

VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY)	
FEDERATION, LOCAL 3180, AFT,)	
AFL-CIO)	
)	DOCKET NO. 91-1
and)	
)	
VERMONT STATE COLLEGES)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 7, 1991, the Vermont State Colleges Faculty Federation, Local 3180, AFT, AFL-CIO ("Federation"), filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board. The petition sought an election among employees in the following bargaining unit:

Adjunct faculty employed by the VSC who have taught or are teaching in the current academic year and who meet the following requirements: 1) employed for at least 3 semesters or who are currently in their third teaching semester; 2) teach at least 6 credit hours per academic year; 3) notwithstanding the first two requirements, adjuncts who have not taught during one academic year, provided they otherwise regularly teach at least 6 credit hours per academic year and have been employed for at least three semesters or are currently in their third teaching semester; and 4) are not otherwise employed by the Colleges in a full time position as a manager or administrator.

In a response filed February 7, 1991, the Vermont State Colleges ("Colleges") objected to the proposed unit. The Colleges contended that the following would constitute the appropriate unit:

Adjunct faculty employed by the VSC (excluding CCV) who are teaching in the current semester, and who meet the following requirements: 1) have taught at least three (3) credits per semester for three consecutive semesters or are currently in their third consecutive semester of teaching three (3) or more credits; 2) are not otherwise employed by the Colleges in a full time position as a manager or administrator.

The Colleges also contended that the Federation should not be allowed to represent adjunct faculty, because the Federation represented full-time faculty of the Colleges and a potential conflict of interest would exist if the Federation represented both full-time faculty and adjunct faculty.

A hearing was held on March 14, 1991, in the Labor Relations Board hearing room before Board Members Charles McHugh, Chairman; Catherine Frank and Carroll Comstock. Attorney Nicholas DiGiovanni, Jr., of Morgan, Brown & Joy of Boston, Massachusetts represented the Colleges. Attorney Richard Cassidy of Hoff, Agel, Curtis, Pacht & Cassidy of Burlington, Vermont represented the Federation. Subsequent to the hearing, briefs were filed by the parties.

FINDINGS OF FACT

1. On January 22, 1987, the Board, after an evidentiary hearing involving the Federation and the Colleges, issued Findings of Fact, Opinion and Order in Docket No. 86-22, Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO v. Vermont State Colleges, 10 VLRB 39. Therein, the Board concluded that adjunct faculty employed by the Colleges who meet the following requirements are "employees" within the meaning of the State Employees Labor Relations Act, 3 VSA §901 et seq., and that the addition of such adjunct faculty to the existing bargaining unit of full-time faculty and ranked librarians employed by the Colleges is appropriate:

- 1) employed for at least three semesters, or who currently are in their third teaching semester, 2) teach at least six credit hours per academic year, 3) notwithstanding the first two requirements, adjuncts who have not taught during one academic year, past or present, meet the definition of (employee) provided

they otherwise regularly teach at least six credit hours per academic year and have been employed for at least three semesters, or who are currently in their third teaching semester; and 4) are not otherwise employed by the Colleges in a full-time position as a manager or administrator.

2. The Colleges appealed the Board decision to the Vermont Supreme Court. In a decision issued on May 12, 1989, the Supreme Court affirmed the Board decision that the above-described adjunct faculty are "employees" within the meaning of the State Employees Act, but the Court reversed the Board's decision insofar as it provided for the inclusion of adjunct faculty in the same bargaining unit with full-time faculty members. 152 Vt. 343 (1989)

3. There is no evidence indicating that there has been a substantial change in factual circumstances relating to the question of which adjunct faculty members are "employees" within the meaning of the State Employees Act since the date of the Board's decision on January 22, 1987. The Board hereby takes judicial notice of the findings of fact in that decision.

4. Adjunct faculty work under one semester contracts which contain no representations as to future employment. When adjunct faculty who have taught previously are rehired, they are issued new contracts rather than a renewal of the previous contract. The decision to hire adjunct faculty for a semester generally ranges from a period late in the preceding semester up to just before the semester begins.

5. Some adjunct faculty have taught for many consecutive semesters. Other adjunct faculty teach courses which are given only once per year, or once every two or more years. Adjunct faculty who do not teach during a particular semester are not considered to be on a leave of absence for that semester.

6. Many adjunct faculty who cease teaching for two consecutive semesters never return to teaching for the Colleges. However, there are some adjunct faculty who cease teaching for two or more consecutive semesters and do return to teaching for the Colleges.

7. Adjunct faculty teach courses which are assigned units of credit varying from one to four credits per semester.

8. The Federation has represented employees in a bargaining unit consisting of full-time faculty and ranked librarians at the four campuses of the Colleges since 1973. There are approximately 280 members in this bargaining unit.

9. There are approximately 91 adjunct faculty who meet the bargaining unit eligibility description proposed by the Federation.

10. In negotiations for a collective bargaining agreement effective 1986-1988, the Federation made bargaining proposals which would have provided full-time faculty with preference in teaching courses over adjunct faculty and which would have provided additional compensation to bargaining unit members due to increased workload because of the employment of adjunct faculty. These proposals did not become part of the agreement (Colleges Exhibit A).

11. Department chairpersons are members of the full-time faculty bargaining unit and are part of the academic and administrative structure at all four campuses. Department chairpersons have various responsibilities concerning adjunct faculty, including recommending the need for adjunct faculty, assisting in the selection and orientation of adjunct faculty and

making recommendations concerning the rehiring of adjunct faculty (Colleges Exhibit B, Appendix H).

12. It varies throughout the Colleges system the extent of the role Department chairpersons have in the reappointment, tenure and promotion of full-time faculty members. In some, but not all, cases, Department Chairpersons play a role in such decisions. A Department Chairperson may place written materials in a full-time faculty member's personnel file concerning the Chairperson's evaluation of that faculty member, which materials the faculty member may respond to and insert such response in his or her personnel file.

13. Department chairpersons have served as Federation officers.

14. The Federation amended its constitution effective July, 1990. Pursuant to the amended constitution, all full-time faculty, adjunct faculty and ranked librarians are eligible for membership in the Federation. The Executive Board of the Federation consists of a President, Vice President, Treasurer and Secretary. The election of those officers is conducted among all members of the Federation, and all members in good standing for one semester are eligible to run for office. The Executive Board is responsible for the administration of the policy of the Federation as formulated by the Delegate Assembly (Federation Exhibit 1).

15. Pursuant to the Federation Constitution, the Delegate Assembly consists of the following members: a) the Executive Board; b) four delegates from each of the four campus chapters of the Federation: a chapter chairperson who is elected by the chapter and can be either a full-time or adjunct faculty member, two representatives who are elected by full-time faculty, and one

representative who is elected by adjunct faculty; and c) two alternates: one who is elected by full-time faculty and one who is elected by adjunct faculty, who serve in the absence of a regular delegate (Federation Exhibit 1).

16. The Federation Constitution provides that the adjunct faculty and full-time faculty have separate contract negotiating teams. The Constitution requires that the adjunct faculty negotiating team be made up exclusively of adjunct faculty and a non-voting professional negotiator. It requires that the full-time faculty negotiating team be made up exclusively of full-time faculty and a non-voting professional negotiator. The Constitution provides that adjunct faculty contracts be ratified by an exclusive vote of adjunct faculty, and that full-time faculty contracts be ratified by an exclusive vote of full-time faculty (Federation Exhibit 1).

17. The Federation Grievance Chairperson is appointed by the President pursuant to the Federation Constitution. Under the Constitution, there is a Grievance Committee, which includes the President, the Grievance Chairperson and a grievance counselor from each of the four campuses. No limitations concerning the processing of grievances are expressed in the Constitution based upon whether a member is an adjunct faculty member or a full-time faculty member. The Delegate Assembly is not involved at the first step of the grievance procedure, which involves an appeal at the individual college level. The Delegate Assembly is involved in the decision whether to file a grievance at Step II, to the Colleges Chancellor, and at Step III, to the Labor Relations Board (Federation Exhibit 1).

OPINION

Representation of Adjunct Faculty by the Federation

The Colleges first contend that the Board should not allow the Federation to represent adjunct faculty because of inherent conflicts of interests which will undermine the policies of the State Employees Labor Relations Act, 3 VSA §901 et seq. ("SELRA"), for both the Colleges and the employees.

The Colleges contend that the Board has the inherent power to disallow a labor organization from representing a particular group of employees, and that the Board should exercise this power to prohibit the Federation from representing adjuncts as well as full-time faculty despite the fact that they will be in separate bargaining units. The Colleges contend that the interests of the adjunct will be dominated by the interests of the much larger full-time faculty group within the Federation, and that the adjuncts will have a separate bargaining unit in name only. In support of its position that the adjuncts should have their own local union, the Colleges cite the Vermont Supreme Court decision; Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO v. Vermont State Colleges, 152 Vt. 343 (1989); in which the Court concluded that the interests of the full-time faculty and adjunct faculty were so divergent that they should not be included in the same bargaining unit. The Colleges further contend that allowing the Federation to represent both department chairpersons and adjunct faculty will create fair representation issues for the adjuncts, and will create serious problems over divided loyalties as far as the Colleges are concerned, due to supervisory responsibilities chairpersons have over adjunct faculty.

We disagree, and conclude that the Federation should not be prohibited from representing both full-time faculty and adjunct faculty in separate bargaining units. §903 (a) of SELRA provides that "(e)mmployees shall have the right . . . to bargain collectively through representatives of their own choice." Under SELRA, a petition to represent employees "may be filed . . . (b)y an employee or group of employees or any . . . employee organization purporting to act in their behalf." 3 VSA §941(c)(1). Given these statutory provisions, we question whether we have the authority to limit employees' choice of their representative. It is the employees' choice, not ours, who will be their bargaining representative. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Employees, 5 VLRB 82, 100 (1982). Affirmed, 143 Vt. 636 (1983).

Even assuming we do possess such authority, we conclude that the potential for conflicts of interest as alleged by the Colleges does not exist in any meaningful way. We cannot presume that the interests of the adjunct faculty will be dominated by the interests of the larger full-time faculty group within the Federation. Adjunct faculty have a representative voice in the general affairs of the Federation, and will be conducting negotiations for a contract covering adjunct faculty without the involvement of full-time faculty. The Colleges' citation of the 1989 Supreme Court decision is not on point. The Court concluded that there was not a community of interests between adjunct faculty and full-time faculty sufficient to place them in the same bargaining unit. It does not follow that the lack of a

community of interests to place two groups of employees in the same bargaining unit results in the conclusion that a conflict of interests results, prohibiting allowing the two groups of employees to be represented by the same union in separate bargaining units.

Also, we reject the assertion of the Colleges that the alleged supervisory responsibilities of department chairpersons over adjunct faculty means they should not be included in the same union as adjunct faculty. First, there never has been a determination made by this Board that department chairpersons are supervisory employees within the meaning of SLRA. Second, even assuming that department chairpersons do possess supervisory responsibilities, this does not result in the conclusion that they cannot belong to the same union as employees whom they supervise. SELRA contains no such prohibition and, in fact, under SELRA, the Vermont State Employees' Association represents both supervisory employees and non-supervisory employees in separate bargaining units. Finally, department chairpersons have involvement in the evaluation of full-time faculty, as well as adjunct faculty, and they have been in the same unit as full-time faculty since 1973 without apparent conflict.

We note that any problems which may occur with respect to the Federation not properly representing adjunct faculty members are not without remedy. If adjunct faculty decide to be organized into a bargaining unit and be represented by the Federation, and subsequently are unhappy with their representation, they can at an appropriate time vote to decertify the Federation as their bargaining representative. 3 VSA §941(c). Article 13, Board Rules

of Practice. Also, the Federation has the statutory obligation to fairly represent all employees in the bargaining units it represents and to have membership rules which are not discriminatory. 3 VSA §962(1). VSEA v. State of Vermont, 7 VLRB 227, 228 (1984). c.f., Ilges v. Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO, 11 VLRB 235, 238-239 (1988). Lary v. Upper Valley Teachers' Association, 3 VLRB 416, 420-421 (1980). If adjunct faculty members believe the Federation is not fairly representing them and/or has discriminatory membership rules, then they can file unfair labor practice charges so alleging with this Board.

Appropriateness of Bargaining Unit

The Colleges contend that a bargaining unit consisting of those adjunct faculty whom the Board has previously concluded are "employees" within the meaning of §902(5) of SELRA; Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO v. Vermont State Colleges, 10 VLRB 39 (1987); which decision was affirmed in pertinent part by the Supreme Court; Vermont State Colleges Faculty Federation, supra; is inappropriate.

At the outset, we note that, in light of the above-cited past Board and Court decisions concerning the adjunct faculty, the Colleges have to demonstrate that there are substantially changed factual circumstances relating to the question of which faculty members are "employees" within the meaning of SELRA for the Board to reconsider the holdings in the Board and Court decisions. There is no evidence indicating that there has been a substantial change in factual circumstances in this regard. Thus,

we reaffirm the past holdings, and conclude that adjunct faculty who meet the requirements set forth in Finding of Fact #1 herein are "employees" within the meaning of SELRA.

This conclusion does not end our inquiry. Pursuant to the provisions of SELRA, we now consider whether these adjunct faculty constitute an appropriate bargaining unit. The Colleges contend that it is not an appropriate bargaining unit; and propose a more restricted unit which would require adjunct faculty to be teaching during the current semester, and to have taught at least three credits per semester for three consecutive semesters or who are currently in their third consecutive semester of teaching three or more credits, to be eligible to be a member of the bargaining unit.

3 VSA §941(f) provides three statutory criteria the Board shall take into consideration in determining the appropriateness of a collective bargaining unit. One of the criteria - authority of governmental officials at the unit level to take positive action on matters subject to negotiations - is not at issue. The remaining criteria are whether a community of interest exists among the employees and whether overfragmentation of units will result to a degree which is likely to produce an adverse effect either on the effective representation of employees generally or upon the efficient operation of the employer.

We first examine the community of interest criterion. SELRA directs the Board to take into consideration the "similarity or divergence of the interests, needs and general conditions of employment of the employees to be represented." 3 VSA §941(f)(2).

The following factors are relevant in determining whether a community of interests 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, 231 (1983).

Upon consideration of the facts we found in the 1987 decision; 10 VLRB, at 40-45; and the facts contained herein, it is evident that a community of interest does exist among all the adjunct faculty who meet the definition of "employee" within the meaning of SELRA. All these adjunct faculty have similar methods of compensation, hours of work, employment benefits or lack thereof, and job sites. They have similar job functions to the extent that they all teach the same students in an undergraduate curriculum at the same work sites. They have similar qualifications, training and skills to the extent that they each are able to teach courses on a college level. We have no specific evidence relating to the frequency of their contact with each other and their integration of work functions.

On a more general level, adjuncts who meet the definition of "employee" under SELRA have similar interests in that they each have demonstrated a serious, sustained commitment to the teaching profession by their extended teaching service with the same employer. 10 VLRB, at 49-50.

In considering the remaining criterion, whether overfragmentation of units will result, we conclude that overfragmentation of units could result if the Colleges' proposed

unit definition is accepted, but will not result under the broader unit proposed by the Federation.

As a result of the 1989 Supreme Court decision concluding that it is inappropriate to include full-time faculty and adjunct faculty in the same bargaining unit, a potential exists for at least two faculty bargaining units in the Colleges. If the unit proposed by the Federation is accepted, and all adjunct faculty who are "employees" within the meaning of SELRA are included in the same bargaining unit, then the potential exists for just two faculty bargaining units in the Colleges: 1) a unit of full-time faculty, and 2) a unit of all adjunct faculty who are "employees" within the meaning of SELRA.

If the unit proposed by the Colleges is accepted, then the potential exists for at least three faculty bargaining units: 1) a unit of full-time faculty, 2) a unit of those adjunct faculty who, among other requirements, are teaching in the current semester, and have taught at least three credits per semester for three consecutive semesters or are currently in their third consecutive semester of teaching three or more credits, and 3) a unit or units of those remaining adjunct faculty who do not meet the requirements of #2 above but are "employees" within the meaning of SELRA.

The established policy of the Board that public rights are protected by larger units favors placing all eligible adjunct faculty in one bargaining unit. Vermont Federation of Teachers, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB 6, 28 (1985). We conclude that, if the position of the Colleges is accepted and the potential for three or more faculty units exists, then

overfragmentation of units may result to a degree which is likely to produce an adverse effect either on the effective operation of employees generally or upon the efficient operation of the Colleges. 3 VSA §941(f)(3).

In sum, we conclude that the placement of all adjunct faculty employed by the Colleges, who are "employees" within the meaning of SELRA, in one bargaining unit is appropriate.

Finally, we note that, as we concluded in the 1987 adjunct faculty decision; 10 VLRB, at 50; we believe it is appropriate that only those above-described adjunct faculty who have taught or are teaching in the current academic year shall be eligible to vote in the election to be conducted by the Board in this matter. Further, in the election two determinations must be made: 1) whether the adjunct faculty wish to be organized into the approved bargaining unit, and 2) whether employees wish to be represented by the Federation. 3 VSA §941(e) and (g). In re Liquor Control Department Non-Supervisory Employees, 135 Vt. 623, 625-626 (1978).

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

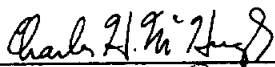
1) Adjunct faculty employed by the Vermont State Colleges who meet the following requirements comprise an appropriate bargaining unit: 1) employed for at least three semesters, or who currently are in their third teaching semester, 2) teach at least six credit hours per academic year, 3) notwithstanding the first two requirements, adjuncts who have not taught during one academic year, past or present, are included in the bargaining unit provided they otherwise regularly teach at least six credit hours per academic year and have been employed for at least three semesters, or who are currently in their third teaching semester; and 4) are not otherwise employed by the Colleges in a full-time position as a manager or administrator;

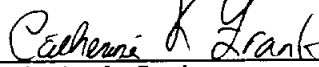
2) The Vermont State Colleges and the Vermont State Colleges Faculty Federation, Local 3180, AFT, AFL-CIO, shall cooperatively compile a list, with mailing addresses, of adjunct faculty who meet the above requirements, provided that such list shall not include any adjunct faculty member who has not been employed during the current academic year. Such list shall be filed with the Labor Relations Board by April 16, 1991. The parties shall be prepared to appear before the Labor Relations Board on April 25, 1991, at 9:00 a.m., in the Board hearing room in Montpelier, to resolve any disputes concerning such list; and

3) The Board shall conduct a secret ballot election pursuant to 3 VSA §941(e) and (g), to determine whether the above-described adjunct faculty desire to be organized into the above bargaining unit; and 2) determine whether the above-described adjunct faculty wish to be represented for exclusive bargaining purposes by the Vermont State Colleges Faculty Federation, Local 3180, AFT, AFL-CIO, or no union.

Dated this 4th day of April, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank

/s/ Carroll P. Comstock
Carroll P. Comstock