

VERMONT LABOR RELATIONS BOARD

GRIEVANCES OF SELMA GUTTMAN,)	
WALTER MINAERT and VERMONT STATE)	Docket No. 79-38S
COLLEGES FACULTY FEDERATION, AFT)	
LOCAL 3180, AFL-CIO)	and
)	
vs.)	Docket No. 79-49S
)	
VERMONT STATE COLLEGES)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This matter is a grievance pursuant to 3 V.S.A. §926 brought by two employees of the Vermont State Colleges and the collective bargaining representative of those employees alleging a violation of the Collective Bargaining Agreement between the Vermont State Colleges and the Vermont State Colleges Faculty Federation. At the hearings on the merits (October 11, 1979 and December 20, 1979) the Vermont State Colleges Faculty Federation and the grievants were represented by Stephen Butterfield, Grievance Chairperson, and the Vermont State Colleges was represented by Peter R. Hicks of the law firm of Morgan, Brown, Kearns & Joy of Boston, Massachusetts.

FINDINGS OF FACT

1. Professor Walter C. Minaert was first employed at Johnson State College in 1947.
2. Professor Selma Guttman was first employed by Johnson State College in 1951.

3. Both Minaert and Guttman have taught as faculty members at Johnson State College since their original dates of employment.

4. Concurrent with becoming faculty members at the college, the Grievants became members of the State Teachers' Retirement System of Vermont.

5. Under the Vermont State Teachers' Retirement System the mandatory retirement age was and remains 70. A member who has attained the age of 60 or completed 30 years of creditable service may retire at his option.

6. In 1961, the General Assembly of the State of Vermont created a public corporation to be known as "Vermont State Colleges" (VSC) to own and operate Castleton, Johnson and Lyndon teachers colleges and Vermont Agriculture and Technical Institute.

7. In 1963, the VSC offered each faculty member the option of remaining in the Vermont State Teachers' Retirement System or electing the retirement system provided by TIAA-CREF. The TIAA-CREF plan provided in part as follows:

"II. Retirement Age. Except as provided in Section III all participants in this retirement plan shall retire at the end of the academic year in which they attain age 65, herein called normal retirement age.

III. Extension of Service. By special vote of the Board of Trustees extensions of service beyond normal retirement age may be made for definite periods not to exceed one year, but no such extension shall postpone retirement beyond the end of the academic year in which age 70 is attained."

8. In 1963, Professors Guttman and Minaert received information generally describing the advantages and disadvantages of remaining with the Vermont State Teachers' Retirement System or changing to the TIAA-CREF retirement system in 1963.

9. Concurrent with the creation of the option for faculty members to transfer to the TIAA-CREF retirement program was the enactment by the Legislature of a statute defining the rights of a faculty member who elected to transfer from the State Teachers' Retirement System to another system. 16 V.S.A. §1935(f).

10. The statute is silent with regard to the mandatory retirement age referred to in 16 V.S.A. §1937(a)(2).

11. By letters dated April 15, 1964, the State Teachers' Retirement System advised Professor Guttman and Professor Minaert that their requests to transfer to the TIAA-CREF retirement plan had been granted and their withdrawal from membership in the State Teachers' Retirement System of Vermont was recorded as of November 1, 1963. Their respective membership accounts were closed and transferred to the TIAA-CREF.

12. Professor Guttman and Professor Minaert indicated that their decision to transfer to TIAA-CREF was voluntary and based upon their perceptions of the benefits and disadvantages of TIAA-CREF versus the Vermont State Teachers' Retirement System.

13. The major advantage to joining the TIAA-CREF plan was the ability to transfer retirement benefits if the employee left the Vermont State Colleges system and was employed at another educational system. Under the State Teachers' Retirement System the employee could have lost some of the retirement benefits.

14. Professor Guttman and Professor Minaert were aware at the time they transferred that they would not be able to retain all the benefits of the Vermont State Teachers' Retirement System when they transferred to TIAA-CREF. They were aware that in order to obtain the advantages of the TIAA-CREF plan, they would lose certain benefits under the Vermont State Teachers' Retirement System.

15. Professors Guttman and Minaert were considering the advantages of transferability rather than the retirement age when they elected to enter TIAA-CREF.

16. In August of 1966, the VSC distributed the first faculty handbook. That handbook provided in part

"III. Faculty.

A. Historic Policy.

1. Members of the teaching staff at each of the four state colleges serving during the year of 1961-1962 shall be entitled to the rights and privileges of academic rank, tenure, retirement, pension, and other benefits specified by State law.

* * * *

G. Retirement. Retirement shall be automatic at the end of the academic year following the 65th birthday; but reappointment for one-year terms may be authorized by the board on recommendation by the president and the provost.

17. The same policy was continued in subsequent faculty handbooks.

18. Between 1962 and 1974, Professors Napier and Ellsworth, both of whom who elected to leave the Vermont State Teachers' Retirement System and use the TIAA-CREF system, were retired at age 65. Professor Napier was retired over his strenuous objection.

19. The request of Professor Stefaniak in November of 1974 to extend his appointment as Professor of Science on a full-time basis for the 1975-1976 academic year was granted. Professor Stefaniak requested the extension of his appointment as a professor because he had reached the age of 65 and was expected to retire at the end of the 1974-1975 academic year.

20. Professor Stefaniak's request was granted because he was involved in a special project at the college.

21. By letter dated December 18, 1975, Professor Stefaniak advised the college that he would terminate his teaching at the college at the end of the school year in May of 1976 in accord with his understanding.

22. In February of 1975, the first Collective Bargaining Agreement between the parties was consummated. Article 39 of the agreement relating to insurance and retirement did not have the present language regarding mandatory retirement. The parties inserted language relating to retirement and proceeded to adhere to past custom and practice as described in the faculty handbook.

23. The first Collective Bargaining Agreement expired on September 1, 1976.

24. On December 18, 1976, a second collective bargaining agreement was entered into between the parties, which agreement remained in effect until September 1, 1978. Included in Article 31 of this agreement was the traditional handbook language indicating that the normal retirement age was 65. Article 31 of that agreement provided in part as follows:

"ARTICLE XXXI

Retirement

1. The age of normal retirement from service on the faculty of a College will be 65 years. The date of normal retirement shall be the terminal date of the academic year in which the faculty member is 65. A President may grant extensions of service beyond mandatory retirement age for indefinite periods not to exceed one year each.

2. After twenty-five years of teaching within the Vermont State Colleges, or thereafter, a faculty member shall have the option of retiring at half-salary until age sixty-five.

3. At age fifty-five, or thereafter: a faculty member with fifteen years or more of teaching within the Vermont State Colleges may opt for early retirement, at half-salary until age 65, and a faculty member with ten years or more of teaching service within Vermont State Colleges may opt for early retirement, at 2/5 salary until age 65.

* * * *

25. Mr. Kenneth Raymond, former Library Director at the College, requested in June of 1977 that he be allowed to teach full-time for one year from September 1978 through 1979. He requested this extension because he would be 65 at the end of the academic year ending May 1978 and he believed that he would be required to retire at the end of that year.

26. Mr. Raymond's request to teach history full-time or to remain as Library Director with some part-time history teaching duties were denied. However, his third choice to remain as a full-time Library Director was granted because of exceptional circumstances at the College and the special needs of the College.

27. Mr. Raymond continued to serve as Library Director for one additional year and then retired. Mr. Raymond was never a member of the Vermont State Teachers' Retirement System.

28. The four individuals referred to above are the only individuals who have retired from the College since the implementation of the TIAA-CREF plan.

29. On May 1, 1979, the Vermont State Colleges and the Vermont State Colleges Faculty Federation entered into the current collective bargaining agreement. Article XXXI of the agreement which sets forth the retirement benefits contains the same language as that used in the immediately preceding agreement.

30. Professors Guttman and Minaert are members of the Faculty Collective Bargaining Unit at the Vermont State Colleges and subject to the collective bargaining agreement entered into between the VSC and the Vermont State Colleges Faculty Federation. Professors Guttman and Minaert will attain the age of 65 during the academic year 1979-1980 and desire to have the option to teach until age 70.

31. Professors Guttman and Minaert have been advised that the VSC will not employ them beyond the academic year in which they attain age 65.

32. The exhibits and the transcript are made a part of these Findings for purposes of review by the Supreme Court.

CONCLUSIONS OF LAW AND OPINION

Jurisdiction

This action is brought as a grievance pursuant to 3 V.S.A. §926. This Board "as a public administrative body has such adjudicatory jurisdiction as is conferred upon it by statute." In Re: Grievance of Albert Brooks, 135 Vt. 563, at 570 (1977). In Re: Lake Sadadwga Dam, 121 Vt. 367, 370 (1960).

This Board's jurisdiction in this case is determined by the definition of a grievance which is defined in 3 V.S.A. §902(14) which provides:

" 'Grievance,' means an employee's, group of employees', or the employee's collective bargaining representative's expressed dissatisfaction, presented in writing, with aspects of employment or working conditions under collective bargaining agreement or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with immediate supervisors."

A grievance relates to either a complaint arising under a collective bargaining agreement or a discriminatory application of rules and regulations.

When the State Employees Labor Relations Act was first enacted in 1969 a "grievance" was not defined. Subsequently the State of Vermont and the Vermont State Employees Association in their collective bargaining agreement attempted to define "grievance." Thereafter, in 1971 the Legislature amended the Act and provided for a definition of a grievance. In this case, the issues are whether the grievants have a

cause of action based upon either the collective bargaining agreement or the discriminatory application of a rule or regulation.

Discriminatory Application of A
Rule or Regulation

The evidence indicates that two of four persons seeking to work past the age of 65 at Johnson State College were granted permission to do so by the president of the college. The college had valid reasons for granting one-year extensions to Professors Stefaniak and Raymond. There is no evidence in this case that the college discriminated against either of the grievants by denying them an extension to teach in the academic year following the academic year in which they attained the age of 65. Therefore, a grievance based upon the discriminatory application of a rule or regulation should be denied.

Interpretation of Collective Bargaining Agreement

"ARTICLE XXXI

Retirement

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2. After twenty-five years of teaching within the Vermont State Colleges, or thereafter, a faculty member shall have the option of retiring, at half-salary until age sixty-five.

3. At age fifty-five, or thereafter: a faculty member with fifteen years or more of teaching within the Vermont State Colleges may opt for early retirement, at half-salary until age 65, and a faculty member with ten years or more of teaching service within Vermont State Colleges may opt for early retirement, at 2/5 salary until age 65.

4. The College shall maintain Social Security and TIAA-CREF contributions according to current practice. A faculty member exempted from enrolling in TIAA-CREF will receive an equivalent sum. A faculty member in the Vermont State Teachers' Retirement System will receive a sum added to his salary equal to the amount of his required contribution to the retirement system."

The language of the first two sentences of Section 1 refer to "normal" retirement age. We are required to decide whether "normal" as used there means "mandatory", and thus age 65 is the mandatory retirement age. Based upon the contents of sections 2 and 3 of that article one can argue that 65 is either the first age at which one may retire with full benefits or, as the employer urges, means mandatory retirement except for certain circumstances. The last sentence of section 1 is the only place in which reference to mandatory retirement age is made.

In our view this section refers to two "mandatory" retirement ages: age 70 for those individuals who elected to remain in the State Teachers' Retirement System and age 65 for those who opted to do otherwise. Since very few faculty members remained in the State Teachers' Retirement System, the "normal" age of mandatory retirement would be 65, and the "abnormal" age would be 70. Our reasons for this conclusion follow.

At the time the Grievants were employed as faculty members at the Colleges, they were "teachers" and obligated to join the State Teachers' Retirement

plan. See 16 V.S.A. §1933(a). The State Teachers' Retirement System was a "condition of employment" which included mandatory retirement at age 70 among other features. See 16 V.S.A. §1937(a)(2).

However, number 247 of the Acts and Resolves of 1961 by which the Vermont State Colleges were created changed the "conditions of employment" of all college faculty. 16 V.S.A. §2179 provided in part

"Except as expressly provided in this act, the corporation, its officers and employees shall not be governed by: ...

(4) 16 V.S.A. Ch. 55 dealing with State teachers retirement system except as may be otherwise agreed by the Board of Trustees of the system and the Board of Trustees of the corporation with respect to those officers and employees of the corporation transferred to the corporation from the State institutions replaced by the corporation...."

16 V.S.A. Sec. 2175 which was enacted at the same time provided that the college by-laws shall contain regulations

"but without diminishing the rights as to tenure and status now held by ... employees transferred to the corporation from the other state institutions replaced by this corporation. The corporation may deduct from funds appropriated to it for salaries, employer contributions as to a retirement system established by its board of trustees or to such other retirement system as the board may choose."

Thus the legislation when establishing the Vermont State Colleges provided that only those portions dealing with the State Teachers' Retirement Act agreed to by the Board of Trustees of the State Teachers' Retirement System and the Board of Trustees of the corporation would apply.

The trustees of the corporation decided in 1963 to provide those employees subject to the State Teachers' Retirement System with the option of either remaining in the State Teachers' Retirement System or entering the TIAA-CREF plan. The choice was more than a selection between private pension plan option; it was a choice to alter "conditions of employment." Mandatory age 70 retirement was a statutory feature for "teachers," once out of that system mandatory retirement was governed by rules of contract. Both Grievants elected to enter the TIAA-CREF plan. If they had remained in the State Teachers' Retirement System, the mandatory retirement age would have been 70 years. (Cole vs. Town of Hartford School District, 131 Vt. 464 (1973)) The Grievants after electing to leave the statutory shelter of 16 V.S.A. §1933(a) were subject to the Vermont State Colleges Faculty Handbook, first published in 1966 which expressly provided that age 65 was mandatory retirement. The collective bargaining agreement between the VSC and the Vermont State Colleges Faculty Federation continued the past practice. If Section 1 of Article XXXI is to be given full meaning, normal retirement must mean normal for each of two existing retirement systems, and "mandatory" modifies both. Any other construction would not give to full effect to all the words used and still result in a harmonious construction.

Moreover, construing the meaning of an ambiguous term of a collective bargaining agreement it is appropriate to look at the past

conduct of the parties. In previous years four faculty members at the college had asked for an extension to be permitted to teach beyond the academic year in which they attained the age 65. These faculty members who were members of the collective bargaining unit recognized 65 as a mandatory retirement age.

ORDER

NOW, THEREFORE, it is hereby ordered that the Grievances of Selma Guttman and Walter Minaert are hereby dismissed.

Dated at Montpelier, Vermont, this 27th day of March, 1980.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Jr.
William G. Kemsley, Jr.

Robert H. Brown
Robert H. Brown

Before 5/8