

VERMONT LABOR RELATIONS BOARD

DEPARTMENT OF CORRECTIONS )	
DESIGNATION DISPUTE )	
(RE: CORRECTION INFORMATION )	DOCKET NO. 94-70
SYSTEMS CHIEF) )	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 14, 1994, R. Barre Davis filed a designation dispute concerning his position, Corrections Information Systems Chief. He contended that the designation of his position by the Commissioner of Personnel as "supervisory" should be changed to "management".

A hearing was held before Board Members Charles McHugh, Chairman; Leslie Seaver and Carroll Comstock on April 27, 1995, in the Labor Relations Board hearing room in Montpelier. Assistant Attorney General Michael Seibert represented the State. Mr. Davis represented himself. The State filed a brief on May 11, 1995. Mr. Davis filed no brief.

FINDINGS OF FACT

1. On or about April 21, 1994, the Department of Corrections submitted a request for classification action to the Department of Personnel to have the position of Probation and Parole Assistant Director, Pay Grade 25, reviewed. The position was designated as a managerial position. R. Barre Davis occupied the position at the time and had held the position since at least 1987.

2. The Probation and Parole Division had not existed for several years at the time the department made the request for a classification review, and the position

title of Probation and Parole Assistant Director did not accurately reflect the nature of Davis' duties. While occupying such position, Davis always functioned as the director of computer information systems.

3. Davis designs, develops and implements the automated computer information systems for the Department of Corrections. The Department's request for classification review sought a change in position title to Information Systems Director, and an upgrade to Pay Grade 26.

4. As a result of the request for review, the Department of Personnel changed Davis' position title to Corrections Information Systems Chief ("Information Chief") and changed the designation from managerial to supervisory. It retained the pay grade for the position at Pay Grade 25.

5. Davis reports to Richard Turner, Director of Correctional Services. Turner reports to the Commissioner of Corrections. Eight positions designated as managerial report directly to Turner; specifically the Director of Security, Director of Program Services, Chief of Clinical Services, Director of Work Programs, and four Area Managers. An Administrative Assistant also reports to Turner.

6. Davis is on the Commissioner's policy team. The team meets to discuss department policy and to assist the Commissioner in formulating department policy. For example, such meetings have been called to discuss the impact of pending legislation on the department. Davis' role on the team is not limited to his knowledge of computer information systems. He is expected to participate and provide input on all matters before the team. Other members on the team include positions designated as managerial, such as the Director of Security Operations, the

Director of Education and the Business Manager. The authority to set department policy resides with the Commissioner.

7. Davis supervises six employees in the computer information systems unit. Such employees include automated systems specialists and data clerks. None of these employees are supervisory.

8. Davis evaluates the employees in his unit. He has imposed lower levels of disciplinary action, such as written reprimands. He does not have the authority to impose higher levels of disciplinary action, such as suspensions or dismissals. Davis has the authority to conduct employment interviews and to hire employees for positions in his unit. There is no evidence indicating that these personnel administration responsibilities of the Information Chief are substantially different from employees in the department who are designated supervisors.

9. Davis formulates an annual budget proposal for the computer information systems unit and advocates such proposal to the Commissioner. The ultimate authority to allocate an operating budget for the unit, dependent on appropriated funding levels, lies with the Commissioner. Before the Commissioner allocates a final unit budget, Davis may have to make adjustments and reformulate his budget proposal.

10. After the Commissioner allocates a final unit operating budget, Davis has the authority to distribute the money within the unit. He has discretion to decide which computer programs and equipment to purchase and whether to hire consultants.

11. Davis' role in formulating an operating budget, presenting it for approval, and distributing the budget once it is approved, is similar to other positions in the department under Turner designated as managerial, such as Area Managers.

### OPINION

At issue is whether the Commissioner of Personnel appropriately designated the Corrections Information Systems Chief ("Information Chief") as a supervisory employee. The incumbent in the position, E. Barre Davis, disputes the supervisory designation and contends that the Information Chief should be designated as a managerial employee.

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

Section 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.

Davis contends that the Information Chief meets this definition of a managerial employee. Although Davis does not specify in which category the Chief functions to meet the statutory definition, the position must be analyzed as whether it should be included in the category of a major section chief. The position clearly does not fit within any of the other categories of the statutory definition. The State contends that the Information Chief is not a major section chief and that the designation of Information Chief as a supervisory employee is the appropriate designation. Section 902(16) of SELRA defines “supervisory employee” as follows:

an individual finally determined by the board as having the 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).

We conclude that Davis has not demonstrated that he 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 the area of policy matters, the Information Chief is one of several key employees on a team which meets to discuss department policy and to assist the Commissioner in setting policy. Other members on the team are designated as managerial employees. The evidence before us, however, does not indicate that the Information Chief actually has much discretionary authority in this regard. He is only one member of a group which is limited to providing input to the Commissioner, and the policy is actually set by the Commissioner. Such input is insufficient to confer managerial status on the Information Chief. Vermont Federation of Teachers, AFT, AFL-CIO, 8 VLRB 6, 19 (1985). The fact other members of the team are managers is of limited relevance, but not sufficient to confer managerial status.

In the area of personnel administration, the Information Chief has the authority to evaluate employees, impose lower forms of discipline and to hire. The Information Chief has no authority to suspend or to dismiss employees. The Information Chief's authority in matters of personnel administration is clearly a supervisory responsibility under Section 902(16), and there is no evidence that the Information Chief's responsibility in this area is substantially different from other employees in the department who are designated as supervisory.

In the area of budget administration, the Information Chief has the significant responsibility of distributing the annual budget within the computer information systems unit after the Commissioner has allocated the operating budget to the unit

dependent on appropriated funding levels. We recognize that this requires the Information Chief to make significant decisions, such as what computers and equipment to purchase and whether to hire consultants. All of these responsibilities are consistent with those performed by supervisors.

We are not persuaded, however, that the Information Chief's authority in budget administration, when combined with his policy and personnel administration responsibilities, is sufficient to warrant removing his position from the supervisory bargaining unit. This is because we do not believe that the Information Chief is the chief of a "major section", as required by statute to make the Information Chief a managerial employee. The determination of what is a "major section" within the meaning of Section 902(18) is not 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. Agency of Transportation Designation Dispute (Re: Transportation Senior Planner), 17 VLRB 135, 143 (1994). The computer information systems unit consists of the Information Chief and six nonsupervisory employees who are responsible for the technical operation of Department of Corrections computer information systems. We do not diminish the importance of the unit to the work of the Department, but the evidence is insufficient for us to conclude that the size and scope of the information systems unit rises to the level of a major section within the meaning of Section 902(18).

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 Corrections Information Systems Chief of the Department of Corrections as a supervisory employee is AFFIRMED; and
2. The Corrections Information Systems Chief shall be included in the supervisory bargaining unit represented by the Vermont State Employees' Association.

Dated this 29th day of June, 1995, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Charles H. McHugh  
Charles H. McHugh, Chairman

/s/ Leslie G. Seaver  
Leslie G. Seaver

/s/ Carroll P. Comstock  
Carroll P. Comstock