VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF DEREK LEVIN and VERMONT STATE COLLEGES FACULTY FEDERATION, AFT, UPV LOCAL 3180, AFL-CIO	))))	DOCKET NO. 02-20
GRIEVANCE OF DEREK LEVIN and VERMONT STATE COLLEGES FACULTY FEDERATION, AFT, UPV LOCAL 3180, AFL-CIO	))))	DOCKET NO. 02-21

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 22, 2002, Derek Levin and the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO (hereinafter collectively referred to as "Grievants") filed two grievances with the Labor Relations Board. In the first grievance, Docket No. 02-20, Grievants contended that the Vermont State Colleges ("Employer") violated Articles III, VI, XIV, XV and XVIII, and Appendix A of the collective bargaining agreement between the Employer and the Federation, covering part-time faculty, effective September 1, 2000 to August 31, 2005 ("Contract") by imposing an inappropriate set of expectations on Levin, a part-time faculty member at Vermont Technical College, as a condition of assigning him teaching responsibilities for the spring 2002 semester. In the second grievance, Docket No. 02-21, Grievants alleged that the Employer violated Articles III and XVIII of the Contract by using arbitrary and non-contractual procedures in assigning courses to part-time faculty members at Vermont Technical College, resulting in Levin being assigned less credits than he requested.

The Labor Relations Board consolidated Docket Nos. 02-20 and 02-21 for hearing subsequent to the parties agreeing to a consolidation. A hearing was held on May 29,

2003, in the Board hearing room in Montpelier before Board Members Richard Park, Chairperson; Carroll Comstock and John Zampieri. Russell Mills, Federation Grievance Chairperson, represented Grievants. Attorney Nicholas DiGiovanni, Jr., represented the Employer. The parties filed post-hearing briefs on June 12, 2003.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

ARTICLE III
MANAGEMENT RIGHTS

A. All the rights and responsibilities of the Vermont State Colleges, which have not been specifically provided for in this Agreement, shall be retained in the sole discretion of the Vermont State Colleges and, except as modified by this Agreement, such rights and responsibilities shall include but shall not be limited to:

1. The right . . . to hire . . . assign . . . employees . . .

2. The right to determine the . . . personnel by which the Colleges' operations are to be conducted . . .

B. The application of such management rights in alleged violation of the provisions of this Agreement shall be subject to the provisions of Articles XII and XIII (Grievance and Arbitration).

. . .

D. No such management right or responsibility set forth or referred to in this article shall be enacted, applied, or implemented in a manner which is arbitrary or capricious or in contravention of this Agreement.

. . .

ARTICLE VI
ACADEMIC FREEDOM

A. The Vermont State Colleges shall continue its policy of maintaining and encouraging full freedom of inquiry, teaching and research. Such academic freedom shall encompass the unconditional freedom of discussion of any material relevant to any course which a faculty member

has been assigned to teach and, to this end, there shall be no unreasonable restrictions upon instructional methods.

. . .

ARTICLE XII
GRIEVANCE PROCEDURE

. . .

D. The following steps shall be followed for the processing of grievances:

Step one

1. Within thirty (30) calendar days after the grievant could reasonably have been aware of the alleged violation . . . the grievant (or his/her representative) shall hand deliver a written and dated grievance to the President of the College or his/her designee . . . The clock may be stopped during all recesses in excess of seven (7) calendar days provided the grievant or his/her representative notifies the College in writing. The clock shall start again after the conclusion of the recess. . .

. . .

F. Failure to Adhere to Time Limitations:

. . .

2. Failure of the grievant to comply with the time limitations of the grievance steps set forth in this article shall preclude any subsequent filing of the grievance.

. . .

ARTICLE XIV
DISCIPLINE

. . .

B. Unit members shall not be disciplined for acts which occurred more than one year prior to service of the notice with two exceptions. Disciplinary action resulting from acts of sexual harassment shall have a time limit of two years. Acts which would constitute a crime shall have a statute of limitations commensurate with appropriate State and federal law. . .

ARTICLE XV
FACULTY EVALUATIONS

A. The evaluation of part-time faculty shall be used to improve instruction and to aid in determining whether part-time faculty shall receive a subsequent appointment.

B. Any formal evaluations will be conducted by the Dean or his/her designee. Selections regarding who will be evaluated will be made at the Dean's/designee's discretion. In addition, part-time faculty may request to be evaluated. Such requests will be honored in the order they are received. No fewer than three (3) members and no more than ten percent (10%) of the active teaching faculty may be reviewed by request during each fall and spring semester. . .

. . .

E. Formal evaluations shall include a review of any classroom observation, student evaluations, Committee reports, department chair reports, and other information related to the part-time faculty's performance. The only written material that may be used in conducting evaluations shall be the material placed in the personnel file, and student evaluations.

1. Classroom Observation
   a) The Dean or his/her designee may with advance notice schedule no more than one (1) classroom observation with a part-time faculty per semester, unless the part-time faculty or the Dean or his/her designee requests the scheduling of additional observations.
   b) The Dean or his/her designee shall place a written report of the observed class in the part-time faculty member's personnel file no later than thirty (30) days following the completion of the classroom observation.
   c) The part-time faculty shall have the right to meet with the Dean or his/her designee to discuss the report of the observed class and may place a written response in his/her file.

. . .

ARTICLE XVI
PERSONNEL FILES

. . .

G. The only written material that the College shall use for evaluation, merit review, promotion, contract renewal or to support disciplinary action

contemplated against a faculty member shall be that contained in his/her personnel file.

H. The only written material that the college shall use for any personnel action involving a part-time faculty member shall be contained in his/her personnel file.

. . .

ARTICLE XVIII
SEMESTER APPOINTMENTS AND ASSIGNMENTS

A. All part-time faculty appointments and assignments will be made by the appropriate administrator at each College. All appointments shall be made on a semester or summer basis. No appointments shall create any right, interest or expectancy in any further appointments beyond its specific term, except as otherwise provided in this article.

B. 1. In planning appointments and assignments for forthcoming semesters, the College shall distribute a teaching availability form to each part-time faculty member . . . The teaching availability form shall request the part-time faculty member to provide the following:

a) Availability by days of the week and times of the day to teach in the forthcoming semester. The part-time faculty may also indicate preference as to which days of the week and times of the day he/she would like to teach, as well as other relevant considerations.

b) Indication of courses which the part-time faculty is interested in teaching.

. . .

6. It is understood that the distribution and receipt of a teaching availability form by part-time faculty does not obligate the College in any way to provide an appointment or a particular assignment to the part-time faculty member.

. . .

7. The teaching availability forms will be sent to and considered by the department chairperson or other appropriate administrator in establishing department schedules. In addition, part-time faculty may consult with the department chairperson regarding department scheduling for an upcoming semester, and if the department holds a meeting to discuss scheduling, part-time faculty shall be free to attend and participate. The employer will notify the part-time faculty of such scheduled meetings in a timely fashion.

. . .

D. The College shall consider the information provided by the part-time faculty on the teaching availability form in planning for semester assignments.

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. (sic) 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. Part-time faculty shall accumulate seniority at each campus based upon the number of credits taught at that campus. . .

H. In addition to 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.

. . .

APPENDIX A
MINIMUM DEGREE REQUIREMENTS

A. Minimum degree requirements for part-time faculty members shall be limited to a Masters degree or equivalent experience in the appropriate field of study.

B. All present members of the bargaining unit at the date of the signing of this agreement shall be exempt from this minimum degree requirement as delineated in "A" above.

. . .

(Joint Exhibit 1)

2. The Federation has been the exclusive bargaining representative of certain part-time faculty at the campus-based colleges of the Employer since 1991. The Employer and the Federation have negotiated several collective bargaining agreements since that time, the most recent effective from September 1, 2000 to August 31, 2005 (Joint Exhibit 1).

3. Grievant Levin has been a part-time faculty member in the General Education Department at Vermont Technical College since 1988. He is the senior part-time faculty member in his department. He has taught a variety of writing courses over the years, including basic, standard and advanced composition; journalism and technical communications. He also was Vice President of the Federation for several years. He has been a member of all Federation negotiations team for collective bargaining contracts covering part-time faculty, including serving as the head of the negotiation team for several years.

4. In 1993, the Employer imposed an eight-month disciplinary suspension on Levin for misrepresentation of academic credentials, specifically for claiming that he had received a Master's degree when he had not received such a degree. In an agreement entered into among Levin, the Employer and the Federation, Levin agreed not to contest the validity of the suspension and the parties further agreed: "All parties agree that no grievance or legal actions of any type will be pursued and that no further action of any kind will be taken for this alleged misrepresentation" (Grievants Exhibit 7).

5. Dr. Lisa Altomari is a full-time Associate Professor in the VTC General Education Department. Since the spring 2000 semester, she has been the Department Chairperson. She is a member of the full-time faculty bargaining unit represented by the Federation. As Department Chairperson, Professor Altomari is responsible for recommending the scheduling of faculty for courses in the General Education Department each semester. She also recommends the rehiring of part-time faculty. As Department Chairperson , she reports directly to the Academic Dean.

6. Dr. Steven Ingram served as VTC Academic Dean from 1989 to June 30, 2001. Dr. Jack Anderson was Acting Academic Dean from July 1, 2001 to April 2003.

7. Included among the courses Grievant Levin has taught over the years are GE 111 (Expository Writing, GE 112 (Research Writing), GE 113 (English Composition) and GE 115 (Technical Communications) (Employer Exhibits 6 – 9, 11).

8. In the fall 1999 semester, Levin taught one section of GE 111 and one section of GE 113 for a total of 10 teaching credits. In the spring 2000 semester, he was assigned to teach one section of GE 112 and one section of GE 115 for a total of eight teaching credits. However, shortly after the spring 2000 semester started, Levin was appointed to the House of Representatives of the Vermont General Assembly to fill a vacancy, and withdrew from his teaching assignments for the remainder of the semester. Dean Ingram informed Levin at that time that, when he returned to teaching, he expected him to make a full commitment to his teaching responsibilities. In the fall 2000 semester, Levin taught two sections of GE 113 for a total of nine teaching credits. In the spring 2001 semester, he taught two sections of GE 112 for a total of ten teaching credits (Employer Exhibits 6 – 9, 11).

9. Beginning in late 1999 or early 2000, Levin developed a serious medical problem with his back. In the spring of 2000, Levin indicated on his teaching availability form for the fall 2000 semester that he only wanted to teach two or three days a week. The VTC General Education Department offers courses that meet three days a week; there are no two day a week course offerings in the Department. Further, some of the three day a week courses have lab components that involve two additional hours of instruction a week. The labs may or may not be held on the same day as the lectures. Dr. Altomari wished to assign Levin two sections of GE 113 for the fall of 2000. Each section had three days of classes a week and two labs per week for a total of five teaching credits. One of the sections had labs that would create a four-day a week obligation. To accommodate Levin's medical problem and his wishes to teach only three days a week, Altomari decided to have Levin handle the three hours of lecture, and one of the labs that met on the same day as one of the lectures, for the section that had a four day a week obligation. The other lab for the section was assigned to Janet Dana, another part-time faculty member in the department. As a result, Levin received four credits for the course and Dana received one credit (Employer Exhibit 8).

10. During the fall 2000 semester, some students complained to Dr. Altomari about the co-teaching arrangement between Levin and Dana in the GE 113 section. Students contended that Levin and Dana were not adequately communicating about assignments, thus creating problems in the lab assigned to Dana. Dr. Altomari spoke to Levin and Dana about the complaints, and suggested that the they have a more unified approach concerning assignments.

11. Dr. Altomari received other complaints from students during the 2000-2001 academic year about Levin's teaching. Approximately half a dozen students complained that Levin's classes were disorganized, he told irrelevant rambling stories, he did not follow the course syllabus, and he graded papers late with few comments. This constituted a relatively high number of complaints about a faculty member. Altomari discussed these student complaints with Levin shortly after she received them.

12. In March of 2001, Dawn Carleton, Director of the VTC Writing and Communication Center, expressed concern to Altomari about students of Levin coming to the Writing and Communication Center and complaining about Levin providing insufficient guidance on assignments, wasting class time and not adequately explaining material in his classes. In response to Altomari's request, Carleton expressed her concerns in writing to Altomari (Employer Exhibit 26).

13. At some point in the spring of 2001, Altomari reviewed student evaluations done of Levin's courses from the previous fall semester along with evaluations from 1998. Many of the evaluations were positive or neutral about Levin's teaching. Some students expressed concerns about Levin's teaching in the evaluations that were similar to the oral complaints students had made to Altomari (Employer Exhibits 22, 23).

14. During the spring 2001 semester, Altomari met with Dean Ingram to discuss with him the complaints students had made about Levin's teaching. During the meeting, she gave the Dean a file on Levin that included the memorandum Carleton had sent to Altomari. Dean Ingram asked Altomari to summarize her thoughts in writing (Employer Exhibit 26).

15. On April 20, 2001, Altomari wrote a memorandum to Dean Ingram that listed negative comments made on the student evaluations of Levin's courses that Altomari had reviewed. She also recommended that Levin be offered the options of either resigning or continuing to teach on the condition that he adhere to a course of professional development set forth by Altomari in the memorandum (Employer Exhibit 10).

16. Altomari's April 20, 2001, memorandum to Dean Ingram and Carleton's memorandum to Altomari were not placed in Levin's personnel file. Neither Altomari nor Dean Ingram showed Levin copies of Altomari's memorandum or Carleton's memorandum. They did not provide Levin with an opportunity to respond to these memoranda.

17. On May 4, 2001, Dean Ingram met with Levin and gave him a memorandum that provided as follows:

> Part-time Teaching Assignments to Mr. Derek Levin
> AY 01-02
>
> Continuing student/colleague complaints about Mr. Levin's teaching effectiveness and his use of class/lab time during this academic year, following discussions last spring between the Dean and Mr. Levin that the college would expect improvements in these performance areas, necessitate the next step. Any assignment to Mr. Levin for academic year 2001-2001 (sic) will be made with the following expectation:
>
> - Mr. Levin will submit to the department chair complete course syllabi for each course assigned at least three weeks prior to the first day of class. Responding to student concerns about the lack of clarity of course assignments, the syllabi will include specific assignments for student writing. The department chair will review the syllabi and discuss any issues with Mr. Levin.
> - Mr. Levin will prepare weekly lesson plans and submit them to the department chair at least one week prior to their scheduled delivery. Weekly lesson plans will include outlines for the use of class/lab time, lecture topics supporting course objectives and required assignments and discussion topics

supporting course objectives. The chair will meet with Mr. Levin to discuss any issues with the weekly lesson plans.

- Mr. Levin will submit graded student course work to the department chair prior to returning it to students. The graded course work will be reviewed to assure students receive constructive feedback as well as the appropriate letter grade assessment for their work.
- Graded student work will be returned to students within one week of the assignment submission (including time for the review required above). The major research paper assignment can be an exception to the one-week return requirement.
- Mr. Levin's sections will each be observed once each month, September, October and November during the Fall 2001 semester in accordance with the classroom observation process as specified in the *Part-time Faculty Agreement*.
- Mr. Levin will abide by the class cancellation policy and practice.
- Mr. Levin will make steady progress toward completing a master's degree originally claimed in his application for employment at VTC. Faculty development monies are available to part-time faculty for such professional development.

These conditions are meant to address student concerns raised in student evaluations, to faculty advisors, to subsequent course instructors and VTC staff in academic support. Failure to cooperate with the department in meeting these conditions will result in no future assignments offered to Mr. Levin.

(Employer Exhibit 12)

18. The conditions that Dean Ingram set forth in his memorandum to Levin are consistent with the course of professional development proposed by Altomari in her April 20, 2001 memorandum to Dean Ingram with the exception that he reduced the number of classroom observations and added the reference to adherence to class cancellation policies.

19. At the May 4, 2001, meeting between Dean Ingram and Levin, the Dean asked Levin if he would agree not to seek any further teaching assignments. He told Levin that if he chose to continue teaching he would have to comply with the conditions in the memorandum that he handed him. Levin told Dean Ingram that he wanted to think about it and he would tell him the following week what he wanted to do.

20. Dean Ingram and Levin met on May 9, 2001. Levin informed the Dean that he wished to continue teaching. They then discussed the conditions set forth in the memorandum Dean Ingram had provided Levin on May 4, 2001. Dean Ingram understood that Levin would be teaching during the fall 2001 semester.

21. Dean Ingram sent Levin a letter of appointment dated June 1, 2001, setting forth teaching assignments for the fall 2001 semester and stating that the assignment was contingent on Levin complying with the attached memorandum he gave Levin on May 4, 2001, containing the conditions of appointment. Dean Ingram never received a response from Levin concerning the letter of reappointment. Levin does not recall ever seeing the letter of reappointment (Employer Exhibit 11).

22. Levin did not file a grievance concerning the conditions set forth by Dean Ingram in the memorandum handed him on May 4, 2001.

23. At some point between the conclusion of the spring 2001 semester and the beginning of the fall 2001 semester, Levin informed the Employer that he would not teach during the fall 2001 semester due to a heart condition.

24. During the fall 2001 semester, the Employer sent Levin a teaching availability form for the spring 2002 semester. On October 18, 2001, Levin returned the completed form to the VTC Academic Dean's office. Levin indicated that he was available to teach during the spring 2002 semester. He stated he was available "for 11 – 9 credits 3 days a week" or "for 8 – 6 credits 2 days a week". He indicated that he was interested in teaching GE 111, GE 112, GE 113, GE 114, GE 115 and GE 244 (Employer Exhibits 13, 14).

25. Dr. Altomari decided to schedule Levin for two sections of GE 115, Technical Communication, during the spring 2002 semester. She spoke with Acting Academic Dean Jack Anderson about the memorandum Dean Ingram gave to Levin on May 4, 2001, setting forth the conditions governing teaching assignments to Levin for the 2001-2002 academic year. Dean Anderson agreed that the conditions would apply to teaching assignments given Levin for the spring 2002 semester with only minor modifications.

26. By letter to Levin dated December 7, 2001, Dean Anderson confirmed Levin's part-time instructional assignment for the spring 2002 semester as two sections of a three-credit course in GE 115, Technical Communication, for a total of six credits. Both sections were scheduled to meet Monday, Wednesday and Friday, one from 8:00 – 8:50 a.m. and the other from 1 – 1:50 p.m. (Grievants Exhibit 2, Employer Exhibit 16)

27. By memorandum dated December 10, 2001, Dean Anderson informed Levin that any assignment to him for "academic year 2001-2002" would be made with seven expectations. The seven listed expectations were identical to those set forth by Dean Ingram in his spring 2001 memorandum to Levin (see Finding of Fact No. 17) except: a) the fourth bulleted expectation provided that the "major technical report assignment" can be an exception to the one-week return requirement for student assignments rather than the "major research paper assignment", and b) the fifth bulleted expectation was revised to provide in its entirety:

> Mr. Levin's sections will each be observed once each month, February, March, and April during the Spring 2002 semester in accordance with the classroom observation process as specified in the *Part-time Faculty Agreement*. These classroom observations will be shared by Dr. Lisa Altomari and Acting Dean of Academic Affairs Jack Anderson on a rotating monthly basis. The purpose of this evaluation process is to determine if progress has been made in the areas of noted

> deficiencies to help the College determine whether continuous employment is merited or not and that such a decision will be at the discretion of the College administration and Department Chair.
>
> (Grievants Exhibit 3, Employer Exhibit 12)

28. On December 14, 2001, Levin sent an email to Altomari. He indicated that he had received his teaching assignments and stated that he "frankly was surprised that I never got the list of courses available to part-time people since I am the most senior part-time member." He further stated "that there are courses that I could teach that I would prefer and wondered why I wasn't offered those. What I refer to are GE 113-01 & 115.03." GE 113-01 is a section of an English Composition course, and GE 115-03 is a section of a Technical Communications course. The Employer offered Levin GE 115-03 as a teaching assignment (Employer Exhibit 15).

29. On December 18, 2001, Levin signed and dated forms indicating that he accepted the teaching assignments offered him for the spring 2002 semester, including the Employer's expectations set forth in Dean Anderson's December 10, 2001, memorandum. Levin returned the signed and dated forms to Dean Anderson along with a letter dated December 18, 2001, informing Dean Anderson that he intended to grieve certain parts of the procedure of his assignment and the restrictions on his teaching (Grievants Exhibits 2 & 4, Employer Exhibits 16 - 18).

30. Miriam Conlon was the General Education Department Chairperson prior to Altomari. Conlon gave senior part-time faculty preference over less senior part-time faculty on certain courses. This approach was not followed in all cases. Janet Dana, a part-time faculty member, was not allowed to select a course on "English as a Second

Language", despite her qualifications to teach the course. Instead, the course was assigned to Denise Wilder, a part-time faculty member with less seniority than Dana.

31. Altomari chose not to follow Conlon's approach of giving senior part-time faculty preference over less senior part-time faculty on certain courses. She first has assigned courses to the full-time faculty in the department. In assigning the remaining courses, she has not given senior part-time faculty first choice as to which courses to teach. Instead, she makes judgments as to who is the best choice based on scheduling, personal needs and relative skills, knowledge and experience.

32. Altomari chose not to assign Levin to teach a section of GE 113, English Composition, during the spring 2002 semester due to previous experience and Levin's stated availability. Levin had indicated he was available to teach only three days a week, and a possibility existed that GE 113 would require a four day a week commitment due to the labs connected with the course. Altomari decided not to try a split teaching arrangement with Levin and another faculty member due to the problems with that approach in the fall 2000 semester when Levin and Dana both were involved in teaching a section of GE 113. Instead, she assigned Dana to teach a section of GE 113 during the spring 2002 semester (Grievants' Exhibit 8).

33. In the fall of 2001, Altomari considered all of the teaching availability forms submitted by faculty for the spring 2002 semester in devising a schedule of teaching assignments. The evidence does not indicate that she held any department scheduling meeting. She did not contact Levin about his assignments. The evidence does not indicate that Levin contacted Altomari about scheduling teaching assignments prior to his December 14, 2001 email to her. Altomari had a discussion with Dana during the

fall 2001 semester concerning her teaching assignment preferences for the spring 2002 semester.

34. On January 8, 2002, Federation Chairperson Russell Mills filed two grievances with VTC President Allan Rodgers. The first grievance contended that the Employer had violated the Contract by imposing a list of seven expectations on Levin as a condition of receiving a teaching assignment for the spring 2002 semester. The second grievance alleged that the Employer violated the Contract by assigning Levin a teaching schedule without due regard to his rights as a senior part-time faculty member. President Rogers denied the grievances. The grievances were filed with Colleges Chancellor Robert Clarke at Step Two of the grievance procedure, and were denied there (Employer Exhibits 1 - 5).

OPINION

Docket No. 02-20

In the first grievance before us for decision, Docket No. 02-20, Grievants contend that the Employer violated Articles III, VI, XIV, XV and XVIII, and Appendix A of the Contract by imposing an inappropriate set of expectations on Derek Levin, a part-time faculty member at Vermont Technical College, as a condition of assigning him teaching responsibilities for the spring 2002 semester.

The Employer raises a threshold issue of the timeliness of the grievance. The Employer contends that the grievance should be dismissed because the original basis for this grievance was the imposition of seven expectations on Levin by Dean Ingram on May 4, 2001, as a condition of receiving a teaching assignment for the 2001-2002 academic year. Since Grievants did not file a grievance upon imposition of these

conditions by Dean Ingram, the Employer contends that it was too late to file a grievance on January 8, 2002, when Grievants filed a grievance over Acting Dean Anderson including the same expectations as a condition of Levin receiving a teaching assignment for the spring 2002 semester.

Grievants contend that Dean Ingram's issuance of conditions and Dean Anderson's issuance of conditions constitute discrete acts, each of which may involve contract violations. The subject of this grievance is Dean Anderson's action, Grievants maintain, which fell within the time limits for filing a grievance. Grievants also contend that the conditions imposed by Dean Ingram in the spring of 2001 were never implemented because Levin did not teach in the fall 2001 semester. Even if the conditions applied to the entire academic year, Grievants contend that they only went into effect at the beginning of the spring 2002 semester at which point they were grieved in a timely manner. Grievants further contend that the conditions imposed by Acting Dean Anderson were not the same as those issued by Dean Ingram and, thus, can be grieved because a different set of conditions is involved.

Under contracts providing that grievances must be filed within specified times at earlier steps of the grievance procedure, the Board, with the approval of the Vermont Supreme Court, has refused to consider grievances which were untimely filed at earlier steps of the grievance procedure. Grievance of Boyde, 18 VLRB 518 (1995); *Affirmed*, 165 Vt. 624 (1996). Grievance of Peck and VSCFF, 1 VLRB 329, 331-32 (1978); *Affirmed in pertinent part*, 139 Vt. 329, 331-332 (1981).

The grievance procedure of the Contract here provides that "(w)ithin thirty (30) calendar days after the grievant could reasonably have been aware of the alleged

violation . . . the grievant (or his/her representative) shall hand deliver a written and dated grievance to the President of the College or his/her designee". Article XII (D). The Contract further provides that "(f)ailure of the grievant to comply with the time limitations of the grievance steps set forth in this article shall preclude any subsequent filing of the grievance." Article XII (F). Thus, pursuant to this contract language and precedents, the grievance in Docket No. 02-20 is untimely filed if we conclude that Dean Ingram's imposition of conditions constitutes the "alleged violation" since Grievants did not file a grievance within 30 days of this action.

In making this determination, we consider the arguments advanced by Grievants. The first argument is Grievants' contention that Dean Ingram's issuance of conditions and Dean Anderson's issuance of conditions constitute discrete acts, both of which can be grieved. We disagree that two discrete acts were involved here. Discrete acts are separate and distinct. Webster's New World Dictionary, *Third College Edition* (1988 Simon & Schuster). Dean Anderson's issuance of conditions was not a separate and distinct act from that of Dean Ingram. Dean Ingram's imposition of conditions applied to the entire 2001-2002 academic year. In subsequently issuing conditions applying to final part of the 2001-2002 academic year which were identical in substance to the conditions of Dean Ingram, Dean Anderson essentially was reaffirming the action already taken by Dean Ingram. Rather than constituting a separate and distinct act, Dean Anderson's issuance of conditions was inextricably intertwined with Dean Ingram's action.

We also reject the contention of Grievants that the conditions imposed by Dean Ingram in the spring of 2001 were never implemented because Levin did not teach during the fall 2001 semester. The conditions imposed by Dean Ingram were implemented. They

applied to the entire 2001-2002 academic year, and were implemented during that academic year.

Nonetheless, even if the conditions applied to the entire academic year, Grievants contend that they only went into effect at the beginning of the spring 2002 semester at which point they were grieved in a timely manner. We disagree. The conditions were effective when Dean Ingram handed Levin the memorandum containing the conditions on May 4, 2001, indicating that the conditions applied to any assignment given to Levin for academic year 2001-2002. The error of Grievants' argument that the conditions only went into effect at the beginning of the spring 2002 semester is clear given that in June of 2001 the Employer offered Levin teaching assignments for the fall 2001 semester contingent on Levin complying with the conditions. The fact that Levin decided not to teach during the fall 2001 semester does not convert effective conditions in an offer of employment into ineffective ones.

We also are not persuaded by Grievants' further argument that the conditions imposed by Acting Dean Anderson were not the same as those issued by Dean Ingram and, thus, can be grieved because a different set of conditions is involved. The conditions issued by Dean Anderson were identical in substance to the conditions of Dean Ingram. The only differences that are not provided elsewhere in the conditions are: a) a major technical report assignment is the exception to the one-week return requirement for student assignments rather than the major research paper assignment; b) the months that classroom observations will occur are change to reflect that the teaching assignments are for the spring semester, rather than the fall semester; and c) the persons conducting the classroom observations are specified. These differences do not rise to the level of

constituting any substantive changes in conditions Levin would have to meet during his teaching assignments. Moreover, we note that none of these differences form a basis for Grievants' assertion of alleged violations of the Contract by the Employer.

We address one final timeliness argument of Grievants. In their brief, Grievants indicate that a grievance has now been filed over Dean Ingram's alleged "explicit contract violation" of basing his imposition of conditions on written materials that were not contained in Levin's personnel file. Since Dean Ingram's action in this respect has now been grieved, Grievants contend that the Employer cannot claim that the grievance is untimely. This argument of Grievants is not logical. It would be illogical and inappropriate for us to base a decision on whether a grievance first filed in January 2002 is untimely on another grievance that has just been filed at the first step of the grievance procedure.

In sum, we conclude that Dean Ingram's imposition of conditions constitutes the alleged violation of the Contract at issue in this grievance, and the grievance in Docket No. 02-20 is untimely filed since it was not filed within 30 days of this alleged violation as is required by the grievance procedure article of the Contract. The conditions imposed by Dean Ingram were effective from the time he issued them through the entire 2001-2002 academic year, the conditions subsequently issued by Dean Anderson were identical in substance to the conditions of Dean Ingram, and such conditions simply reaffirmed the action already taken by Dean Ingram. Under these circumstances, Grievants waived their right to grieve the conditions by waiting until the beginning of the spring 2002 semester to contest them.

Before concluding our discussion of Docket No. 02-20, we would like to make one observation to guide the parties with respect to any future conditions governing teaching assignments provided to Levin. One of the conditions imposed by the Employer for Levin's teaching assignments for the 2001-2002 academic year is that he "make steady progress toward completing a master's degree". Appendix A of the Contract provides that members of the bargaining unit who were employed by a certain date were exempt from a requirement to have a Masters degree or equivalent experience in the appropriate field of study.

Since Levin was employed by the date of exemption from this requirement, the Employer cannot require him to have a Master's degree and needs to exercise great care in structuring a professional development program for Levin that does not run afoul of this provision of the Contract. Further, the Employer needs to be mindful of the agreement entered into with Grievants in 1993 that no further action of any kind would be taken due to Levin's "alleged misrepresentation" that he had received a Master's degree when he had not received such a degree.

Docket No. 02-21

In the second grievance, Docket No. 02-21, Grievants allege that the Employer violated the Contract through assignments given to Levin for the spring 2002 semester. Grievants contend that the Contract provides for work to be assigned "according to seniority" pursuant to Article 18 (F). The Employer violated this contract provision, Grievants maintain, by not giving Levin, the most senior part-time faculty member of his department, preference during the scheduling process of teaching assignments for the spring 2002 semester; instead he was denied opportunities that were offered to less senior

part-time faculty. Also, Grievants contend that Levin was treated worse than less senior faculty because he was not consulted concerning his scheduling preferences, while a less senior faculty member was consulted concerning her preferences, and he received less desirable teaching assignments. Grievants further request that the Board look to the practice in the General Education Department to support its interpretation of the provisions of the Contract.

The Employer contends that, by assigning Levin to teach two courses for a total of six credits during the spring 2002 semester, the Employer provided Levin with what was required under the Contract and no violation of the Contract occurred. The Employer contends that to the extent Grievants seeks to expand the scope of the seniority provisions of the Contract to allow for selection of courses by seniority, it reads the Contract much too broadly and incorrectly. Similarly, the Employer contends that to the extent that Grievants seek to establish a binding practice in the General Education Department as to how courses are assigned, they have not established such a practice.

Article XVIII of the Contract governs teaching assignments for part-time faculty. Section F of Article XVIII provides that "(t)wo available teaching assignments with a minimum of six credits per semester shall be first offered to bargaining unit members on the basis of seniority" and on the basis of academic qualifications, availability and stated preferences of part-time faculty, experience in teaching available courses, and the curricular needs of the department. In interpreting this language, we look to the rules of contract construction developed by the Vermont Supreme Court. 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). 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. 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 the interpretation of Article XVIII, Section F, we conclude that this contract provision clearly and unambiguously provides that senior part-time faculty such as Levin are entitled to receive an offer to teach at least two courses worth at least six credits per semester assuming other criteria set forth in the provision are met. The language is clear that a senior part-time faculty member is not entitled to any assignments beyond two courses and six credits per semester.

Nonetheless, Grievants contend that the Employer violated Article XVIII (F) of the Contract by not giving Levin preference during the scheduling process of teaching assignments for the spring 2002 semester by denying him teaching opportunities that were offered to less senior part-time faculty. In determining whether Grievants are correct that Levin was entitled to preference in particular teaching assignments over less senior part-time faculty, we do not limit ourselves to an analysis of Article XVIII (F). Instead, we must examine Article XVIII in its entirety. 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). The contract provisions must be viewed in their entirety and read together. Stacey, 138 Vt. at 72.

Section B of Article XVIII provides for part-time faculty completing a teaching availability form indicating availability by days and times to teach, preferences as to days and times, and courses they are interested in teaching for the next semester. The form is "sent to and considered by the department chairperson or other appropriate administrator in establishing department schedules." Article XVIII (B) (7). "In addition, part-time faculty may consult with the department chairperson regarding department scheduling" and, if there is a department scheduling meeting, the part-time faculty member will be notified of the meeting and is "free to attend and participate." Id.

Article XVIII does not require that the Employer provide part-time faculty with the particular teaching assignments and schedule requested. Instead, it states that "the distribution and receipt of a teaching availability form by part-time faculty does not obligate the College in any way to provide an appointment or a particular assignment to the part-time faculty member". Article XVIII (B) (6).

Further, an examination of the practice in the General Education Department does not support Grievants' interpretation of the provisions of the Contract that senior part-time faculty members are entitled to preference in particular teaching assignments over less senior part-time faculty. Even assuming *arguendo* that the practice of one department concerning the scheduling of teaching assignments can aid us in interpreting the provisions of the Contract, the practice of the General Education Department provides no aid in this case. The evidence indicated that the department chairperson preceding Department Chairperson Altomari gave senior part-time faculty preference over less

senior part-time faculty on certain courses. This discretionary approach followed by one chairperson in certain cases, but not in other cases, cannot be construed to bind a succeeding chairperson. No consistent, long-standing practice has been developed in the department to mitigate the Contract provisions governing the scheduling of teaching assignments.

Thus, although Levin was entitled under the Contract to provide input on his scheduling preferences and have that considered by the Employer, there is nothing in Article XVIII that required the Employer to give Levin preference over less senior part-time faculty concerning particular teaching assignments for the spring 2002 semester.

Given this interpretation of the contract provisions, we conclude that the Employer committed no violation of the Contract in assigning courses to Levin for the spring 2002 semester. Levin submitted a teaching availability form and this was considered, along with other submitted forms, by Department Chairperson Altomari in developing a schedule of teaching assignments for the semester. One of the courses Levin indicated on the teaching availability form that he was interested in teaching was GE 115, Technical Communication. Altomari assigned him to teach two sections of that course for a total of six credits.

Levin also indicated that he was interested in teaching GE 113, English Composition. Altomari did not grant Levin's request to teach a section of GE 113 due to previous experience and Levin's stated availability. Levin had indicated he was available to teach only three days a week, and a possibility existed that GE 113 would require a four day a week commitment due to the labs connected with the course. Altomari decided not to try a split teaching arrangement with Levin and another faculty member due to the

problems with that approach in a previous semester, and instead assigned the course to a less senior faculty member than Levin. These were legitimate considerations within Altomari's discretion in scheduling teaching assignments.

Altomari did not otherwise violate Article XVIII during the scheduling process. The evidence does not indicate that there was a department scheduling meeting, so Altomari cannot be faulted for not including Levin in such a meeting. Although Altomari did not contact Levin to discuss his teaching assignment preferences, she was not required to do so under the Contract. The fact that Altomari had a discussion with a less senior part-time faculty member concerning her teaching assignment preferences for the Spring 2002 semester does not mean this obligated her to also meet with Levin. Although Altomari could have met with Levin, the Contract did not require such a meeting. Moreover, Levin was entitled to "consult with (Altomari) regarding department scheduling for (the) upcoming semester" pursuant to Article XVIII (B) (7), but failed to initiate any such consultation until after Altomari had developed the department schedule of teaching assignments.

In sum, the Employer met its obligations under the Contract in the procedure used to assign courses during the spring 2002 semester and in assigning Levin the two courses and six credits he was entitled to under the Contract. Grievants have presented a similar argument in this case to that presented by the Federation and the involved faculty member in Grievance of Rosenberg and the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO, 25 VLRB 253 (2002). The Board rejected the argument in Rosenberg, stating:

> Grievants' second allegation of a violation of Article XVIII is that the Employer acted contrary to Section F of that article by assigning courses to less senior

> faculty before Rosenberg was assigned any work for the Spring 2002 semester. Section F provides that "(t)wo available teaching assignments with a minimum of six (6) credits shall be first offered to bargaining unit members on the basis of seniority" and other considerations. We cannot conclude that a violation of this section occurred given that the Employer ultimately assigned Rosenberg two courses carrying a total of six credits for the spring 2002 semester. 25 VLRB at 263.

We are not persuaded to reach a different result in this case and, thus, we dismiss the grievance filed in Docket No. 02-21.

ORDER

Based on the foregoing findings of fact and the for the foregoing reasons, it is ordered that the Grievances of Derek Levin and the Vermont State Colleges Faculty Federation, AFT, UPV Local 3180, AFL-CIO, in Docket Nos. 02-20 and 02-21 are dismissed.

Dated this ____ day of August, 2003, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

_____
Richard W. Park, Chairperson

_____
Carroll P. Comstock

_____
John J. Zampieri