

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 99-45
CARL BRANDON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 1, 1999, Attorney Kimberly Cheney filed a grievance on behalf of Carl Brandon, a Vermont Technical College faculty member ("Grievant"). Grievant alleged that the Vermont State Colleges ("Colleges") violated Articles 8 and 29(A) and (D) of the collective bargaining agreement between the Colleges and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, effective September 1, 1997 – August 31, 1999 ("Contract") by denying sabbatical leave to Grievant.

On November 4, 1999, a hearing was held before Labor Relations Board Members Catherine Frank, Chairperson; Richard Park and John Zampieri in the Board hearing room in Montpelier. Attorney Kimberly Cheney represented Grievant. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. The parties filed post-hearing briefs on November 19, 1999. On December 6, 1999, Grievant filed a reply brief. Grievant's reply brief has not been considered by the Board as it is the practice of the Board not to allow reply briefs.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE 8
ANTI-DISCRIMINATION

The parties shall not discriminate against any faculty member . . . by reason of . . . union activity . . .

ARTICLE 29
FACULTY DEVELOPMENT FUND

A. . . . (F)or use in each year of the contract, each College, except for Castleton, shall grant a total of four semesters of sabbatical leave plus one additional semester per year as described in D.6 below beginning in FY98 to tenured faculty . . . Tenured faculty may be awarded one- or two-semester sabbaticals. Payment shall be at the rate of 75% plus full fringe benefits for full year sabbaticals and 85% plus full fringe benefits for one-semester sabbaticals . . .

...

D. A tenured faculty member shall be eligible for a sabbatical after every five (5) full years or more of full-time teaching service.

1. Sabbatical proposals must be submitted to a committee designated by the Faculty Assembly for such purpose on or before November 15. Faculty are encouraged to design the proposal as part of their overall professional development.

2. The committee shall evaluate the proposals and make appropriate recommendation to the Dean on or before December 15. The Dean shall evaluate the proposals and the committee's recommendation and forward his/her own recommendation to the President by January 15.

3. The President shall give written notification of the sabbatical awards on or before February 1.

...

5. The Colleges and the Federation shall mutually agree to guidelines setting out relevant information that should be included in any sabbatical request (See Appendix H). These guidelines do not abrogate the President's responsibility to grant the requisite number of sabbaticals specified in Section (A) above.

6. One additional semester of sabbatical shall be offered yearly at each campus. This sabbatical is subject to the following restrictions:

- (1) The proposal must specifically relate to:
 - (a) the enhancement of teaching effectiveness, skills, and methods, or
 - (b) curriculum development work;

- (2) The request must include a specific work product for presentation to the faculty and administration upon the faculty member's return (Joint Exhibit 1).

2. Grievant has been a full-time faculty member at Vermont Technical College (“VTC”) for 23 years. He has a Ph.D in Zoology. At all times relevant, he has been a member of Science Department. In the 1980’s, Grievant taught computer programming courses at VTC. Currently, Grievant teaches physics courses. He also has taught zoology, anatomy and chemistry. At all times relevant, Robert Clarke was VTC President and Steven Ingram was Academic Dean.

3. In the Fall of 1998, four faculty members at VTC applied for sabbaticals for the 1999-2000 academic year: Grievant, Elisabeth Gambler, David Jarmy and Amy Woodbury. The form for requesting sabbaticals requires a statement as to the length of the proposed sabbatical (i.e., one semester or two); the description of the proposed sabbatical and the relevance of the proposed sabbatical to the applicant and to the college. Grievant’s sabbatical request described a two semester sabbatical that would focus on developing a two semester course on web page design (Joint Exhibit 1, Appendix H; Grievant’s Exhibit A).

4. The faculty development committee designated by the VTC Faculty Assembly to review sabbatical requests is comprised entirely of faculty members. The faculty development committee that reviewed the four sabbatical requests in the Fall of 1998 recommended that the four semesters of sabbatical under Article 29 (D) (1) be awarded to Elisabeth Gambler and David Jarmy. The committee further recommended that the one semester of sabbatical pursuant to Article 29 (D) (6) be awarded to Amy Woodbury. The committee communicated its recommendations by a memorandum dated December 9, 1998, to Dean Ingram (Colleges Exhibit 2).

5. In reviewing the sabbatical requests, the faculty development committee did not discuss the requests with either Dean Ingram or President Clarke. The members of the committee compared the requests to the criteria in the Contract, not to each other. The committee first decided to recommend Gambler and Jarmy for the Article 29 (D) (1) sabbaticals. The committee then reviewed the sabbatical requests of Woodbury and Grievant according to the Article 29 (D) (6) criteria. In deciding to recommend Woodbury rather than Grievant, the committee determined that Woodbury's request met the Article 29 (D) (6) criteria and Grievant's request did not meet the criteria.

6. The committee decided that Grievant's request did not meet the contractual criteria because he was making a curriculum development proposal for a course outside of his department, the Science Department. The committee also believed that Grievant's proposal was redundant because there already were two staff at VTC who did web page development work for faculty and administrators. The committee did not communicate these reasons for concluding Grievant's request did not meet the contractual criteria to either Dean Ingram or President Clarke (Colleges Exhibit 2).

7. On December 15, 1998, Dean Ingram notified President Clarke by memorandum that he concurred with the recommendations of the committee on the sabbatical requests (Colleges Exhibit 3).

8. On January 13, 1999, President Clarke decided to award sabbatical leave for the 1999-2000 academic year as recommended by the faculty committee and Dean Ingram. He notified Grievant of his decision at that time (Colleges Exhibit 4).

9. On January 29, 1999, Woodbury notified President Clarke by e-mail that she had decided to decline the sabbatical award for one semester because she believed

“that the projects and professional development I wish to undertake really will require a full year.” At the time President Clarke decided to award Woodbury a one semester sabbatical, he did not know that she may decline it (Colleges Exhibit 5).

10. After Woodbury declined the sabbatical, Grievant had conversations with Dean Ingram on his sabbatical request. Grievant understood from his discussions with Dean Ingram that he would be awarded a sabbatical and it was just a matter of getting the paperwork to the President’s office. Grievant did not discuss his sabbatical request with President Clarke.

11. On March 11, 1999, Dean Ingram sent an e-mail message to the faculty development committee that provided in pertinent part:

Your Faculty Development Committee report on sabbaticals was silent on the Brandon proposal. Now that Dr. Woodbury StDenis has not accepted the one semester sabbatical, that opportunity is open. I would like a recommendation from you whether the Brandon request for a two semester sabbatical should be recommended for the one semester curriculum development sabbatical.

...

(Colleges Exhibit 6)

12. After receiving this memorandum, the faculty development committee met and decided not to review Grievant’s sabbatical request again given the committee’s conclusion that it did not meet the contractual criteria. On March 14, 1999, the faculty development committee sent a memorandum to Dean Ingram that provided: “In reference to sabbatical requests, the faculty development committee has made its recommendations to the Dean in a memo dated December 9 (see attached) in accordance with the conditions set forth in the contract”. The committee did not communicate any reasons to Dean Ingram or President Clarke for declining to recommend that Grievant be granted a sabbatical (Colleges Exhibit 7A).

13. Dean Ingram made no written recommendation to President Clarke on Grievant's sabbatical leave request after receiving this memorandum from the committee. Dean Ingram and President Clarke had a discussion in which it was determined that Grievant's sabbatical request did not meet Article 29 (D) (6) criteria. President Clarke decided not to award Grievant a sabbatical. In considering the issue, President Clarke believed that he had the authority to award the one semester sabbatical to Grievant once Woodbury declined it, but that he was not obligated to do so.

14. In deciding not to award Grievant a sabbatical, President Clarke determined that Grievant's curriculum proposal did not have sufficient relevance to VTC's curricular needs. He was not contemplating this type of course being added to the curriculum. He considered that the web design course proposed by Grievant would be an elective course, and that VTC students have limited opportunities to take elective courses. He also considered that the proposed course would not be in Grievant's particular field of study.

15. Any proposed addition of courses to the VTC curriculum must be reviewed by the Faculty Assembly and approved by the President.

16. Over the past ten years, President Clarke often has approved the recommendations of the faculty development committee concerning sabbatical leave. There also have been several occasions when he has disagreed with the committee's recommendations (Colleges Exhibit 1).

17. In sabbaticals awarded for the 1995-96 academic year, one faculty member declined a sabbatical and sabbaticals were awarded to other faculty members in his place. Russell Mills was awarded a two semester sabbatical, and Terry Murphy and

Carol Rogers were awarded one semester each. In awarding the sabbaticals, President Clarke knew that Mills was considering not taking the sabbatical due to his duties with the Faculty Federation. President Clarke indicated in his award that he would grant full year sabbaticals to the other two faculty members if Mills ultimately declined. Mills did decline the sabbaticals, and President Clarke extended the Murphy and Rogers sabbaticals to a full year (Colleges Exhibit 1).

18. Grievant was active on Faculty Federation negotiations teams through 1988. He has not been on a negotiations team since 1988. At one time, Grievant was Federation grievance officer on the VTC campus. In 1988, Grievant was vocal in seeking to persuade other faculty to reject a tentative agreement that the Federation had negotiated with the Colleges because of a change in the early retirement age. The faculty did reject the tentative agreement. Approximately five years ago, Grievant opposed President Clarke on the issue of faculty members being required to attend graduation. There is no evidence of active Federation involvement by Grievant in recent years.

19. There have been occasions over the years where President Clarke has awarded sabbaticals to union activists. Russell Mills has served as president and grievance chairperson of the Faculty Federation. President Clarke granted Mills sabbaticals for 1995-1996 and 1997-1998, in the latter year even though the faculty development committee and the Dean had not recommended that Mills be granted a sabbatical. In 1999-2000, one of the sabbatical recipients, David Jarmy, was grievance officer for the VTC chapter of the Federation. Another of the faculty members who was awarded a sabbatical that year, Amy Woodbury, was previously president of the VTC chapter of the Federation (Colleges Exhibits 1, 7, 8).

OPINION

Grievant first contends that the faculty development fund article of the Contract, Article 29, compelled the Colleges to award a sabbatical to Grievant once faculty member Amy Woodbury declined the offer of a sabbatical. Grievant maintains that the requirement of Article 29, Sections A and D, that there be a “grant” of five semesters of sabbatical leave must be construed to mean that funds for five semesters of sabbaticals actually must be expended. Grievant argues that to construe the Contract so that it is sufficient to award five semesters of sabbatical leave, even if all recipients do not actually take the leave, is an invitation to corruption since the President could encourage favorites to apply, grant the sabbatical, have it declined, and reward the applicant in other ways.

Under the circumstances of this case, we conclude that the Colleges did not violate the provisions of Article 29 in not granting Grievant a sabbatical. The sabbatical at issue involved the provisions of Section (D) (6) of Article 29, which provides in pertinent part that a “semester of sabbatical shall be offered yearly” subject to restrictions that it “must specifically relate to . . . curriculum development work”. Once President Clarke offered the sabbatical to Woodbury, and she declined it, it was appropriate for the President to decide whether Grievant’s sabbatical request was sufficiently relevant to the curricular needs of VTC in the absence of more specific guidance in the Contract. He reasonably concluded that Grievant’s curriculum proposal of a web design course was not sufficiently relevant to VTC’s curricular needs.

The President was not contemplating this type of course being added to the curriculum. He considered that the course proposed by Grievant would be an elective course, and that VTC students have limited opportunities to take elective courses. He also

considered that the proposed course would not be in Grievant's particular field of study. These were appropriate considerations in deciding not to award Grievant a sabbatical and, under the se circumstances, there was no contractual violation.

Grievant also alleges that correct procedures were not followed in the sabbatical process because the faculty development committee did not make "an appropriate recommendation to the Dean" concerning Grievant's request for a sabbatical after Woodbury declined it. We disagree. Article 29 Section (D) (2), provides that the "committee shall make appropriate recommendation to the Dean on or before December 15". The committee met this contractual obligation through its initial recommendation to the Dean on December 9, 1998, that faculty members Elisabeth Gambler, David Jarmy and Amy Woodbury should be awarded sabbaticals. Once Woodbury declined the sabbatical, it was appropriate for the committee to rely on the earlier December 9 recommendation given the committee's conclusion that Grievant's sabbatical request did not meet the criteria for a Article 29, Section (D) (6), sabbatical.

Grievant further alleges that the sabbatical denial violated the provisions of Article 8 of the Contract that faculty members not be discriminated against on the basis of their union activity. In determining whether action was taken against an employee for engaging in union activities, once an employee demonstrates protected conduct, the employee must show the conduct was a motivating factor in the decision to take action against the employee. If the employee meets that burden, 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).

Grievant demonstrated that he engaged in union activities, since he served as a member of the Federation negotiations team and was Federation grievance officer at VTC. Having demonstrated protected activities, Grievant must show the union activities constituted a motivating factor in the sabbatical denial.

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 protected activities, 2) whether a climate of coercion existed, 3) whether the timing of the action was suspect, 4) whether the employer gave protected activities as a reason for the decision, 5) whether the employer interrogated the employee about protected activities, 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 such activity. Horn of the Moon, 12 VLRB at 126-127.

In applying these guidelines, we conclude that Grievant has presented insufficient evidence for us to conclude that his union activities constituted a motivating factor in the sabbatical denial. The timing of the denial was not suspect. Although Grievant had been active in the Faculty Federation until the late 1980's, there is no evidence of active Federation involvement by Grievant in recent years. Also, while evidence was presented on disagreements Grievant had with President Clarke on specific labor relations issues, those incidents were several years ago.

Grievant has not demonstrated the existence of a climate of coercion. Grievant also has not demonstrated that President Clarke discriminated between employees engaged in union activities and employees not so engaged. He has awarded sabbaticals to

faculty members visibly active in Faculty Federation affairs. In the academic year Grievant's sabbatical leave request was denied, two of the faculty members awarded sabbaticals had been active in the Federation, David Jarmy and Amy Woodbury. On another occasion, he awarded a sabbatical to a union activist even though the faculty development committee and the Dean had not recommended that he be granted a sabbatical.

In sum, Grievant has not demonstrated that his union activities constituted a motivating factor in the sabbatical denial. Thus, his claim of discrimination based on union activities fails.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievance of Carl Brandon is DISMISSED.

Dated this ____ day of January, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Richard W. Park

John J. Zampieri