

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
GUSTAV VERDERBER and the)	DOCKET NO. 99-18
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT)	
LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 29, 1999, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation") filed a grievance on behalf of the Federation and Gustav Verderber, a part-time faculty member at Johnson State College. The Federation alleged that the Vermont State Colleges ("Colleges") violated Article XVIII of the collective bargaining agreement between the Federation and the Colleges, covering the part-time faculty of the Colleges ("Contract"), by failing to offer Verderber a second teaching assignment during the Fall 1998 Semester.

On April 7, 1999, the Colleges filed an Answer to the grievance. The Colleges asserted that Verderber was offered two assignments for the Fall 1998 Semester, and denied that Article XVIII was violated.

A hearing was held on September 30, 1999, before Labor Relations Board Members Catherine Frank, Chairperson; Carroll Comstock and Richard Park in the Board hearing room in Montpelier. Russell Mills, Federation Grievance Chairperson, represented the Federation and Verderber. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. The parties filed post-hearing briefs on October 15, 1999.

FINDINGS OF FACT

1. Article XVIII of the Contract, entitled "Semester Appointments and Assignments", provides in pertinent part as follows:

...

- E. The College reserves the right to give preference to full-time faculty for teaching courses on an overload basis or to individual administrators prior to offering courses to part-time faculty.
- F. Except as provided in Section E and Section H, and except that no individual may be assigned more than eleven (11) credits per semester. Two (2) available teaching assignments with a minimum of six (6) credits per semester shall be first offered to bargaining unit members on the basis of seniority as defined in (G) below and on the basis of:
 - 1. The academic qualifications of the part-time faculty including teaching ability.
 - 2. The availability and stated preferences of the part-time faculty as indicated on the teaching availability form.
 - 3. Experience in teaching available courses.
 - 4. The curricular needs of the department.
- G. The term "seniority" as used in this Article shall be based upon the number of credits taught by part-time faculty at a particular campus-based college within the VSC...
- H. In addition to the normal non-unit assignment of courses that may occur consistent with this article, the Colleges may offer assignments to individuals without following the procedures above. Such assignments shall be limited to individuals with exceptional qualifications or expertise or in extraordinary circumstances.

...

(Joint Exhibit 1)

2. Johnson State College Dean Vincent Crockenberg has developed "Guidelines for Determining Workload". The "Guidelines", which were most recently revised in September 1995, provide in pertinent part as follows:

...

The guidelines that follow are meant to be understood only as signposts or as fixed points for determining workload credit for the wide variety of credit-bearing courses taught by the faculty. For course arrangements or class sizes that depart significantly from those described in this document, appropriate workload credit will be determined using the arrangements described below as a starting point for discussion between the dean's office and the instructors of the courses. Ultimately, our touchstones are fairness and equity in workload assignment and consistency with past practice . . .

The typical lecture size for combination lecture/discussion and lecture/lab courses shall be 28 to 35 students. For lecture/lab courses, there will be two labs of 14 to 16 students each; the instructor will receive 3.0 workload credits for three hours of lecture, 1.33 credits for each two hour lab (0.67 workload credits per hour).

In the alternative, the lecture/lab size could be 20 to 24 with a single lab, or the lecture could enroll 44 to 48 students, with two lab sections of 20 to 24 students each, and 1.5 additional workload credits for the increased lecture size.

...

(Federation Exhibit 1)

3. Gustav Verderber is a part-time faculty member at Johnson State College, and is a member of the bargaining unit represented by the Federation.

4. Biology 124 is an introductory biology course that Verderber has taught on several occasions. A section of the course consists of a lecture twice a week for a total of 2 1/2 hours (rounded off to 3 hours for credit purposes), and a laboratory session once a week for 2 hours. For purposes of workload credit calculations, each hour of lecture carries one credit and each hour of lab carries 2/3 credit. One section of the Biology 124

course generally yields 4 1/3 credits – three credits for the lecture and 1 1/3 credits for the lab.

5. At all times relevant, a section of the Biology 124 course has had a maximum student enrollment of 20 students.

6. Lecture/laboratory science courses at Johnson sometimes have been offered as "double" or "combined" sections, and assigned to one faculty member. The faculty member separately conducts two labs with students of each section, but the students of each section meet as a single group for the lecture component of the course.

7. The time commitment and compensation for a double section are greater than for a single section, but less than for two single sections.

8. For the Fall 1998 Semester, Verberder was assigned to teach Biology 124, Sections E and F. This was a double section. Students in Section E had a lab on Tuesday from 10:00 a.m. to noon. Students in Section F had a lab on Thursday from 10:00 a.m. to noon. Students in Sections E and F met together for a lecture from 1:00 p.m. to 2:15 p.m. on Tuesday and Thursday (Federation Exhibit 3).

9. Verberder was paid for 6.68 credits for teaching Sections E and F of Biology 124. He received four credits, instead of three, for the combined lecture consistent with the practice of the College administration for science courses to give an additional credit when two sections are combined for a common lecture. He received 1 1/3 credits for each of the two-hour labs.

10. Sections E and F of Biology 124 each had a maximum enrollment of 20 students. Students of each section registered separately. Section E had a wait list of students who initially could not get into the section because the maximum enrollment had

been met. Due to students withdrawing from the course during the semester, 17 students in Section E and 14 students in Section F completed the course (Colleges Exhibit 7).

11. Verderber gave students in Sections E and F lecture assignments and examinations as a single group. The students' lab-related assignments were submitted separately by section. Verderber gave grades separately for the two sections.

12. Anne Spearing, a part-time faculty member with less seniority than Verderber, was assigned to teach Biology 124, Section G, for the Fall 1998 Semester. Verderber was available to teach that section as he had no scheduling conflicts. If Verderber was assigned Section G in addition to the workload he was assigned, his total teaching load for the semester would have been 11 credits (Federation Exhibit 3).

OPINION

At issue is whether Gustav Verderber's teaching responsibilities for the Fall 1998 semester – teaching Sections E and F of Biology 124 – constituted one or more teaching assignments. The Federation is not contesting the amount of credits and compensation Verderber received for teaching Sections E and F. Instead, the Federation contends that this assignment of a "double" section – combined lecture and separate labs – constituted a single teaching assignment within the meaning of the Contract, and that Grievant should have been offered a second teaching assignment that semester pursuant to Article XVIII of the Contract. The Colleges contend to the contrary that the assignment of the double section constituted two teaching assignments. If those responsibilities constituted only one teaching assignment, the parties agree that Verderber should have been offered the additional section of Biology 124, Section G, that Anne Spearing taught.

provides that "two available teaching assignments with a minimum of six credits per semester shall first be offered to bargaining unit members on the basis of seniority". However, the Contract does not define "teaching assignment", and the meaning of such term is ambiguous. Where disputed contract language is sufficiently ambiguous, it is the duty of judicial or quasi-judicial bodies to construe a contract so as to ascertain the true intention of the parties. Grievance of Gornuso, 150 Vt. 139, 143 (1988). In such circumstances, it is appropriate to look to the extrinsic evidence of past practice and bargaining history to ascertain whether such evidence provides any guidance in interpreting the meaning of the contract. Grievance of Majors, 11 VLRB 30, 35 (1988).

ately, bargaining history and past practice provide little assistance to us in determining whether the assignment of a double section constituted one or two teaching assignments. The parties presented no evidence on bargaining history. The parties presented evidence on past practice, but such evidence was limited to indicating that there has been a practice at Johnson State College of lecture/laboratory science courses sometimes being offered as double sections, and there has been a practice of providing a faculty member additional workload credit and compensation for double sections.

In seeking to construe the ambiguous Contract language with little guidance, we begin by examining the characteristics of double section assignments compared to other teaching assignments. If a faculty member is teaching one section of a lecture/laboratory course with 2 ½ lecture hours a week and one two-hour lab, it is clear that constitutes one teaching assignment. If a faculty member is teaching two sections of a lecture/laboratory

course with each section having 2 ½ lecture hours a week and one two hour lab, it is clear that constitutes two teaching assignments.

The double section involved in this case is a hybrid. It is characteristic of the former situation to the extent that there is combined lecture. It is characteristic of the latter situation to the extent that there are two labs. The time commitment and compensation for a double section are greater than for a single section, but less than for two single sections. There are more contact hours with students than a single section with one lab, and less contact hours than two separate sections with separate lectures and labs. The number of students in a double section with whom to interact and grade is more comparable to two separate sections than a single section. The compensation for the double section - based on 6.68 workload credits – occupies the middle ground between a single section with one lab for which 4.34 workload credits are granted, and two single sections with two labs for which there are 8.68 workload credits.

In determining whether the hybrid nature of the double section assignment constitutes one or more teaching assignments pursuant to the Contract, we conclude that the most significant component of the Contract is the minimum number of credits that a part-time faculty member could expect to receive in a semester. This is important because the number of credits have a reasonable relation to time and effort, and a faculty member's compensation is entirely based on the number of credits. Here, Grievant received 6.68 credits for the double section, which exceeded the Contract minimum of six credits per semester.

When the number of credits is considered together with the two separate labs, the large number of students, the time commitment for the faculty member, and the treatment

of the double section as two separate sections from the students' viewpoint, we conclude that the double section constituted two teaching assignments within the meaning of the Contract. Thus, the Colleges did not violate the Contract by not offering Verderber the additional section of Biology 124, Section G, that Anne Spearing taught.


We emphasize the limited nature of our holding. The lack of guidance in the Contract as to the meaning of "teaching assignment" makes it difficult to provide much direction for future cases. We encourage the parties to negotiate clearer contract language.

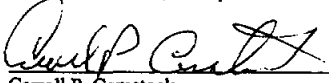
ORDER

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

Dated this 5th day of November, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Carroll P. Comstock


Richard W. Park