

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
DR. REBECCA RUMBO AND THE)	
VERMONT STATE COLLEGES)	DOCKET NO. 95-20
FACULTY FEDERATION, AFT)	
LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 28, 1995, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation"), filed a grievance with the Vermont Labor Relations Board on behalf of Dr. Rebecca Rumbo ("Grievant"), a faculty member at Lyndon State College. The grievance alleged that the Vermont State Colleges ("Colleges") violated Articles 5(E), 7(A), 8, 20(E), and 25(A), (C) and (D) of the collective bargaining agreement between the Federation and Colleges ("Contract"), by allowing a letter of evaluation on Grievant done by certain faculty members of the Lyndon English Department to remain in Grievant's personnel file.

Hearings were held on July 12, 1995, and August 22, 1995, in the Labor Relations Board hearing room in Montpelier, before Labor Relations Board Members Catherine Frank, Acting Chairperson; Leslie Seaver and Carroll Comstock. Timothy Sturm, Federation Grievance Chairperson, represented Grievant. Attorney Nicholas DiGiovanni represented the Colleges. The Colleges filed a post-hearing brief on September 5, 1995. Grievant filed a brief on September 8, 1995.

FINDINGS OF FACT

1. Article 25(C) provides as follows:

Except for student evaluations as provided for in Article 20, Faculty Evaluation, the faculty member shall have the right to grieve the insertion in his/her personnel file of any item or material which he or she alleges to be untrue or inaccurate.

2. During the 1994-95 academic year, Grievant was in her third year of employment as a full-time faculty member in the English Department at Lyndon State College. She was reviewed that year for reappointment to a fourth year.

3. The formal process for evaluating a nontenured faculty member for reappointment is set forth in the Contract. Under the Contract in effect at time of the review of Grievant for reappointment to a fourth year, a college-wide peer committee established by the Faculty Assembly at each college reviews the candidate for reappointment in accordance with the standards and criteria detailed in the Contract. The committee completes its work by December 20. Thereafter, the Dean evaluates the faculty member and places a letter of evaluation and recommendation in the faculty member's personnel file by February 1. The President then decides whether to reappoint the faculty member by March 1 (Joint Exhibit 1).

4. Although it is not required under the Contract, it is typical at Lyndon for many departments to evaluate their own nontenured faculty prior to the college-wide review. There are no set guidelines for such a review. In the Lyndon English Department, this peer review traditionally has taken place. In previous years, the department chairperson typically did the review with input from other faculty; the chairperson wrote a letter to be placed in the faculty member's personnel file commenting on the individual's performance and the department's perspective on their colleague. During the 1994-95 academic year, however, after Richard Moye

became chairperson of the department, a more collaborative approach was used. The peer review was done by the entire English Department, with an evaluative letter composed and signed by those participating.

5. During 1994-95, the English Department as a whole reviewed Grievant, as well as Professors Buck Beliles and Richard Moye. Grievant, Beliles and Moye participated in reviews other than their own review. All other members of the English Department participated in each of the reviews.

6. The English Department letter of review concerning Grievant was dated October 27, 1994, and ultimately was placed in Grievant's file on or about November 15, 1994. The letter was signed by English Department members Ralph Aldrich, Alan Boye, Buck Beliles, James Doyle and Richard Moye. Department member Kurt Singer did not sign the letter, which was signed by all other Department members except Grievant. Department Chairperson Moye wrote a draft of the letter, and it subsequently was edited collaboratively by the other signatories of the letter. The letter provided in pertinent part as follows:

The English Department regrets that it cannot unreservedly recommend reappointment for Dr. Rumbo. The department is certainly as confident of Dr. Rumbo's capabilities as we were when we recommended her initial appointment, but we cannot say that we are confident that she is fulfilling the requirements of the job as the department conceives it.

To her credit, Dr. Rumbo has certainly displayed her abilities; her first year was, we believe, a significant success. She has also displayed considerable learning, fine wit, and genuine engagement in what we have seen informally of her work in the classroom. She has maintained a consistent effort to demonstrate progress in scholarship . . . She has also served the college in her committee work - Library, Ad-hoc, GEP, and Curriculum - and as a member of the negotiating

team for the faculty federation . . . She clearly *can* do the job and, we believe, do it well (emphasis in original).

However, we are concerned about several areas where we think that she isn't doing the job as it needs to be done . . .

The department applauds, in fact demands, continuing scholarship of its members, but we also believe that it must not be at the expense of teaching, our first priority. While we are pleased to see Dr. Rumbo attend conferences, we must also acknowledge that attending conferences, along with her duties as a member of the faculty federation's negotiating team and several illnesses, accounted for a quantity of absences that adversely affected her classes, especially last spring. We realize that Dr. Rumbo made an effort to catch up on those classes she missed, but we must also say that it is always difficult to find times in addition to the regularly scheduled class during which all students can meet and that playing catch up is never as effective as getting it right the first time. Another problem, moreover, was that many students commented angrily to other members of the department about Dr. Rumbo's requirements for her students' attendance and the rules she applied to herself . . . (T)he problem is indicative of a larger issue: her actions and occasionally her comments to colleagues suggest that Dr. Rumbo's commitment to teaching is secondary and indeed less than her stated expectations of her students' commitment to her classes . . .

It is, ultimately, the relation between Dr. Rumbo and her students that most concerns us . . . We are concerned . . . that her fundamental approach to students does not serve the department's and the college's pedagogical ends. Based upon our admittedly limited perception of her relations to individual students, upon comments that students have made to other members of the department, and most directly, upon Dr. Rumbo's statements to her colleagues and in her syllabi and elsewhere concerning the relation between faculty and students, we believe that Dr. Rumbo sees the relation as one of power - fundamentally the faculty member's over the student - rather than as a relation involving dialogue and mutual respect . . . (W)e do believe that there is nothing to be gained by establishing a hierarchical relation between teacher and student that insists upon the inferior position of the student and upon unquestioning respect by students for the faculty member, simply because he or she is a faculty member . . .

Members of the department have acknowledged that a variety of students, including some of the best, have complained to them about

Dr. Rumbo's comments on their papers; the complaints are, in general, that comments can be sarcastic and belittling, that they note only that things are wrong without explaining how they might be made right, and that they too frequently suggest that the student is incapable of learning . . . (I)t is possible to be demanding without being demeaning, and we are afraid that Dr. Rumbo does not always make that distinction.

. . . (C)hange for the best is necessary in these problematic areas if Dr. Rumbo is to fully and effectively fill the position which she now holds.

(Colleges Exhibit 1, Federation Exhibit 5).

7. English Department member Kurt Singer, a previous chairperson of the department, did not sign the department evaluations of either Grievant or Beliles. He attached the following note to the evaluations:

I did not sign either of the evaluations for the simple reason that I do not think I have enough information of a critical nature about their teaching performances to do so. As chairman, I made it my business to be informed of such things; as a fellow toiler in the vineyards, I did not feel the necessity of establishing critical criteria for my colleagues. This does not mean that I do not have opinions of the process, but opinions are not always firmly rooted in fact. I lack facts; I refuse to state my opinions.

(Federation Exhibit 6)

8. Grievant saw the draft of this letter for the first time on or about November 3, 1994, when she received a draft from English Department Chairperson Moyer. On several occasions between November 3, 1994, and November 15, 1994, Moyer offered to enter into a "dialogue" with Grievant with respect to the contents of the letter. Moyer suggested to Grievant that changes in the letter might result from this "dialogue". Grievant chose not to discuss the letter as requested, and did not file a response to the letter for inclusion in her personnel file. This was based on limited

available time she had during this period due to medical appointments in Boston and preparing for factfinding with respect to the Federation - Colleges Contract, and an opinion expressed to her by Lyndon Academic Dean Rex Myers that a response by her may serve to reinforce the negative aspects of the letter. The letter was placed in Grievant's personnel file on or about November 15, 1994, in the same form as the draft Moye provided to Grievant (Colleges Exhibit 1, Federation Exhibit 5).

9. The English Department faculty who signed the letter of review concerning Grievant based their opinions on their own observations and on what students had expressed to them. Four or five students had spoken critically to Moye about Grievant's absences. Moye held the opinion that Grievant considers teaching secondary to scholarship and service based on his perception and discussions he had with Grievant. Moye's opinion that Grievant saw the faculty - student relationship as one of power was based on the tone of her syllabi as Moye perceived it, Grievant's statements to him, and a guidebook which Grievant prepared for new students, entitled The Student's Guide to College Survival, in which she discussed rank, status and how to properly address faculty members. Four or five students complained to Moye of critical comments which Grievant had made on their papers which the students viewed as sarcastic or belittling (Federation Exhibits 25, 26, 30).

10. Two students complained to Buck Beliles about Grievant's absences. Beliles' opinion that teaching was secondary to Grievant was based on conversations he had with Grievant. Beliles believed that the discussion in Grievant's guidebook for new students on how professors should be addressed demonstrated that Grievant viewed the student - faculty relationship as one of power. Three students complained

to Beliles about comments Grievant wrote on their papers which the students viewed as sarcastic and belittling.

11. Two or three students complained to Alan Boye about Grievant's absences from class. Several students came to Boye with their papers and asked him to look at what Grievant wrote on them. Boye was of the opinion that some of the comments made by Grievant were intimidating and directed at the student personally, rather than at the content of the paper. The opinion of Boye that Grievant's commitment to teaching was secondary was based on conversations he had with Grievant and Grievant's absences from class.

12. At the time the English Department faculty wrote their letter on Grievant, none of the signatories of the letter had ever formally observed Grievant's classroom teaching.

13. Grievant asked some faculty members and students to write letters to be included in her file by November 15, 1994, which was the date Grievant's file was to "close" prior to the formal review of her for reappointment to a fourth year of service. Several faculty members and students wrote positive letters in support of Grievant's reappointment (Federation Exhibits 21, 22 A - B, 23 A - E).

14. Grievant voluntarily undertook helping Lyndon students with their writing skills. Several students made positive comments about Grievant in this regard to Linda Metzke, an Associate Professor of Education at Lyndon.

15. Grievant taught an interdisciplinary seminar in the Spring 1994 semester on Music, Literature and Self with Ken Langer, a Music Department faculty

member. Grievant had positive interactions with students in this course, and students never commented negatively to Langer about Grievant.

16. Rex Myers, Lyndon Dean of Academic Affairs, observed two of Grievant's classes during the Fall 1994 semester. In classroom observation reports which he prepared subsequent to the classes, Dean Myers viewed Grievant's teaching effectiveness favorably (Federation Exhibits 7, 8).

17. On December 20, 1994, the Appointment, Promotion and Tenure Committee ("APT Committee") recommended the reappointment of Grievant to a fourth year. Ralph Aldrich and James Doyle, English Department faculty members who had signed the English Department letter of review on Grievant, were members of the APT Committee. They concurred in the recommendation to reappoint Grievant. The APT Committee reappointment recommendation stated in part:

The committee acknowledges the concerns expressed by department colleagues regarding Dr. Rumbo's commitment to teaching. However, a review of her teaching evaluations and related personnel file material indicates that Dr. Rumbo has the potential to become one of LSC's better teachers. Her self-initiated efforts to experiment with a variety of teaching techniques and to incorporate classes missed demonstrate her desire to provide students a quality educational experience. In addition, Dr. Rumbo's attention to feedback provided through student evaluations demonstrates her awareness of student concerns. The committee supports these actions and future efforts by Dr. Rumbo to improve her teaching effectiveness.

...

(Federation Exhibit 10)

18. On January 18, 1995, Dean Myers recommended Grievant for reappointment to a fourth year. His recommendation provided in pertinent part:

I. Teaching Effectiveness

Prof. Rebecca Rumbo continues to develop as a classroom teacher. As in the previous year, her self-review is excellent, reflective and an indication of her on-going efforts to provide students with a strong learning environment in the classroom. Most student evaluations indicate this effort is successful and student letters in her file are testimony to teaching/mentoring done well. She makes a positive contribution to the teaching of English at Lyndon State College.

II. Scholarly and Professional Activity

As with teaching, it is clear that Prof. Rumbo's professional activity has continued this past year with laudable results. Participation in professional organizations, a successful grant application to the National Endowment for the Humanities and an article submitted for publication are the fruits of solid effort. It is also a pleasure to see the note in her self-review that she has applied this scholarly work to her classroom teaching.

III. Service to College and Community

The service commitment Prof. Rumbo has made to Lyndon State College is as impressive as her efforts in teaching and scholarship. She is active on campus committees, represents the Faculty Federation in negotiations and at the Delegate Assembly and still finds time to advise a student organization and participate in their activities. I agree with the APT, her service commitment is "highly valued."

IV. Summary:

The strong progress toward tenure which I noted in last year's evaluation continues. I am pleased to recommend Prof. Rumbo for reappointment to a fourth year contract at Lyndon State College.

(Federation Exhibit 9)

19. On February 28, 1995, Lyndon President Peggy R. Williams reappointed Grievant, stating: "I concur with the comments of the APT Committee and Dean Myers" (Colleges' Exhibit 7).

OPINION

Grievant contends that the inclusion in her personnel file of the Lyndon State College English Department letter of review on her violated Article 25(C) of the Contract. Article 25(C) provides in pertinent part that a faculty member "may grieve the insertion in his/her personnel file of any item or material which he or she alleges to be untrue or inaccurate".

Should the grievant prevail through the grievance procedure, the inaccurate or untrue submission is removed from the personnel file. Grievances of Murray and VSCFF , 18 VLRB 232, 252 (1995). Grievance of McHenry and VSCFF, 4 VLRB 236,246-48 (1981). If portions of a document contained in a personnel file are untrue or inaccurate, the entire document should be removed if the untrue or inaccurate portions discredit the faculty member. Id.

Grievant contends that the letter contains several inaccuracies and distortions, and is not based on direct interaction with Grievant, observation of her, or a review of relevant items and materials in her personnel file. The Colleges contend that, under the contract language, a faculty member cannot grieve the insertion of material in the faculty members's personnel file that was not written or compiled by the College administration unless the letter formed the factual basis for an administrative decision or judgment on the faculty member. Further, the Colleges contend that, even if a faculty member can grieve the inclusion in the personnel file of a letter written by fellow faculty members, Article 25(C) can only be invoked for factually erroneous material, not the evaluative opinion contained in the English Department letter at issue in this matter.

We disagree with the Colleges' view that Article 25 should be read narrowly as allowing a faculty member to grieve only materials which the College administration produces or which the administration adopts as the basis for its own judgments about a faculty member. A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacey, 138 Vt. 68, 71 (1980). Here, Article 25(C) is clear in providing that a faculty member has the "right to grieve the insertion in his/her personnel file of any item or material" which the faculty member alleges to be untrue or inaccurate "except for student evaluations". The Contract is clear and unambiguous in adopting a broad scope of grievable matters, not the narrow construction which the Colleges urge on us. Thus, Grievant is able to grieve the insertion in her personnel file of the letter of review which the English Department wrote concerning her.

We agree with the Colleges ultimately, however, that the letter of review of the English Department concerning Grievant consists of evaluative opinion which is not "untrue or inaccurate" within the meaning of Article 25(C) of the Contract. In the letter, the English Department faculty express the opinions that Grievant's teaching is secondary to her commitment to scholarship and service, that Grievant sees the relationship between students and teachers as one of power, and that Grievant is demeaning at times to students when making comments on their papers. These opinions are based on their interpretations of the factual information of Grievant's absences from her classes, some students' criticism of Grievant to English Department faculty due to her absences, the content of Grievant's syllabi, discussions between Grievant and colleagues in the English Department, and complaints by some

students to English Department faculty that Grievant's comments on their papers were sarcastic and belittling.

We recognize that Grievant is understandably upset that her fellow faculty members would emphasize negative areas of her performance based on an admittedly limited knowledge of Grievant's interactions with her students and performance in the classroom. Nonetheless, we conclude that the opinions which the English Department faculty reached based on the information which they had were not so devoid of a factual basis to make the contents of the letter of review "untrue or inaccurate" within the meaning of Article 25(C). Thus, we conclude that the Colleges did not violate Article 25(C) with respect to the insertion of the letter in Grievant's personnel file.

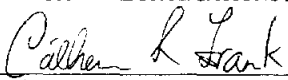
Grievant alleged violations of various other contractual provisions in her grievance which were neither developed through evidence at the hearing nor briefed. In any event, the record provides no support for a conclusion that any of these provisions of the Contract were violated by the Colleges.

ORDER

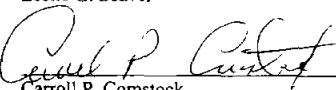
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Dr. Rebecca Rumbo and the Vermont State Colleges Faculty Federation. AFT Local 3180, AFL-CIO, is DISMISSED.

Dated this 7th day of November, 1995, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Leslie G. Seaver


Carroll P. Comstock