

STATE OF VERMONT  
VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

PHILLIP ANDERSON

Docket No. 77-56S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case.

This matter is a grievance brought by Phillip Anderson against the Vermont State Colleges. The petition in this matter, dated June 14, 1977, alleged that the Vermont State Colleges applied a rule or regulation in a discriminatory and arbitrary fashion against the grievant by refusing to pay him compensation for extra duties performed by him as Director of Theatre at Lyndon State College for the academic years beginning 1974-1975 through 1977-1978. Grievant complained that another member of the Lyndon State College faculty who was the Director of Media Services has been paid additional compensation to act as such Director. Grievant claimed his position was analogous to the Director of Media Services and that payment of additional compensation to the Director of the Media Service while denying such additional compensation to the grievant is discriminatory.

For the reasons stated below, the Board finds that the Vermont State Colleges did discriminate against the grievant in the application of a rule or regulation and awards back pay in the sum of \$500.00 for the additional services performed by the grievant during the academic year 1976-1977. On the evidence presented, the Board declines to provide additional back pay for prior years.

Findings of Fact.

1. Grievant is an Associate Professor of Theatre and Interpretive Arts at Lyndon State College. Since 1974, he has served as the Director of the Theatre at Lyndon State College.

2. On February 25, 1977, the grievant became aware that another member of the Lyndon faculty, the chairperson of the Media Department was being given additional compensation by the State Colleges for his work as Director of Media Services. The Director of Media Services received \$500.00 per year at least since 1974 for service as such Director.

3. The grievant has never received additional compensation specifically identified for his services as Director of the Theatre.

4. The grievant's function as Director of Theatre is analogous to the function of the chairperson of the Media Department in his capacity as Director of Media Services.

5. The grievant's activities as Director of Theatre were in addition to his duties as a teacher at the College. As Director of the Theatre, in addition to his teaching workload, the grievant has maintained the theatre and equipment including attention to necessary repairs, overseeing the installation of improvements, attention to routine maintenance; regulated the use of theatre equipment by outside groups; and co-ordinated the use of the theatre by campus and outside groups, giving attention to scheduling matters and preparation of the theatre for use and supervising of the return to condition of the theatre on the conclusion of productions.

6. Lyndon State College administration has been aware of the grievant's activities as such Director and has knowingly accepted the benefits of his extra duties.

7. Although the grievant may have assumed the title of "Director" without official sanction initially, the Colleges have acquiesced in this designation

and identify the grievant as the Director of the Theatre in its 1977-1978 Lyndon catalog.

8. No evidence was introduced as to the existence of any other positions analogous to Director of the Theatre and Director of Media Services.

9. Grievant is a member of the Vermont State Colleges Faculty Federation, AFT Local No. 3180, AFL-CIO and, as such, is entitled to the benefits of the Collective Bargaining Agreement between the parties. The Board takes judicial notice of the provisions of that Collective Bargaining Agreement.

Conclusions of Law and Opinion.

10. The policy of the Vermont State Colleges as to the payment of additional compensation to members of the faculty for services rendered to the Colleges beyond the normal teaching workload of a faculty member is a "rule or regulation" as defined by Article III, Section 14 of the Collective Bargaining Agreement existing between the parties. Application of this policy to members of the Union is a proper subject of the grievance procedures in the Collective Bargaining Agreement.

11. In all essential ways, the positions of Director of the Theatre and Director of Media Services at Lyndon State College are analogous. The Vermont State Colleges have failed to establish by evidence any reasonable justification for the use by the State Colleges of a different policy for compensation of the Director of Theatre than the Colleges apply for compensation of the Director of Media Services.

12. The application by Lyndon State College of a different compensation policy to two positions which are essentially similar, without providing any reasonable justification for such difference, is discrimination prohibited by the Collective Bargaining Agreement. The Board is authorized by 3 V.S.A. § 982

(f) to enforce compliance with all the provisions of the Collective Bargaining Agreement on complaint of any interested party.

13. The Board does not, however, wish to intrude upon the bargaining relationship between the parties as to the future definition of services to be performed by the Director of the Theatre or the amount of compensation which is fair in light of those services. In the future, the parties should negotiate such matters themselves. In the absence of any such past negotiations, the Board is left to make a determination on the basis of the evidence before it.

14. The Director of Media Services has received \$500.00 compensation as such Director at least since 1974. The even-handed application of the compensation policy applied by Lyndon State College to this Director would require the payment of the same amount to the Director of the Theatre. \$500.00 annual compensation seems fair and reasonable compensation for the services performed by the Director of the Theatre in light of the same amount being paid to the Director of Media Services and the essential similarity between the positions.

15. Based on the foregoing, the only remaining matter is to determine for how long a period the grievant should be awarded back pay. The Board holds that such back pay should be awarded for the period when the evidence shows the discriminatory pay practices existed and for which grievant's rights were preserved by filing of a timely grievance. This period must be limited to the time when the grievant was recognized by the Colleges as a director but was not given compensation paid to others similarly situated. Unilateral assumption of duties without the proven knowledge or acquiescence of the Colleges would not entitle grievant to extra compensation. Based on the evidence before the Board, only during the 1977-1978 academic year was the grievant recognized by the Colleges as Director of Theatre and back pay is appropriate for that period only. Grievant made a timely issue of his pay status for the 1977-1978 academic year.


Order.

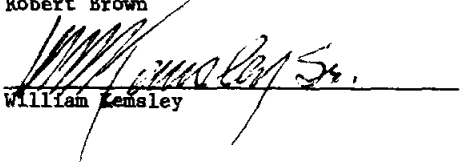
The Vermont State Colleges shall pay to the grievant the sum of \$500.00 as back pay for his services during the 1977-1978 academic year as Director of the Theatre at Lyndon State College. The grievance is dismissed as to years prior to the 1977-1978 academic year.

DATED this 21<sup>st</sup> day of July, 1978.

VERMONT LABOR RELATIONS BOARD

*Appeal dismissed  
pursuant to  
SLP.*

  
Robert Brown

  
William Lemsley Sr.