VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
VERMONT STATE COLLEGES STAFF FEDERATION, AFT LOCAL 4023, AFL-CIO	)	DOCKET NO. 89-88
	)	
LIAN BOYNTON	)	
	)	
v.	)	DOCKET NO. 90-22
	)	
LYNDON STATE COLLEGE, et al.	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 20, 1989, the Vermont State Colleges Staff Federation, AFT Local 4023, AFL-CIO ("Federation") filed a grievance. Therein, the Federation alleged that the Vermont State Colleges ("Colleges") violated Articles 1 (Section 10, 11, 12, 14), 2, 42 (Section 6), 43, 46, 48 and 49 of the collective bargaining agreement between the Federation and the Colleges, effective for the period July 1, 1989 - June 30, 1991 ("Contract") by refusing to pay Lyndon State College employee Lian Boynton benefits listed in the Contract for part-time employees.

On March 15, 1990, Lian Boynton filed an unfair labor practice charge against Lyndon State College and its agents, Peggy R. Williams, President; William Laramee, Dean of Student Affairs; and David Kanell, Director of Housing. Therein, Boynton alleged that the College and its agents violated 3 VSA §961(1) and (3) by retaliating against Boynton for expressing an intent to join and joining the Federation, and for claiming that she should be treated as a member of the collective bargaining unit represented by the Federation. Boynton

claimed that the retaliation consisted of arbitrarily reducing her schedule of working hours, improperly requiring her to serve a probationary period, changing other terms of employment, refusing to clarify work rules under which she was expected to work and causing her constructive discharge. On May 2, 1990, the Labor Relations Board issued an unfair labor practice complaint on the charge.

The grievance (Docket No. 89-88) and the unfair labor practice case (Docket No. 90-22) were consolidated for hearing pursuant to an agreement by all parties. The hearing was held before Board members Louis Toepfer, Acting Chairman; Catherine Frank and Leslie Seaver on October 18, 1990. Attorney Nancy Quinn Dorey, of Morgan, Brown and Joy of Boston, Massachusetts, represented the Colleges. Attorney Richard Ward, of Ropes and Gray of Boston, Massachusetts, represented the Federation and Boynton.

The Colleges filed a brief on November 12, 1990. Briefs were filed on behalf of the Federation and Boynton on November 13, 1990. The Federation and Boynton filed a Motion to Strike and Objection on November 19, 1990.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE 1
DEFINITIONS

10. Employee - The term "employee" as used in this Agreement, except when appearing in conjunction with modifying adjective(s) which specifically identifies non-bargaining unit personnel (e.g., professional, managerial, confidential, supervisory, other) refers to an employee who is a member of the bargaining unit.

11. Part-time Employee - The term "part-time employee" as used in this Agreement means any employee who regularly works at least 20 hours per week, but less than a regular full-time schedule.

12. Non-Probationary Employee - The term "non-probationary employee" as used in this Agreement refers to any employee who has completed the probationary period.

13. Probationary Employee - The term "probationary employee" as used in this Agreement refers to any employee who has not completed the probationary period.

14. Probationary Period - The term "probationary period" as used in this Agreement refers to the the three-month period beginning from the most recent date of hire to a regular bargaining unit position. Only one probationary period per employee shall be served within the College system.

...

ARTICLE 2
RECOGNITION

1. The Vermont State Colleges recognizes the Federation as the exclusive bargaining representative with respect to wages and other terms and conditions of employment for all full-time, part-time, and limited-status non-faculty employees of the Vermont State Colleges (Castleton State College, Johnson State College, Lyndon State College, Vermont Technical College), excluding the Chancellor, College Presidents, Deans, Business Managers and all management, supervisory, confidential, professional and temporary employees.

...

ARTICLE 42
SICK LEAVE

... 4. Sick leave schedule:

SERVICE REQUIREMENT	SICK LEAVE DAYS
Less than one year	One day for each month of service.

... 6. A part-time employee serving 20 hours or more per week shall earn sick days on a pro rata basis.

ARTICLE 43
PERSONAL LEAVE

1. Each employee is entitled to three personal days per year, to be earned at a rate of one every 17 weeks, on July 1, October 28 and February 4.

2. An employee who, in any calendar quarter (commencing July, October, January and April) uses no more than one-half sick day during that quarter shall be entitled to one-half day of personal leave, not to exceed two per year.

...

ARTICLE 46
JURY DUTY LEAVE

A leave of absence shall be granted to any employee who is required to be absent due to jury duty. Such employee shall receive the difference between jury duty pay and his/her regular rate of pay for the period of jury service.

ARTICLE 48
VACATION

1. All employees are eligible for paid vacations in accordance with the schedule in Section 2 of this Article.

2. Vacation schedule:

SERVICE REQUIREMENTS	VACATION ENTITLEMENT
Less than one year	One day of each month of active service

...

Full-time employees shall be paid one day's pay at their hourly wage per vacation day taken. Part-time employees shall be paid pro-rated pay at their hourly wage per vacation day taken.

... 4. During an employee's probationary period, vacation is earned, but may not be taken.

ARTICLE 49
HOLIDAYS

1. All full-time employees shall receive one day's pay and all part-time employees shall receive pro-rated pay at their hourly wage for the following holidays or substitution holidays:

New Year's Day	Columbus Day
Town Meeting Day	Veteran's Day
Washington's Birthday	Thanksgiving Day
Independence Day	Christmas Day
Bennington Battle Day	*Memorial Day
Labor Day	Lincoln's Birthday
Christmas Eve Day	

...

2. Employees required to work on any of the holidays shall be paid for all hours worked at one and one-half times their hourly wage or shall receive compensatory time at one and one-half times the hours worked except where substitution occurs under Section 5 of this Article in which case pay at one and one-half times the hours worked will be provided only for hours of work performed on the alternative holiday date selected. The President of the College or his/her designee has the sole

discretion to determine whether an employee will work a holiday. Such discretion shall be exercised in a non-discriminatory fashion.

... (Boynton Exhibit 4)

2. Peggy R. Williams was President of Lyndon State College from July 17, 1989 to the present. At all times relevant, William Laramee was Dean of Student Activities for Lyndon State College and reported to President Williams. At all times relevant, David Kanell was Director of Housing for Lyndon State College and reported to both Dean Laramee and President Williams.

3. On April 10, 1989, Lian Boynton was hired and commenced working at the College as the secretary for Housing and Student Activities. Boynton was hired as a temporary employee, and was scheduled to work 15 hours per week. The letter of appointment which Boynton received from then-College President Clive Veri provided in pertinent part:

> This part-time appointment does not confer the rights or benefits of a regular VSC staff appointment. At any time during this appointment, the college or the employee may terminate employment for any reason- - with one week's notice.
>
> (Boynton Exhibit 2)

4. As the secretary for Housing and Student Activities, Boynton worked under the immediate direction and supervision of Kanell and Dennis Koch, the Director of Student Activities for Lyndon State College. Boynton's duties and responsibilities included: 1) performing secretarial work for both Kanell and Koch, 2) assisting Kanell in the administration of the College's judicial system for students relating to infractions of rules, 3) administering and arranging housing assignments for students in the various dormitories

operated by the College, and 4) billing students for damage done to College property. In addition, Boynton supervised and directed the work of a work-study student who worked in the Housing office.

5. During the course of her employment, Boynton performed her duties in a satisfactory manner and received praise for her performance from various administrators.

6. During May, 1989, Boynton advised Kanell that she was unable to complete her job responsibilities within 15 hours per week, and requested that she be allowed to work additional hours. Kanell informed Boynton that he did not have the authority to allow her to increase her hours, but that he would contact Dean Laramee to see if it would be possible for her to do so. As Dean of Students, Dean Laramee is responsible for the Housing and Student Activities Office. Shortly thereafter, Kanell informed Boynton that he had spoken to Dean Laramee and that Boynton was authorized to work between 20 hours per week and less than 25 hours per week. Kanell told Boynton that she could not work 25 hours or more per week because she would be considered a part-time employee covered by the Contract and entitled to benefits. This information Kanell gave to Boynton with respect to coverage of the Contract was inconsistent with Article 1 of the Contract, which provides that employees who regularly work 20 hours or more per week are covered by the Contract.

7. Commencing no later than June 5, 1989, with the express written approval of Kanell, Boynton commenced regularly working 20 hours or more per week during the period from June 5, 1989 through September 15, 1989. During this period, Boynton's hours of work per week averaged more than 20 hours per week (Joint Exhibit 1).

8. Shortly before or on September 8, 1989, Boynton spoke with Jean Geremia, a grievance officer for the Federation, and discussed with her the difficulty she had accomplishing the workload assigned to her despite the fact that she was working 20 hours or more per week. Geremia informed Boynton at this time that, since she was regularly working 20 hours or more per week, she was subject to the Contract and eligible for benefits thereunder.

9. On or about September 8, 1989, Boynton discussed with Kanell the stress that she was feeling because of the amount of work that she was expected to accomplish in the limited number of hours in which she was authorized to perform the work. She requested that he determine whether something could be done about the hours and indicated that the stress from the job was so severe she might begin looking for a job with a different employer. During this conversation, Boynton also informed Kanell that, since she had been working 20 or more hours per week, she believed she was entitled to fringe benefits pursuant to the Contract. To this, Kanell replied: "those aren't your words, you are talking to the wrong people", or words to that effect. Boynton informed Kanell that she had been speaking with Jean Geremia. Kanell was aware that Geremia was a representative of the Federation.

10. On September 15, 1989, Boynton and Kanell had a further discussion concerning her conditions of work in which Boynton stated that she would like to stay on the job but desired that the hours be increased to an authorized 30 hours per week and that she be provided fringe benefits. Boynton also stated to Kanell that she intended to join the Federation. Kanell stated to Boynton that she was "going about this the wrong way" or words to that effect, and that she was

"going to cause a lot of trouble" or words to that effect. Kanell told Boynton that he would make no promises but that he would see what he could do about increasing her hours. At some point during this discussion, Kanell informed Boynton that Sandy Franz, administrative assistant in the College Business Office, had indicated to him that specific administrative procedures had to be followed to authorize an employee to work additional hours.

11. To confirm her request, on September 15, 1989, Boynton gave Kanell a written memorandum. The memorandum set forth that Boynton had been working 20 hours or more per week regularly since shortly after she had commenced work and that the workload in the office could not be adequately or accurately completed within the current authorized hours. Boynton requested that she be granted fringe benefits pursuant to the Contract retroactively to the time that she commenced working regularly 20 hours or more per week (Boynton Exhibit 5).

12. Kanell immediately sent a memorandum to Dean Laramee, requesting that the Housing and Student Affairs Office be allowed to increase its secretarial coverage to 30 hours (or less) per week. As the basis for his request, Kanell cited additional workload, increased bed capacity and a general rise in enrollments (Boynton Exhibit 7).

13. On the next work day, Monday, September 18, 1989, without any discussion by Kanell with Boynton about his request to Dean Laramee that the authorized secretarial hours for the Housing Office be increased to 30 hours or any further discussion, Kanell informed Boynton that her hours would be reduced immediately to 15 hours per week. President Williams was not aware at the time that Boynton's work hours were being reduced.

14. On September 18, 1989, subsequent to Kanell telling Boynton that she was to work 15 hours per week, Boynton formally requested in a memorandum to Sarah Bean, a Federation representative, that the Federation represent her in a grievance against Lyndon State College. In this memorandum to Bean, Boynton set forth her position that she was covered by the Contract, and entitled to benefits, since the date she began working 20 hours or more per week. Boynton also stated that the position she held was improperly classified as an entry level secretarial position, given its duties and responsibilities, and that the arbitrary cut of her hours to 15 hours per week constituted a reprisal for her expressing her intention to join the Federation (Colleges Exhibit 11).

15. Boynton provided Kanell with a copy of her memorandum on September 18, 1989. At some point prior to September 26, 1989, President Williams received a copy of the memorandum.

16. At some point prior to September 26, 1989, Geremia and Bean contacted President Williams in their roles as Federation representatives and requested to meet with President Williams to discuss the situation involving Boynton. President Williams agreed to meet with them on September 26, 1989, on an informal basis. During the meeting, President Williams indicated to Bean and Geremia that she would appoint Boynton to a 20-hour per week position effective October 2, 1989. She informed them that this position would include Federation representation, benefits and a probationary period.

17. On October 2, 1989, President Williams sent Boynton a letter of appointment which provided as follows:

> I am pleased to offer you the following part-time appointment to the staff of Lyndon State College.

Position	Secretary for Housing & Student Activities Secretary I, Grade 4, Represented Staff
Compensation	$5.65/hour, 20 hours/week, plus fringe benefits.
Starting Date	Monday, October 2, 1989.
Responsibilities	Under the direction of the Director of Housing, you are responsible for performing a variety of repetitive clerical and secretarial duties in the Housing and Student Activities Offices, following prescribed or well-defined procedures. You may be required to direct work-study students.
Probationary Period	The first three months of this appointment is a probationary period. During that period, you or the College may terminate employment for any reason. Prior to the end of the probationary period, you will be notified whether or not your employment will be continued beyond that time.

Terms and conditions of employment are outlined in the current Agreement between the Vermont State Colleges and Vermont State Colleges Staff Federation.

Please acknowledge your acceptance of this officer of appointment by returning one signed copy of this letter to me no later than October 2.

(Boynton Exhibit 8)

18. President Williams placed Boynton in a probationary period because Boynton previously had not been required to serve a probationary period.

19. On October 2, 1989, Boynton signed the letter of appointment, acknowledging that she understood and accepted the offer as stated (Boynton Exhibit 8).

20. President Williams instructed Kanell that because of the expense the College would incur by virtue of Boynton becoming a 20-hour per week employee entitled to benefits, it would be important to limit overtime.

21. Immediately after Boynton received the letter of appointment, Kanell instructed Boynton that she was to work 20 hours per week, and that her hours would be 9:00 a.m. to 1:00 p.m.

22. During the period September 18, 1989, to October 16, 1989, contrary generally to past dealings with Boynton, Kanell spoke gruffly with Boynton, exhibited impatience with her, criticized her for minor errors, publicly exhibited his dissatisfaction with "mistakes" she had made, and generally was withdrawn from Boynton. Dean Laramee also was not as friendly towards Boynton, and on one occasion did not acknowledge her presence as they passed in the corridor. Boynton experienced stress during this period due to the work environment. She had trouble sleeping, sought psychiatric counseling and took medication to relieve her stress.

23. On October 12, 1989, Mark Majors, Federation Grievance Chairperson, filed a Step I grievance with President Williams. Therein, Majors requested the removal of Boynton from the probationary period and the crediting to Boynton of all benefits listed in the Contract for part-time employees retroactive to the date Boynton was hired (Colleges Exhibit D).

24. During the course of Boynton's employment, by mutual agreement, Boynton and Kanell had established a practice whereby Boynton was permitted to make up any hours of work lost due to an excused absence by working additional hours on other work days.

25. On October 13, 1989, President Williams received a telephone call from Kanell, indicating Boynton had, without authority, exceeded the number of hours she was expected to work on October 5 and 6, and had failed to work her assigned hours on October 2, 4 and 10.

President Williams advised Kanell to write a note on Boynton's time card indicating that the variation of her hours was unauthorized.

26. Kanell wrote the following on the back of Boynton's time card for the two-week period of September 30, 1989 to October 13, 1989:

> Lian:
> I did not authorize you to work extra time on 10/5/89 and 10/6/89 and for shorter periods on 10/2/89, 10/4/89 and 10/10/89. Your hours are 9:00 a.m. to 1:00 p.m. without any variation unless I approve of a change. I did not authorize you to work 2 1/2 additional hours when I was out of town on 10/5 and 10/6, nor did I authorize the shorter periods of time when you worked over.
> DK
> 10/13/89

(Joint Exhibit 1)

27. On October 16, 1989, Kanell read to Boynton the contents of the above note. Boynton then asked Kanell if he was willing to tell her of any other "rules" changes in the office. Kanell indicated to Boynton that he was not prepared to tell her of any other changes.

28. Shortly thereafter, on October 16, Boynton prepared a memorandum to Kanell, which she left for him that day, which provided:

> This is my formal notice to you that I intend to terminate my employment two weeks from today, on Friday, October 27, 1989. The rules in this office keep changing, usually after the fact, and it is too difficult to work under these conditions.
>
> This morning as I entered the office, you requested that I come into your office and began a discussion with me about my time slip and read me the notes you had made on the back regarding the fact that additional time I had worked last week had not been authorized by you. As regards my time slip of last week, and in response to your discussion with me as of today and your exposition on the reverse of my time sheet for the week ending Friday, October 13, 1989, I wish to state the following for the record:
>
> 1. It has been a past practice, previously approved by David Kanell, to permit me to work extra hours to make up

any time I have missed by working extra hours. Since I was previously a 15-hour a week employee, I received no benefits and this was the only way In which I could make up time missed. It was my understanding that since it was a previously approved practice to permit me to work up to 20 hours per week, that I could continue to do so; it has certainly been a demonstrable practice that I was permitted in the past to work to make up time that I was absent from work and until this morning's discussion, I was not advised that I could not continue to do so.

2. I was employed by Lyndon State College on April 10, 1989. I was offered a new contract on October 2, 1989, at 20 hours per week with benefits. Although I have been working 20 hours and more a week since June 6, 1989, I was put on an additional probationary period, thereby making additional forms of leave to cover time I would need to be absent from work unavailable.

3. Although I was advised by David Kanell upon receipt of the new appointment letter, which I was told I had to sign and return the day I received it, that my hours from that day on would be limited to 20 hours, I was not advised at that time either that I could no longer work additional hours to make up time that I was absent from work.

4. Further, my absence from work on Monday, October 9, 1989, was previously approved by David Kanell. I was not advised at that time either that I could no longer work additional hours to make up time that I was absent from work.

5. Further, in the course of my conversation this morning with David Kanell, it occurred to me that I might no longer know what the rules of the office might be. I asked David Kanell directly to think about any rules that might be changed of which I had not already been advised, and to so advise me. He refused outright to do so.

It is impossible to work without knowing what the rules are so that I can avoid breaking them. These conditions make it impossible to continue working as an employee of Lyndon State College, and my last day of employment will be Friday, October 27, 1989.

I formally request a copy of this letter be entered in my Personnel file.

(Federation Exhibit 9)

29. On October 16, 1989, President Williams informed Boynton that she was accepting her resignation (Colleges Exhibit 15).

30. At all times relevant, Lyndon State College had a complaint resolution procedure for non-faculty employees not represented by the Federation. The procedure provided that "(f)air and prompt consideration shall be given to employee complaints, problems and questions". Under the procedure, if an employee had a complaint, the employee would bring the complaint first to the immediate supervisor, then to the College President if it could not be resolved, and finally to the Chancellor of the Colleges (Colleges Exhibit 16).

31. Under the Contract, employees represented by the Federation or the Federation may seek to have oral or written complaints resolved informally. If a complaint is not resolved informally, then the employee or the Federation may file a grievance. Grievances are presented at the first step to the College President, and at Step II to the Chancellor. The third and final step of the grievance procedure is final determination by the Labor Relations Board (Articles 9-10 of Contract, Boynton Exhibit 4).

OPINION

Docket No. 89-88

We first address the grievance filed by the Federation. The Federation alleges the Colleges violated the Contract by failure to recognize Lian Boynton as a member of the bargaining unit represented by the Federation from June 5, 1989, onward when the Colleges specifically authorized and approved of her working regularly at least 20 hours per week.

Article 2 of the Contract includes "part-time" employees in the bargaining unit represented by the Federation. Article 1, Section 11,

of the Contract defines a part-time employee as "any employee who regularly works at least 20 hours per week, but less than a full-time schedule".

We conclude that Boynton met the test of "regularly working" at least 20 hours per week from June 5, 1989, until her employment terminated in October, 1989. The fact that Boynton worked more than 20 hours a week for approximately four months is sufficient to demonstrate that she was "regularly working" 20 hours or more per week.

Nonetheless,, the Colleges contend that Boynton was not a part-time employee within the meaning of the Contract until October 2, 1989, because prior to that date the Lyndon State College President had not formally appointed Boynton to such a position. We disagree. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, at 71. If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense. Swett v. Vermont State Colleges, 141 Vt. 275 (1982). The Board will not read terms into a contract unless they arise by necessary implication. In re Stacey, supra. Here, the language of the Contract is clear that an employee who regularly works 20 hours or more per week is a part-time employee covered by the Contract. The Contract nowhere requires a formal action by the College President making such an appointment, and we will not read such terms into the Contract.

As a remedy for this violation of the Contract, the Federation requests that Boynton be awarded retroactive benefits due a part-time employee for the period she was regularly working more than 20 hours

per week. We concur that Boynton should be awarded those retroactive benefits which part-time employees who have not completed their probationary period are entitled to under the Contract.

However, we do not believe she should be treated, as the Federation requests, as having completed her probationary period on September 5, 1989. We so conclude because the Contract contemplates that an employee will be required to serve one three-month probationary period (Article 1, Sections 12, 13 and 14 of the Contract), and Boynton was not required to do so until October 2, 1989. We recognize that the contract provides that the probationary period begins "from the most recent date of hire to a regular bargaining unit position", and we have concluded that Boynton effectively began employment in a bargaining unit position on June 5, 1989. However, the fact remains that Boynton was not required to begin serving a probationary period until almost four months after June 5. Under the circumstances, we believe she should be treated as an employee in a probationary period for purposes of awarding retroactive benefits. We conclude no further remedy is appropriate.

In its brief filed subsequent to the hearing in this matter, the Federation requested that the Board decide whether the Colleges violated the Contract by failing to notify the Federation of changes in Boynton's hours of work and by constructively discharging Boynton without just cause. The Board has declined to resolve issues which were not raised in the grievance filed with the Board pursuant to Article 18 of the Board Rules of Practice, which requires that a grievance contain a concise statement of the nature of the grievance and specific references to the pertinent section of a collective

bargaining agreement and/or rules and regulations. Grievance of Regan, 8 VLRB 340, 364 (1985). Grievance of Shockley, 5 VLRB 192, 202-203 (1982). The issues raised by the Federation in its post-hearing brief were not raised in the grievance filed with the Board. Thus, we will not address them.

Docket No. 90-22

In the unfair labor practice charge at issue, Lian Boynton contends that the Colleges violated 3 VSA §961(1) and (3), which provide:

> It shall be an unfair labor practice for an employer:
> 1) to interfere with, restrain or coerce employees in the exercise of their rights guaranteed by section 903 of this title, or by any other law, rule or regulation.
> ...
> 3) By discrimination in regard to hire and tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization.

Boynton contends that the Colleges violated these provisions of the State Employees Labor Relations Act by retaliating against her for expressing an intent to join and joining the Federation, and for claiming that she should be treated as a member of the collective bargaining unit represented by the Federation. Boynton contends that the retaliation consisted of arbitrarily reducing her schedule of working hours, improperly requiring her to serve a probationary period, changing other terms of employment, refusing to clarify work rules under which she was expected to work and causing her constructive discharge.

In determining whether action was taken against an employee for engaging in union activities, the Board employs the analysis used by

the US Supreme Court and National Labor Relations Board in such cases. Once an employee demonstrates protected conduct, he or she must show the conduct was a motivating factor in the decision to take action against the employee. Then, the burden shifts to the employer to show by a preponderance of the evidence it would have taken the same action even in the absence of the protected conduct. Horn of the Moon Workers Union v. Horn of the Moon Cafe, 12 VLRB 110 (1988). Mt. Healthy City School District Board of Education v. Doyle, 429 US 274 (1977). NLRB v. Transportation Management Corp., 462 US 393 (1983). Wright Line, 251 NLRB No. 150 (1980).

At the heart of any employment action allegedly linked with anti-union discrimination is the question of employer motivation. Ohland v. Dubay, 133 Vt. 300, 302 (1975). The guidelines the Board follows in determining whether the protected conduct of engaging in union activities was a motivating factor in an employer's decision to take action against an employee are: 1) whether the employer knew of the employee's protected activities, 2) whether there was a climate of coercion, 3) whether the timing of the action was suspect, 4) whether the employer gave as a reason for the decision a protected activity, 5) whether the employer interrogated the employee about protected activity, 6) whether the employer discriminated between employees engaged in protected activities and employees not so engaged, or 7) whether the employer warned the employee not to engage in protected activity. Id, at 302-303. Horn of the Moon, supra, at 126-127.

Boynton clearly was engaging in protected conduct known to her supervisors by expressing to her supervisors an intent to join the Federation and by contending that she should be treated as a member of

the collective bargaining unit represented by the Federation. We turn then to deciding whether this particular conduct was a motivating factor in various actions taken by the Colleges.

Boynton contends that the first instance of action taken against her for engaging in protected conduct was the action by David Kanell, her immediate supervisor, reducing her weekly work hours to 15 a week on September 18, 1989.

We concur with the Federation that Kanell demonstrated anti-union animus in his conversations with Boynton, when making the following comments after Boynton had indicated she was talking to Federation representatives concerning her claim that she was in the bargaining unit represented by the Federation: "you're talking to the wrong people"; "you're going about this the wrong way"; and "you're going to cause a lot of trouble".

Also, at first blush, Kanell's action of reducing Boynton's work hours is suspicious due to its timing since it occurred on the first work day after Boynton had told him on September 15, 1989, that she was going to pursue the issue concerning being in the bargaining unit represented by the Federation.

However, the suspect timing and effect of this action were considerably diminished by Kanell, at Boynton's urging, requesting that his superiors authorize Boynton working 30 hours per week or less. This request occurred immediately after Boynton and Kanell had their September 15 conversation and, if granted, would mean Boynton indisputably would be represented by the Federation. In fact, Kanell's request was granted to the extent that Boynton was authorized to work enough hours (i.e., 20 hours per week) so that the

Colleges recognized her as being represented by the Federation. Under the circumstances, we conclude that Boynton has not demonstrated by a preponderance of the evidence that her protected conduct was a motivating factor in the decision to reduce her hours from September 18, 1989 to October 1, 1989.

Boynton next contends that the Colleges took action against her for engaging in protected conduct by improperly requiring her to serve a probationary period. This action was taken by President Williams of Lyndon State College. We also conclude with respect to this issue that Boynton has not demonstrated by a preponderance of the evidence that her protected conduct was a motivating factor in this decision. There is no evidence of any anti-union animus displayed by President Williams. The requirement for Boynton to serve a probationary period appears to have been motivated by President Williams' belief that this was required by the Contract, rather than anti-union animus.

The final issue we need address is whether Boynton's resignation on October 16, 1989, was a constructive discharge.

Constructive discharge refers to a resignation that was improperly procured or induced to the point that, conceptually, the resigned employee should be taken to have been discharged. In re Grievance of Bushey, 142 Vt. 290, 291 (1982). In constructive discharge cases, the general rule is that if the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer has encompassed a constructive discharge and is as liable for any illegal conduct involved therein as if it had formally discharged the aggrieved employee. Grievance of Bushey, 4 VLRB 285, 298 (1981). The

establishment of intolerable working conditions must be intended by the employer to get the employee to resign. Id, at 299. In re Grievance of Bushey, supra, at 298.

Boynton contends that the evidence demonstrates that the Colleges retaliated against her for engaging in protected conduct by intending to get her to resign by deliberately making her working conditions so intolerable. The evidence does demonstrate that Boynton faced a more difficult work environment, particularly with respect to her relationship with Kanell, once she was outspoken in her views concerning her work schedule, bargaining unit status, membership in the Federation, and entitlement to benefits. From that point on, Kanell was less friendly to her and more critical of her. Also, it is evident that some past arrangements changed rather abruptly with respect to flexibility of her work hours.

However, a difficult employment environment can generate a voluntary resignation. In re Bushey, supra, at 298. Boynton simply has not demonstrated by a preponderance of the evidence that Kanell, or any other management official, purposely took actions directed at obtaining her resignation. Boynton resigned without sufficiently attempting to work out her differences with Kanell or bringing her complaints against Kanell to the attention of Kanell's superiors. Instead, she abruptly resigned. Her resignation occurred less than a month after her working environment became more difficult, and was two weeks after the Colleges first recognized her as a member of the bargaining unit represented by the Federation and covered by the Contract. Under the circumstances, we cannot conclude that Boynton has established a case of constructive discharge.

ORDER

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

1. The Grievance of the Vermont State Colleges Staff Federation, AFT Local 4023, AFL-CIO, is SUSTAINED to the extent described in the opinion herein and the Vermont State Colleges shall award Lian Boynton benefits to which she was entitled as a part-time employee in a probationary period, from June 5, 1989, to her resignation on October 16, 1989, under the Contract between the Colleges and the Federation.

2. The unfair labor practice charge filed by Lian Boynton is DISMISSED.

Dated this 8th day of February, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer, Acting Chairman

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