

VERMONT LABOR RELATIONS BOARD

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|--------------------------|---|------------------|
| AGENCY OF TRANSPORTATION | ) |                  |
| DESIGNATION DISPUTE      | ) |                  |
| (RE: TRANSPORTATION      | ) | DOCKET NO. 93-19 |
| SENIOR PLANNER)          | ) |                  |

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 31, 1993, the Vermont State Employees' Association ("VSEA") filed a designation dispute concerning the Transportation Senior Planner in the State Agency of Transportation. VSEA contended that the designation of the position by the Commissioner of Personnel as "management" should be changed to "supervisory", resulting in the position being included in the Supervisory Bargaining Unit represented by VSEA.

A hearing was held before Board Members Charles McHugh, Chairman; Louis Toepfer, and Carroll Constock on January 27, 1994, in the Labor Relations Board hearing room in Montpelier. Assistant Attorney General Mary Lang represented the State. Jonathan Sokolow, VSEA Legal Counsel, represented VSEA. The parties filed briefs on February 17, 1994.

FINDINGS OF FACT

1. The State Agency of Transportation is made up of five divisions: Transportation Planning, Engineering, Transportation Construction and Maintenance, Motor Vehicles, and Administration (State's Exhibit 1, page 1).

2. The Agency of Transportation underwent a reorganization in November of 1991. One of the results of this reorganization was the creation of the Planning Division with expanded responsibilities, including the creation of a regional planning

program. Many of the changes in planning were in response to changes in federal transportation law.

3. The Planning Division is headed by a Director, Jeffrey Squires. Squires reports directly to Patrick Garahan, Secretary of the Agency of Transportation. The Planning Division has approximately 55 employees (State's Exhibit 1, page 2).

4. Seven employees of the Planning Division report directly to Squires. Two of these seven employees are designated managers: a civil engineer, Daniel Grahovac, who heads the Project Planning section; and the Senior Planner, Bruce Benner, who heads the System Planning section. The designation of the Senior Planner as a managerial employee is at issue in this case. The Senior Planner position was created as a result of the reorganization. The Senior Planner was designated as a managerial employee effective March 14, 1993. Two of the seven employees who report directly to Squires are designated as supervisors: the Administrative Assistant, Edward Chabot, who heads the Administrative Support section; and the Transportation Data and Mapping Engineer, David Scott, who heads the Transportation Data and Mapping section. Previously, the engineer who headed the Transportation Data and Mapping component was designated as a manager. However, at some point during 1993, David Scott moved from another position in the Agency into the Transportation Data and Mapping Engineer position, and was designated as a supervisory employee. The remaining three of the seven employees who report directly to Squires are designated as non-management: the Transportation Policy Analyst, Barry Driscoll; the Transportation Information Research Manager, James Mossman; and the

Transportation Planning Coordinator, Anthony Redington (State's Exhibit 1, pages 1-2; Grievant's Exhibit 1).

5. The Senior Planner supervises a total of seven employees, four Transportation Planning Coordinators and three employees in the Modal Planning Unit. The duties of the Senior Planner involve overseeing the development of the long-range transportation plan and representing the Agency in the work of the Chittenden County Metropolitan Planning Commission (State's Exhibit 1, page 2; State's Exhibit 4)..

6. Each of the four Transportation Planning Coordinators is assigned a geographic region of the state, and coordinates with local officials and regional planning commissions in carrying out overall planning initiatives. They are the Agency's liaisons with local and regional officials so that transportation problems and needs throughout the state can be identified and addressed (State's Exhibit 1, page 2; State's Exhibit 2).

7. The Senior Planner supervises the employees of the Modal Planning Unit in the development of the long-range transportation plan. The Modal Planning Unit consists of a Transportation Planning Supervisor and two planning technicians. The Unit coordinates a statewide long range plan for each of the transportation modes (i.e., highway, air, rail, public transit, pedestrian, bicycle), and identifies means for integrating the various transportation modes within the state and connecting with the major modes of transportation outside the state. This statewide, long-range plan is a requirement of new federal transportation law. The Modal Planning Unit also works on establishing priorities among the transportation needs which have

been identified through the Agency's planning initiatives for local and regional levels (State's Exhibits 2, 4).

8. The Senior Planner spends the majority of his time coordinating and supervising the work of the seven employees who work under him.

9. The Senior Planner recommends candidates for hiring in his section, and Director Squires makes the actual hiring decision. The Senior Planner conducts performance evaluations of employees in his section and has significant input into decisions whether to discipline employees in the section. There is no evidence indicating that these personnel administration responsibilities of the Senior Planner are substantially different from the employees in the Planning Division who are designated as supervisors.

10. Director Squires makes policy recommendations to Agency Secretary Garahan. Squires attempts to develop policy recommendations by consensus, and solicits input from the employees who report directly to him. The Senior Planner is a key person in the development of policy recommendations on planning initiatives, and works closely and regularly with Squires in this regard. If a consensus cannot be developed, then Director Squires' position prevails and that position is presented to Secretary Garahan.

11. The Planning Division as a whole has a budget, which is administered by Director Squires. Squires establishes the distribution of the budget to the various components of the Planning Division.

12. Grants are a major component of the Planning Division

budget. Grants are distributed through contracts to the twelve regional planning commissions in the state and to the Chittenden County Metropolitan Planning Organization. Approximately \$3 million in grants are distributed on an annual basis. The four Transportation Planning Coordinators are responsible for working directly with the regional planning commissions pursuant to work plans approved by the Senior Planner. The Senior Planner and the head of the modal unit, who is designated as a supervisor, work directly with the Chittenden Metropolitan Planning Organization. They both attend Chittenden Metropolitan Planning Organization meetings. Also, they work together in developing and drafting contracts for the distribution of grants to the various commissions. The contracts are drafted consistent with a budget set by Squires. The contracts consist of "boilerplate" provisions and details specific to the particular regional projects. Squires is familiar with the boilerplate provisions of the contracts and ensures that the contracts are consistent with the budget he has set. Squires does not review the details of each contract specific to the particular regional projects. After leaving the Planning Division, the contracts go through an elaborate review process within the Agency before they are actually executed.

13. The Civil Engineer who heads the Project Planning section of the Planning Division, and is designated as a manager, has 13 employees under him. The Transportation Data and Mapping Engineer who heads the Transportation Data and Mapping section, and is designated as a supervisor, has 22 employees under him. The Administrative Assistant who heads the Administrative Support section, and is designated as a supervisor, has 5 employees under him (State's Exhibit 1, page 2).

### OPINION

At issue is whether the Commissioner of Personnel appropriately designated the Senior Planner in the Planning Division of the Agency of Transportation as a managerial employee. The VSEA disputes the managerial designation, and contends that the Senior Planner should be designated as a supervisory employee.

The State Employees Labor Relations Act, 3 V.S.A. §901 et seq. ("SELRA"), provides that any disputes over the designation of positions shall be decided by the Board. 3 V.S.A. §906. Should the Board decide that the Senior Planner is a manager, the Senior Planner will be ineligible to be included in a bargaining unit represented by VSEA. 3 V.S.A. §902(5)(F), §907. Should the Board conclude that the Senior Planner is not a managerial employee, but is instead a supervisory employee, the Senior Planner will be included in the supervisory bargaining unit represented by VSEA. 3 V.S.A. §907.

§902(18) of SELRA defines "managerial employee" as follows:

an individual finally determined by the board as being in an exempt or classified position which requires him to function as an agency, department or institution head, a major program or division director, a major section chief or director of a district operation.

The State contends that the Senior Planner meets this definition as a "major section chief". VSEA contends that the Senior Planner is not a major section chief, and that the designation of the Senior Planner as a supervisory employee is the appropriate designation. §902(16) of SELRA defines "supervisory employee" as follows:

an individual finally determined by the board as having authority in the interest of the employer to hire,

transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

The supervisory authority defined in the statute is clearly encompassed in managerial responsibility as well. In re Personnel Designations, 139 Vt. 91, 94 (1980). The two descriptions are not mutually exclusive; it is simply that, in terms of responsibility, some supervisors justify managerial designations, and some do not justify such designations. Id. An employee's discretionary authority in the central areas of management of budget administration, personnel administration and policy matters will be examined to determine if that employee is a manager. Department of Public Safety Personnel Designation Disputes, 5 VLRB 141, 161 (1982).

Where an employer seeks to exclude an individual from a bargaining unit, as the State does here, a considerable amount of evidence must be advanced to warrant such exclusion. In re Local 1201, AFSCME v. Rutland Dept. of Public Works, 143 Vt. 512 (1983). VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB 6, 20-21 (1985). City of St. Albans and Local 1343, AFSCME, AFL-CIO, 7 VLRB 48, 58 (1984). We conclude that the State has not presented such evidence here.

The State has not demonstrated that the Senior Planner has sufficient discretionary authority in the areas of budget administration, personnel administration and policy matters to meet the statutory definition of a managerial employee. In policy

matters, the Senior Planner is a key person in developing policy recommendations on planning initiatives. However, the evidence before us does not indicate that he actually has much discretionary authority in this regard. Policy recommendations are developed by consensus in the Planning Division. If a consensus cannot be reached, then the position of the Planning Division Director prevails.

In the area of budget administration, the evidence before us also is insufficient for us to conclude that the Senior Planner has sufficient discretionary authority in administering a budget. The Planning Division Director establishes the distribution of the budget for the various components of the Division. The Department has presented little specific evidence on how the budget is actually administered in the System Planning section headed by the Senior Planner.

The specific evidence that we do have relates to the distribution of grants through contracts to the regional planning commissions in the state and to the Chittenden County Metropolitan Planning Organization. The Senior Planner has extensive involvement and oversight in developing contracts and approving regional plans. However, his discretionary authority in the amount of grants actually allocated is limited. The Planning Division Director ensures that all contracts drafted are within the budget he has set. Also, the contracts go through an elaborate review process within the Agency before they are actually executed. Moreover, the Senior Planner develops contracts in conjunction with another employee who is not a manager.



In the area of personnel administration, there is no evidence indicating that these responsibilities of the Senior Planner are substantially different from the employees in the Planning Division who are designated as supervisors. Further, his discretionary authority in budget administration and policy matters, when combined with his personnel administration responsibilities, is insufficient to warrant a managerial designation.

The State places much emphasis on the fact that there are three "major sections" within the Planning Division - Project Planning, System Planning, and Transportation Data and Mapping - and that the Senior Planner heads one of these sections. The State reasons that this translates into the Senior Planner being a major section chief within the statutory definition of a managerial employee contained in §902(18).

We disagree. A section of a division within a state agency does not become a "major section" within the meaning of §902(18) simply because the State labels it as a major section. The determination of what is a "major section" within the meaning of §902(18) is not so easily ascertained. In each case, the structure of the particular section, the responsibilities of the employees within it, and the relationship of the section and its employees to the larger department or agency structure must be closely examined to determine whether the employee heading the section is a managerial employee. We have done such an examination based on the evidence before us, and have concluded that the State has not presented sufficient evidence for us to

conclude that the Senior Planner meets the statutory definition.

Also, we note that the State's argument in this regard assumes that the employees heading the other two so-called "major sections" are managers. However, only one of the employees is so designated. The State claims that the designation of one of the employees, the Transportation Data and Mapping Engineer, as a supervisor rather than as a manager was a mistake. We cannot assume for purposes of reaching our decision that a mistake was made. We consider positions as they are designated. In any event, our ultimate decision that the Senior Planner is not a managerial employee would not differ even if the Transportation Data and Mapping Engineer was designated as a managerial employee.

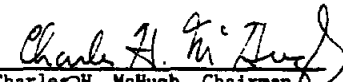
ORDER

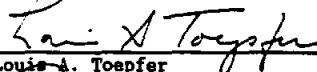
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

1. The designation by the Commissioner of Personnel of the Senior Planner in the Planning Division of the State Agency of Transportation as a managerial employee is REVERSED; and
2. The Senior Planner is a supervisory employee and shall be included in the supervisory bargaining unit represented by the Vermont State Employees' Association.

Dated this 23<sup>rd</sup> day of June, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman

  
Louis A. Toepfer

  
Carroll P. Comstock