

STATE OF VERMONT
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
SHERRIE F. CUMMINGS)	

Docket No. 77-19S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This matter was brought for hearing on July 7, 1977, on the Grievant's petition to enforce this Board's order of March 18, 1977. On March 18, 1977, this Board ordered that the Grievant be reinstated as a full-time faculty member with full pay and other privileges retroactive to the beginning of the then current contract year. In its petition to enforce dated May 31, 1977, the Grievant complained that she had not received the full back pay previously ordered. Grievant claimed that the Vermont State Colleges had deducted from the amount otherwise due earnings of the Grievant from outside, part-time employment as a reading consultant and the amount of unemployment benefits received by the Grievant prior to reinstatement.

For the reasons stated below, the Board finds in favor of the Grievant and orders the Vermont State Colleges to pay to the Grievant her full back pay without deduction for unemployment benefits or earnings from part-time employment.

Findings of Fact.

1. By its Finding of Fact, Opinion and Order dated March 18, 1977, this Board ordered the Grievant to be reinstated as a full-time faculty member with full pay and other privileges retroactive to the beginning of the then current contract year. This Board's previous decision of March 18, 1977, is incorporated herein by this reference.

2. Lyndon State College has withheld from the back pay tendered to the Grievant the sum of \$4,545.00. \$420.00 of the amount withheld represents unemployment benefits paid to the Grievant prior to her reinstatement and \$4,125.00 represents earnings of the Grievant prior to her reinstatement.

3. The unemployment benefits received by the Grievant were paid to her by the appropriate governmental authorities during the period of the Grievant's unemployment preceding her reinstatement pursuant to the Board's order of March 18, 1977. The Grievant's income from outside employment referred to above was received by her from the Caledonia North School District during the same period.

4. Grievant's applicable employment by the Caledonia North School District was as a remedial reading consultant. The Grievant was so employed on a part-time basis and was paid by the hour.

5. The provisions of the applicable collective bargaining agreement are incorporated herein by this reference. That collective bargaining agreement expressly permits faculty members to engage in outside employment provided that such outside employment does not interfere with the performance of the faculty member's normal duties and responsibilities at the State Colleges. Numerous other members of the faculty at the State Colleges, including Lyndon State College, regularly engage in outside, part-time employment.

6. The Grievant herself had engaged in part-time work as an outside consultant prior to any difficulties with her employment at Lyndon State College. During the period of time for which back pay was ordered, she changed

her work schedule from her prior schedule to suit her convenience and the convenience of the Caledonia North School District. Under the new schedule, Grievant performed consulting services at the School District during the hours when she might have been engaged in teaching responsibilities at the State College but for her wrongful dismissal by the State Colleges.

Conclusions of Law and Opinion.

7. A short answer to this dispute is available upon a close reading of the Board's order of March 18, 1977. In that order, this Board required that "full pay" be paid retroactively to the Grievant. That order was not appealed and is final. The deductions made by the State Colleges in this matter and described above represent a failure to comply with the terms of that order since the deductions represent a departure from "full pay".

8. The Board need not rely solely on the foregoing rationale. The Board does not believe that the deductions from full back pay are proper even without resort to the literal terms of its prior order.

9. The Vermont State Colleges and Lyndon State College have no official standing to safeguard the interests of State government in matters pertaining to unemployment compensation. It is not this Board's function to determine what unemployment benefits were properly payable to the Grievant or what portion of those benefits previously paid should be refunded by the Grievant to the paying authority. This Board does not, however, believe that the Vermont State Colleges should be allowed to withhold the appropriate funds from Ms. Cummings since this Board is not in a position to insure proper application of any withheld funds, even if the withholding is proper.

10. Adequate protection of the interests of the governmental authorities directly concerned with unemployment benefits can be assured if the State Colleges give notice to the appropriate authorities of the fact of the back pay

tendered to Ms. Cummings. The appropriate authorities can then take whatever steps are available to them under the law in order to protect its legitimate interests.

11. The Board does not believe it to be proper in this case for the State Colleges to withhold from the Grievant's back pay amounts she earned in outside employment. Off-campus, part-time employment which does not interfere with faculty responsibilities is a right assured to each member of the faculty, including the Grievant, by the collective bargaining agreement. The only matter subject to any question in this proceeding is whether the Grievant could have worked as often as a consultant as she in fact did during the period in question if she had not been out of work during that period.

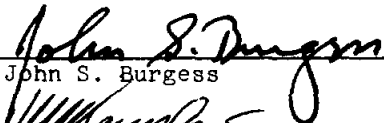
12. The Board believes that it must resolve this matter in the employee's favor. If the Vermont State Colleges had not wrongfully discharged the Grievant, then the circumstances which give rise to a question would not have existed. It would be unfair to the Grievant to penalize her because of questions which arise only because of the State Colleges' wrongdoing. Moreover, the evidence indicates a broad degree of flexibility in the arrangements between the Grievant and the Caledonia North School District. This flexibility, coupled with the history of outside employment by the Grievant before her dispute with the State Colleges, further persuades the Board to resolve this dispute in the Grievant's favor.

Order.


For the reasons stated above, it is hereby ORDERED that Ms. Cummings be paid forthwith the sum of \$4,545.00, which amount represents the difference between the full back pay awarded her by this Board's order of March 18, 1977, and the amounts heretofore paid.

DATED at the City of Montpelier, County of Washington and State of Vermont
this 23rd day of October, 1978.

VERMONT LABOR RELATIONS BOARD



John S. Burgess



William Kemsley