

VERMONT LABOR RELATIONS BOARD

VERMONT STATE EMPLOYEES' ASSOCIATION	)	
	)	
and	)	DOCKET NO. 11-34
	)	
JUDICIARY DEPARTMENT OF THE STATE OF VERMONT	)	
	)	

MEMORANDUM AND ORDER

The Vermont State Employees' Association ("VSEA") and the Judiciary Department of the State of Vermont ("Employer") have filed a joint unit clarification petition requesting that the Labor Relations Board amend the order issued by the Board in VLRB Docket No. 00-16 on July 21, 2000, subsequent to an election conducted by the Board, certifying VSEA as the exclusive bargaining representative of all employees of the Employer covered by the Judiciary Employees Labor Relations Act ("JELRA"). Specifically, the parties request amendment of the order to: 1) reflect the addition of probate registers to coverage of JELRA in 2011 by the Vermont General Assembly as part of a judicial reorganization, and add the probate registers to the bargaining unit; 2) reflect changes in positions included within the bargaining unit which have occurred since the 2000 certification; and 3) replace the specific definition of the bargaining unit contained in the 2000 certification order of the Board with a general definition of the unit which will accommodate future changes to positions within the unit without the Board having to issue further orders amending the certification of VSEA as bargaining representative.

A petition for clarification of an existing bargaining unit or units may be filed by a collective bargaining representative or an employer under the Judiciary Employees

Labor Relations Act where no question concerning the majority status of the exclusive bargaining representative is pending at the time the unit clarification petition is filed. Such a petition may be filed where there is a dispute over the unit inclusion or exclusion of employee(s), or where there has been an accretion to or reorganization of the work force.<sup>1</sup> If the Board grants a unit clarification petition, employees are added to, or removed from, a bargaining unit by Board order without a representation election.

The parties are requesting that the Board grant their joint unit clarification petition due to “accretion and/or reorganization”. The parties’ petition is supported by a document they jointly filed on January 13, 2012, providing supplemental information on the bargaining unit. The pertinent facts set forth in this Memorandum and Order are based on the information provided by the parties in this document.

We first consider whether it is appropriate to add the probate registers to the bargaining unit based on accretion. Accretion is a method by which an employee or group of employees are added to an existing bargaining unit without an election. Accretion is the process whereby new employees, whose work and interests are aligned with those of employees in an existing bargaining unit, are added to that unit. If the duties of the new employees are identical or substantially similar to those of employees in an existing bargaining unit, it is appropriate to find an accretion.<sup>2</sup>

Probate registers were specifically excluded from the definition of employees covered by JELRA when VSEA was certified in 2000 as the exclusive bargaining representative of all employees eligible to be represented by an employee organization

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<sup>1</sup> Article 54, Board Rules of Practice.

<sup>2</sup> Barre Town School Chapter, AFSCME Local 1369 and Barre Town School District, 13 VLRB 364, 368 (1990). Woodstock Union High School Teachers Organization, Educational Support Personnel Unit and Woodstock Union High School District, 22 VLRB 186, 196 (1999). UE Local 267 and University of Vermont, 24 VLRB 260 (2001).

under JELRA.<sup>3</sup> Although probate registers were state employees, they worked under the supervision of probate judges who managed independent county probate courts. As a result of legislation enacted in 2010, the county court system was abolished and a unified court system under the administration of the Vermont Supreme Court was created. One of the outcomes of the legislation was that the independent probate courts were replaced by a probate division, one of five divisions under the Vermont Superior Court. JELRA was amended effective February 1, 2011, as part of the court system restructuring to add the probate registers to the definition of employees covered by JELRA.<sup>4</sup>

The probate registers perform docketing and case management functions necessary for functioning of the probate division which is comparable to employees in the bargaining unit who work for the other four divisions of the newly restructured court system. The methods of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions and job sites of the probate registers are comparable to employees in the bargaining unit. Further, in key personnel and labor relations matters, such as hiring, discipline, layoff, grievance procedures and contract negotiations, the ultimate responsibility for both groups of employees is with the state court administrator. We conclude given these circumstances that the duties of the probate registers are substantially similar to those of employees in the existing bargaining unit, and their work and interests are aligned, so that it is appropriate to add them to the bargaining unit through an accretion.

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<sup>3</sup> 3 V.S.A. §1011(8)(H).

<sup>4</sup> Act No. 1, 2011 Session.

We next consider the parties' request that the order of certification be amended to reflect changes in positions included within the bargaining unit which have occurred since the 2000 certification. The supplemental information provided by the parties indicates that many positions included in the 2000 Board order of certification are no longer part of the bargaining unit because the Employer does not require that their duties and responsibilities be performed or because the duties and responsibilities have been assumed by other bargaining unit positions. The parties agree that the order of certification should be amended to reflect current position titles which have been reclassified and/or updated since the original certification of 2000. The parties included as Exhibit C to its supplemental information the list of position titles. It is appropriate to amend the order of certification to accurately reflect the positions currently included in the bargaining unit as a result of reclassification and/or updating.

Finally, we consider the parties' request that we replace the specific definition of the bargaining unit contained in the 2000 certification order of the Board, listing each position included in the bargaining unit, with a general definition of the unit which will accommodate future changes to positions within the unit without the Board having to issue further orders amending the certification of VSEA as bargaining representative. Specifically, the parties request that VSEA be certified as the "representative of all employees of the Judiciary Department of the State of Vermont who are eligible for representation by a labor organization pursuant to Title 3, Vermont Statutes Annotated, Chapter 28, as the same may be amended from time to time."

We grant this request. VSEA has been the exclusive bargaining representative of all employees eligible to be represented by a labor organization since the Board order of

certification issued in 2000, and the change from a specific to general definition simply is a recognition that positions in the unit are likely to continue to evolve in the future. We agree with the parties that it is desirable for the Board order of certification to allow for these changes to occur without the need of further amendment of certification orders.

Accordingly, it is ordered that the Order issued by the Labor Relations Board in Docket No. 00-16 on July 21, 2000, is amended as follows:

1. The probate registers employed in the probate division of the Judiciary Department of the State of Vermont are added to the bargaining unit of Judiciary Department employees represented by the Vermont State Employees' Association;
2. The Vermont State Employees' Association is certified as the exclusive bargaining representative of all employees of the Judiciary Department of the State of Vermont who are eligible for representation by a labor organization pursuant to Title 3, Vermont Statutes Annotated, Chapter 28, as the same may be amended from time to time; and
3. The current list of bargaining unit position titles is contained in Exhibit C provided by the parties, which is attached to this Order.

Dated this 16th day of February, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Richard W. Park, Chairperson

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James C. Kiehle

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Gary F. Karnedy