

SUPREME COURT OF VERMONT

In re Grievance of June Rosenberg and Vermont State Colleges  
Faculty Federation, UPV/AFT Local 3180, AFL-CIO

11 A.3d 651 (2010) · No. No. 09-199 · Decided August 9, 2010

SUMMARY

The Vermont Supreme Court affirmed a Vermont Labor Relations Board decision rejecting June Rosenberg's claims concerning faculty course assignments, seniority under a collective bargaining agreement, and discrimination based on protected union activity. The court held that Rosenberg was not entitled to the disputed course because she was not qualified to teach it, that the agreement unambiguously made seniority controlling only when other factors were equal, and that she offered insufficient evidence of retaliatory motive.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Vermont                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Chief Justice Reiber; Justice Dooley; Justice Johnson; Justice Skoglund; Justice Burgess                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Vermont                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | August 9, 2010                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | No. 09-199                                                                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | June Rosenberg appealed a Vermont Labor Relations Board decision rejecting her claims concerning course assignments, seniority, and discrimination based on protected union activity.                                                                                                                                                                                           |
| STANDARD OF REVIEW    | The court accorded substantial deference to the Board's construction of the collective bargaining agreement and reviewed its legal conclusions under the applicable standard for agency review. The court treated the Board's factual determination concerning discriminatory motive as unsupported by sufficient evidence only if no reasonable basis existed for the finding. |
| PRECEDENTIAL VALUE    | published Vermont Supreme Court opinion                                                                                                                                                                                                                                                                                                                                         |
| PARTIES               | June Rosenberg v. Vermont State Colleges                                                                                                                                                                                                                                                                                                                                        |

## TOPICS

labor law

employment law

contracts

retaliation

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## PRACTICE AREAS

employment law

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## QUESTIONS PRESENTED

1. Whether assigning the Basic Reading and Writing course to K.C. violated the collective bargaining agreement's minimum-degree-requirements provision.
2. Whether the collective bargaining agreement required seniority to control course assignments when a more senior part-time faculty member was qualified, particularly for introductory courses.
3. Whether Vermont State Colleges discriminated against Rosenberg because of her protected union activity by denying her course assignments.

## HOLDINGS

1. Rosenberg could not prevail on the alleged violation because she failed to show that, even if K.C. was ineligible under the minimum-degree-requirements provision, Rosenberg would have been assigned the course.
2. Under the unambiguous language of Section F, seniority prevails only when the listed factors, including credentials, qualifications, teaching experience, evaluations, work performance, and availability, are deemed equal; the provision applies to all courses, including introductory courses.
3. Rosenberg failed to prove that her protected union activity was a motivating factor in the denial of course assignments and therefore could not prevail on her discrimination claim.

## KEY QUOTATIONS

*"The general rule is that "[a] labor agreement will be interpreted by the common meaning of its words where the language is clear." (¶ 13)*

*"An employer's knowledge of an employee's protected activity is not enough to infer discriminatory motive." (¶ 18)*

## FACTUAL BACKGROUND

June Rosenberg was a part-time faculty member at Lyndon State College who had greater seniority than most part-time faculty members and had previously filed grievances concerning course assignments. For the spring, summer, and fall 2008 semesters, Vermont State Colleges assigned no courses to Rosenberg, including assigning a remedial reading and writing course to K.C., who allegedly lacked a master's degree. Rosenberg claimed that the assignments violated the collective bargaining agreement's degree and seniority provisions and resulted from retaliation for her union activity.

## PROCEDURAL HISTORY

The Vermont Labor Relations Board rejected Rosenberg's three grievances arising from course assignments for the spring, summer, and fall 2008 semesters. The Supreme Court of Vermont reviewed the Board's decision and affirmed it, concluding that Rosenberg could not establish a violation of the collective bargaining agreement or discriminatory treatment.

## DISPOSITION

affirmed

## CASES CITED

- Rosenberg v. Vt. State Colleges, 2004 VT 42, 176 Vt. 641, 852 A.2d 599 (mem.)
- In re Rosenberg, No. 06-10, 29 V.L.R.B. 12 (Feb. 12, 2007)
- In re Rosenberg, No. 06-40, 29 V.L.R.B. 169 (July 19, 2007)
- In re Rosenberg, No. 07-16, 29 V.L.R.B. 317 (Dec. 31, 2007)
- In re Rosenberg, Nos. 07-35, 07-39, 07-39, 08-04, 30 V.L.R.B. 63 (July 9, 2008)
- In re Gregoire, 166 Vt. 66, 72, 689 A.2d 431, 435 (1996)
- In re West, 165 Vt. 445, 448, 685 A.2d 1099, 1102 (1996)
- In re Cronan, 151 Vt. 576, 578, 563 A.2d 1316, 1317 (1989)
- In re Cole, 2008 VT 58, ¶ 13, 184 Vt. 64, 954 A.2d 1307
- In re Verderber, 173 Vt. 612, 616, 795 A.2d 1157, 1162 (2002) (mem.)
- Green Mountain Inv. Group v. Flaim, 174 Vt. 495, 497, 807 A.2d 461, 464 (2002) (mem.)
- Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 287, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977)
- Ohland v. Dubay, 133 Vt. 300, 302-03, 336 A.2d 203, 205 (1975)

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