

Vermont Labor Relations Board

GRIEVANCE OF:]	
]	DOCKET # 77-19S
SHERRIE F. CUMMINGS]	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter is before the Board on a grievance petition dated 29 October 1976, and filed by Stephen T. Butterfield, Grievance Chairperson for the Vermont State Colleges Faculty Federation, affiliated with the American Federation of Teachers, Local 3180, AFL-CIO. The grievance was filed on behalf of Sherrie F. Cummings, at all times material a full-time faculty member at Lyndon State College, Lyndonville, Vermont. A hearing on the matter was held on 14 January 1976 before Board Members Burgess and Kemsley. The American Federation of Teachers was represented by Stephen T. Butterfield and the Vermont State Colleges by David McGregor, Chancellor. The Vermont State Colleges filed an answer to the petition dated 14 December 1976, raising the question of arbitrability. The parties hereto executed an instrument entitled "Letter of Agreement" which was dated 14 June 1976, and purported to be an agreement as to the interpretation to be placed on the prior Order of the Vermont State Employees' Labor Relations Board dated 7 June 1976, Vermont Labor Relations Board Docket #76-12. This agreement was introduced as College Exhibit A for Identification, admitted by agreement. The following conditions were therefore agreed to by the parties:

"(1) Of the material that is presently in the file, the College

agrees to consider only the material in the file on or before 10 June 1975.

"(2) The College will not remove any material from the file of Ms. Cummings.

"(3) The College will add to file only relevant material which is given to the College by Ms. Cummings prior to 1 July 1976. [This date was later extended to 14 July 1976.] The College agrees to consider this material as a part of its review.

"(4) The review is to be conducted only by the administration of the Vermont State Colleges.

"(5) The review is to be completed and a written answer forwarded to Ms. Cummings by August 2, 1976."

Discussion of Evidence and Credibility of Witnesses.

Witnesses were Mrs. Sherrie F. Cummings, Mr. Cedric E. Pierce, Jr., Dr. Michael D. Sherbrook, Dr. John A. Muzzey, President Edward I. Stevens of Lyndon State College. In general the evidence was uncontradictory, although the parties placed different interpretations on the statements of the witnesses and the import of the exhibits.

Findings of Fact.

1. Article XXIV of the Contract between the American Federation of Teachers and Vermont State Colleges, the article dealing with Tenure, is controlling.

2. Mrs. Cummings was first employed by Lyndon State College in November of 1961, as an instructor in the Department of Education and also in order to establish a model school in connection with the College.

She did indeed establish the Baker Demonstration School which was administered by the College but eventually closed in June of 1975 as a result of friction between the College and the Town of Lyndonville School Board.

3. A letter was written by David S. Sicard, Superintendent of Schools for Caledonia North Supervisory Union, which included the Town of Lyndonville on 29 June 1976 (Grievant's Exhibit 11). This letter was apparently written at the request of Dr. Sherbrook, Grievance Advisor for the College, apparently to offset the damage done by a prior letter from Superintendent Sicard which may have created a false impression that Mrs. Cummings had been responsible for the ultimate failure of the Baker Demonstration School.

4. On 6 February 1975, Mrs. Cummings was informed by then President Irwin of Lyndon State College that she would not be reappointed for the following year. The present grievant then filed a grievance, which was heard by the State Employees' Labor Relations Board on 30 June 1975, which hearing resulted in a ruling by the Board 17 November 1975 (Case # 75-23). On 30 April 1975 President Irwin again denied tenure to the grievant. She filed another grievance on 19 December 1975 with the Board which again found in her favor and remanded the case for an administrative review of the question of tenure by the Vermont State Colleges (Case #76-12).

5. On 1 July 1976 President Stevens sent to the grievant a written statement of criteria that would be used in her tenure review, which statement was given to her at her request (Grievant's Exhibit 4). There was a strong difference of opinion between various witnesses as to whether the criteria used had been the same that were used for other candidates for tenure in the Spring of 1975. The Board is unable to find from the evidence

presented whether indeed the criteria as set forth in Grievant's Exhibit 4 were the same criteria used previously, but the Board does find that it was the custom of the Review Committee and administration to consider six years' tenure in position as a fulltime faculty member as the main criteria, and all others were secondary.

6. On 2 August 1976 tenure was again denied to the grievant by President Stevens on the recommendation of Assistant Dean Addison (Grievant's Exhibits 5 and 6).

7. 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.

The first question to be reached is the contention by the Employer that the issue of tenure is not arbitrable. The Answer of the Employer set up the issue of arbitrability. It is contended that the contract provides for review of tenure decisions on due process questions only, and that due process was followed in the review ordered by this Board in Case #76-12. It is assumed by the Board that the contract which expired September 1, 1976 must govern. Article XXIV provides that "the provisions of Article XXIX and XX, Grievance and Arbitration, provide the exclusive remedy available for any faculty member allegedly denied due process in the college's failure to grant tenure..." The Board has construed this language to mean that the matter must be filed as a grievance rather than as a court proceeding. The Board has not construed this language in the past as limiting the employee's grievance to a denial of due process only if the matter involved tenure. Accordingly, it is our opinion that the issue of tenure is indeed arbitrable in a grievance

proceeding.

It is quite clear from the entire history of this matter that certain persons in the Administration of Lyndon State College felt that Mrs. Cummings' professional qualifications were not up to standard, despite her long period of employment and professional experience. Primarily this feeling arose from the fact that her teaching experience was limited for many years to a demonstration school, basically on the secondary school level. Nevertheless, Mrs. Cummings presently is teaching on the university level and has been requested to take on even more courses. It seems difficult to reconcile her present status with any lack of professional qualifications. Certainly, it is no more proper for the Administration to expose students to an unqualified teacher on a parttime basis than it is to an unqualified teacher on a fulltime basis. One of the primary problems confronted by Mrs. Cummings was the misunderstanding of a letter written by David S. Sicard, Superintendent of Schools for Caledonia North Supervisory Union, relative to the relationship of the Town of Lyndonville School District and the Baker Demonstration School.

In the review ordered by this Board (Case #76-12), certain criteria is to be used as explained by President Stevens in his communication of July 1, 1976. These criteria appear to be complete and most reasonable, but the evidence is most equivocal as to whether the criteria were indeed used. Certainly, in other instances, the Review Committee and the Administration have considered that longevity of at least six years is and was the primary consideration in granting tenure and full time faculty status to an applicant. It is the belief of this Board that the

denial of tenure by President Stevens might well be justified on the basis of the application of all criteria set forth. However, since the evidence preponderates that only longevity was normally considered, without the enactment of a firm and definitive prior policy on the part of the Review Committee and the Administration, it is not clear whether Mrs. Cummings was given the same consideration as other faculty members similarly situated.

Order.

As a result of the foregoing, it is hereby ORDERED as follows:

1. That Mrs. Cummings be reinstated as a full time faculty member with full pay and other privileges, retroactive to the beginning of the current contract year.

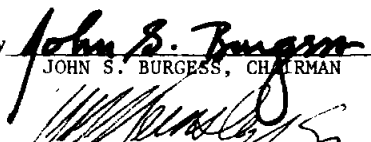
2. That Mrs. Cummings be not granted tenure at this time, but that Mrs. Cummings shall be given a full tenure review as required by Article XXIV or such other article or provision as may be in force during her seventh year. In other words, if she is still employed by Lyndon State College, a decision on tenure shall be made to become effective at the commencement of the 1979-80 school year.

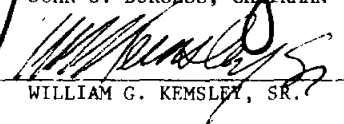
3. The first Sicard letter shall be removed from Mrs. Cummings' personnel file, and any reference thereto and any written conclusions which may have been based on such letter and drawn therefrom.

Dated at Montpelier, Vermont this 18th day of March, 1977.

VERMONT LABOR RELATIONS BOARD

By


JOHN S. BURGESS, CHAIRMAN


WILLIAM G. KEMSLEY, SR.