

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 99-51
VERMONT STATE COLLEGES)	
FACULTY FEDERATION, AFT,)	
LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 5, 1999, the Vermont State Colleges Faculty Federation, AFT, Local 3180, AFL-CIO ("Federation") filed a grievance against the Vermont State Colleges ("Colleges") alleging that the Colleges violated Article 29 of the collective bargaining agreement between the Colleges and the Federation, AFT Local 3180, AFL-CIO, effective September 1, 1997 – August 31, 1999 ("Contract") by its failure to grant the requisite number of sabbatical leaves during the 1997 – 1998 academic year.

On March 16, 2000, a hearing was held before Labor Relations Board Members Catherine Frank, Chairperson; Richard Park and Edward Zuccaro in the Board hearing room in Montpelier. Attorney Nicholas DiGiovanni, Jr., represented the Colleges. Federation Grievance Chair Russell Mills represented the Federation. The parties jointly filed letters and copies of depositions on April 6, 2000, and post-hearing briefs on April 20, 2000.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

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;

...

(Federation Exhibit 1).

2. The first category of sabbaticals are considered "regular" sabbaticals and have been in effect for many years. The second type of sabbaticals set forth in Article 29 (D)(6) are considered "special" sabbaticals and have been part of the Contract for less than 5 years.

3. The Federation and the Colleges recognize that regular sabbaticals benefit both faculty members and the Colleges. Faculty members are able to take a break from their regular teaching duties with some financial compensation. The Colleges benefit when the faculty member returns fresh and rested to resume his or her teaching duties.

4. Eligible faculty members apply for a sabbatical leave by submitting his or her proposal on a form mutually agreed to by the Federation and the Colleges. Sabbatical proposals are reviewed by the faculty committee, the academic dean and the president. The academic dean is not bound by the recommendation of the faculty committee and the president is not bound by the recommendation of the academic dean. Only college presidents have the authority to grant sabbatical leaves. Applications for special sabbaticals may be denied if the applicant does not meet the requirements set forth in Article 19 (D)(6) (Federation Exhibits 1, 6).

5. The faculty development committee is the committee at Johnson State College ("JSC") which reviews sabbatical applications. In the Fall of 1996, the faculty development committee received five applications for sabbatical leaves for the 1997 – 1998 academic year. All five faculty requests were for a regular sabbatical; no one specifically applied for the special sabbatical. Three individuals requested two semesters of sabbatical leave: Margaret Ottum, Roberta Bienvenu and Nacklie Bou-Nacklie. Faculty members Herb Propper and Joe Farara also applied for sabbaticals for the 1997 – 1998 academic year.

6. The faculty development committee determined that all five applicants were eligible for a sabbatical and that all five requests had merit. Accordingly, it

recommended that all five applicants receive one semester of sabbatical leave. It recommended that Propper receive the special sabbatical (Colleges Exhibit 1).

7. JSC Academic Dean Vincent Crockenberg reviewed the faculty development committee's recommendations. On January 15, 1997, Crockenberg sent a memorandum to JSC President Robert Hahn and recommended that Hahn accept the committee's recommendation with respect to each applicant receiving one semester of sabbatical leave. He also recommended that Ottum receive the special sabbatical instead of Propper. Hahn accepted Crockenberg's recommendation and granted Bienvenu, Bou-Nacklie, Farara and Propper one semester of regular sabbatical leave and Ottum one semester of special sabbatical leave for the 1997 – 1998 academic year (Colleges Exhibit 2).

8. Bienvenu requested and received approval to use the Fall semester of 1997 for her sabbatical leave. Bou-Nacklie requested and received approval to use the Spring semester of 1998 for his sabbatical leave (Colleges Exhibit 4).

9. On or about October 14, 1997, Bou-Nacklie sent a letter to Crockenberg requesting that Crockenberg cancel his 1998 Spring sabbatical leave because of problems he was experiencing with the U.S. Immigration and Naturalization Service. Bou-Nacklie did not request that JSC delay his sabbatical until the next academic year because he was leaving JSC after the Spring semester (Colleges Exhibit 5).

10. Dean Crockenberg knew that Bienvenu, who was on her Fall sabbatical at the time, had applied for two semesters of sabbatical leave. Of all the applicants, Bienvenu was the only one who could possibly benefit from Bou-Nacklie's cancellation because Farara only had applied for one semester, Ottum received the special sabbatical

and Propper was already scheduled to take his sabbatical in the Spring. Crockenberg decided to pursue the possibility of Bienvenu taking Bou-Nacklie's unused sabbatical. He was unsure what procedure to follow, as the Contract contains no procedures for this type of situation.

11. Crockenberg contacted Bienvenu's department chair to make sure that the 1998 Spring semester would be covered if Bienvenu was absent. After researching the issue, the chair told him that the department could handle her absence. Crockenberg also contacted Bienvenu, either before or after contacting the chair, to determine whether she was still interested in two semesters of sabbatical leave. Bienvenu told Crockenberg that she was still interested. Crockenberg told Bienvenu that he would get back in touch with her regarding this issue.

12. Crockenberg contacted the Colleges' General Counsel, Stanley Carpenter, and told him about the situation and asked him for guidance. Carpenter recommended that Crockenberg not offer Bou-Nacklie's sabbatical semester to Bienvenu because it could set a bad precedent for all the colleges in the Vermont State Colleges system. Crockenberg did not ask Carpenter if any of the other colleges in the system had encountered similar situations.

13. Hahn accepted Carpenter's advice and did not offer Bienvenu a sabbatical for the 1998 Spring semester. Crockenberg informed Bienvenu of this decision.

14. There have been no comparable situations at JSC in which a faculty member was awarded a sabbatical and later declined to use it. There also have been no comparable situations at Lyndon State College ("LSC"), although sabbatical leaves occasionally have gone unused at LSC because not enough faculty members have applied

for them. The other two Colleges in the Vermont State College system, Vermont Technical College (“VTC”) and Castleton State College (“CSC”), have encountered situations in which a grantee of a regular sabbatical has either been unable to use it, or declined to use it, and the president has awarded the sabbatical to other eligible applicants.

15. On or about January 31 1996, Castleton State College (“CSC”) President Martha Farmer awarded a sabbatical to Dr. Steven Butterfield. Butterfield was seriously ill at the time Farmer awarded his sabbatical. Butterfield died shortly after he was awarded the sabbatical and Farmer subsequently awarded the sabbatical to an applicant from the eligible pool of applicants who had applied that year (Federation Exhibit 3).

16. At some time in the 1990’s, Russell Mills and two other faculty members applied for sabbaticals at VTC. Mills anticipated becoming the Federation grievance chair that year and informed VTC President Robert Clarke that, if he became grievance chair, he would be unable to accept his sabbatical. Clarke awarded Mills’ two semesters of sabbatical leave and awarded two other faculty members one semester each. At the time he made his awards, Clarke informed the other two successful applicants that they could each have two semesters, instead of one, if Mills was unable to use his two semester award. Mills was elected grievance chair, declined the award, and the other two faculty members each received two semesters of sabbatical leave.

17. VTC also experienced a situation in which a successful applicant for a special sabbatical declined to use it. The president re-evaluated an eligible applicant from the original applicant pool, Carl Brandon, but did not award Brandon the sabbatical because his application did not have sufficient relevance to the curriculum needs of the

college. The applicant grieved Clarke's decision and the Labor Relations Board upheld his decision. Grievance of Brandon, 23 VLRB 1 (2000).

18. In another situation at VTC, in November 1985, the VTC administration and the Federation agreed to postpone the 1986 Spring sabbatical leave granted to faculty member Peter Kawecki's until the following academic year so that he could teach during the 1986 Spring semester. Subsequent to that agreement, in December 1985, another VTC faculty member, Peter Rasmussen, who was on an unpaid leave for the 1985 Fall semester, requested that Kawecki's unused 1985 – 1986 sabbatical funds be retroactively awarded to him for his Fall semester of unpaid leave. The president denied Rasmussen's request. Kawecki took his sabbatical the following academic year and the college president also granted the full complement of four sabbaticals the following year; this resulted in five sabbaticals for the 1986 – 1987 academic year and no sabbaticals went unused. Rasmussen grieved the president's decision and the Labor Relations Board upheld the president's decision. Grievance of Rasmussen, 10 VLRB 9 (1987).

19. Over the years, the Federation and the Colleges have fine-tuned the sabbatical leave provisions of the Contract. They have never negotiated a procedure to follow if grantees of sabbaticals decline to use the leave they have been awarded.

OPINION

The Federation contends that the Colleges improperly denied a semester of sabbatical leave to Roberta Bienvenu in violation Article 29 of the Contract. The Federation contends that Article 29, as well as past practices of other colleges in the Vermont State Colleges system, require the Colleges to award a regular sabbatical leave to another eligible applicant if the original award is declined or cannot be used. The

Federation contends that allowing the Colleges to do otherwise could result in the Colleges colluding with faculty members to have sabbaticals accepted, and then declined for special favors, as a way to save money with these unused sabbatical funds.

A contract will be interpreted by the common meaning of its words where the language is clear. In re Stacy, 138 Vt. 68, 71 (1980). 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, 138 Vt. at 71. The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts; not to make or remake them for the parties, or ignore their provisions. Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).

In applying these standards to this case, we conclude that the Colleges did not violate Article 29. Article 29 states in pertinent part that “(F)or use in each year of the contract, each College . . . shall grant a total of four semesters of sabbatical leave”. President Hahn did just that; he granted four semesters of sabbatical leave for use in the 1997 – 1998 academic year. He fulfilled his obligation under the Contract by granting regular sabbatical leave to faculty members Bienvenu, Bou-Nacklie, Farara and Propper. Although one of the grantees, Bou-Nacklie, subsequently relinquished his award, Article 29 does not require re-granting an awarded sabbatical if it is declined. If we were to so rule, we would be inappropriately reading new terms into the contract and remaking it.

Here, the Colleges' general counsel recommended that President Hahn not re-award Bou-Nacklie's sabbatical semester to Bienvenu because he feared establishing a system wide precedent. There is nothing in the Contract which would have prevented the president from using his discretion and awarding the 1998 Spring sabbatical semester to Bienvenu. She had applied for both the 1997 Fall and 1998 Spring semesters, her application had been found meritorious by the president, and her department chair agreed that the department could accommodate her absence another semester. However, we will not turn a discretionary act into a contractual obligation.

The Federation contends that the Colleges were obligated to reassign Bou-Nacklie's sabbatical to Bienvenu because of past practices of the Colleges. The Federation points to earlier decisions presidents at Castleton State College and Vermont Technical College had made in re-granting unused sabbaticals. The Board has resorted to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language if sufficient ambiguity exists in the contract. Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978). 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). However, in the matter before us, there is not sufficient ambiguity in the Contract to justify resorting to past practices.

In addition, we are not persuaded by the Federation's argument that denying the Federation this grievance could result in the Colleges colluding with faculty members to have sabbaticals accepted, and then declined for special favors, in order to save money with unused sabbatical funds. We have seen no signs of abuse. Except for the failure to

award Bou-Nacklie's vacated sabbatical to Bienvenu, there is no evidence that any regular sabbaticals have gone unused. They have either been used the following academic year, or been awarded to an eligible faculty member from the original pool of applicants. If the Federation is concerned about the Colleges abusing this contract provision, the remedy lies in revising contract provisions for sabbaticals in future contract negotiations.

ORDER

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

Dated this 24th day of May, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Richard W. Park

Edward R. Zuccaro