

VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY)  
FEDERATION AND MICHAEL PECK,) )  
Petitioners )

and )

VERMONT STATE COLLEGES,) )  
Employer )

Docket No. 78-81S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On June 9, 1978 the Vermont State Colleges Faculty Federation, hereinafter the "Federation", filed a Petition on behalf of Michael Peck, one of its members,, with the Vermont Labor Relations Board alleging that Lyndon State College, hereinafter the "college", violated the collective bargaining agreement in the nonrenewal of Michael Peck. The Vermont State Colleges, herein- after the "V.S.C.", viled its Answer on June 15, 1978.

The matter came for a hearing before the Board on July 27, 1978. The petitioner was represented by Stephen Butterfield, Grievance Chairperson for the Federation, and the employer was represented by Nicholas DiGiovanni, Jr., Esquire. At the close of the evidence, the Board ordered briefs and requests for find- ings be submitted no later than August 10, 1978.

FINDINGS OF FACT

1. Lyndon State College is a Vermont State College and subject to the bargaining agreement between the Federation and the V.S.C.

2. Michael Peck was employed by Lyndon State College as the Director of Cooperative Education for two years, beginning in September, 1976.

3. Michael Peck was officially granted faculty status by Lyndon State College effective July 1, 1977. (Grievant's #13 & 15)

4. In December 1977, Michael Peck met with Ronald Addison, Academic Dean of Lyndon State College and Janet Murphy, the newly elected President of the College, to discuss the Cooperative Education Program. No indication was given to Mr. Peck that the purpose of the meeting was to evaluate his job performance, nor was any written report of the meeting placed in Mr. Peck's personnel file.

5. On February 21, 1978 Mr. Peck met with Dean Addison and was informed that Dean Addison had decided to recommend to the President that Mr. Peck not be reappointed for the 1977/1978 academic year. (Grievant's #12)

6. On March 1, 1978 Dean Addison hand-delivered a copy of an official letter of non-reappointment to Mr. Peck. (Grievant's #1) The original of that letter was received through the mail by Michael Peck's wife at their home on March 2, 1978.

7. Prior to March 6, 1978 no written evaluations or recommendations of any kind had been placed in Mr. Peck's personnel file. (Grievant's #11)

8. On March 6, 1978 Michael Peck filed a grievance over his non-renewal at the Step One grievance level. The College answered on March 30, 1978. Step Two was initiated on April 11 and a Step Two answer given on May 19 (Grievant's #2 & 5)

## OPINION

The issue in this matter is whether or not the procedures used by Lyndon State College in carrying out its decision not to reappoint Michael Peck violated the collective bargaining agreement between the Federation and the V.S.C. The Federation alleges that Mr. Peck's contractual rights were violated in three ways:

1. He was not informed of his termination by a legal date.
2. He was not evaluated, according to the procedures of the agreement, to aid in determining whether or not he would be appointed or non-reappointed.

3. His personnel file was not properly maintained for the purpose of making decisions as to his future employment with the College.

As to the first issue concerning the date upon which Mr. Peck received notice of non-reappointment, the Board finds that based on the issue as it was initially raised at the Step One grievance level, there was no violation by the V.S.C. of the provisions in the agreement relating to non-reappointment notification. Article XXIII of the agreement requires that written notification of non-reappointment must be given to a faculty member "no later than (a) March 1 of the first year of service, (b) December 15 of the second year of service ..." Whether or not Mr. Peck should or should not have had faculty status during his first year of service with the College is a separate issue which was not raised at the Step One grievance level and evidence relating to that

issue will not be considered by the Board. Mr. Peck was officially granted faculty status for the second year of his employment and, as a first year faculty member, the hand-delivering of a copy of the March 1 letter by Dean Addison to Mr. Peck constituted adequate and timely notice of his non-reappointment within the terms of the Agreement.

With regard to the second and third issues raised by the Federation, the Board finds that according to its construction of the contract Mr. Peck was properly evaluated and his personnel files were properly maintained for the purpose of making decisions as to his future employment with the College.

Article XXI of the Agreement relating to Personnel Files states in pertinent part:

Section 1: A faculty member shall have the right to have relevant material added to his personnel file. The faculty member is encouraged to keep his file up-to-date... The faculty member shall have the right to respond to any document in his personnel file ...

Section 4: The only written material the Colleges will use for evaluation, merit review, promotion, reappointment, tenure, or to support disciplinary action contemplated against a faculty member shall be that contained in his personnel file.

Article XXII of the Agreement relating to Evaluations states in pertinent part:

Section 1: Evaluations of faculty shall be used for the purpose of improving instruction and to aid in determining whether a faculty member shall be promoted, reappointed, non-reappointed, or tenured.

The article further provides for evaluations by both the faculty and the college administration. Michael Peck's personnel file

contained no evaluations either by the faculty or by the administration.

We believe the above cited provisions of the Agreement contemplate that in the normal course of college administration written evaluative material would be placed in the files of all faculty members. However, there is no provision in the Agreement which requires the College to place written evaluative material in a faculty member's file prior to giving notice of non-reappointment. Furthermore, under the terms of the Agreement, the College is not required to give any faculty member "written notice of reasons" for non-reappointment until after the third year as a full time faculty member. (Article XXIII - Reappointment)

In interpreting the language of the contract we use the same reasoning which we did in our recent decision on the Vermont State Colleges Faculty Development Fund, Docket No. 78-77S. As we stated in that opinion, we must assume that each word in the contract is a subject of hard fought bargaining; and, while the general intent of the parties is an important consideration, specific mandatory language must be used in order to express this intent. Here, in order to find for the grievant, we would have to apply Article XXI, Section 4, as though the word "written" was not contained in it. That section would then require that material in the personnel file be the sole basis for a non-reappointment decision. This we decline to do in view of the actual language used by and agreed to by the parties. If the Federation believes written evaluative material must be placed in a personnel file prior to a non-reappointment decision, it would be simple to say so.

This is not to say that we entirely condone the College's handling of this matter. We believe good labor relations would be promoted if a faculty member had a modicum of written notice if the assessment of his performance is negative and that he be given the right to express disagreement with that assessment either verbally or as a written response to a written evaluation.

As a community of scholars, a college is founded on the notion that human progress is based on reason. A process of reasoning at least implies that a faculty member has a right to a dignified argument to controvert a negative assessment of his work, and if not to persuade at least to be heard. It may be a small right in light of the College's right to dismiss first year faculty without giving reasons but it is an important one in any institution calling itself a college.

In the instant case, however, we must conclude that absent any language in the Agreement which specifically provides a faculty member with these rights, the V.S.C. did not violate the terms of the Agreement in the non-reappointment of Michael Peck.

#### ORDER

For the above stated reasons, the petition of Michael Peck is hereby ORDERED dismissed, and it is DISMISSED.

Dated this 21<sup>st</sup> day of September, 1978, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

13/  
Kimberly B. Cheney, Chairman

13/  
William G. Kemsley, Sr.

13/  
Robert H. Brown

*Board's Order  
Reversed. Recommended  
for Reformation of appropriate  
sanctions  
2/4/81  
Order issued 10/20/81  
Case received 9/10/81*