

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

BRYAN O'NEILL and the VERMONT STATE COLLEGES)
FACULTY FEDERATION, AFT LOCAL #3180, AFL-CIO)

DOCKET NO. 79-68S

FINDINGS OF FACT, MEMORANDUM AND ORDER,
EMPLOYER'S MOTION TO DISMISS

Statement of the Case

On September 29, 1979, the Vermont State Colleges Faculty Federation filed a petition with the Vermont Labor Relations Board on behalf of Professor Bryan O'Neill. In that petition, the Federation alleged, inter alia, that in giving Professor O'Neill a one-year terminal appointment, Castleton State College violated the due process requirements of the Agreement between the Vermont State Colleges and the Federation by failing to supply the Grievant with written reasons for his non-reappointment.

The Colleges filed an answer to the petition on October 17, 1979, which not only denied the specific allegations contained in the petition but also asserted those charges had not been specifically or timely filed pursuant to the Agreement's grievance procedure.

A hearing on this matter was held before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown on January 17, 1980. Stephen Butterfield, grievance chairperson of the VSCFF represented the Grievant. Peter Hicks, counsel for VSC, represented the Employer. At that hearing, the Colleges moved to dismiss the grievance as procedurally defective, in that it did not comply with Article XIX. Evidence was then taken regarding whether the Grievant had satisfied the procedural requirements of the grievance procedure by providing the Colleges with relevant facts surrounding

his complaint and pertinent contract citations at the step one level. As a result of substantial testimony on this point, we find the following facts.

FINDINGS OF FACT

1. The collective bargaining agreement governing the employment relationship between the parties to this grievance is the Agreement between Vermont State Colleges and Vermont State Colleges Faculty Federation, AFT, Local #3180, AFL-CIO, effective May 1, 1979.

2. The Grievant is employed as an Assistant Professor of Business at Castleton State College and is a full time faculty member under the terms of the collective bargaining agreement.

3. Castleton State College is a member of the Vermont State Colleges system.

4. By letter dated June 18, 1979, (Grievant's Exhibit #6) from Walter Reuling, Acting President of Castleton State College, the Grievant was notified of a one-year terminal appointment for the 1979-1980 academic year, which he accepted on July 2, 1979. The Grievant attached a letter to the signed letter of appointment indicating he had signed the letter "under protest," but did not indicate why. (Grievant's Exhibit #6, p.2)

5. Prior to official notification (Grievant's Exhibit #6) of his terminal appointment for 1979-1980, the Grievant had access to his personnel file on several occasions (See Grievant's Exhibit #3), and subsequently became aware of the Academic Dean's (William Feaster) January 28, 1979, recommendation (Grievant's Exhibit #1) for the Grievant's non-reappointment, which recommendation was followed by then President Wilson on March 7, 1979 (Grievant's Exhibit #2).

6. On June 1, 1979, the Grievant filed a written complaint (Grievant's Exhibit #4) regarding his evaluation for reappointment, citing contract violations of Articles XXI and XX which relate to personnel files and faculty evaluation. No facts supportive of the circumstances causing the complaint were provided by the Grievant. After a meeting on June 5, 1979, with Bruce Chaloux, Acting Academic Dean, and a Federation grievance officer, the complaint was denied by letter of June 14, 1979 (Grievant's Exhibit #5).

7. On June 19, 1979, the Grievant filed a step one grievance alleging Dean Chaloux's written response to the Grievant's initial complaint violated the following contract provision:

Article III, Definitions point 14, [definition of a grievance],
Article IV, Anti-Discrimination,
Article XXI, Personnel files,
Article XX, Faculty Evaluation,
Article XXIII, Appointment, Reappointment and Review,
Article XXV, Promotion,
Article XXVI, Lay-off, and
Article XXIX, Workload.

No pertinent facts explanative of specific allegations were given by the Grievant. The Grievant sought as a remedy: reappointment, removal of alleged erroneous information from his personnel file, "the cost of litigation," and "to be made whole for damages." (Grievant's Exhibit #7)

8. By letter dated July 13, 1979, from Holman Jordan, Assistant to the President and step one grievance officer, the grievance was denied.

9. On July 24, 1979, the Grievant filed a step two grievance, its contents indistinguishable from the step one grievance notification.

10. By letter dated August 27, 1979, Acting President Reuling denied the step two grievance.

11. Article XIX of the Agreement provides a three step grievance procedure for resolving disputes at the individual college level, beginning

with an informal complaint. Section 3A sets forth the required steps for processing grievances beyond the complaint stage. That section provides:

The Grievant shall submit his grievance in writing to the designated College official stating the nature of the grievance including relevant facts, the provision(s) of the Agreement alleged to have been violated, where relevant, and the adjustment sought.

MEMORANDUM

The parties to the Agreement negotiated a grievance procedure which includes specificity timeliness and notice of grievances. Here, we find the Grievant failed to submit written notice to the College, sufficient to advise his employer of the essential nature of his complaint and the relevant facts supportive of his allegations. The hearing in this case was lengthy and replete with conflicting testimony regarding what actually took place at the complaint stage and step one grievance hearings. This evidence reinforces our inclination to require strict enforcement of the contract language requiring that the nature of the complaint, relevant facts, and pertinent contract citations be submitted in writing at the step one level of the grievance procedure. We have previously held that disciplinary action imposed without sufficient facts supportive of the reasons given for the action should not be sustained. Grievance of: Daniel Swainbank, 3 VLRB 34 (1980), We cannot require any less of a grievant when giving notice to the employer of the specific nature of his complaint. See Grievance of: Vermont State Colleges Faculty Federation on behalf of Catherine Wheeler, 2 VLRB 289 (1979).

We note in passing that according to our Supreme Court's recent decision in (Nzomo v. Vermont State Colleges, Docket #51-79 Vt. Slip Op. Feb. 5, 1980) assuming due process violations may have occurred here and we were able to reach the merits of this case, due process errors would not automatically

require granting the relief requested. Nzomo, supra, seriously undercuts the theory of this grievance which asserts that any due process violation would result in the remedy sought.

ORDER

Therefore, based on the foregoing findings of fact and reasons, the grievance of Bryan O'Neill is ORDERED DISMISSED and is DISMISSED.

Dated this 13th day of March, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.
William G. Kemsley, Sr.

Robert H. Brown
Robert H. Brown

*Matter settled by
Stip. 4/9/80. \$ payment
of 1200 to O'Neill*