

VERMONT LABOR RELATIONS BOARD

UNITED ELECTRICAL, RADIO	)	
AND MACHINE WORKERS	)	
OF AMERICA LOCAL 267	)	
	)	DOCKET NO. 01-40
and	)	
	)	
UNIVERSITY OF VERMONT	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 27, 2001, the United Electrical, Radio and Machine Workers of America Local 267 ("Union") filed a unit clarification petition seeking to add the Technical Studio Supervisor in the Art Department, Building Automation Engineer, and Research Field Technicians in the College of Agriculture and Life Sciences to the bargaining unit of University of Vermont service and maintenance employees represented by the Union. The University of Vermont ("Employer") filed a response in opposition to the petition.

A hearing was held before Labor Relations Board Members Richard Park, Acting Chairperson; Carroll Comstock and John Zampieri on September 13, 2001. Union Field Organizer Heather Riemer represented the Union. Attorney Joseph McConnell represented the Employer. The Union and the Employer filed post-hearing briefs on October 5 and 8, 2001, respectively.

FINDINGS OF FACT

1. On December 29, 1997, following a unit determination decision by the Labor Relations Board and an election, the Labor Relations Board certified the Union as the exclusive bargaining representative of all full-time and regular part-time nonexempt service and maintenance employees of the Employer who make up Job Groups 350, 510,

520, 610 and 630 and the Parking Operations Coordinator in Job Group 620 (20 VLRB 219, Board Docket No. 97-23).

### **Technical Studio Supervisor**

2. One of the positions included in the bargaining unit certified by the Board was Shop Technician in the Art Department of the School of Arts and Sciences, a pay grade 10 position held by Paul Decausemacker. The Shop Technician position was the only position in the School of Arts and Sciences included in the bargaining unit. In 1998, Decausemacker approached Kerry Castano, Assistant to the Dean of Arts and Sciences, about reviewing his position because he believed it was similar to two positions in the Theatre Department of the School of Arts and Sciences which were excluded from the service and maintenance employees bargaining unit. After review of Decausemacker's position, the Employer reclassified his position as Technical Studio Supervisor, the same as the two positions in the Theatre Department. Following this review, the Employer also changed the status of the position from nonexempt to exempt under Fair Labor Standards Act criteria (Employer Exhibit 1, Union Exhibit 4).

3. Decausemacker acts as a consultant for student art projects. He assists students in problem-solving and implementation of their designs for art projects. He provides instruction on construction technique and the safe use of equipment. He spends a majority of his time working with students in the lab studio, and also works with faculty.

4. When Decausemacker's position was changed from Shop Technician to Technical Studio Supervisor, his job duties did not change, and his pay grade remained the same. He continued to have the same supervisor, the Chair of the Art Department.

The job group of his position was changed from Job Group 510 – Sr. Campus Facilities Support – to Job Group 250 – Professionals-NonFaculty-Provosts (Employer Exhibit 1; Union Exhibits 3, 4).

5. The minimum qualifications for the Shop Technician are “Associate’s Degree in Industrial Arts or related field and two to three years related experience required or an equivalent combination of education and experience from which comparable knowledge and abilities can be acquired”. The minimum qualifications for the Technical Studio Supervisor are “Bachelor’s Degree in related field required, or an equivalent combination of education and experience from which comparable knowledge and abilities can be acquired” (Employer Exhibit 1; Union Exhibits 3, 4).

### **Research Field Technicians**

6. The Miller Research Center and Horticultural Research Center are agricultural facilities operated by the College of Agriculture and Life Sciences at the University. There are 200-250 cows at the farm and 24 horses in the equine facility. The Miller Center is both a working farm and a scientific research facility. Due to the nature of a farm, there are occasions when general farm duties must be done by all employees, including faculty.

7. There are three employees at the agricultural facilities in the service and maintenance employees bargaining unit: Mark Young, Farm Maintenance/Facilities Specialist, pay grade 9; Andy Bessette, Crop and Machine Specialist, pay grade 11; and John Messier, Farm Maintenance Specialist, pay grade 8. Greg Eurich, the Farm Manager, supervises the employees. At the time the Union was certified as bargaining representative, there also were two Farm Assistants in the bargaining unit. The Farm

Assistants were involved in milking cows, feeding animals and taking care of crops. The Farm Assistants left employment in 1999, and Farm Assistants were not hired to replace them (Union Exhibits 6 – 9, 12).

8. Young works at the Miller Center. His primary duties are landscaping, supervising students and coordinating tours. Bessette is the chief mechanic for farm equipment and heavy equipment operator. He has primary responsibility for the crops, and also has been involved in feeding animals. Messier's primary responsibility is farm maintenance, and he also has been involved in feeding cows. The minimum qualification for the positions held by Young, Bessette and Messier is a high school diploma (Union Exhibits 7 – 9).

9. There currently are three Research Field Technician I's who work at the agricultural facilities: Mark Biercevicz, Scott Shumway and Bryan Chicoine. Eurich supervises the Research Field Technicians. The Research Field Technician I positions were created and filled by the spring of 1997. The positions were created to properly conduct the protocols for research that takes place at the agricultural facilities with respect to methods, timing and quantities of feeding. The Employer concluded that the Farm Assistants did not adequately carry out the protocols, and that higher-level positions requiring understanding of research protocols were needed. The Employer also concluded that the higher-level Research Field Technicians would be better able to communicate with the researchers than the Farm Assistants. The Research Field Technician I position is a Pay Grade 9 position requiring a Bachelor's Degree in a related science or an equivalent combination of education and experience from which comparable knowledge and abilities can be acquired. The Farm Assistant position is a Pay Grade 7 position

requiring a high school diploma and two years farm experience, or an equivalent combination of education and experience from which comparable knowledge and abilities can be acquired (Union Exhibits 5, 6 and 12; Employer Exhibit 2).

10. Chicoine has been in the position since approximately 1996. Biercevicz and Shumway were hired approximately in the Spring of 1997. Chicoine is the assistant herdsman. He is primarily responsible for animal health and milking. He interacts with faculty doing research. Shumway is the lead person on the 2 a.m. shift, and performs milking and feeding responsibilities. If a research project is being conducted, Shumway ensures that procedures in the research protocol are carried out. Biercevicz primarily works in the Horticultural Research Center. He is responsible for carrying out agricultural research protocols and is a contact person interacting with researchers.

11. It is anticipated that there will be an increasing number of research trials in the next few years at the agricultural facilities given increasing interest by students in Animal Sciences and an increasing number of faculty in the College of Agriculture and Life Sciences. This will increase the need to rely on the Research Field Technicians.

### **Building Automation Engineer**

12. The Building Automation Engineer position was created at the University to perform programming and associated mechanical repairs and maintenance for building automation systems on campus such as heating, cooling, refrigeration, and fire alarm. The Employer was increasingly using outside contractors – specifically Honeywell and Johnson Controls – to perform maintenance, repair and design work for building automation systems. The outside contractors reduced the number of service employees and responsiveness declined. The Employer sought to hire a person with building

automation knowledge and experience, and computer programming capabilities, rather than relying heavily on the outside contractors to perform this work. The minimum qualifications for the position are an associate's degree in electronic or mechanical engineering with five to seven years experience with automation system programming and operation required, or an equivalent combination of education and experience. It is a Pay Grade 13 position (University Exhibit 3, Union Exhibit 1).

13. The Employer had difficulty recruiting candidates for the Building Automation Engineer position and had to readvertise the position. Chuck Norton ultimately was hired in March 2000 to fill the position. He was paid more than the maximum hiring salary for Pay Grade 13 positions under the collective bargaining agreement between the Union and the Employer.

14. Norton is supervised by Utilities Superintendent Robert Howard. Howard also directly supervises the Electronic Control Systems Specialist Carmyn Stanko and Operator Jim Shumway. Stanko and Shumway are in the service and maintenance employees bargaining unit represented by the Union. The minimum qualifications for the Electronic Control Systems Specialist position are "high school diploma and five years formal apprenticeship training plus four to five years related experience and State of Vermont electrician's journeyman license required, or an equivalent combination of education and experience from which comparable knowledge and abilities can be acquired." It is a Pay Grade 12 position. Stanko also is responsible for installation, repair and maintenance of building automation systems at the University (Union Exhibit 2).

15. Norton and Stanko's offices are adjacent, and they discuss work at least once a day. They corroborate on some work. They also share information on various

building projects and on work they are doing. Johnson Control and Honeywell are the two main automation systems on campus. When Norton was hired, he had experience working with Johnson Control systems, but not with Honeywell systems. Stanko spent considerable time assisting Norton on Johnson Control systems (Union Exhibit 2).

16. Norton has performed some of the same type of pneumatics work on HVAC controls previously done by Ben Linden, who occupied a position in the bargaining unit before leaving employment with the University. Since Linden has left employment, Norton has spent a substantial amount of time assisting the person who replaced Linden. Norton also has spent a significant amount of time assisting people who Linden used to assist.

17. The Building Automation Engineer is responsible for more computer programming, and more work in implementing and revising entire building systems, than is the Electronic Control Systems Specialist. Norton has been actively involved in consulting on the design and setup of building automation systems in new and renovated campus facilities, including meeting with architects and engineers. Norton has greater programming knowledge than Stanko, particularly with respect to programming software. Norton spends approximately 20 percent of his time on logics programming work.

#### MAJORITY OPINION

By filing a unit clarification petition, the Union is requesting that the Board add the Technical Studio Supervisor in the Art Department, Building Automation Engineer, and Research Field Technicians in the College of Agriculture and Life Sciences to the existing bargaining unit of University of Vermont service and maintenance employees

represented by the Union 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 employees, or where there has been an accretion to or reorganization of the workforce.” The Employer opposes the addition of the positions to the bargaining unit through a unit clarification petition.

We first discuss the Technical Supervisor in the Art Department. The Union contends that this position should be included in the bargaining unit because what is involved here is simply a reclassification of a position previously included in the bargaining unit with no change in job duties, supervision, worksite, pay grade and salary. The Employer contends that this is a technical position that does not share a community of interests with service and maintenance employees in the existing bargaining unit.

We agree with the Union that the Technical Supervisor in the Art Department should be included in the existing service and maintenance employees bargaining unit. One of the positions included in the bargaining unit when the Labor Relations Board certified the Union as the representative of service and maintenance employees at the University of Vermont in 1997 was Shop Technician in the Art Department. In 1998, the Employer reclassified the position as Technical Studio Supervisor, and placed the position in a job group that was not included in the bargaining unit. When the position was reclassified from Shop Technician to Technical Studio Supervisor, there was no change in job duties, supervision, worksite, pay grade and salary.

Under these circumstances, it would be inappropriate to approve the exclusion of the position from the bargaining unit. The fundamental nature of the position has not

changed since the position was included in the bargaining unit. There has been no change of significance that warrants a conclusion that a position included in a bargaining unit as appropriate in 1997 no longer is appropriate for inclusion in the unit. If we were to allow this position to be excluded from the unit, the Employer in essence would be able to remove positions from the bargaining unit, even though there have been no changes in the fundamental nature of the position, simply by reclassifying them to job groups not included in the bargaining unit.

We next discuss the Research Field Technicians in the College of Agriculture and Life Sciences. The Union contends that the Research Field Technicians should be included in the service and maintenance employees bargaining unit because they share a community of interests with employees in the unit and to exclude them would result in an erosion of the bargaining unit. The Employer contends that the Research Field Technicians perform significant scientific support activities that indicate that their positions are technical in nature and not appropriate for inclusion in the service and maintenance bargaining unit.

In deciding this question, it is significant that the Research Field Technician positions existed in 1997 when the bargaining unit of service and maintenance employees was established, yet the Union did not attempt to include them in the bargaining unit. In Local 1343, AFSCME, Burlington Area Public Employees Union, 4 VLRB 391 (1981), the Board declined to add employees to an existing bargaining unit through a unit clarification petition, where the 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 the Research Field Technicians to the existing service and maintenance employees bargaining unit through a unit clarification petition. The Union has not made a showing of significantly changed circumstances since the employees were excluded from the bargaining unit in 1997, or labor relations difficulties, warranting adding the employees to the bargaining unit through a unit clarification petition. Id. at 396-99.

We recognize that the Research Field Technicians, like the Farm Assistants and other employees included in the bargaining unit, are involved in the milking and feeding of animals. Nonetheless, the evidence does not indicate there has been a significant change in the nature of their duties in this regard since they were excluded from the bargaining unit in 1997. The Research Field Technician positions were created and filled by the spring of 1997 to properly conduct the protocols for research that take place at the agricultural facilities with respect to methods, timing and quantities of feeding. The Employer concluded that the Farm Assistants did not adequately carry out the protocols, and that higher-level positions requiring understanding of research protocols were needed. The Employer also concluded that the higher-level Research Field Technicians would be better able to communicate with the researchers than would the Farm Assistants. The evidence indicates that the current Research Field Technicians have performed duties consistent with these purposes underlying the creation of their positions, and the Union has not demonstrated that their exclusion from the unit has resulted in significant labor relations difficulties. The work of Research Field Technicians remains

sufficiently distinct from bargaining unit employees so that it would be inappropriate to add them to the existing bargaining unit through a unit clarification petition.

Finally, we address the Building Automation Engineer. The union is seeking to add this position to the bargaining unit by the method of accretion rather than by election. Accretion is the process whereby new employees, whose work and interests are aligned with those of employees in an existing bargaining unit, are added to that unit. If the duties of the new employees are identical or substantially similar to those of employees in an existing bargaining unit, it is appropriate to find an accretion. Barre Town School Chapter, AFSCME Local 1369 and Barre Town School District, 13 VLRB 364, 368 (1990). Woodstock Union High School Teachers Organization, Educational Support Personnel Unit and Woodstock Union High School District, 22 VLRB 186, 196 (1999). A determination shall be made whether new employees share a community of interests with employees in the existing unit. Barre Town, 13 VLRB at 369. Woodstock, 22 VLRB at 196. In accretion cases, the Board must consider the facts in light of conflicting policies of maintaining stability in bargaining relations and assuring that employees have the right to choose their own bargaining representative. Id.

It is a difficult question whether the Building Automation Engineer should be added to the existing bargaining unit through a unit clarification petition. On the one hand, much of the work performed by the Business Automation Engineer is similar to work performed by employees in the bargaining unit. The Building Automation Engineer is responsible for the installation, repair and maintenance of building automation systems at the University. The Electronic Control Systems Specialist, an employee in the bargaining unit, also is responsible for the installation, repair and maintenance of building

automation systems. The Building Automation Engineer further has performed some of the same type of pneumatics work previously done by a bargaining unit employee who has left employment with the University and, since that person has left employment, has spent a substantial amount of time assisting his replacement.

Also, the Building Automation Engineer has some shared interests with bargaining unit employees. In performing duties, he at times corroborates with the Electronic Control Systems Specialist. Their offices are adjacent, and they discuss work at least once a day. They have the same immediate supervisor. Also, as indicated above, he has spent a substantial amount of time assisting another bargaining unit employee.

On the other hand, the Building Automation Engineer performs some different and higher level work than do bargaining unit employees. He is responsible for more complex computer programming, and more work in implementing and revising entire building systems, than is the Electronic Control Systems Specialist or any other bargaining unit member.

Ultimately, we conclude that the similarity between the work performed by the Building Automation Engineer and bargaining unit employees, and the community of interests between the Building Automation Engineer and bargaining unit employees, suffice to grant the Union's position to include the Building Automation Engineer in the bargaining unit without an election. Although the Building Automation Engineer has assumed increased, more responsible duties than performed by bargaining unit employees, we do not view the difference in duties to be so fundamental as to conclude an accretion has not occurred. Woodstock, 22 VLRB at 198-99. The evidence indicated that the Building Automation Engineer spends approximately 20 percent of his time on

higher-level programming logic work not done by bargaining unit employees. This leaves the bulk of his work-time spent on duties similar to bargaining unit employees. On balance, we conclude it is appropriate to find an accretion and include the Building Automation Engineer in the bargaining unit.

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Carroll P. Comstock

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John J. Zampieri

#### MINORITY OPINION

I agree with my colleagues that it is inappropriate to add the Research Field Technicians to the existing service and maintenance employees bargaining unit through a unit clarification petition. Their work remains sufficiently distinct from bargaining unit employees so that it would be inappropriate to add them to the existing bargaining unit through a unit clarification petition.

However, I disagree with the majority decision to grant the Union's petition to add the Technical Supervisor in the Art Department of the School of Arts and Sciences and the Building Automation Engineer to the bargaining unit. With respect to the Art Department Technical Supervisor, I appreciate the majority's concerns about the Employer reclassifying a position out of the bargaining unit. In smaller units, the erosion of the bargaining unit would be a bigger concern. In this case, however, we are considering one position in one of the state's largest bargaining units.

I am persuaded that an insufficient community of interests exists between the Art Department Technical Supervisor and bargaining unit positions. This is evident by there

being no positions in the School of Arts and Sciences included in the bargaining unit. Further, there is no evidence that the Technical Supervisor's work of instructing and assisting students in their art projects has any similarities with work performed by service and maintenance employees included in the bargaining unit. It is apparent that the Employer's placing of the Art Department Technical Supervisor in the same classification as two non-bargaining unit positions in the Theatre Department of the School of Arts and Sciences, and excluding the position from the bargaining unit, was a reasonable action reflecting the reality of the situation. Under these circumstances, it is better in my judgment to achieve the right result now by excluding the position from the bargaining unit than to continue down the wrong path chosen when the bargaining unit was first established.

Further, the original certification by this Board was for non-exempt positions, despite the Employer's desire for a more inclusive unit. To have one position in the bargaining unit that is exempt reinforces a lack of a community of interests and would put unnecessary burdens on the employer to negotiate likely different terms of employment for one exempt bargaining unit member.

I also disagree with my colleagues concerning whether the Building Automation Engineer should be added to the bargaining unit through a unit clarification petition. The Building Automation Engineer position was created primarily to replace work being done by outside contractors, not to do work previously done by bargaining unit employees. The Employer was increasingly using outside contractors – Honeywell and Johnson Controls – to perform maintenance, repair and design work for building automation systems. The Employer sought to hire a person with building automation knowledge and

experience, and higher computer programming capabilities, rather than relying heavily on the outside contractors to perform this work. The Building Automation Engineer fulfilled this objective. There is no evidence of an intent to take work away from the bargaining unit, but rather what is involved here is an employer responding to external events affecting critical functions.

I recognize that a bargaining unit employee, the Electronic Control Systems Specialist, also is responsible for installation, repair and maintenance of building automation systems at the University. Nonetheless, the Building Automation Engineer position requires greater qualifications and knowledge, and performs higher level duties, than the Electronic Control Systems Specialist position.

The position is at a higher pay grade, and requires more education and experience than the Electronic Control Systems Specialist. It would be the only pay grade 13 position in the bargaining unit. The Building Automation Engineer is responsible for higher level “logics” computer programming, and more work in implementing and revising entire building systems, than is the Electronic Control Systems Specialist. The Building Automation Engineer has greater programming knowledge than the Electronic Control Systems Specialist, and unlike the Electronic Control Systems Specialist spends a substantial amount of time on programming logic work. In sum, I conclude that the duties of the Building Automation Engineer are not substantially similar to those of employees in the bargaining unit, and an insufficient community of interests exists with bargaining unit employees. Thus, I would not include the Building Automation Engineer in the service and maintenance employees bargaining unit through a unit clarification petition.

Finally, I note that employees in the two disputed positions would not be denied a right to organize and bargain collectively if my views were adopted. In the Woodstock case cited by the majority, an exclusion from the bargaining unit would have left the employee in dispute as the sole position excluded from the bargaining unit, so the Board correctly decided on the side of inclusion. In the case at hand, these employees can still affiliate with a large group of technical and professional employees with whom they share a much stronger community of interests.

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Richard W. Park

#### ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered:

1. The unit clarification petition filed by the United Electrical, Radio and Machine Workers of America Local 267 (“Union”) is granted with respect to the Technical Studio Supervisor in the Art Department of the School of Arts and Sciences at the University of Vermont, and the Technical Studio Supervisor in the Art Department is included in the bargaining unit of service and maintenance employees of the University represented by the Union;
2. The unit clarification petition filed by the Union is denied with respect to the Research Field Technicians of the College of Agriculture and Life Sciences of the University of Vermont, and the Research Field Technicians are excluded from the bargaining unit of service and maintenance employees of the University represented by the Union; and

3. The unit clarification petition filed by the Union is granted with respect to the Building Automation Engineer at the University of Vermont, and the Building Automation Engineer is included in the bargaining unit of service and maintenance employees of the University represented by the Union.

Dated this 21st day of December, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Carroll P. Comstock

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John J. Zampieri