

VERMONT FEDERATION OF)	
TEACHERS, AFT, AFL-CIO,)	VERMONT LABOR RELATIONS BOARD
VERMONT STATE COLLEGES)	
STAFF FEDERATION)	Docket No. 78-83S
)	
- and -)	
)	
VERMONT STATE COLLEGES)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

The Vermont State Colleges Staff Federation, Vermont Federation of Teachers, AFT, AFL-CIO, hereinafter the "Federation," filed a petition requesting that the Board hold a hearing to determine whether a question of unit representation exists and, if so, to conduct an election by secret ballot and certify the result. The petition requested that a bargaining unit comprised of "all non-faculty employees--excluding supervisors and confidential employees--of the Vermont State Colleges employed at Lyndon State College, Johnson State College, Vermont Technical College and Castleson State College." The matter was set for hearing on October 5, 1978, at which time the Vermont State Colleges was represented by Arthur P. Menard, Esq. and Nicholas DiGiovanni, Jr., Esq., and the Federation was represented by Ms. Beverly A. Ryan and Ms. Carla Thomas. Prior to hearing, the parties had agreed upon the inclusion or exclusion of a number of positions from the proposed

bargaining unit. The parties disagreed as to whether security personnel and counsellors should be included in the proposed bargaining unit. Evidence was presented in this regard.

Findings of Fact.

1. The residence counsellor--PROVE, counsellor, co-ordinator of college and alumni relations; field co-ordinator--Upward Bound; field co-ordinator--Out Reach; and administrative assistant--developmental skills (hereinafter referred to collectively as "professional employees") all perform tasks of an intellectual nature.

2. The "professional employees" have contact with other professionals.

3. The work of the "professional employees" is not standardized. The "professional employees" generally work on an independent basis and advanced training or a college degree is required.

4. The "professional employees" exercise discretion and judgment in working in close cooperation with other professionals.

5. The duties and responsibilities of security officers are to patrol the campus at night to check building security; to supervise student security officers; to report broken fixtures or defects in any building; to report hazardous conditions on campus; to protect college property and personnel; to lend assistance in cases of accident and fire;

to report damage done to property belonging to the college or individual students or when bodily injury has been done; to work with the students in order to instill in them respect for law and authority; to direct traffic on campus and assist in parking for special functions, such as homecoming, basketball games, etc.

6. At Johnson State College, the Director of Safety and Security reports to the Chairperson of Learning Support Services, who reports to the President.

7. The Director of Security at Johnson State College is permitted to carry firearms.

8. The security officers share a community of interest with other employees in the proposed bargaining unit.

9. A separate unit consisting of security officers of each of the Vermont State Colleges would result in over-fragmentation of units and likely produce an adverse effect on effective representation of Vermont State Colleges employees.

10. The authority of governmental officials at the unit level to take positive action on matters subject to negotiation is similar for security officers and other persons in the proposed bargaining unit.

11. Custodial employees have a community of interest with other nonfaculty employees.

12. The exhibits and the transcript are made a part of these findings for purposes of review by the Supreme Court.

Conclusions of Law and Opinion.

By order dated August 23, 1974, the Vermont State Employees Labor Relations Board determined that a collective bargaining unit consisting of "all nonfaculty employees, excluding the Chancellor, the college Presidents, Dean, Business Managers, all management, supervisory, and confidential employees set forth in Schedule A" would be appropriate and further that a secret ballot election be conducted. The Board further ordered that "the positions set forth in Schedule B shall be included in the present collective bargaining unit for faculty at the Vermont State Colleges provided that a majority of the employees in the positions listed in Schedule B vote in favor of joining the bargaining unit."

This Board recognizes that the determination of the composition of a collective bargaining unit is extremely important in establishing the framework for successful collective bargaining between the employer and its employees. This Board has previously recognized that unit determinations may very well have the greatest impact of all decisions this Board makes. The State Employees Labor Relations Board, which is the predecessor to this Board, recognized the diverse interests of the various employees and the importance of determining the collective bargaining unit in Docket Nos. 74-3, 74-9, 73-6 and 72-9.

This Board will continue to follow the precedent established in Docket Nos. 74-3 and 74-9 with regard to the "professional employees." The interests of the so-called "professional employees" seem to be more closely aligned with the faculty than with the clerical and maintenance personnel. The precedent established by the State Employees Labor Relations Board, which followed the tests supplied by the National Labor Relations Board in determining whether positions should be placed in a faculty group or a non-faculty group should be continued. The tests are as follows:

(1) Does the employee perform various tasks with an intellectual character? (2) Does the employee have contact with other professionals? (3) Is the work nonstandardized? (4) Does the employee work on an independent basis? (5) Is advanced training or a degree required? (6) Does the employee exercise discretion or judgment? (7) Is there interchange and close cooperation with other professionals? In this case the answers to the foregoing questions are in the affirmative. The evidence before this Board is that the persons are independent, work closely with students, perform various intellectual tasks, exercise discretion and judgment, have close relationships with the faculty and are required to have a degree.

These persons should have the option of joining the faculty bargaining unit if they so desire and to that end,

upon the filing of a petition an election should be conducted to determine whether they desire to be included in the present collective bargaining unit for the faculty at the Vermont State Colleges or in some other bargaining unit.

Under the National Labor Relations Act, plant guards are prohibited from being members of a collective bargaining unit with other employees at a plant. The rationale for the law is that the plant guards are responsible for the security of the institution and would be placed in a difficult position in the event of a strike by members of the same bargaining unit. The State Employees Labor Relations Board excluded security guards from the proposed unit in the 1974 order. This Board has reviewed the evidence submitted by affidavit on behalf of the employer and found that the security officers have a substantial community of interest with the other employees in the proposed bargaining unit. The rationale for excluding them would be the security of the premises in the event of a strike. The security officers might more readily be classified as watchmen rather than guards. The Board recognizes that the security officers might play a role in the event of strike at any of the College campuses but believes that the State Police would probably be called upon to prevent damage to College property. The security officers are more concerned with keeping an eye on things, working with students and directing traffic at special events.

The State Employees Labor Relations Act does not provide that plant guards or security persons shall be excluded from another unit. The State Employees Labor Relations Act makes a special provision for the State Police. 3 V.S.A. §1004. The State Labor Relations Act provides "no labor organization may be certified as the representative of employees in a bargaining unit of guards if it admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." 21 V.S.A. §1543. The Legislature could amend the State Employees Labor Relations Act to provide specifically that guards will be excluded from a bargaining unit. In this case the balancing of the interests of the security officers in being members of a larger unit with those of the employer in placing them in a separate unit must be determined in favor of the employees.

Order.

NOW, THEREFORE, it is ordered pursuant to 3 V.S.A. §941 that a collective bargaining unit for the nonfaculty employees of the Vermont State Colleges is appropriate; that the appropriate bargaining unit comprises "all nonfaculty employees, excluding the Chancellor, the college Presidents, Deans, Business Managers, all management, supervisory, confidential, and professional employees set forth in Schedule A"; that a secret ballot election shall be conducted by this Board on or about March 15 as this Board may determine by

its further order; and that upon petition to this Board and following an election the positions set forth in Schedule B (attached hereto) shall be included in the present collective bargaining unit for faculty at the Vermont State Colleges or some other bargaining unit as determined by majority vote of the employees in the positions listed in Schedule B.

Dated this 1st day of February, 1979.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney

William G. Kemsley, Sr.
William G. Kemsley, Sr.

Robert H. Brown
Robert H. Brown

VERMONT LABOR RELATIONS BOARD

Schedule A

Vermont State Colleges Nonfaculty Bargaining Unit

NONFACULTY POSITIONS EXCLUDED FROM
BARGAINING UNIT

<u>POSITION</u>	<u>INCUMBENT</u>
<u>Johnson State College</u>	
President	Edward Elmendorf
Executive Secretary	Gladys Cubit
Executive Secretary	Audrey Miller
Vice President for Academic Affairs	(Vacant)
Executive Assistant to the President	Gus Root
Division Director Budget and Fiscal Operations	George Brisson
Assistant Business Manager	
Manager Physical Plant	Leo Audy
* Foreman Physical Operations	Lyle Miller
* Foreman Technical Operations	Austin Richards
Administrative Assistant Business Office	Patricia Tuttle
Supervisor Bookstore	Michael Pare
Accountant	Gloria Green
Division Director Learning Support Services	Sally Candon
Manager Placement	Wayne Blann
Manager Registration	William Eick
Manager Safety & Security	Edgar Hooke
Manager Financial Aid	Randolph Nichols
Manager Admissions	Lynne O'Brien
Manager Housing	Emma Thompson
Coordinator, PROVE/ACCESS Program	Peter Eddy
Coordinator Development Skills	Anne Herrington
Division Director Humanities	(on leave)
Division Director Continuing Studies	Ken Hood
Coordinator, Continuing Education	Robert Sheridan
Coordinator, Conference Center	James Dawson
Division Secretary	JoAnn Lamore
Division Secretary	Helen Minaert
Division Director Environmental and Scientific Studies	Jerome Knapczyk
Director Graduate Studies	Gary Confessore

Administrative Assistant to	
Division Director	Susan Mann
Coordinator, Upward Bound	John Anderson
Specialist Computer Operations	Frederic Miller
Assistant Manager Admissions	Mabel Houghton
Resident Counselor PROVE	Kathleen Schafer
Coordinator Counseling Services	Paul Harris
Counsellor	Carolyn Forsyth
Administrative Assistant Dev. Skills	Barbara Nichols
Specialist, Dev. Skills	Maurice Mahoney
Coordinator External Degree Program	Adele Clewley
Coordinator College & Alumni	
Relations	Marilyn Knapp
Field Coordinator, Upward Bound	Leslie Ryan
Field Coordinator, Outreach Serv.	Melvin Pritchett
Co-Director Child Dev. Center	Patricia Chamberlain
Co-Director Child Dev. Center	Pamela Clineff
Advisor Child Dev. Center	Mary Cromack
Counsellor-Living Learning Center	Susan Wick
Specialist, Learning Support	Andrea Johnson
Specialist, Learning Support	Leslie Becker
Specialist, Learning Support	Carol Singleton

Vermont Technical College

President	Ned Herrin
Secretary to President	Muriel Vande Griek
Business Manager	Miles Prentice
Administrative Assistant	
Business	Miriam Anderson
Account Clerk	Alberta Wood
Plant Superintendent	Robert Wilcox
Maintenance Foreman	James Patneaude
Ground Foreman	Willard Child
Custodial Foreman	C.J. Roppe
Security Foreman	Stanley Clogston
Director Education Services/	
Registrar	Albert Roberge
Admissions and Financial Aid	
Director	Arthur Napier
Placement Director	W. Newton Ryerson
Director Student Services Div.	Richard Dalton
Administrative Secretary	Joann Moffatt
Assistant for Residential Life	Paul Boisse
Farm Manager	George Wellman
Bookstore Manager	Harriet Fellman
Dorm Director/Counsellor	L. Leach
College Nurse	D. Michaud
Placement Director	N. Ryerson

Cassleton State College

President	Donald Wilson
Executive Secretary	Alice Wood
Assistant to the President	Holman Jordan
Academic Dean	William Feaster
Secretary to Academic Dean	Karen Craig
Associate Academic Dean and Registrar	James Gilbert
Assistant Academic Dean	Bruce Chaloux
Director of Continuing Education and Graduate Studies	Walter Reuling
Director of Admissions	Kevin Coveney
Director of Development	Frank Wall
Director of Alumni (Member of Presidential Adv. Council)	- William Abrahamovich
Secretary to Director of Development (works for Pres., Dean)	Kathleen Torretta
Business Manager	Robert Bruce
Assistant Business Manager	Martha Alexander
Director Physical Plant	Stanley Reed
Bookstore Manager	John Schwaner
* Custodial Supervisor	John Pelletier
Account Clerk	Cathy Freye
Dean Student Affairs	Richard Hammond
Director Financial Aid	Kenneth Moulton
Director of Security	Richard Schmidt
Associate Director of Admissions	Joan Phalen
Assistant Director, Continuing Education	Jack Jones
Assistant Registrar	Elinor Bosworth
Nurse	Pauline Young
Director, Student Activities	Jeff Davis

Lyndon State College

President	Janet Murphy
Secretary to President	Janet Charron
Dean of Administration	James McCarthy
Assistant to the President	Perry Viles
Director of Physical Plant	(Vacant)
Maintenance Superintendent	Francis H. Carpenter
* Foreman of Custodians	William C. Thompson
* Maintenance Engineer	A. Dana Cutter
Comptroller	Richard Boera
Chief Accountant	Nancy Moore
Director of Purchasing and Staff Services	Robert B. Michaud
Bookstore Manager	Arline Hamel
Academic Dean	Ronald Addison

Faculty Secretary	Anne Allen
Secretary to Academic Dean	Kathleen Cahill
Registrar	(Vacant)
Administrative Assistant Computer Operations	Richard Lee
Dean of Admissions	Richard Wagner
Assistant Dean of Admissions/ Director of Financial Aid	Russell S. Powden
Dean of Students	Robert Laramee
Assistant to Dean of Students	David I. Kanell
Counselor	Sherri Fitch
Admissions Counselor	(Vacant)
Placement and Career Counselor	Nancy Rankin
Physician Assistant	Rebecca Singer
Administrative Assistant to Director of Cooperative Education	Patricia Hails

* Upon motion of either party, the Board will take further evidence as to whether these positions should be included or excluded.

Schedule B

NONFACULTY PROFESSIONAL POSITIONS

The following is a list of professional positions at the Vermont State Colleges which are excluded from the nonfaculty bargaining unit but which may be eligible for inclusion in the present collective bargaining unit for faculty or some other bargaining unit. This list is for illustrative purposes only and should not be construed as representing a definitive list of all eligible professional positions. Some of the positions which appear on this list may not be eligible for inclusion in a bargaining unit because they are confidential, managerial or supervisory. There may also be other professional positions which have not been listed which would be eligible.

<u>POSITION</u>	<u>INCUMBENT</u>
<u>Johnson State College</u>	
Supervisor Bookstore	Michael Pare
Accountant	Gloria Green
Division Director Learning	
Support Services	Sally Candon
Manager Placement	Wayne Blann
Manager Registration	William Eick
Manager Safety & Security	Edgar Hooke
Manager Financial Aid	Randolph Nichols
Manager Admissions	Lynne O'Brien
Manager Housing	Emma Thompson
Coordinator, PROVE/ACCESS	
Program	Peter Eddy
Coordinator Development Skills	Anne Herrington
Coordinator, Continuing Education	Robert Sheridan
Coordinator, Conference Center	James Dawson
Coordinator, Upward Bound	John Anderson
Specialist Computer Operations	Frederic Miller
Assistant Manager Admissions	Mabel Houghton
Resident Counselor - PROVE	Kathleen Shafer
Coordinator Counseling Services	Paul Harris
Counselor	Carolyn Forsyth
Administrative Assistant Dev. Skills	Barbara Nichols
Specialist, Dev. Skills	Maurice Mahoney
Coordinator External Degree Program	Adele Clewley
Coordinator College & Alumni	
Relations	Marilyn Knapp
Field Coordinator, Upward Bound	Leslie Ryan
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Advisor Child Dev. Center	Mary Cromack
Counselor-Living Learning Center	Susan Wick
Specialist, Learning Support	Andrea Johnson
Specialist, Learning Support	Leslie Becker
Specialist, Learning Support	Carol Singleton

Vermont Technical College

Administrative Assistant,
Business
Account Clerk
Director Education Services/
Registrar
Admissions and Financial Aid
Director
Placement Director
Director Student Services Div.
Assistant for Residential Life
Farm Manager
Bookstore Manager
Dorm Director/Counselor
College Nurse
Placement Director

Miriam Anderson
Alberta Wood

Albert Roberge

Arthur Napier
W. Newton Ryerson
Richard Dalton
Paul Boisse
George Wellman
Harriet Fellman
L. Leach
D. Michaud
N. Ryerson

Castleton State College

Associate Academic Dean and
Registrar
Assistant Academic Dean
Director of Admissions
Assistant Business Manager
Bookstore Manager
Director Financial Aid
Associate Director of Admissions
Assistant Director, Continuing
Education
Assistant Registrar
Nurse
Director, Student Activities

James Gilbert
Bruce Chaloux
Kevin Coveney
Martha Alexander
John Schwaner
Kenneth Moulton
Joan Phalen

Jack Jones
Elinor Bosworth
Pauline Young
Jeff Davis

Lyndon State College

Chief Accountant
Director of Purchasing & Staff
Services
Bookstore Manager
Registrar
Administrative Assistant Computer
Operations
Assistant Dean of Admissions/
Director of Financial Aid
Assistant to Dean of Students
Counselor
Admissions Counselor
Placement and Career Counselor
Physician Assistant
Administrative Assistant to Director
of Cooperative Education

Nancy Moore
Robert B. Michaud
Arline Hamel
(Vacant)
Richard Lee
Russell S. Powden
David I. Kanell
Sherri Fitch
(Vacant)
Nancy Rankin
Rebecca Singer
Patricia Hails