

VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY)	
FEDERATION, AFT LOCAL 3180,)	
AFL-CIO)	
)	
v.)	DOCKET NO. 88-63
)	
VERMONT STATE COLLEGES)	

MEMORANDUM AND ORDER

On November 21, 1988, 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 alleges that the Colleges violated 3 VSA §961(5) through the following actions taken against Gordon MacGregor, a tenured full-time faculty member in the Psychology Department of Johnson State College ("JSC"):

a) Beginning in September, 1988, President Eric Gilbertson of JSC removed upper level courses from MacGregor's schedule on the pretense that he is not competent to teach them. The Federation alleges that this action changes MacGregor's workload, maligns his reputation among his students and colleagues, and alters the curriculum of his department which place his future enrollments and workload in jeopardy.

b) Beginning in September, 1988, MacGregor has been under continued harassment by Academic Dean Joseph Kennedy; specifically that documents were being entered into his personnel file alleging that unidentified students were complaining he "made them feel stupid" and that MacGregor

has been given no opportunity to respond to them. The Federation alleges that the contract between the Federation and the Colleges specifically prohibits the use of anonymous materials from students, other than student evaluations, as a basis for evaluating faculty, and yet the Dean has used these alleged anonymous complaints to support the unsubstantiated charge that MacGregor verbally abuses his students.

The Federation contends that these events represent a procedure for disciplining and penalizing faculty, and a mode of passing judgment on their competence, which was neither bargained with the Federation nor agreed upon by MacGregor or his department. The Federation notes that President Gilbertson made no use of the discipline clause in the parties' contract, or accorded MacGregor any of the rights provided in that clause. Further, the Federation contends that the curriculum changes resulting from the unilateral change of MacGregor's workload have not been submitted to the Faculty Assembly for its consideration and review.

At the time the Federation filed the unfair labor practice charge, it simultaneously filed a motion requesting that the hearing in an earlier grievance filed by the Federation and MacGregor (Docket No. 88-42, filed September 22, 1988) be continued should the Board issue an unfair labor practice complaint in this matter, until after the unfair labor practice case is decided. In the grievance, it is alleged that the Colleges violated the following provisions of the contract between the Federation and Colleges by: 1) ceasing to assign MacGregor any upper-level courses in his discipline, without a hearing

or any kind of due process; 2) restricting his advisees, on the assumption that he is incompetent to give them proper advice, without a hearing or any kind of due process; 3) a recommendation by Dean Kennedy which was tainted by procedural errors, contains errors of fact, and violates the contractual standards for evaluation; and 4) violating his right to scheduling preference:

- Article 3D - Arbitrary and capricious exercise of management rights;
- Article 14B - discriminatory application of evaluative criteria;
- Article 14L - discipline;
- Article 18 C & D - Changes in curriculum without consulting faculty assembly and unreasonable changes in MacGregor's schedule without an effort to accommodate his preferences;
- Article 19G - improper use of evaluative procedure;
- Article 19E - violations of procedure
- Article 22B - no showing that MacGregor violated any of the standards defining "cause" to discipline, suspend, remove duties from or discharge faculty.

On December 5, 1988, the Colleges filed a response to the unfair labor practice charge, along with a motion to defer the charge to the grievance procedure.

On December 15, 1988, oral argument was heard by Board Members Louis Toepfer, Acting Chairman; William Kemsley, Sr.; and Catherine Frank, with respect to the Federation's Motion for Continuance of the hearing in #88-42 and the Colleges' Motion to Defer the Charge in #88-63 to the grievance procedure. Stephen Butterfield, Federation Grievance Chairperson, represented the Federation. Attorney Nicholas DiGiovanni represented the Colleges.

Upon review of the materials on file with respect to the grievance and the unfair labor practice charge, and upon consideration of representations made during oral argument on December 1, we have concluded that the most appropriate action is not to issue an unfair labor practice complaint in this matter.

The Board has not ruled on unfair labor practice charges where the Board believed the dispute involved the interpretation of a collective bargaining agreement and the employee had an adequate redress for the alleged wrongs through the grievance procedure. Burlington Education Association v. Burlington Board of School Commissioners, 1 VLRB 335 (1978). AFSCME Local 490 v. Town of Bennington, 9 VLRB 195 (1986). Under the State Employees Labor Relations Act (SELRA), 3 VSA §901 et seq., where the Board both adjudicates unfair labor practice charges and makes final determination on employee grievances, a dual process of review is neither warranted nor desirable where the alleged incidents and their effect involve an interpretation of contract language and relate to an employee individually. Swett and VSCFF v. Vermont State Colleges, 3 VLRB 344 (1980). Normally, contract violations under SELRA are properly pursued through the grievance procedure, not through the unfair labor practice route; only extraordinary circumstances justify adjudicating contract disputes through the unfair labor practice route. VSEA v. State of Vermont (re: Smoking Policies), 10 VLRB 181, 190 (1987). VSEA v. State of Vermont, 7 VLRB 119, 227 (1984).

The Federation alleges that the Colleges violated §961(5) of SELRA, which provides that "it shall be an unfair labor practice for an employer... to refuse to bargain collectively with representatives

of his employees". The bulk of the allegations made by the Federation herein clearly involve alleged violations of the collective bargaining agreement impacting on MacGregor individually, and should be pursued through the grievance procedure. The only allegations which arguably may fall under the purview of §961(5) are the allegations by the Federation that the Colleges have refused to bargain collectively by introducing a procedure for discipline and determining competence which was not bargained and making curriculum changes unilaterally without submitting them to the Faculty Assembly for its consideration and review.

We disagree that any violation of the duty to bargain collectively occurred. The determination whether the Colleges introduced an improper procedure for discipline and determining competence can be made through interpretation of the contract provisions cited in the grievance filed in Docket No. 88-42. We further conclude that, with respect to the alleged unilateral curriculum changes, a change in curriculum was not involved when MacGregor was no longer assigned upper level courses. Instead, the action taken involved a change in assignment of courses to an individual faculty member. Moreover, even if curriculum changes were involved, such changes are covered under Article 18 of the Contract, Faculty Governance.

In sum, a refusal to bargain in violation of 3 VSA §961(5) is not involved here, but instead alleged violations of the collective bargaining agreement which are properly pursued through the

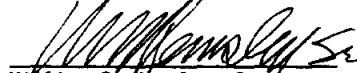
contractual grievance procedure. No extraordinary circumstances exist which justify adjudicating the contract dispute through the unfair labor practice route. Given our ruling, it is not necessary to decide the Colleges' motion to defer the charge to the grievance procedure and, by separate order, we will dismiss the Federation's motion for continuance of the hearing in Docket #88-42.

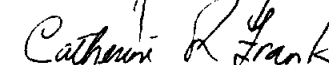
Now therefore, based on the foregoing reasons, the Labor Relations Board declines to issue an unfair labor practice complaint and hereby ORDERS this matter DISMISSED.

Dated this 6th day of January, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Louis A. Toepfer, Acting Chair


William G. Kamsley, Sr.


Catherine L. Frank