VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	
GERARD BEATTY AND THE	)	DOCKET NO. 84-30
VERMONT STATE COLLEGES	)	
FACULTY FEDERATION, AFT	)	
LOCAL 3180, AFL-CIO	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 6, 1984, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation") filed a grievance on behalf of Professor Gerard Beatty ("Grievant"). The grievance alleged that the refusal by the president of Castleton State College to grant Grievant, a sixth year faculty member at Castleton, an unpaid leave of absence violated Articles 3A-5, 3D, 7A, 8, 14B and 38 of the collective bargaining contract between the Federation and the Vermont State Colleges, effective September 1, 1982, to August 31, 1984 ("Contract").

A hearing was held before the full Board on October 18, 1984. Attorney Paul Sutherland represented the Colleges. Dr. Stephen Butterfield, Federation Grievance Chairperson, represented Grievant.

Requested Findings of Fact and Memoranda of Law were filed by the Federation and the Colleges on November 1 and 2, 1984, respectively. The Federation and the Colleges filed Reply Briefs on November 8 and 9, 1984, respectively.

FINDINGS OF FACT

1. Grievant was hired to teach at Castleton State College in Fall 1978 as an Assistant Professor in the Criminal Justice program. Academic

Year 1983-84 was his sixth year of continuous full-time teaching service and the year, according to the Contract, when he would be reviewed for tenure.

2. Grievant does not possess a terminal degree in his major teaching field of Criminal Justice.

3. On January 27, 1984, Grievant submitted a memorandum to Castleton President Thomas Meier which provided in pertinent part:

> In the event that a negative decision on my candidacy for tenure is rendered because I do not meet the requirement of having a terminal degree, I propose to fulfill that requirement in the following manner.
>
> 1. As provided in Article 38 of the VSC-FF Agreement, I shall apply for and receive an unpaid leave of absence for Academic year 1984-85 which shall not be credited as a year of service.
>
> 2. I shall return to service in September 1985 to complete my seventh year as provided in Article 22.
>
> 3. Upon notification from my graduate school that I have completed the requirement for my terminal degree at any time prior to March 1, 1986, the President shall rescind his original decision to deny tenure for lack of a terminal degree.
>
> If the above is agreeable, please consider this my application for a leave of absence...
>
> (Grievant's Exhibit 1)

4. On February 28, 1984, having received no response to his January 27, 1984, memorandum, Grievant submitted another memorandum to President Meier. This memorandum was identical to the January 27 memorandum with the exception that the phrase "If the above is agreeable" immediately following the paragraph numbered 3 was replaced by the phrase, "In any event" (Grievant's Exhibit 2).

5. The purpose for Grievant's leave request was to enable him to complete a doctorate program at the State University of New York in Albany, which he had begun in 1974.

6. On March 19, 1984, Assistant Academic Dean Jeffrey Willens informed Grievant that his request for an unpaid leave of absence was denied.

7. Grievant was evaluated for tenure in the Spring of 1984. On March 29, 1984, President Meier informed Grievant he would not be granted tenure. The stated reasons for tenure denial were failure to have a terminal degree and failure to meet the criteria of scholarly and professional growth as specified in the Colleges' Administrative Policy on Tenure.

8. On April 24, 1984, President Meier wrote Grievant a letter concerning his request for an unpaid leave of absence. The letter provided:

> I am writing to respond to your earlier request for a leave of absence for the 1984-85 academic year. As I told you on March 29, 1984, my decision is that you will not be granted tenure at Castleton State College; your request for a leave of absence is connected to your tenure denial. Because next year, 1984-85 will now be your terminal year, I have decided not to grant your leave of absence.
>
> My denial of your leave of absence request is primarily based on concern for the Criminal Justice program and for students in that program. A leave of absence for you next year would mean that we would be able to hire only a one-year replacement faculty member, since you would be returning for your terminal year in 1985-86. As you know, Professor Greer's resignation will mean that we will already be hiring one new faculty member for the Criminal Justice program for next year. It is my judgment that two new faculty members, an entirely new Criminal Justice faculty, would not be in the best interests of the Criminal Justice program and its students.
>
> (Grievant's Exhibit 5)

9. Professor Greer informed President Meier of his intention to resign on April 6, 1984, 18 days after Assistant Dean Willens told Grievant that his leave request was denied (Grievant's Exhibit 6).

10. Grievant has completed all the coursework for a terminal degree and needs only to complete his dissertation. If he had been granted leave for Academic Year 1984-85, Grievant would have likely been able to complete the work needed for a doctorate.

11. Grievant operates a private security business, and as of Fall 1985 will have three children in college. Academic year 1984-85 was a favorable year for him to take leave because he had a replacement for himself in his business at that time and only one of his children was in college. After 1984-85, Grievant is also in danger of possibly exceeding the time limits allowed by SUNY Albany for completion of his degree.

12. During Academic Year 1984-85, Grievant is serving his seventh year of full-time teaching service.

13. Over the last five years, no faculty member at Castleton with five years or more of continuous full-time service has been denied a request for an unpaid leave of absence.

14. The Federation is aware of no faculty member who has applied for an unpaid leave of absence during their sixth year of teaching service while undergoing a tenure review.

15. Bonnie Jean Buckett, a full-time faculty member at Castleton, was hired in August 1976. She was on leave during Academic Year 1981-82 and 1982-83. She received tenure in Spring 1984, which would have been her eighth year of service, except that her two leave years were not counted as years of service. Academic Year 1983-84 was therefore counted as her sixth year.

16. The Contract provides in pertinent part as.follows:

ARTICLE 22
TENURE

...The Colleges may grant tenure in accordance with the following: during a faculty member's sixth year of full-time teaching service with the Colleges and after consideration of the evaluation of the faculty member in accordance with the provisions of Article 19, Faculty Evaluation, a College shall notify the faculty member that the next year (his/her seventh) is his/her last one-year appointment or that he/she is tenured.

ARTICLE 38
UNPAID LEAVES OF ABSENCE

The President of the College may grant a faculty member an unpaid leave of absence from the faculty. Permission to take such a leave of absence shall not be unreasonably withheld and the leave may be renewed at the discretion of the President. Inability to find adequate replacements shall be sufficient reason for denying a request for leave. However, after every five years or more of continuous full-time teaching service to the Vermont State Colleges, permission to take one unpaid leave of absence from the faculty of a College of up to two consecutive semesters must be granted. Requests in all above cases should be made six months in advance of the commencement of the leave; however, the President of a College may consider requests with less than six months' notice.

Faculty taking an unpaid leave of absence shall retain rank, tenure status, and credit for years of service for purposes of promotion, tenure, salary, layoff and early retirement. While on unpaid leave of absence, faculty shall not be credited with any time of service for purposes of promotion, tenure, sick leave or early retirement. Up to four semesters of unpaid leave shall be counted toward seniority for purposes of layoff. A faculty member shall not file for unemployment insurance because the College terminates his salary during a leave of absence.

OPINION

At issue is whether Castleton State College President Thomas Meier violated the Contract by refusing to grant Grievant, a sixth-year faculty member, an unpaid leave of absence for the 1984-85 Academic Year.

The Colleges contend there is a literal inconsistency between Article 38 of the Contract, which guarantees to any faculty member with five years or more of full-time teaching service an unpaid leave of absence of up to two consecutive semesters, and Article 22 of the contract, which states that following the sixth year tenure review a faculty member shall either be tenured or notified that the next year (his/her seventh) is his/her last one-year appointment. In interpreting these Contract provisions, the Colleges argue that Article 38 presupposes that one requesting an unpaid leave of absence has not been previously notified of non-reappointment, and that because Article 22 states that the year following tenure denial is the last year of appointment, one who has been denied tenure has a right to employment only for the next academic year and is not entitled to a leave of absence for that year. Thus, the Colleges argue Grievant was not entitled to an unpaid leave of absence because his leave request was made during the year he was notified of tenure denial.

The Federation's position is that the controlling contractual language is unambiguous and clear; that Article 38 mandates that a request for unpaid leave must be granted after five or more years of continuous full-time service. Thus, the Federation argues, Grievant is entitled to the unpaid leave because he had more than five years of continuous full-time

service when he requested leave. The Federation contends that the language of Article 22 in no way precludes the seventh year of full-time teaching service from being delayed by an intervening leave of absence; that there is no requirement that the seventh year be served immediately after the sixth, only that the next year served be the last.

The central issue here is whether sixth-year faculty members have a contractual right to an unpaid leave of absence for the following academic year even though they are notified during the sixth year of tenure denial. In interpreting the Contract, we are guided by the rules of construction that 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), and a contract will be interpreted by the common meaning of its words where the language is clear. In re Stacy, 138 Vt. 68, 71 (1980). When the language of a contract is clear, the intention of the parties must be taken to be what their agreement declares it to be. Bellows Falls Union High School District v. Rodia, 139 Vt. 262, 264 (1981).

Here, the language of the Contract is clear. Article 38 mandates that "after every five years or more of continuous full-time teaching service... permission to take one unpaid leave of absence... of up to two consecutive semesters must be granted" (emphasis added). Under this language, a sixth-year faculty member such as Grievant clearly was entitled to a year's unpaid leave of absence.

This specific language is not in conflict with the provision of Article 22 that "during a faculty member's sixth year of full-time teaching service... a College shall notify the faculty member that the

next year (his/her seventh) is his/her last one-year appointment or that he/she is tenured". In reading Article 22 together with Article 38, it is evident the parties intended that if a faculty member was denied tenure during his/her sixth year, the next year of "full-time teaching service" would be the faculty member's last year of appointment; not, as the Colleges contend, that the last year of appointment would have to be the next academic year. To accept the Colleges' position would be to improperly read terms into Article 22 which do not arise by necessary implication, In re Stacey, supra, at 71, and be in direct conflict with the very specific language of Article 38.

We conclude the language of Article 22 does not preclude the last year of appointment from being delayed by an intervening leave of absence. A sixth-year faculty member's contractual right to an unpaid leave of absence is earned by previous service and is not contingent on passing a tenure review.

The Colleges argue that the contract interpretation we have adopted means that two full academic years may pass before the Colleges can hire a permanent replacement for Grievant and, moreover, that the effect of the intervening leave of absence causes further difficulty for the Colleges in that a one-year temporary vacancy will occur before the permanent vacancy. The result, the Colleges contend, is disruptive, unnecessarily expensive and academically unwise, and could not be presumed to have been intended by the parties. We do not find the Colleges' argument persuasive. A temporary replacement would have to be found for any year that a faculty member took leave. Further, the possibility always exists, assuming the faculty member is untenured,

that the faculty member returning from leave will be permanently replaced at some future date. In any event, the language of the Contract is clear regarding faculty entitlement to an unpaid leave of absence. If the Colleges do not like the result of the language they have negotiated, they should seek to change the language through negotiations but not unilaterally act contrary to it.

The Colleges make the further argument that the reason for a college to provide unpaid leaves of absence for its faculty members is to permit individual development which would then benefit the college upon the individual's return. The Colleges contend this purpose would be defeated by permitting Grievant to take a leave since he was denied tenure and would be replaced at Castleton. However, the Colleges' argument does not take into account that a faculty member, such as Grievant, who would come back to teach for a year following the leave would potentially be of increased value to students during that year as a result of individual development during the year of leave.

We turn now to determining what remedy to grant Grievant. Grievant requests that he be reappointed for academic year 1985-86 and 1986-87, and allowed to take either of these years as a leave of absence. Grievant contends this remedy will give him time to offset the disadvantage of coming into the job market without a terminal degree and will also continue his medical insurance, retirement benefits and tuition benefits for his children. Further, Grievant requests monetary compensation equivalent to what it will cost him to be absent from his private security business for a year during his leave and that the Board fashion an order to make Grievant whole for any future costs he sustains if he is not allowed to complete his doctorate program at SUNY Albany because of having exceeded time limits.

In fashioning a remedy, our concern is to make Grievant whole; to make an award commensurate with the proven injury. Vermont State Colleges Faculty Federation and Peck v. Vermont State Colleges, 139 Vt. 329 (1981). We recognize that making Grievant whole is a difficult task given that the circumstances which existed at the time leave was improperly denied him cannot be duplicated. However, we will attempt to place Grievant in the closest position he would have been had his contractual rights not been violated.

Under the existing circumstances, we believe it appropriate that Grievant be given an unpaid leave of absence for the 1985-86 academic year and then be allowed to return to Castleton for a full year of teaching service in 1986-87. This will allow him to pursue his doctoral studies for a year, then have a year of full-time employment to seek other employment. Further, he will be entitled to whatever contractual benefits a full-time faculty member in his situation is entitled.

We recognize the remedy we have fashioned means Grievant will be entitled to serve one more year of full-time teaching duties than he would have if President Meier had not violated the Contract in denying him leave. Nonetheless, we believe this appropriate to redress the damage done to Grievant and make him as whole as possible.

ORDER

Now therefore, based on the foregoing findings of fact and the foregoing reasons, it is hereby ORDERED:

1. The Grievance of Professor Gerard Beatty and the Vermont State Colleges Faculty Federation, AFT Local 3180, is ALLOWED;

2. Professor Beatty shall be granted permission to take an unpaid leave of absence for the 1985-86 Academic Year pursuant to Article 38 of the Contract; and

3. Professor Beatty shall be permitted to return to Castleton State College for a one-year appointment to full-time teaching service during the 1986-87 Academic Year.

Dated this [illegible] day of November, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson