

VERMONT LABOR RELATIONS BOARD

IN RE: DESIGNATION DISPUTES	)	
(CORRECTIONAL OFFICER C -	)	DOCKET NO. 88-62
COMMUNITY CONTROL PROGRAM)	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 15, 1988, the Vermont State Employees' Association ("VSEA") filed a notice of dispute, contending that the State of Vermont ("State") erred by designating the position of Correctional Officer C - Community Control Program, as part of the Non-Management Bargaining Unit represented by VSEA. Previously, all Correctional Officer C positions had been part of the Corrections Bargaining Unit represented by VSEA.

A hearing was held before Board members Louis Toepfer, Acting Chairman, and Catherine Frank on July 13, 1989, in the Board hearing room in Montpelier. Michael Zimmerman, VSEA Staff Attorney, represented VSEA. Michael Seibert, Assistant Attorney General, represented the State.

Briefs were due to be filed by August 10, 1989. VSEA filed Requested Findings of Fact and Memorandum of Law on August 10, 1989. The State filed a Response to VSEA's Requested Findings on August 22, 1989. The State's response has not been considered by the Board due to its late filing pursuant to Section 12.16 of the Board Rules of Practice.

### FINDINGS OF FACT

1. By decision of March 25, 1982, the Board determined that a collective bargaining unit consisting of all employees of the six community correctional centers of the State of Vermont with the exception of employees designated managerial, supervisory or confidential pursuant to 3 VSA §906, but including correctional facility shift supervisors, was appropriate. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRRB 82. On December 14, 1983, the Vermont Supreme Court affirmed the Board decision except for that portion of the Board's order that included correctional facility shift supervisors in the bargaining unit. 143 Vt. 636.

2. Subsequent to a unit determination and representation election, the Board certified VSEA as the collective bargaining representative of employees in the Corrections Bargaining Unit on February 21, 1984 (Docket No. 81-25).

3. When the Corrections Bargaining Unit was created, the class Correctional Officer C was included in that unit. Prior to December 18, 1987, the class specification for Correctional Officer C provided as follows with respect to the definition of the class:

Correctional and supervisory duties involving the custody, treatment and training of inmates confined within a correctional facility. The role may include supervision and control of an inmate work crew in an institutional industry program or other work programs of a correctional facility... Work is performed in accordance with standard operating procedures of the facility, and under the supervision of a shift supervisor or a technical superior who makes assignments and review work through personal observation.

(Exhibit E, pgs. 13-14, VLRRB Docket No. 81-25)

4. In 1987, the Joint Fiscal Office of the Vermont General Assembly authorized seven limited service positions on a pilot project basis to undertake a community control program, or "house arrest" program, in the Burlington area. Four of the seven positions were Correctional Officer C's (State's Exhibit 1).

5. The Correctional Officer C's assigned to the community control program are assigned to the Burlington District Probation and Parole Office. Their function is to move around the community checking on inmates in the program at home or at work.

6. The Department of Personnel, rather than creating a separate class of correctional officer for the community control program, changed the existing Correctional Officer C class specification, effective December 1987, in minor respects to reflect that incumbents may be assigned to field supervision of furlonghees or inmates placed in community control programs (State's Exhibit 2).

7. During the 1988 session, the General Assembly authorized the conversion of the four Correctional Officer C positions, assigned to the community control program, from limited service to permanent positions (State's Exhibit 5).

8. On August 29, 1988, Jacqueline Kotkin, Area Manager for Correctional Services in the northwest part of the State, informed the four Correctional Officer C's working in the community control program that, effective October 1, 1988, their positions were becoming permanent and that the Department of Corrections was recommending that their positions be placed in the Non-Management Bargaining Unit represented by VSEA. Kotkin informed the employees that they had the option to be assigned to these permanent positions or to return to

their former assignments at the Chittenden Community Correctional Center (State's Exhibit 7, pages 2-6).

9. By joint letter of September 1, 1988, the four Correctional Officer C's informed Kotkin that they chose to be assigned to the permanent positions assigned to the community control program (State's Exhibit 7, page 1).

10. Effective October 1, 1988, the Department of Personnel converted the four Correctional Officer C positions, assigned to the community control program, from limited to permanent positions (State's Exhibit 5).

11. Effective October 2, 1988, the Department of Personnel indicated that the bargaining unit designation of the four Correctional Officer C's, assigned to the community control program, was being changed from the Corrections Bargaining Unit to the Non-Management Bargaining Unit (State's Exhibit 6, Joint Exhibit 1).

12. The chain of command, from a Correctional Officer C to the Commissioner of the Department of Corrections, is as follows:

- a. For Correctional Officer C's assigned to a correctional facility:

Correctional Officer C--Shift Supervisor--Security &  
Operations Supervisor--Superintendent--Area  
Manager--Director of Corrections Services--Deputy  
Commissioner--Commissioner.

- b. For Correctional Officer C's assigned to the community control program:

Correctional Officer C--Casework Supervisor--District  
Probation & Parole Office Manager--Area  
Manager--Director of Corrections Services--Deputy  
Commissioner--Commissioner.

13. The Correctional Officer C's assigned to the community control program work out of the Burlington District Probation and

Parole office. They interact daily with probation and parole officers, and attend office staff meetings. Probation and Parole officers are supervised by the Probation and Parole Office Manager.

14. All employees in the various Probation and Parole offices, who are not supervisors or managers, are included in the Non-Management Bargaining Unit represented by VSEA. Included in the Non-Management Bargaining Unit are probation and parole officers, and administrative assistants and secretaries of the Probation and Parole offices.

15. Correctional Officer C's assigned to the community control program spend a minimal percentage of time inside the Chittenden Community Correctional Center for activities such as exchanging vehicles, delivering mail, and returning inmates or furlougees to the correctional facility who violated terms of their release. They are not required to work overtime inside the correctional facility, although they may do so on a voluntary basis.

16. Correctional Officer C's assigned to correctional facilities work outside the facility if they are delegated to supervise a work crew of five inmates. The officer so assigned transports the inmates from the correctional facility in the morning to a worksite in the community, supervises them during the day, and then returns them to the facility at the end of the day. The work crew officer is supervised by a supervisor in the facility, and is required to work overtime in the same manner as officers who are working in the facility. Correctional Officer C's assigned to a work crew eventually are reassigned to duty within the correctional facility.

17. At present, the Department of Corrections has Correctional Officer C's assigned to community control programs in a few district

probation and parole offices other than Burlington. Ultimately, the Department plans to have officers working in community control programs in all 12 district probation and parole offices throughout the State.

#### OPINION

At issue is a determination as to the most appropriate bargaining unit placement of the Correctional Officer C's assigned to the community control program in the Burlington District Probation and Parole office. VSEA contends that these officers should be placed in the Corrections Bargaining Unit. The State contends that they more appropriately belong in the Non-Management Bargaining Unit.

Since the position of Correctional Officer C assigned to the community control program did not exist when the Corrections Bargaining Unit and the Non-Management Bargaining Unit were formed, we are acting to clarify the composition of existing bargaining units. Under the State Employees Labor Relations Act ("SELRA"), 3 VSA §901 et seq., in deciding bargaining unit composition we are required to establish units which are "most appropriate to best represent the interests of employees". 3 VSA §902(3). 3 VSA §941(f) provides three statutory criteria the Board shall take into consideration in determining the appropriateness of a collective bargaining unit. Two of the criteria - authority of governmental officials at the unit level to take positive action on matters subject to negotiations and whether overfragmentation of units will result - are not at issue.

The third criterion is the similarity or divergence of the interests, needs and general conditions of employment of the employees to be represented. 3 VSA §941 (f) (2). In this case, the determination to be made by the Board is with which grouping of employees - the

Corrections Bargaining Unit or the Non-Management Bargaining Unit - the Correctional Officer C's assigned to the community control program share the greater community of interest.

The following factors are relevant in determining whether a community of interest exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training and skills, job functions and job sites; and whether employees have frequent contact with each other and have an integration of work functions. AFSCME and Town of Middlebury, 6 VLRB 227, 232 (1983).

In applying these factors here, we conclude that the Correctional Officer C's assigned to the community control program share a greater community of interest with employees in the District Probation and Parole Office, who are included in the Non-Management Unit, than they do with employees in the correctional facilities.

While it is true that these Correctional Officer C's possess similar qualifications, training and skills as Correctional Officer C's who work in the correctional facilities, with respect to the other factors, their interests, needs and general conditions of employment are more closely aligned with the probation and parole office employees. They have similar supervision. They work in the same office and, when working out of the office, deal with offenders as do the probation and parole officers. Their job functions are similar in that their tasks are to deal with an offender population which has been released into the community. They have daily interaction and interchange. They do not share these characteristics with officers working in the correctional facilities.

These factors demonstrate that the Correctional Officer C's assigned to the community control program most appropriately are included in the Non-Management Bargaining Unit with the probation and parole office employees.

ORDER


Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Correctional Officer C's, assigned to the community control program in the Burlington District Probation and Parole Office of the Department of Corrections, are included in the Non-Management Bargaining Unit represented by the Vermont State Employees' Association.

Dated this 7th day of September, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Louis A. Toepfer, Acting Chairman



Catherine L. Frank