

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF JOHN ROSE,	)	
ROBERT ACKORS, and the	)	
VERMONT STATE COLLEGES STAFF	)	DOCKET NO. 80-59
FEDERATION, VFT, AFT, AFL-CIO	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On July 29, 1980, the Vermont State Colleges Staff Federation, VFT, AFT, AFL-CIO, (the "Federation") filed a grievance on behalf of John Rose and Robert Ackors, two maintenance employees at Castleton State College, ("CSC"), the employer and a member of the Vermont State Colleges ("VSC") system. The grievance alleges that VTC imposed disciplinary action on employees Rose and Ackors in a discriminatory manner and in violation of the VSC Staff Handbook (Joint Exhibit No. 1), several provisions of a new contract, and of 3 V.S.A. §961(1), (3), and (4).

On August 11, 1980, VSC filed an answer to the grievance denying the allegations of Handbook violations and maintaining the grievance could not be raised by the Federation because the suspensions being grieved were imposed on May 13, 1980, prior to the effective date of the new contract, June 11, 1980.

A hearing was held at the Board hearing room in Montpelier on August 21, 1980. Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown were present. The grievants were represented by Beverly Ryan, Executive Director of VFT. Nicholas DiGiovanni, Jr.

counsel for VSC, represented the employer. At this time, the Federation, on behalf of the grievants, conceded that the Handbook (Joint Exhibit No. 1) and not the contract now in effect was controlling in this case.

Memoranda and requests for findings of fact were filed by the Federation and VSC on August 4 and August 8, 1980, respectively.

#### FINDINGS OF FACT

1. At all times relevant herein, John Rose and Robert Ackors were full time employees of the CSC Maintenance Department: John Rose as a general Maintenance Mechanic and Plumber, and Robert Ackors as a Maintenance Mechanic for the campus boiler system.

2. Mr. Rose was employed by CSC in that position in April, 1979. Mr. Ackors has worked for CSC in his position for approximately four years.

3. Both Mr. Rose and Mr. Ackors reported directly to and were supervised by Stanley Reed, Director of Physical Plant.

4. Mr. Reed has held the position of Director of Physical Plant for approximately fifteen years.

5. Commencement exercises at CSC were held on Sunday, May 11, 1980.

6. On May 12, 1980, Mr. Rose and Mr. Ackors received notice of suspensions without pay for not reporting to work on graduation day (Joint Exhibits Nos. 2 and 3). Mr. Rose was suspended for a two week period. Mr. Ackors was suspended for one week.

7. Preparation for graduation day exercises requires maintenance employees to perform such tasks as setting up chairs (2,000 in 1980), wiring sound systems, and constructing staging. After the ceremony maintenance employees are required to disassemble and/or store all equipment, seating arrangements and staging.

8. Past practice, for at least the past fifteen years Mr. Reed has been employed at CSC as Director of Physical Plant, has been for all maintenance department employees to report to work on CSC graduation day. Any employee who did not report for work did so with prior authorization from Mr. Reed.

9. Student workers are usually hired to assist in the preparation for and cleanup after graduation. The number of students solicited for that purpose does not affect whether or not the maintenance department is required to work nor the number of maintenance employees scheduled for duty.

10. Approximately one month before graduation, at a time when most all of the maintenance department employees were assembled for their lunch break, Mr. Reed discussed the fact that all maintenance department employees would be required to work on graduation day. Mr. Ackers may not have been present at that time, but Mr. Rose was.

11. When Mr. Reed discussed the subject of work on graduation day with the department, Mr. Rose commented that any overtime assignments would first need to be negotiated with the Federation, or words to that effect.

12. All maintenance staff also had to work on Saturday, May 10, 1980. This was not in conformance with past practice and, for that reason, Mr. Reed put a notice on the department blackboard that week. The special Saturday detail was due to the fact that approximately 2,000 chairs had to be borrowed for graduation and picked up at Green Mountain College in Poultney that day and transported to Castleton. While chairs had been borrowed from them before, Mr. Reed testified

this was the first time Green Mountain's graduation was the day before Castleton's, thus necessitating a last minute pickup. Because this was unusual, he posted it on the blackboard.

13. All members of the maintenance department, except Mr. Ackors and Mr. Rose, did work on May 10 and 11. Ackors and Rose worked May 10 but not on graduation day May 11.

14. Mr. Rose and Mr. Ackors were aware their coworkers planned to report to work on graduation day.

15. On Friday, May 9, 1980, Mr. Ackors overheard a conversation between another maintenance department employee, Mr. Pelletier, and Mr. Reed. Mr. Pelletier asked Mr. Reed when maintenance staff were expected to report for work, Sunday, May 12 (graduation day). Mr. Reed stated the hour. Mr. Ackors then addressed Mr. Reed directly contending before that moment he had been under the impression he would not have to work graduation day, and that he had already made personal plans. Mr. Reed replied with words to the effect that all maintenance department staff were required to work graduation day, that Mr. Ackors was a "big boy" and could do as he chose, but that anyone who did not report could expect to be reported to Robert Bruce, CSC Business Manager, and Mr. Reed's immediate supervisor.

16. Mr. Ackors testified that he understood his May 9 conversation with Mr. Reed served to excuse him from graduation day duty. Nonetheless, Mr. Ackors also testified that had he understood that he had not been given that Sunday off, he could not say whether he would have reported for duty or pursued his family plans.

17. Mr. Ackors relayed his conversation with Mr. Reed to Mr. Rose prior to graduation day.

18. Mr. Rose had no conversation with Mr. Reed regarding graduation day duty other than their exchange the previous month. (See findings nos. 10 and 11 infra.)

19. Mr. Reed had heard rumors among his employees that some employees may not report to work on graduation day. He reported this to Mr. Bruce, his supervisor, whereupon Mr. Bruce directed Mr. Reed to report to him any employees who failed to report for duty graduation day.

20. Mr. Rose in his testimony denied ever hearing Mr. Reed inform maintenance employees that they were required to work graduation day, and further denies remarking to Mr. Reed that he would have to consult with the Federation about such a work assignment.

21. Mr. Rose did work graduation day, 1979. Mr. Rose claims however, he did so because he previously was personally requested to work, and contended he did not feel he was required to report for this year's graduation because student workers had been asked to help.

22. Mr. Ackors has worked graduation day in all his previous years of employment at CSC.

23. In imposing disciplinary action on Mr. Rose and Mr. Ackors, Mr. Bruce considered their respective performance records. Because Mr. Rose had been employed for approximately one year, and in that time had received both a verbal and a written disciplinary warning regarding his work habits and performance, he considered a two week suspension without pay to be appropriate. Conversely, because Mr. Ackors had been employed for several years without any record of prior disciplinary action, he considered a lesser penalty of one week to be appropriate.

24. The Board takes official notice of the fact that the Federation was certified as the exclusive bargaining representative of the CSC staff on July 12, 1979. The first collective bargaining agreement negotiated by the parties took effect on June 11, 1980.

25. The events subject to this grievance occurred during a time of tension between CSC and the Federation we presume was attributable in part to ongoing contract negotiations. However, we are unable to find any discriminatory action taken against the grievants on account of their recent union membership or union activity.

#### OPINION

##### I

#### Standard of Review

Where the Federation agreed at the outset of the hearing that the incidents aggrieved here arose under the CSC Staff handbook, and not the newly-negotiated collective bargaining agreement as first alleged, we need only to determine whether the CSC actions constitute a "discriminatory application of a rule or regulation". 3 V.S.A. §902(14). See Grievance of Joyceanne Roll and the Vermont State Colleges, 2 VLRB 226, 231 (1979). We need not further examine the merits of this grievance under a contractual "just cause" standard. contra Grievance of Paul Cook, 3 VRLB 105, 126 (1980).

##### II

#### Credibility of Witnesses

Before we can get to that point, however, we must reconcile the major factual disputes created by the contrary testimony of Messrs. Rose, Ackors and Reed. We find as facts that the grievants were required to work graduation day, pursuant to past practice at CSC, and that they were fully cognizant of that responsibility when they elected not to

report. We do so in spite of the grievants' testimony denying that knowledge because we found the testimony of Supervisor Reed far more credible and corroborated by the record as a whole.

Mr. Reed and Mr. Bruce testified to the fact that graduation day work by the maintenance department had been required for several consecutive years past. Both Ackors and Reed had worked on previous graduation days: Ackors, on four occasions, and Rose, in 1979, his first year of employment at CSC. Even if, as the grievants contend, in prior years they were specifically asked to work graduation day (which on the evidence before us is possible, but not likely), the facts in this case indicate that Mr. Reed did tell most of the department employees of their required graduation day duty. Mr. Rose was present at that meeting. If Mr. Ackors had been absent from that meeting, he was later informed of his responsibility to work by Mr. Reed, two days prior to graduation. Thereafter, both Rose and Ackors conversed about that exchange between Ackors and Reed. One other fact which seriously questions the credibility of the grievants' understanding regarding graduation duty is the fact that every other maintenance department employee reported for duty.

### III

#### Discriminatory Application of a Rule or Regulation

We find no evidence of discriminatory application of the Handbook rule regarding discipline (Joint Exhibit No. 1, Part III H). That rule states:

Whenever it is apparent to the supervisor that the employee is not performing in a satisfactory manner or that policies or the generally accepted rules of conduct or performance are not being observed, disciplinary action may be expected. There are four

successive levels of discipline: verbal warning, written warning, suspension, and formal written discharge (termination). The level of discipline applied (including termination) is determined by the seriousness of the offense.

There was no evidence of other employees who committed the same or similar offenses and then either received a lesser form of disciplinary action or was not otherwise disciplined. The charge that one employee had failed to report to work and escaped punishment some years past was credibly rebutted by Mr. Reed who asserted that individual had been previously excused from graduation day duty.

#### IV

##### Discrimination for Union Activities

Nor do we find sufficient evidence to infer discrimination by CSC and Mr. Reed against Mr. Rose on account of his union activities in general or his filing of grievances and complaints in particular (which, if we did, would properly be within our jurisdiction as an unfair labor practice, as counsel for VSC argues, and not the instant grievance.) While the friction between Mr. Rose, the Federation representative, and Mr. Reed and other representatives of VSC was certainly apparent at the hearing, no real evidence was introduced to establish that Mr. Reed as Rose's supervisor, used his position to treat him differently than the rest of the maintenance department employees. The fact that Mr. Ackors, a relatively senior employee to Mr. Rose without a history of active grievance filing, was also seriously disciplined would seem to indicate that the discipline imposed was done so irrespective of union activity and within the allowable discretion of the employer.

Finally, we note in passing that if we were to decide this case under a just cause for discipline standard, we would still sustain the discipline imposed. If the grievants' failure to report for duty was



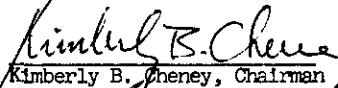
not an act of open defiance of their supervisor and neglect of duty, it did at least demonstrate some degree of negligence. The grievants, in our opinion, are culpable for not inquiring of their supervisor exactly what their work responsibilities on graduation day were if they were in doubt. It was not sufficient for them to resolve any questions about this responsibility between themselves.

ORDER


Now, therefore, based on these finding of fact and for the foregoing reasons, it is hereby ORDERED that the grievance of John Rose, Robert Ackors and the Vermont State Colleges Staff Federation be DISMISSED and is DISMISSED.

Dated this 26<sup>th</sup> day of September, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
William G. Ramsley, Sr.

  
Robert H. Brown