

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
STEWART McHENRY AND THE)	
VERMONT STATE COLLEGES)	DOCKET NO. 01-51
FACULTY FEDERATION,)	
AFT LOCAL 3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 23, 2001, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO filed a grievance alleging that the Vermont State Colleges violated Article XVIII of the collective bargaining agreement between the Colleges and the Vermont State Colleges Part-Time Faculty, AFT, AFL-CIO by reassigning a course from part-time faculty member Stewart McHenry to a full-time faculty member after the Colleges had entered into a contract with Dr. McHenry to teach the course.

There was no evidentiary hearing held in this matter because the parties stipulated to the facts. The Findings of Fact contained herein consist of the facts stipulated to by the parties. Grievants filed a brief on February 8, 2002. The Colleges filed a brief on February 11, 2002.

FINDINGS OF FACT

1. The Vermont State Colleges Faculty Federation, Local 3180, AFT, AFL-CIO is the exclusive bargaining representative of a unit of part-time faculty at the campus-based institutions of the Vermont State Colleges, including Castleton State College. The Federation is also the exclusive bargaining representative of the full-time faculty at the same institutions.

2. At all pertinent times, there was a collective bargaining agreement in existence for both full-time faculty and part-time faculty (Joint Exhibits 1 and 2).

3. Stewart McHenry is a part-time faculty member at Castleton State College and a member of the bargaining unit.

4. Prior to December 15, 2000, Professor McHenry was assigned to teach two sections of GEO 215 (Cultural Geography) for the Spring 2001 semester. The specific sections were GEO 215C and 215D. Sections of the same course are run at different times and students may register for particular sections of a course as best fits their overall schedule.

5. Professor Taparauskas, a full-time faculty member at Castleton and member of the full-time unit, was originally scheduled to teach another section of Cultural Geography (215A) as part of his full-time load of 12 credits for the Spring 2001 semester.

6. On or about December 15, 2000, the Colleges decided to cancel GEO 215A and GEO 215D due to low enrollments for those particular sections for the Spring 2001 semester. GEO 215C, however, had a sufficient enrollment to be offered for that semester and would be offered to students as scheduled.

7. On or about December 15, 2000, the College decided to reassign Professor Taparauskas the GEO 215C section – which had been originally offered to Professor McHenry – in order to complete Professor Taparauskas' full-time teaching load. Without this reassignment, Professor Taparauskas would have been under his full-time teaching load for which he was receiving a full-time salary. The salary of a full-time faculty member cannot be reduced if the Colleges cannot assign a full teaching load of 12 credits.

8. There were no other available courses that could be assigned to Professor Taparauskas to complete his full-time teaching load.

9. On December 15, 2000, Professor McHenry was notified by Associate Academic Dean John Larkin by telephone of the fact that he would not be given a contract for the Spring semester courses due to reduced enrollments in Spring semester Geography courses. This notification took the form of a voice mail. Professor McHenry and Dean Larkin spoke directly by telephone about the retractions on December 18, 2000, and confirmed the notification in writing on December 21, 2000.

10. Since the notification of the assignments being retracted was made on December 15, 2000, more than 30 days prior to the first day of class (January 17, 2001), the College was not required to pay a cancellation fee under Article XVIII(L) of the collective bargaining agreement with the part-time faculty.

11. A grievance by Professor McHenry filed on January 19, 2001 over whether he was entitled to a cancellation fee was later withdrawn after being processed to Step II.

12. Another grievance was filed by Professor McHenry on May 4, 2001 (Joint Exhibit 3) claiming that Professor McHenry was “improperly removed as instructor of Cultural Geography 215C, which was not canceled.” The grievant claimed that Article XVIII(E) of the collective bargaining agreement was violated. The grievance was denied at Steps 1 and 2 and was filed with the Vermont Labor Relations Board on July 23, 2001. The Colleges filed an answer on August 3, 2001 denying that any violations of the contract occurred and that it had the right to reassign the 215C section to a full-time faculty member.

13. The Colleges have reassigned courses away from part-time faculty to full-time faculty in the past. Specifically, in recent years at Castleton, Laurie Rosenzweig, a part-time faculty bargaining unit member, had been scheduled and offered an assignment to teach CRJ 105C in the Fall of 2000 and CRJ 210A in the Spring of 2001. In both cases, the College later reassigned those sections to a full-time faculty member (Bradley Hunt in the Fall of 2000 and Victoria DeRosia in the Spring of 2001). In addition, Denise Frandino, a part-time faculty bargaining unit member, had been offered an assignment to teach SOW 105B in the Fall of 2001 and the College later reassigned that section to a full-time faculty member (Lillian Jackson). Neither Professor Rosenzweig nor Professor Frandino ever notified the Federation of these reassignments nor has the Federation been notified of other reassignments in the past.

OPINION

At issue is whether the Colleges violated Article XVIII of the collective bargaining contract covering part-time faculty by reassigning a course from part-time faculty member Stewart McHenry to a full-time faculty member after the Colleges had initially assigned Dr. McHenry to teach the course.

Grievants contend that the language of Article XVIII, Section E, of the part-time faculty contract is very specific that the preference in assignments to full-time faculty may be exercised only prior to offering courses to part-time faculty. Article XVIII, Section E, provides: “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”.

Grievants maintain that, in retracting Dr. McHenry's course assignment and assigning the course instead to full-time Professor Taparauskas, the Colleges chose an improper remedy to address the situation that a course had been canceled for Professor Taparauskas. Grievants contend that Article 17, Section G, of the collective bargaining contract covering full-time faculty instead provides a specific remedy for dealing with course cancellations for full-time faculty by providing: "If courses are canceled during the year, the College may assign to the faculty member involved professionally relevant duties on a basis proportionate to the number of his/her credits that did not carry".

The Colleges contend that this grievance should be denied because Grievants cannot point to a specific clause in the part-time faculty contract which states that the College cannot cancel a course or retract an assignment once made. The Colleges contend that the provision of the part-time faculty contract relied on by Grievant, Article XVIII, Section E, does not apply to the instant situation.

The Colleges further contend that, if Grievants' position was adopted, it would have the effect of nullifying the language of Article XVIII, Sections (L) and (M), in the part-time faculty contract which specifically allow for the retraction of course assignments for part-time faculty. Article XVIII, Sections (L) and (M), provide:

L. Beginning in the fall semester for 1997, part-time faculty shall receive a cancellation payment of 7.5% of the amount that was to be paid for a course in the event that the assignment is retracted within thirty (30) days prior to the first class meeting. Such cancellation payment shall be waived if the part-time faculty member receives a replacement appointment of comparable value.

M. Beginning in the fall semester for 1997, part-time faculty shall receive a cancellation payment of 15% of the amount which was to be paid for a course, plus a proportional amount for all class meetings, in the event that the assignment is retracted after a first class meeting.

The Colleges maintain that the part-time faculty contract is written in such a way as to allow the Colleges to give preference to the assignments of full-time faculty, and that the Colleges should be allowed to take the action that it took here of transferring an assignment from a part-time faculty member to a full-time faculty member to complete the full-time member's course load. If Grievants' argument prevails, the Colleges contend there would be a nonsensical result because they would have to pay a part-time faculty member additional money to teach a course when it has a full-time faculty member already receiving a full-time salary available to teach the course to complete a full-time course load.

In interpreting the provisions of collective bargaining agreements in resolving grievances, we follow the rules of contract construction developed by the Vermont Supreme Court. A contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole. In re Grievance of VSEA on Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980). 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). 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). Also, in construing a contract, the Board must endeavor to avoid what is unequal, unreasonable and improbable, if this can be done consistently with the words of the contract. In re Gorruso, 139 Vt. 139, 143-44 (1988).

In applying these standards here, we conclude that Grievants have not established the Colleges violated Article XVIII of the part-time faculty contract. The Federation's reliance on Section E of Article XVIII is misplaced. This section does not address what occurred in this case, a retraction of an assignment, but instead is limited to reserving rights of the Colleges to give preference to full-time faculty and administrators when originally making assignments. There is not a necessary implication to be drawn from this provision that the Colleges are somehow restricted in retracting assignments made to part-time faculty to allow a full-time faculty member to complete a full-time course load. Absent such an implication, we conclude that Section E of Article XVIII does not address retraction of assignments.

Retraction of assignments is specifically addressed elsewhere in Article XVIII. Sections L and M provide for payments to part-time faculty members in the event assignments given them are retracted within 30 days prior to the first class or after classes have started. This language contemplates that retraction of assignments will occur, and specifies under what circumstances part-time faculty members will receive a remedy due to a retraction of assignment. It is significant that, in these sections of the contract dealing specifically with retraction of assignments, the parties did not place restrictions on the Colleges' right to retract assignments but instead provided for payment of a cancellation fee in certain circumstances when they exercised that right. Consideration of these sections of Article XVIII reinforces our conclusion that the Colleges acted within its reserved powers in taking the action they did here.

We do not find persuasive Grievants' argument that, in addressing the situation that a course had been canceled for Professor Taparauskas, the Colleges were limited to

the remedy set forth in Article 17, Section G, of the full-time faculty collective bargaining agreement of assigning “professionally relevant duties on a basis proportionate to the number of his . . . credits that did not carry”. Absent specific language in the contract limiting the College to this remedy exclusively, we conclude it would be unreasonable to read such terms into the contract. This is particularly so when the facts of this case are considered. If Grievants’ argument prevailed, the Colleges would have to pay a part-time faculty member additional money to teach a course when it has a full-time faculty member already receiving a full-time salary available to teach the course to complete a full-time course load. We cannot construe the contract to conclude the parties intended such a result absent more specific contract language than exists here. In sum, we conclude that the provisions of the part-time and full-time faculty contracts did not prohibit the Colleges from retracting Dr. McHenry’s course assignment and assigning the course instead to a full-time faculty member.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of Stewart McHenry and the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO is dismissed.

Dated this ____ day of March, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

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