

VERMONT LABOR RELATIONS BOARD

VERMONT STATE COLLEGES FACULTY)	
FEDERATION, AFT LOCAL 3180,)	
AFL-CIO)	
)	DOCKET NO. 94-7
and)	
)	
VERMONT STATE COLLEGES)	

MEMORANDUM AND ORDER

On February 17, 1994, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation") filed a unit clarification petition. Therein, the Federation requested that the adjunct faculty teaching at the Community College of Vermont ("CCV") be added to the bargaining unit of eligible adjunct faculty teaching at the four campus-based colleges of the Vermont State Colleges ("Colleges"). The Federation contends that, prior to 1993, the CCV adjunct faculty met the requirements to be included in the bargaining unit of campus-based adjunct faculty, but were inappropriately classified by the Colleges as contractors and thus did not meet the statutory definition of "employees". The Federation contends that, when the CCV adjunct faculty were reclassified as employees in the Spring of 1993, they should have been included in the adjunct faculty bargaining unit. The Federation indicates that, if the Board grants the unit clarification petition, the size of the existing 130 member adjunct faculty bargaining unit would be doubled at least.

The Colleges oppose the unit clarification petition on several grounds, and request that the Board dismiss the petition. First, the Colleges contend that the original petition to represent the adjunct faculty of the Colleges did not include CCV adjunct faculty, and the Federation could have raised the

issue of inclusion of adjunct faculty at that time. Second, the Colleges contend that it runs counter to the intent of the State Employees Labor Relations Act, 3 V.S.A. §901, et seq. ("SELRA"), to double the size of a bargaining unit without giving involved employees an opportunity to vote on whether they wish to be represented by the Federation. Third, the Colleges contend that the CCV adjunct faculty do not share a community of interest with the adjunct faculty at the campus-based colleges. We note that we need not, and do not, address all these contentions by the Colleges in deciding whether to dismiss this unit clarification petition. We address only the second contention of the Colleges.

Board Member Catherine Frank has recused herself from this matter, and thus has not participated in the decision whether to dismiss this petition.

By filing a unit clarification petition, the Federation is requesting that we add the CCV adjunct faculty to the existing bargaining unit of eligible adjunct faculty at the four campus-based colleges of the Colleges system without a representation election. Under Section 14.1 of the Board Rules of Practice, a petition for clarification of an existing bargaining unit 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". The Federation does not allege that there has been a reorganization of the workforce warranting the petition.

Also, an accretion is not involved here. Accretion occurs when the work and interests of employees in newly established positions are aligned with those of employees in an existing

bargaining unit, and the new positions are added to that unit. Barre Town School Chapter, AFSCME Local 1369 and Barre Town School District, 13 VLRB 364, 368 (1990). Adjunct faculty positions at CCV cannot be considered newly established positions given that the retaining of adjunct faculty at CCV dates back prior to the original petition filed by the Federation in 1986 to represent adjunct faculty of the Colleges. See VFT, AFT AFL-CIO and Vermont State Colleges, 8 VLRB 6 (1985); VSCFF v. Vermont State Colleges, 10 VLRB 39 (1987).

The final appropriate category of unit clarification petitions is "where there is a dispute over the unit inclusion or exclusion of employee(s)". Typically, at issue in this category of cases is whether the job duties of a position have changed so that an employee previously included in a bargaining unit should be excluded as either a confidential or supervisory employee, or whether duties have changed so that an employee previously excluded from a bargaining unit as supervisory or confidential should be included in the unit because they no longer are confidential or supervisory employees. Village of Essex Junction and Local 1343, AFSCME, 12 VLRB 211 (1989). Orange Southwest Supervisory Union, et al and Orange Southwest Teachers' Association, 11 VLRB 285 (1988).

The Federation petition cannot be construed as falling within this typical line of cases. Instead, the Federation is seeking to add to an existing bargaining unit a large group of individuals whom the Federation had not previously sought to include in the unit. In Local 1343, AFSCME, Burlington Area Public Employees Union, 4 VLRB 391 (1981), the Board declined to

add a group of employees to an existing bargaining unit without allowing them the opportunity to decide in an election whether they wished to be represented by the union, where the group of employees had been excluded from the bargaining unit at the time the bargaining unit was formed. The Board concluded that the democratic rights of the employees to determine whether they wished to be represented by the union outweighed any negative effect of leaving them out of the unit. Id. at 398.

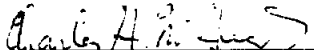
Here too we believe it is inappropriate to add a group of CCV adjunct faculty to the existing bargaining unit of adjunct faculty at the four-campus based colleges without allowing them the opportunity to decide in an election whether they wish to be represented by the Federation. A unit clarification petition is an inappropriate vehicle to at least double the size of the bargaining unit, which would be the result if we were to grant the Federation's petition. We cannot construe the provisions of SELRA and our Rules of Practice to allow such a large group of individuals to be represented by the Federation without allowing such individuals to vote on whether they wish to be represented by the Federation. The democratic rights of these individuals to determine whether they wish to be represented for collective bargaining purposes far outweigh any possible negative effects of leaving them out of the bargaining unit.

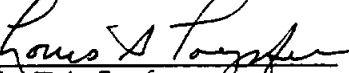
If the Federation seeks to represent CCV adjunct faculty, the Federation needs to obtain a sufficient showing of interest, and file a petition for election of collective bargaining representative. In closing, we stress that we are making no determination in this decision concerning the status of CCV faculty as independent contractors or employees.

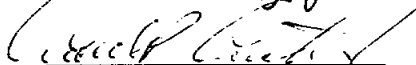
NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Unit Clarification Petition filed by the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO, is DISMISSED.

Dated this 24 day of May, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Carroll P. Comstock