

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
JANET THORN and the VERMONT STATE)	DOCKET NO. 80-16
COLLEGES FACULTY FEDERATION, AFT)	
Local #3180, AFL-CIO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On February 14, 1980, the Vermont State Colleges Faculty Federation, AFT, Local #3180, AFL-CIO, (hereinafter, the "Federation") filed a petition with the Vermont Labor Relations Board. In that petition, the Federation alleged that Lyndon State College, of the Vermont State Colleges, (hereinafter, the "Colleges") violated the collective bargaining agreement in effect between the Federation and the Colleges by withholding faculty rank designation from the Acting Head Librarian Janet Thorn.

Counsel for the Colleges filed an answer to the petition on February 25, 1980, denying the alleged contract violations.

A hearing was held on June 19, 1980, in the Board hearing room in Montpelier, before Board members Kimberly B. Cheney, William G. Kemsley, Sr., and Robert H. Brown.

Federation Grievance Chairperson Peter Dean Anthony represented the Grievant at the hearing. Grievant Janet Thorn was absent. Attorney Nicholas DiGiovanni, Jr., of Morgan, Brown, Kearns & Joy represented the Colleges.

Requests for findings of fact and memoranda were filed on July 7 and July 8, 1980, by the Colleges and the Federation, respectively.

FINDINGS OF FACT

1. On July 30, 1979, Janet Murphy, President of Lyndon State College, sent Janet Thorn a letter of appointment, offering Ms. Thorn a one-year terminal appointment as Acting Head Librarian at Lyndon State College for the 1979-1980 academic year (Grievant's Exhibit #3).

2. The appointment was terminal because the incumbent Head Librarian would be on a leave of absence for the 1979-1980 academic year.

3. The Head Librarian is a faculty unit position according to the initial certification by the State Employees Labor Relations Board dated December 18, 1973, (Docket #73-6).

4. During her one year as Acting Head Librarian, Ms. Thorn was considered by the College administrators as a member of the faculty bargaining unit. The parties agreed, and we find that during her tenure as Head Librarian, Janet Thorn was a member of the faculty bargaining unit. Faculty Federation dues were checked off for her by the College (Grievant's Exhibit #2).

5. The letter of appointment (paragraph 3 of Grievant's Exhibit #3, Employer's Exhibit #1) indicated the position was a faculty position but that no faculty rank would be designated "since it is a terminal appointment."

6. On August 24, 1979, Ms. Thorn accepted the appointment, as indicated by her signature on Employer's Exhibit #1.

7. Prior to her appointment as Acting Head Librarian, Ms. Thorn was employed at Lyndon State College in a library staff position and was a member of the Vermont State Colleges staff employee bargaining unit (The Vermont State Colleges Staff Federation).

8. The collective bargaining agreement material to this grievance and introduced into evidence as Joint Exhibit #1 is the Agreement between the

Vermont State Colleges and Vermont State Colleges Faculty Federation effective May 1, 1979.

9. On October 2, 1979, Federation representatives John DeLeo and Florence Yeats complained to Dean of Lyndon State College Ronald Addison regarding Ms. Thorn's appointment without rank.

10. On October 16, 1979, Ms. Thorn filed a step one grievance alleging Lyndon State College had violated Articles III, section 12, and XXIII, section 3, of the collective bargaining agreement by withholding rank in her terminal appointment.

11. On November 14, 1979, the step one grievance was denied by Perry Viles, Assistant Academic Dean, Lyndon State College.

12. On December 4, 1979, the grievance was filed at the step two level.

13. On January 28, 1980, the step two grievance was denied by Ronald Addison, Dean, Lyndon State College.

14. Article XXIII, section 3, (Joint Exhibit #1, p. 28) of the Agreement states that faculty appointees shall receive, upon being offered a position with a college, an individual notice of employment which includes, inter alia, "the designated academic rank."

15. Article III, section 12 (Joint Exhibit #1, p. 4) of the Agreement defines "rank"

"as used in this Agreement [to mean] any one of the four academic ranks of Instructor, Assistant Professor, Associate Professor and Professor. These ranks apply to all librarians included in the bargaining unit equally with all classroom faculty." (emphasis added)

OPINION

The single issue in this grievance is whether Ms. Thorn is entitled to a designated academic or faculty rank for the term of her appointment as Acting Head Librarian at Johnson State College. The College concedes the position

is a faculty rather than staff bargaining unit position, and that the employer-employee relationship for the period material to this grievance, the 1979-1980 academic year, is governed by the current Agreement between the Federation and the Colleges (Joint Exhibit #1). Accordingly, the Grievant's status as a faculty member during that period is not at issue, while her entitlement to academic rank as a faculty member is.

We find that Ms. Thorn was entitled to a designated academic rank upon appointment to the faculty position of Head Librarian, for the following reasons.

First, Ms. Thorn was, with the exception of the denial of academic rank, considered and treated by the College as a faculty member as that term is used in the Agreement. The initial Board certification of the faculty unit, and the Agreement under Article I, "Recognition" (Joint Exhibit #1, p. 1), refer to "ranked librarians," not simply to "librarians." It is inconsistent for the employer to consider Ms. Thorn a Librarian in the faculty unit without also assuming she is a "ranked librarian." Thus, if the College recognized Ms. Thorn as a faculty member in her capacity as Acting Head Librarian, that status, by Board certification and the Agreement, implies rank.

Second, we read Article XXIII, "Initial Appointment," section 3, (Joint Exhibit #1, p. 28) to require the designation of academic rank on newly appointed faculty by the parties' use of "shall" in that provision.

3. When a prospective faculty member is offered a position at a College, he shall be provided with ... a copy of this Agreement ... and an individual notice of appointment.

The notice of employment shall include:

- A. The name of the employing College.
- B. The dates for which the appointment is effective.

- C. The designated academic rank.
- D. Salary, fringes, and total compensation.
- E. A list of the field or fields in which he is expected to work for the term of the contract.
- F. Teachers Oath (Title XVI, V.S.A., Sec. 12).
- G. If applicable, a statement that the appointment is terminal.

(emphasis added)

Third, the pertinent provision of the Agreement cited above makes no distinction between terminal and multi-year appointments.

Fourth, we may infer from the language in the definition of "rank" in the Agreement in Article III, "Definitions," section 12 (Joint Exhibit #1, p. 4) that all librarians included in the bargaining unit shall be assigned an academic rank. That definition states, again without qualification, that:

... These ranks apply to all librarians included in the bargaining unit equally with all classroom faculty.

Finally, we do not feel as the Colleges suggest that Ms. Thorn's signature indicating her acceptance to the terms and conditions of employment as set forth on Employer's Exhibit #1 constitutes a waiver of a right she is entitled to under the Agreement. Article VIII, "Federation Rights," section 1, (Joint Exhibit #1, p. 9) distinctly forbids diminishment of negotiated rights included in the Agreement by any individual employment contract.

That section provides:

1. Individual Contracts

Rights and benefits of the faculty members set forth in this Agreement are part of any individual contract of employment. In the event of conflict between the terms of an individual contract of employment and the terms of this Agreement, the latter shall be controlling. This Agreement shall be referred to in any employment contract issued to faculty members.

We feel the Agreement speaks clearly and unequivocally on Ms. Thorn's rights to academic rank for the period of her appointment. We see no reason why she should have been denied an academic rank. On the other hand, we

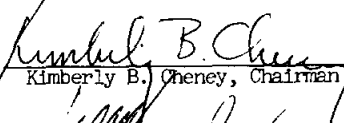
cannot perceive what importance such a designation carries, except perhaps a certain degree of professional status since rank confers no added compensation, benefit or privilege. Nonetheless, a literal reading of the Agreement, in our opinion, requires that Ms. Thorn be given an academic rank.

ORDER


Now, therefore, based on these findings of fact and for the foregoing reasons it is hereby ORDERED that Lyndon State College designate an appropriate academic rank for Janet Thorn coincident with her appointment as Acting Head Librarian; and that the employment records of Lyndon State College and the personnel file of Janet Thorn be amended to reflect one year of academic service with rank as a faculty member.

Dated this 22nd day of August, 1980, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William C. Kemsley, Sr.


Robert H. Brown