

VERMONT LABOR RELATIONS BOARD

VERMONT STATE FACULTY FEDERATION,)	
Petitioner)	
v.)	Docket No. 78-77S
)	
VERMONT STATE COLLEGES,)	
Employer)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On May 16, 1978 the Vermont State Colleges Faculty Federation, hereinafter the "Federation", filed a petition with the Vermont Labor Relations Board alleging that the Vermont State Colleges, hereinafter the "V.S.C.", violated the collective bargaining agreement between the parties by not disbursing certain funds allocated for use under the Faculty Development Fund Article of the Contract. An answer by the V.S.C. was submitted to the Board on May 22, 1978.

The matter came for a hearing by the Board on July 27, 1978. The Federation was represented by Stephen Butterfield, Grievance Chairperson for the Federation and the V.S.C. was represented by Nicholas DiGiovanni, Jr., Esquire. Following a stipulation of facts and issue, the Board ordered briefs to be postmarked no later than August 3, 1978.

FINDINGS OF FACT

The parties stipulated to the following facts and the Board accordingly finds:

1. A sum of \$35,000 was negotiated for the Faculty Development Fund for each year of the current two year agreement between

the V.S.C. and the Federation.

2. A sum of \$4,397.77 remaining from the first year's fund, primarily from Vermont Technical College, was not carried over to the second year, but was applied to the V.S.C. system deficit.

OPINION

The issue in this matter is whether or not the V.S.C. had the contractual right under the provisions of the collective bargaining agreement to revert unused funds from the Faculty Development Fund to the system deficit rather than carry them over to the Faculty Development Fund for the next year.

Article XXXVIII of the agreement between the V.S.C. and the Federation provides for the establishment of the Faculty Development Fund and for the apportionment of that Fund to the colleges for the purposes of advanced study grants and sabbatical activities for intellectual development. The Article states in pertinent part:

"Advanced study loan funds unused in any year
may be carried to the subsequent year."
(emphasis added)

Taking the word "may" in the above cited provision in the totality of the context of the agreement, we interpret it to be permissive. The amount of money in the Faculty Development Fund is arrived at through the collective bargaining process, and the V.S.C. is obligated in good faith to use the money in the Fund for the purposes outlined in Article XXXVIII. However, absent any showing of bad faith on the part of the

V.S.C. to use the funds during the academic year for the purposes for which they were bargained, the permissive use of the word "may" allows the V.S.C. the option to either carry over leftover money or to divert it to the system deficit.

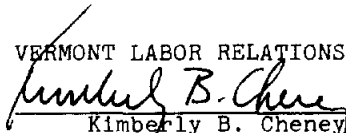
We do not mean to encourage the diversion of funds from the uses for which they were bargained. However, we do expect that each word of the contract is the subject of hard-fought bargaining by both parties. If the Federation had intended the agreement to mandate the carryover of leftover money to the next year's Fund, the word "shall" ought to have been used rather than the word "may". Since the word "may" does not mandate a carryover and since there is no evidence before us of bad faith on the part of the V.S.C., we can only conclude that the diversion of leftover funds to the college deficit did not violate the terms of the collective bargaining agreement.

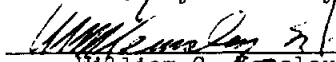
ORDER

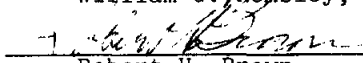
The petition of the Federation is hereby ORDERED dismissed and it is DISMISSED.

Dated this 15th day of September, 1978 at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chr.


William G. Kemsley, Sr.


Robert H. Brown

All Board Members were present at the July 27, 1978 hearing on this matter.