on Mr. McPhetres outstanding teaching history as well as his significant involvement in curriculum development and his enthusiasm for working with the pre-technology and agricultural mathematics courses. These are courses on the campus that have long been deserving of significant attention and Mr. McPhetres was the only candidate that expressed a great deal of enthusiasm for working in those areas. We will loose [sic] some versatility by appointing Mr. McPhetres. However, this should not be a long term problem as his plans are to work for only another five or six years. During that time I'm sure our remedial program will be vastly improved."

(Grievants' Exhibit 5.6)

58. Dean Miller concluded that McPhetres' strong commitment to work in the remedial area overcame his lack of a second computer language such as Pascal; that his deficiency in this area was not that crucial because Pascal was an elective course and several faculty members were available to teach a Pascal course.

59. President Clarke reviewed the Dean's recommendation and discussed it with him. While he did not formally meet with the

Committee members, he informally inquired of Knox as to the committee's thinking. He asked if the recommendation was unanimous; Mr. Knox replied affirmatively. The President then asked in general about the recommendation, particularly how the Committee had viewed the choice between McPhetres, Rogers and Krupinsky. Knox summarized the Committee's recommendation as analogous to a baseball team needing a "left handed relief pitcher". He indicated that McPhetres met a very special need in the department in terms of attacking the low level courses that others in the department were less inclined to handle. President Clarke also informally discussed the committee's recommendation with Wirtz. Clarke did not review Rogers' personnel file or student evaluations prior to making his decision.

60. On or before June 27, 1986, President Clarke concurred in the recommendation and appointed McPhetres. (Grievants' Exhibit 7)

61. Following her interviews, Rogers went away on vacation and in late June, she called Dean Miller about the job. Dean Miller told her McPhetres had been hired. While it was Rogers' impression from the conversation that Dean Miller had jointly recommended her and McPhetres to the President, the Dean meant to indicate that he would have been comfortable with either candidate but that he concurred with the Committee recommendation.

62. Two of McPhetres' course assignments in the Fall of 1986 were the 105 Ag-Math course. Knox asked him to teach the course with particular sensitivity to the need for changes within the curriculum. McPhetres has worked with the Agriculture-Business Department on curriculum revisions. McPhetres also taught a lower level Technical Math course that semester - MA 102. McPhetres was originally

scheduled to teach the Basic Computer course, MA 108, that semester. However, he did not teach the course when one section was dropped due to lower enrollments than expected.

63. In McPhetres' first three semesters teaching at VTC, he was assigned to teach remedial courses and lower-level Tech-Math and Ag-Math courses. McPhetres has not taught the Basic Computer course, MA 108, since his appointment.

64. On September 16, 1986, the Federation filed a grievance with President Clarke over the non-appointment of Rogers to the Math Department position. The grievance alleged discrimination based on sex, union membership/activity, age and marital status.
(Colleges Exhibits 1,2)

65. The grievance filed with the Labor Relations Board did not allege discrimination based on age and marital status.

66. Grievants have withdrawn their allegation that Rogers was discriminated against based on Federation membership/activity.

67. In light of the Colleges' request that if the Board determines that Rogers is entitled to back pay, then the Colleges wish another hearing to more fully explore precise back pay amounts, we make no findings as to earnings of Rogers during the period Fall 1986 to the present.

OPINION

The first issue we need to address is whether Grievants' claims that Carol Rogers was discriminated against on account of age and marital status are properly before the Board. The Colleges contend such claims are not properly raised because the grievance filed with the Board did not specifically allege such discrimination.

The facts indicate that Grievants raised such claims at the first step of the grievance procedure but did not raise them in the grievance filed with the Board. Section 23.3 of the Board's Rules of Practice, effective at the time the grievance was filed, provided that 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. While the grievance filed did cite the anti-discrimination article of the Contract, it did so in reference to discrimination based on sex and Federation membership/activity, not in reference to discrimination based on age and marital status. Thus, the Colleges were not on timely notice that the nature of the grievance included these claims. Failing agreement by the Colleges to allow the Federation to amend the petition, we consider the claims untimely raised. Grievance of Shockley and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, 5 VLRB 192, 202-203; 5 VLRB 280, 281 (1982).

Nonetheless, even though discrimination based on marital status was not timely raised as an independent claim, we consider this issue to be properly before the Board insofar as it may relate to a claim of sex discrimination. Discrimination based on marital status can be evidence of sex discrimination since, for instance, a woman may be

viewed by a prospective employer as an extension of her husband rather than as an individual with independent qualifications of her own. Accordingly, it is appropriate for the Board to consider evidence relating to Rogers' marital status where a nexus can be established with the claim of sex discrimination.

Thus, given these rulings and given that Grievants have withdrawn their claim that Rogers was discriminated against on the basis of Federation membership/activity, the sole issue before us is whether the Colleges discriminated against Rogers because of her sex when it did not appoint her to a full-time position in the Math Department.

This is a case of disparate treatment, a charge that Rogers was treated adversely because of her sex. In deciding such a case, we employ the analysis adopted by the United States Supreme Court and the Vermont Supreme Court in such cases.

The complainant carries the initial burden of establishing a prima facie case of discrimination. The complainant must establish that she belongs to a protected class; that she applied for and was qualified for a job for which the employer was seeking applicants; that, despite her qualifications, she was rejected; and that after the rejection, the position was still open and the employer continued to seek applicants having qualifications like those of the person rejected. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). State of Vermont v. Whitingham School Board, 138 Vt. 15, 19 (1979).

Once the complainant establishes a prima facie case, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection. McDonnell Douglas, supra, at 802. In meeting this burden, the employer is not

required to prove the absence of discriminatory motive. Board of Trustees of Keene State College v. Sweeney, 439 U.S. 24 (1978). In putting forth its nondiscriminatory purpose, the employer need not persuade the reviewing body that it was actually motivated by the proffered reasons. It is sufficient if the employer's evidence raises a genuine issue of fact as to whether it discriminated against the complainant. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254-255 (1981).

Should the employer carry its burden, the complainant must then have the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the employer were not its true reasons, but were a pretext for discrimination. McDonnell Douglas, supra, at 804. Burdine, supra, at 253. The ultimate burden of persuading the trier of fact that the employer intentionally discriminated against the complainant remains at all times with the complainant. Burdine, supra, at 253.

In applying these standards to this grievance, we first conclude, and it is accepted by the Colleges, that Grievants have established a prima facie case of sex discrimination: (i) Rogers was in the protected class of women; (ii) she was qualified for the full-time Math position; (iii) she was rejected for the position; and (iv) VTC instead hired a male for the position.

Grievants having established their prima facie case, the burden shifts to the Colleges to articulate some legitimate nondiscriminatory reason for the employee's rejection. Here, the Colleges have articulated such a reason for Rogers' rejection. Essentially, the reason is that remedial and lower level Math courses were areas of the

curriculum not attractive to existing Math Department faculty, that they were in need of rejuvenation, and that Floyd McPhetres was an experienced, outstanding teacher who demonstrated greater enthusiasm for teaching those courses than did Rogers.

We accept that seeking to meet a special Department need such as shoring up a weak link in the Department curriculum with an enthusiastic, qualified teacher is a legitimate, nondiscriminatory reason for a faculty hiring decision. In so deciding, we need not and are not concluding that the Colleges proved McPhetres was more enthusiastic than Rogers. The applicable standards with respect to the intermediate burden on the employer do not require such proof at this stage of the analysis. That proof is best treated at the final step of the analysis so that Grievants are afforded a full and fair opportunity to demonstrate that the stated reason for rejection was in fact pretext. Burrus v. United Telephone Co. of Kansas, Inc., 683 F2d 339, 342 (1982).

We note that we reject another reason put forth by the Colleges as a legitimate, nondiscriminatory factor in not hiring Rogers; that the faculty committee recommended that McPhetres be hired, and traditionally strong deference was paid to faculty recommendations. In our view, the VTC Administration should not be insulated against the effects of bias exhibited by faculty committee members where, as is the case here, the Administration has the final say on the composition of the committee and strong deference is given to committee recommendations. c.f. Grievance of Burrill, 1 VLRB 386, 393 (1978).

Thus, we proceed to the final step of the analysis. Grievants must prove that the legitimate reason offered by the Colleges was not

its true reason, but was a pretext for discrimination. While it is a close question, we conclude by a preponderance of the evidence that, when all circumstances of the case are considered, the proffered reason is a pretext for sex discrimination against Rogers.

First, the conclusions of the Faculty Committee and the Dean, and the acceptance by the President, of the greater enthusiasm of McPhetres than Rogers for teaching remedial and lower level courses was an unfair conclusion. Rogers was never asked during the interview process for her views on teaching remedial and lower level courses, queries directly made to McPhetres. This difference in treatment at the interview stage was at least in part caused by discrimination on the basis of sex, where no other reason existed for treating the two candidates differently, and their relative degrees of enthusiasm played such a crucial part in the Committee's and Dean's recommendations. King v. Trans World Airlines, Inc., 738 F2d 255, 258 (1984).

We do not accept the Colleges' claim that Rogers had previously expressed her distaste for teaching remedial and lower level courses by requesting as an adjunct faculty member that she be allowed to teach some higher level courses. In making this request, Rogers was not expressing an aversion to remedial and lower level courses, which were the only courses she taught at that point, but a desire to have a wider variety of teaching experience so as not to lose her range of expertise.

Simply stated, the Colleges failed to provide Rogers with the same opportunity to demonstrate her enthusiasm for these courses that they provided McPhetres. They further failed to give weight to her demonstrated ability to teach these courses. This was unfair,

particularly since Rogers' student evaluations demonstrated her enthusiasm when she did teach remedial courses, and given that Rogers was in the process of co-authoring a remedial textbook, a project she had voluntarily undertaken. The Board was impressed by Rogers' testimony concerning her dedication to and enthusiasm for teaching no matter what the subject matter. There is no evidence before us from which we can conclude that Rogers would not have taught remedial and lower-level courses with enthusiasm.

Second, the evidence indicates that Rogers had stronger qualifications for the VTC position than did McPhetres. Both were highly rated as teachers and had done curriculum development work. Both were well-qualified to teach the remedial math courses, Tech-Math courses and Ag-Math courses offered by VTC. Where their qualifications differed, they differed in Rogers' favor. She had recent experience teaching VTC's Basic Computer course and had knowledge of a second computer language. McPhetres had not taught Basic for 13 years and would have to spend a substantial amount of time before being able to teach it. He also had no knowledge of a second computer language.

While the Colleges downplay the importance of this qualification, this claim is belied by the Colleges' own actions. Dean Miller had informed Rogers only months earlier that she would not be considered seriously for a full-time faculty position unless she had knowledge of a second computer language. Also, the advertisement for the vacant position written by Dean Miller had stated that "knowledge of a second (computer) language is highly desirable." While filling academic jobs may require revising or refining the original selection criteria in light of the applications received in an effort to find the candidate

of greatest value to the institution, Lamphere v. Boston University, 798 F2d 532, 539 (1st Cir. 1986), the revising of selection criteria here is suspect where the revision favors a male candidate versus a female candidate and their respective qualifications otherwise appear to be comparable.

In fact, the Colleges accepted the superior qualifications of Rogers during the hiring process. This is indicated by Dean Miller stating in his letter recommending McPhetres that VTC would lose "some versatility" by hiring McPhetres rather than Rogers. Such a statement was an obvious admission that Rogers was a superior overall candidate to McPhetres.

Third, the questioning and comments of male Faculty Committee members during the interview process demonstrated a bias against Rogers because she was a woman. A Committee member asked Rogers whether she would need special scheduling because of children. Such a question was not asked of McPhetres. A Committee member commented that she had used too many "I's" in her cover letter. Such a comment was not made to McPhetres even though his letter contained a greater percentage of "I's". A Committee member questioned whether she was seeking a full-time tenure track position, even though it was obvious she was seeking such a position. The "I's" comment and the latter question were insulting to a serious candidate and indicated an attitude on the part of the Committee that they were not prepared to take Rogers seriously despite her qualifications for the position. There existing no legitimate basis for asking such questions and directing such comments to a female candidate and not a male candidate, we conclude that their difference in treatment at the interview

stage was at least in part caused by bias against Rogers because she was a woman. King v. Trans World Airlines, Inc., supra. The remark by one Committee member during the interview that Rogers' expressed view that women students at VTC were having a problem coping in a male-dominated environment was "her problem" was indicative of a general climate of insensitivity to discrimination against women existing on the Committee. Given the apparent deference given Faculty Committee hiring recommendations by Dean Miller and President Clarke, the bias of the Committee certainly contributed to the ultimate rejection of Rogers for the vacant position.

We recognize that the Committee Chairperson personally recruited two women to apply for the position. Nonetheless, what is most relevant is how the women who were interviewed were treated when they did actively seek the position. That is more probative of the Committee's attitude towards women.

Fourth, while President Clarke and Dean Miller had a stated objective of recruiting more women faculty and students to VTC, an overall climate of discrimination against women existed at the College. The December 1985 "doll incident" and sexist comments made to Rogers in the faculty lounge were indicative of this climate.

Minimal efforts were made by the VTC Administration to change this climate. While we lack evidence on the facts of each hiring selection in which Dean Miller and President Clarke were involved, the lack of progression in the percentage of full-time women faculty at VTC during their tenure has some significance. In the end, the status quo has not changed. The facts of the hiring situation herein indicates that their stated objective of recruiting more women faculty did

not translate into resultant action. Specifically, and without belaboring the point, in choosing the Faculty Hiring Committee, Dean Miller could have selected a women faculty member to sit on the Committee to ensure that a women's perspective would be part of the Committee's thought processes. Yet, no woman was selected with the resultant Committee bias tainting the hiring process.

Further, overt actions of Dean Miller indicate a bias against women. His reference to adjunct faculty as the "faculty wives program" certainly did nothing to lessen the general climate of discrimination against women. Dean Miller's question to Jane Bracken in the interview process, concerning whether she would be comfortable teaching in front of a room full of 18 year old boys, is also revealing in his attitude towards women. A related fair question to male candidates, but one never asked by Miller, is how they would handle women students.

While none of the above reasons existing alone would cause us to conclude that the Colleges' stated reason for hiring McPhetres rather than Rogers was a pretext, taken together we conclude they are sufficient to indicate by a preponderance of the evidence that the actual reason Rogers was not selected for the Math Department faculty position was intentional discrimination against Rogers on the basis of sex.

In determining the appropriate remedy, we seek to make Rogers whole for damages she suffered as a result of the discrimination. Vermont State Colleges Faculty Federation and Peck v. Vermont State Colleges, 139 Vt. 329, 334 (1981). To make an employee "whole" is to place him or her in the position he or she would have been in if the

employer violation had not occurred. Grievance of Benoir, 8 VLRB 165, 168 (1985).

If Rogers had not been discriminated against, she would have been hired into the full-time Math Department position effective the Fall 1986 semester. To make Rogers whole under these circumstances is to order that the Colleges hire her into a full-time tenure track position in the VTC Math Department effective the beginning of the Fall 1988 Semester, and award her back pay and other benefits from the effective date she should have been hired, the Fall 1986 Semester, less sums of money earned or that without excuse should have been earned since that date. Grievance of Brooks, 135 Vt. 563, 570 (1977). Further, it is appropriate that she be treated as a third-year faculty member for all purposes effective the beginning of the Fall 1988 Semester.

ORDER

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

1. The Grievance of Carol Rogers and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, is GRANTED;
2. The Vermont State Colleges shall appoint Rogers to a full-time tenure track position in the Mathematics Department at Vermont Technical College effective the beginning of the Fall 1988 Semester;
3. The Vermont State Colleges shall compensate Rogers retroactively for the Fall 1986 Semester through the Spring of 1988 Semester at a full-time faculty member's salary, plus benefits

she was entitled to under the collective bargaining agreement between the Colleges and Federation, minus any income received by Rogers in the interim;

4. The interest due Rogers on back pay shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing with the beginning of the Fall 1986 Semester, and ending on the effective date of her appointment;

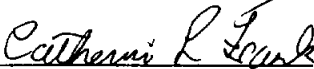
5. Upon her effective appointment for the Fall 1988 Semester, the Colleges shall treat Rogers as a third-year faculty member for all purposes; and

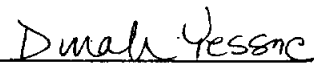
6. The parties shall submit to the Board by April 28, 1988, a proposed order indicating the specific amount of back pay and other benefits due Rogers; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board. Any evidentiary hearing necessary on these issues shall be held on May 5, 1988, at 9:30 a.m. in the Labor Relations Board hearing room.

Dated the 15th day of April, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


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