

VERMONT LABOR RELATIONS BOARD

UNITED PROFESSIONS OF)	
VERMONT/AFT)	
)	DOCKET NO. 01-46
and)	
)	
VERMONT STATE COLLEGES)	
UNITED PROFESSIONS OF)	
VERMONT/AFT)	
)	DOCKET NO. 01-47
and)	
)	
VERMONT STATE COLLEGES)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 17, 2001, the United Professions of Vermont/AFT (“Union”) filed two petitions for election of collective bargaining representative with the Labor Relations Board. In Docket No. 01-46, the Union seeks to represent supervisory employees of the four campus-based institutions of the Vermont State Colleges. In Docket No. 01-47, the Union seeks representation of professional, administrative and technical employees of the four campus-based institutions of the State Colleges. In response to the petition, the Vermont State Colleges (“Employer”) raised numerous objections to the inclusion of certain employees in the bargaining units, primarily on grounds that the employees were managerial or confidential, or based on community of interest considerations.

Subsequent to the Employer response to the petition and prior to the unit determination hearings before the Board, the parties reached various partial agreements as to exclusion of individuals from, and inclusion of employees in, the proposed bargaining units. At the time of the hearings before the Board, the parties continued to

disagree on the inclusion of 11 employees in the supervisory bargaining unit and 33 employees in the proposed unit of professional, technical and administrative employees.

Hearings on the disputed issues were held on November 8, 15 and 30, and December 6, 2001 in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Carroll Comstock and John Zampieri. Attorney Nicholas DiGiovanni, Jr., represented the Employer. Attorney James Dunn represented the Union. The Employer filed a post-hearing brief on December 28, 2001. The Union filed a brief on December 31, 2001.

Subsequent to the hearing, the Union agreed to the exclusion of ten additional employees from the proposed unit of professional, administrative and administrative employees. The Union agreed that one administrative assistant to each Dean of Administration and each Academic Dean at the four campus-based institutions are confidential employees. The Union further agreed to exclude two employees at Lyndon State College – Elaine Turner, Administrative Assistant Student Affairs, and Donna Gile, Administrative Assistant Enrollment Management - from the proposed unit on community of interest grounds. As a result, the parties now disagree on the inclusion of 34 positions in the proposed bargaining units.

FINDINGS OF FACT

1. The Vermont State Colleges is a public system of higher education comprised of the four campus based-institutions of Castleton State College (“Castleton”), Johnson State College (“Johnson”), Lyndon State College (“Lyndon”) and Vermont Technical College (“VTC”), as well as the Community College of Vermont. The system

is headed by a Board of Trustees. The Chancellor is the chief administrative officer for the system. Each institution is headed by a President.

2. The Chancellor's Office is located in Waterbury. Robert Clarke is Chancellor. Three Vice Presidents report directly to Chancellor Clarke: Vice President of Employee and Community Relations Mary Alice McKenzie, who also acts as General Counsel; the Vice President of Finance Administration, and Vice President of Strategic and Academic Planning Karen Wilks. In addition to the Vice Presidents, approximately 22 directors and support staff also work in the Chancellor's Office (Union Exhibit 3).

3. The Presidents of each of the four campus-based colleges report directly to the Chancellor. None of the other employees of the campus-based colleges report directly to anyone in the Chancellor's Office; they ultimately report to the President of the college. Staff in the Chancellor's Office are a resource for campus-based employees.

4. The Vice President of Finance Administration and the Controller from the Chancellor's Office meet on a monthly basis with the Deans of Administration of the four campus-based colleges through meetings of the Business Affairs Council. The Vice President of Strategic and Academic Planning of the Chancellor's Office meets three times a year with the Academic Deans of the four colleges to discuss issues with academic implications.

5. The Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO represents a bargaining unit of the full-time faculty members at the four campuses. The Federation also represents a bargaining unit of part-time faculty at the campuses. The Vermont State Employees' Association ("VSEA") represents certain non-professional and non-supervisory staff at the campuses (Colleges 1, 9, 10).

6. The bargaining unit represented by VSEA includes over 200 employees who are in various classifications within pay grades 5 – 10. Among the categories of positions in the bargaining unit are custodians and housekeepers, maintenance employees, mechanics, secretary/receptionists, administrative assistants, staff assistants, administrative secretaries, security officers, library and bookstore staff, accounting specialists, financial aid specialists, and mailroom employees. The secretary/receptionists are pay grade 6 positions, the administrative secretaries are pay grade 7 positions, administrative assistants are pay grade 8 positions, and staff assistants are pay grade 9 positions. The majority of positions in the VSEA unit do not require a college degree (Joint Exhibit 2, Colleges Exhibit 3).

7. The Chancellor's Office negotiates collective bargaining agreements with the unions representing employees in the three existing bargaining units. The Presidents of each of the colleges have a consultative role in preparation for bargaining. Campus administrators have been involved in proposing changes in contracts, providing input on responses to union proposals, and consulting with the Employer's bargaining team during negotiations. There generally is a Dean on the Employer's bargaining teams, usually a Dean of Administration for the VSEA unit negotiations and an Academic Dean for faculty bargaining.

8. The Chancellor's Office oversees the administration of benefits, compensation and the job classification system. The Office establishes personnel policies for employees of the Colleges not represented by unions (Colleges Exhibit 2).

9. The budget process for the state colleges begins in the fall of each year when the Vice President of Finance Administration provides the Deans of Administration

at each of the campuses with information about the next budget year. This includes tuition rates and fees which are established on a centralized basis, committed salary increases as a result of negotiated collective bargaining agreements, benefit increases, and inflation projections.

10. Each President and their Deans develop an annual budget for their college. The Deans of Administration manage the budget development process. Local administrators build their budgets based in large part on what their anticipated revenue will be for the coming year. Revenues from tuition go directly to the college from which they are generated. Approximately two-thirds of a college's revenue is from tuition and slightly less than one-third is from state appropriations. Colleges project student enrollments for the next academic year to develop a sense of anticipated revenues for that year. In addition, each college receives one-fifth of the state appropriations and each college keeps whatever it brings in through fund-raising. As colleges develop a sense of their revenue for the next year, they plan their anticipated expenditures.

11. Approximately 80 percent of the budget at each college is made up of compensation costs. In years when revenues are strong, a college can consider filling vacant positions or possibly adding new ones. In lean years, a college may consider not filling vacancies, reducing some positions from full-time to part-time, and possibly laying off employees. These staffing decisions are made on a local level except that, if a college seeks to create a new position, it would have to go through the Chancellor's Office. The Chancellor's Office does not decide whether vacancies will be filled or whether a college will add or reduce staff. The Chancellor's office is not involved in deciding who is hired at a campus or how much the person is paid as long as it is within pay grade ranges. The

decisions are made at the campus level by administrators. Under the collective bargaining agreements, decisions as to reappointment, promotion and tenure of faculty; and layoff and termination of non-faculty staff; are made at the campus level with the President being the final authority (Colleges 1, 9, 10).

12. The key managers at each of the colleges are the Presidents and the Deans. Each college has a central policy-making body which meets regularly called by such names as the “President’s Cabinet” or the “Dean’s Council”. On each campus, members of such bodies determine student, academic and personnel policies for the campus; set staffing levels; decide the organization and reorganization of the college; discuss personnel and labor relations matters; and develop and approve the college budget. On each campus, the President and the Deans communicate with each other by e-mail. Included among these e-mail communications are sharing of confidential collective bargaining, personnel administration and budget information. The Deans and the President also have confidential documents in these areas on the hard drives of their computers.

13. The Colleges are in the process of implementing a Student and Administrative Service Initiative (“SASI”). Part of the initiative is to have one software system and one database for the entire Colleges system rather than separate systems for each of the colleges. Another component of the initiative is to consolidate at each of the colleges a function serving the entire system: VTC will do non-student billing; Johnson will do student billing; Lyndon will handle purchasing and accounts payable; Castleton will perform academic data management; and the Community College of Vermont will do payroll.

Physical Plant Directors

14. The Colleges contend that the Physical Plant Directors at each of the four campus-based colleges should be excluded from the proposed supervisory bargaining unit on the grounds that they are managerial and confidential employees (Joint Exhibit 1).

15. Each of the four campus-based colleges has a Director of Physical Plant who reports to the Dean of Administration. The Directors are responsible for the oversight of the maintenance and improvement of the college's buildings and grounds. The Directors are responsible for the administration of the largest single department on campus. The Directors oversee the work of maintenance and custodial employees, most of whom are in the bargaining unit represented by VSEA. The numbers of employees under the direction of the Physical Plant Directors at each college are as follows: 29 at Castleton, 27 at Johnson, 25 at Lyndon, and 24 at VTC. These numbers include two supervisors at each college under the Director who are immediate supervisors of the maintenance and custodial employees (Colleges Exhibits 5 – 8).

16. The Directors of Physical Plant have the authority to effectively recommend the hiring of employees. The Deans of Administration and Presidents generally follow the recommendations of the Directors in this regard. The custodial and maintenance employees have routine functions they carry out on a daily basis. However, the Directors are responsible for coordinating various projects, determining work priorities, assigning and directing work, and effectively recommending when and under what circumstances outside contractors may be needed to do work on campus. Directors have the authority to discipline employees, and to effectively recommend their dismissal. Directors act on leave requests, set schedules and determine the need for overtime.

Directors have access to the personnel files of employees under their direction. The personnel files are located in the Dean of Administration's office. Directors work with union representatives and employees to resolve employee complaints outside the grievance procedure. If employees or the VSEA wish to file grievances, they would file them at the first step of the grievance procedure with the Dean of Administration.

17. Directors are the chief administrators involved when there are emergencies on campus such as snow removal, water problems and furnace shutdowns. Directors set operational policies for the Physical Plant Department such as policies on the use of tools and equipment.

18. Directors administer budgets that range at each college from \$1.5 to \$2.5 million on an annual basis. Much of the budget is dedicated to fixed costs, such as salaries and benefits, utilities and vehicles. The Directors do have discretionary authority to spend money within budget lines without higher approval in such areas as purchase of equipment and tools, maintenance of vehicles, purchase of supplies and general maintenance.

19. Directors discuss Physical Plant Department matters with the Dean of Administration on a regular basis. This includes discussions on budget expenditures for the current year, budget planning for future years, personnel administration matters and long-range planning on physical facility issues.

20. Directors play a key role in deciding whether outside contractors should be used for projects on campus. Directors consider the skill level and availability of employees, the speed with which the project must be completed, the in-house availability of needed equipment for the project and the cost of outside labor. Directors discuss these

considerations with the Dean of Administration and make recommendations to the Dean on whether an outside contractor should be used. If the Dean approves the use of an outside contractor, the Directors generally have the effective authority to select the outside contractor. Directors do not have authority to sign contracts with outside contractors on behalf of the college; that authority lies with the Dean of Administration.

21. Directors are involved in major building renovations on campus that generally involve state capital appropriations. Directors work with the Dean of Administration and the President to prioritize capital projects on campus and make recommendations. Directors then work with the Dean of Administration, the Director of Facilities from the Chancellor's Office, and State Department of Buildings and General Services personnel to oversee and coordinate capital improvements on campus. Directors work with architects and engineers in the planning of renovations, and are involved in the overseeing of the work of contractors when the renovation work is ongoing.

22. Directors are the chief safety officers on campus responsible for ensuring compliance with occupational safety and health, public access for persons with disabilities, fire and plumbing, and environmental protection laws and regulations. Directors are chairpersons of their campus Safety Committees which discuss safety issues and develop safety policies.

23. Directors are not directly involved in collective bargaining negotiations with the VSEA. Deans of Administration may seek input from Directors as to where the collective bargaining contract should be changed from the Employer's perspective.

24. The four Directors of Physical Plant meet twice a year with the Business Affairs Council to discuss capital projects, common safety concerns and procedures, and

other matters affecting the College's physical facilities. The four Directors also convene four times a year, at a meeting chaired by the Director of Facilities from the Chancellor's Office, to share activities of interest at each of the colleges .

Nursing Site Directors

25. The Colleges contend that the four Nursing Site Directors employed by Vermont Technical College should be excluded from the proposed supervisory bargaining unit on the grounds that they are managerial and confidential employees, and based on lack of community of interests with other employees in the proposed unit (Joint Exhibit 1).

26. Dean Steven Ingram is the Dean of External Programs at VTC. There are several nursing programs offered by the College under his jurisdiction. Prior to the mid-1990's, there were several nursing programs run by the State of Vermont Department of Education. They were located in three sites: Fanny Allen Hospital in Colchester, Thompson Hospital in Brattleboro, and the Putnam facility in Bennington. In the mid-1990's, the Colleges assumed control of the programs through VTC. The three main sites were maintained, and there also is an on-campus site at VTC as well as a Northeast Kingdom location. There are Nursing Site Directors in Colchester, Brattleboro, Bennington and the Northeast Kingdom. They report to the Nursing Program Director at VTC, Patricia Menchini. Menchini reports to Dean Ingram (Colleges Exhibit 8, page 6).

27. The VTC nursing programs offer Licensed Practical Nursing ("LPN") certificates and, in some locations, Associate Degrees in Nursing. The LPN program is a year program. Students take courses and also are engaged in clinical assignments two days a week. The clinical assignments are in hospitals, long-term care facilities, facilities

for the care of mentally ill patients or other health care settings. The Associates Degree program adds a year of study and clinical assignments to the LPN requirements. Students apply for the nursing programs through the normal VTC admissions process.

28. Each site is located at or near one of the health care facilities that provide clinical assignments for students. Each site is headed by a Site Director and, with the exception of the Northeast Kingdom site, has an administrative assistant or secretary, a part-time clinical associate and two or three faculty members. The Northeast Kingdom site has only a Site Director (Colleges Exhibit 8, page 6).

29. The administrative assistants/secretaries are part of the VSEA bargaining unit. The clinical associate is a trained nurse who works with students in their clinical settings. Site Directors supervise the administrative secretary or assistant and the clinical associate at their site. When vacancies occur in those positions, Site Directors conduct interviews and make hiring recommendations. Site Directors direct their work and approve leave requests. If Site Directors wished to suspend or dismiss an employee, they would need the approval of the Nursing Program Director and the Dean of External Programs.

30. The faculty members at the nursing sites are part of the full-time faculty bargaining unit. Site Directors do not supervise the faculty members, who report directly to Menchini and the Academic Dean. Site Directors schedule which courses faculty teach.

31. The nursing sites are rented and have a classroom, nursing lab, and computer lab. The Site Director is responsible for the daily administration of the site with respect to maintenance, dealing with the renter if there are problems, payment of bills and

securing supplies. Site Directors recommend a new site if it is necessary to rent a different site. They do not have authority to enter into a lease on behalf of the Colleges.

32. Site Directors are registered nurses. Their duties include teaching courses. They serve as a liaison with clinical sites; finding clinical assignments for students and interacting with the clinical supervisors. If students have problems with faculty members or with their clinical assignments, they discuss the problems with the Site Director. Site Directors also provide registration and financial aid assistance to students.

33. The total budget for the nursing program is approximately \$1.5 million. At each site, Site Directors have an annual budget of approximately \$75,000. They have some discretion to purchase supplies and materials within this budget. The Site Directors inform the Nursing Program Director of their site's needs during the budget preparation process for the Nursing Program. The Nursing Program Director prepares the Nursing Program budget, and has overall responsibility for ensuring that each site stays within its budget.

34. A main role of the Nursing Program Director is to integrate academic programs at the various sites. The Nursing Program Director handles accreditation problems for the program, and establishes nursing policies within the nursing curriculum. Site Directors do not set policies for the program; they execute policies.

Information Technology Employees

35. The Colleges contend that the Directors of Computing Services and all other information technology employees at the four campuses should be excluded from the two proposed units as confidential employees. The Colleges further contend that all

these employees should be excluded from the units pursuant to 3 V.S.A. Section 902(5)(J), which provides: “‘State employee’ . . . exclude(s) an individual . . . determined after hearing by the board . . . to be in a position which is so inconsistent with the spirit and intent of this chapter as to warrant exclusion”. Specifically, the Colleges seek to exclude the following thirteen information technology employees from the bargaining units:

- Castleton Director of Computer Services (Gayle Malinowski)
- Castleton Network Administrator (Jonathan Czar)
- Castleton Micro Computer and Tech Specialist (Brian Billado)
- Johnson Director of Computing Services (Sally Searles)
- Johnson Information Technology Administrator (Dotty Spoerl)
- Johnson Academic Technology Administrator (Stewart Ressler)
- Lyndon Information Technology Specialist (Steve Allen)
- Lyndon Assistant Information Technology Specialist (Michael Dante)
- Lyndon Assistant Information Technology Specialist (Ethan Coppenrath)
- VTC Director of Computing Services (Blair Besset)
- VTC Network Administrator (Scott McGrath)
- VTC Coordinator Computer Support (Jennifer Pollock)
- VTC Technician (Paul Evans)

36. The Colleges have a Computing and Telecommunications Technology Conditions of Use Policy. It is contained in the Personnel Handbook for Administrators & Administrative Staff, and provides in pertinent part as follows:

...

The purpose of this policy is to define responsible and ethical behavior of VSCnet users in order to preserve the health, availability, and integrity of VSCnet resources and promote the goals and values of the VSC. This policy also allows for the support of investigations of complaints under other policies such as sexual harassment as well as state and federal laws on privacy and computer abuse. This policy applies to all users of VSCnet resources. The right to use VSCnet, its resources, and the Internet is dependent upon compliance with this policy.

In order to balance the values of our learning community with its legal rights and requirements, the VSC will enforce its right to track, monitor or access electronic mail or other files in accordance with this policy, with or without notice to the employee, student or other user, and may bypass any password. Under this policy,

only a President (or designee in the President's absence), with the advise (sic) and consent of the Chancellor (or designee in the Chancellor's absence), shall have the power to authorize any tracking, monitoring or accessing of electronic mail or other files on VSCnet without notice to the person or persons involved. Authorization for such interception shall be based only on reasonable belief that one or more or (sic) Rules 1-24, listed below, are being violated by one or more persons.

...

Rules

1. VSCnet may not be used for threatening, obscene, harassing or libelous conduct.
2. VSCnet may not be used for illegal purposes.
- ...
6. Unauthorized access to any information resource without written owner permission is prohibited.
- ...
8. Intercepting or attempting to intercept mail or other files is prohibited, except that the Vermont State Colleges (through its authorized managers or agents) may track, monitor, or access electronic mail or other files in accordance with this policy, with or without notice to the employee, student or user, and may bypass any password.
- ...
10. Logging on or attempting to log on to a machine without an account is prohibited.
11. Using or attempting to use any network address or identity not assigned to you by VSC or college authorities – even on a machine you may own – is prohibited.
12. Use of VSCnet for profit-making activities is prohibited.
- ...

(Colleges Exhibit 2, Appendix II)

37. Each college has college-wide computer networks comprised of workstations, file servers and print servers. A workstation is an individual computer attached to the network with or without its own printer. A file server is a central computer that users link to via the network. It is used to store large numbers of files and programs and to enable multiple users to share certain files. A print server is a printer and computer combination; users send print jobs to it via the network. A network consists of the cables

and electronics that link a group of workstations and servers. E-mails and the files stored on servers are accessible through the network.

38. The Directors of Computer (or Computing) Services at Castleton, Johnson and VTC are the chief persons on their campuses responsible for administering the campus computer systems. They report directly to either a Dean or an associate Dean. They supervise the other information technology employees, administer the budget, plan, and coordinate computer functions. They perform less “hands-on” work than other information technology employees, but on occasion they do engage in “troubleshooting” problems that arise (Colleges Exhibit 5, page 7; Colleges Exhibit 6, page 2; Colleges Exhibit 8, page 8) .

39. At Lyndon, Linda Hilton, Assistant Dean of Technology, performs similar functions to the Directors of Computer Services at the other campuses. In addition, Hilton performs system-wide information technology functions as Director of College Information Technology. In this role, she works on planning, support and common standards for each of the colleges. She visits campuses other than Lyndon 2 – 4 days a week to interact with information technology employees. She reports directly to the Dean of Administration (Colleges Exhibit 7, page 3).

40. The Network Administrator at Castleton, the Network Administrator at VTC, the Information Technology Specialist at Lyndon, and the Information Technology Administrator at Johnson perform similar functions. They create e-mail accounts for students and employees. They maintain and manage access to e-mail accounts, network accounts, printer servers, and hubs and connectors on campus. They back up the contents of file servers. They perform troubleshooting on e-mail accounts and general problems

that arise for end users in using their computers (Colleges Exhibit 5, page 7; Colleges Exhibit 6, page 2; Colleges Exhibit 7, page 3; Colleges Exhibit 8, page 8).

41. The information technology employees at the campuses other than those mentioned above in Findings of Fact 38 - 40 also are involved in troubleshooting problems that arise for end-users. They also install and maintain computer hardware and software on campus.

42. Information technology employees spend much of their time troubleshooting problems that arise. Troubleshooting problems that arise include inability to open an e-mail or e-mail attachment, a corrupted message, inability to open a file, loss of a file, a computer “freezing”, a computer not rebooting, lack of knowledge on how to use software, hardware problems, and inability to print a document. Information technology employees can resolve some of the problems remotely from their own computer. In other cases, they have to go to the end-user’s workstation. Information technology employees perform many of their troubleshooting functions without the need to open documents. There are occasions, such as opening files or e-mail attachments or getting documents printed, that information technology employees are able to view the contents of documents.

43. When e-mail accounts are created for employees and students, the new users are assigned an initial password but are advised to immediately create a new password. Once that is done, information technology employees are not aware of the new password and cannot generally access the account. It is possible for information technology staff to change the password on an account and access it. If that were done,

the user would not be able to access the account and would be aware that their password no longer worked.

44. Information technology employees do not need to know a user's password to access an individual's computer. They have the broadest security clearance, and are able to access e-mail accounts and files of users without their knowledge by use of their own login. They also do not need to be at the user's computer to gain this access; they can obtain access through their own computer on campus or use of a computer off-campus.

45. Under the Colleges Computing and Telecommunications Technology Conditions of Use Policy, information technology staff are prohibited from accessing employee e-mail without a user's permission or without authorization from the college President or President's designee. There is no evidence that information technology employees have accessed e-mail accounts in violation of the Conditions of Use policy.

46. The Colleges have conducted investigations of employees over alleged violations of its computer Conditions of Use policy on infrequent occasions. The Castleton Network Administrator was involved in one such investigation in his seven years of employment. A VTC information technology employee is unaware of any such investigations in his 14 years of employment. The Castleton Dean of Administration recalled two investigations during his employment concerning an employee receiving harassing e-mail from an unknown source. The Lyndon Assistant Dean of Information Technology recalled one situation where a supervisor sought and gained permission to access an employee's e-mail account due to suspected misconduct by the employee. Also, in that situation, subsequently the college backed up the files on the employee's

computer. In other situations, investigations have occurred to seek to discover the source of harassing e-mails. These investigations were conducted consistent with the Colleges' computer Conditions of Use policy.

47. There is no evidence that information technology employees have inadvertently seen or read confidential collective bargaining or budget documents in performing their duties. Information technology employees have no involvement in collective bargaining or labor relations during the normal course of their work.

48. Once users delete e-mails, they are stored on the computer system for 30 days. Information technology employees can access the deleted e-mails for the 30 day period.

49. Information technology employees have access to offices on campus during regular working hours and after hours. At times, they perform installation and maintenance work, such as software upgrades and new wiring, outside of regular hours so as not to disturb employees.

50. The contents of file servers are backed up to ensure that data is not lost in the event of computer or operator problems. The most recent files that are backed up are stored in a locked vault, and less current files are in the information technology office. Information technology employees have access to these backup files, and need to access them on occasion as part of their troubleshooting duties. They would have to restore a document before being able to view its contents. They can retrieve a document without looking at it.

Directors of Payroll and Benefits

51. The Colleges contend that the Directors of Payroll and Benefits at the four colleges should be excluded from the proposed bargaining unit of professional, administrative and technical employees as confidential employees.

52. At the four colleges, the Director of Payroll and Benefits reports directly to the Dean of Administration. The Director's office is located either adjacent to, or near, the office of the Dean. The Director regularly interacts with the Dean (Colleges Exhibit 5, page 7; Colleges Exhibit 6, page 3; Colleges Exhibit 7, page 3; Colleges Exhibit 8, page 6.

53. The Directors of Payroll and Benefits are responsible for administering the payroll and benefits operation at their college. This includes preparing paycheck information for employees based on their hourly rate of pay, hours worked including overtime, and deductions. The Directors administer any wage garnishments. If employees have questions about their paychecks, including calculations and changes, the Director is the contact person to respond to the questions. In performing these duties, Directors have to act consistent with the applicable collective bargaining agreement or personnel handbook. The wage rates of employees are a matter of public record.

54. The Directors maintain employee leave balances. They inform employees of their sick leave and vacation time balances, and answer employee questions in this regard.

55. The Directors of Payroll and Benefits are the chief persons on campus for benefit processing and questions. They maintain all records regarding employee benefits, such as health insurance, life insurance and pension. They handle the necessary

administrative details concerning the pension plan and life insurance plan, and interact with TIAA-CREF, the Colleges' pension and life insurance carrier. They maintain records on which health plan each employee has selected. The benefits offered to employees of the Colleges are public information.

56. Directors serve as the liaison with CIGNA, the Colleges' insurance carrier, with respect to employees' health insurance claims. Employees having problems with health insurance claims will contact the Payroll and Benefits Director who in turn will work with CIGNA on getting the issue addressed. Directors also receive workers' compensation claims from employees concerning on the job injuries. They serve as an intermediary between the employee and the insurance company. Directors do not determine eligibility for workers' compensation benefits; the insurance company determines eligibility. The insurance company may ask Directors if any further investigation is warranted on workers' compensation claims. In dealing with health insurance and workers' compensation claims, Directors gain knowledge of confidential medical treatment of employees.

57. Directors have unlimited access to the personnel files of non-faculty employees that are kept in their offices. They access the files as necessary to obtain salary and benefits information on employees.

58. Deans of Administration involve the Directors of Payroll and Benefits in budget planning. This includes "what if" scenarios in which Directors determine the cost to the college of possible or projected wage and benefit increases. Directors have been asked to calculate projected savings to the college based on not filling a vacant position

or reducing a college program. They have been asked to calculate the cost to the college of changes in health insurance costs as a result of collective bargaining negotiations.

59. Directors of Payroll and Benefits contact the Director of Human Resources, Nancy Shaw, or other staff in the Chancellor's Office if they have questions as to interpretation of the Colleges' wage and benefit policies. Directors are not involved in collective bargaining negotiations. The Chancellor's Office or the Deans of Administration inform the Directors of any wage and benefits changes resulting from negotiations. The four Directors of Payroll and Benefits meet with Shaw once or twice a year to discuss anticipated changes in benefits.

Administrative Assistant to Castleton Dean of Students

60. The Colleges contend that the Administrative Assistant to the Castleton Dean of Students should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that she is a confidential employee. Alternatively, the Colleges contend that the Administrative Assistant should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit.

61. Greg Stone has been Castleton Dean of Students since 1999. Dean Stone is responsible for the overall management of student affairs, including residential life, athletics, career planning, counseling and health services. This includes developing policies in this area and developing the budget for his division. He is a member of the President's Cabinet, and in such role provides input into the development of the college budget. There are 20 employees under his direction, including four in the bargaining unit represented by VSEA. Many of the remaining employees under his direction are in the

proposed bargaining units. Dean Stone has not been involved in collective bargaining (Colleges Exhibit 5, pages 1 and 4).

62. Irene Evanoika has been Administrative Assistant to the Castleton Dean of Students for approximately 15 years. She has a high school education. She is in a pay grade 9 position. Evanoika's desk is just outside Dean Stone's office (Colleges Exhibit 5, page 4).

63. Dean Stone has a computer. Evanoika is the only other person who has access to his e-mail password. She checks Dean Stone's voice mail and e-mail messages at his direction. She opens the Dean's mail, proofreads his drafts of documents, prepares his correspondence for dissemination, and files documents.

64. Some of these materials involve personnel matters such as appointment and reappointment letters and conference letters. She has proofread performance evaluations the Dean has done on some employees. None of these personnel matters have involved discipline, as Dean Stone has not imposed discipline during his tenure. Evanoika has not been involved in employee grievances.

65. Evanoika is involved in keeping track of budget expenditures in the various budgeted areas, and notifying Dean Stone of expenditures. She participates in meetings that Dean Stone has with directors in the student life division to discuss matters within the division, including the budget.

Administrative Assistant to Johnson Dean of Students

66. The Colleges contend that the Administrative Assistant to the Johnson Dean of Students should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that she is a confidential

employee. Alternatively, the Colleges contend that the Administrative Assistant should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit.

67. Ron Chesbrough has been Johnson Dean of Students since 1993. He is responsible for the overall management of student affairs, including residential life, athletics, career planning, counseling, health services, and safety and security. This includes developing policies in this area and developing the budget for his division. He meets with the President regularly. He is on the Dean's Council, which meets every other week in confidential meetings concerning the business of the college. This includes labor relations and personnel issues and the college budget. There are approximately 40 employees under his direction, including some in the bargaining unit represented by VSEA. Many of the remaining employees under his direction are in the proposed bargaining units. Dean Chesbrough has not been involved in collective bargaining (Colleges Exhibit 6, pages 5 –6).

68. Dean Chesbrough has confidential files and e-mail correspondence on his computer, including projected budget reductions and various budget scenarios, employee performance evaluations, student disciplinary letters and rare employee discipline letters. He communicates with the President and the Colleges' General Counsel by e-mail predominantly on student matters, and also on occasion on staffing reductions and personnel issues.

69. Emma Thompson has been Staff Assistant to the Johnson Dean of Students for over 30 years. She has a high school education. She is in a pay grade 9 position. Her desk is just outside of Dean Chesbrough's office. She acts as a receptionist,

provides secretarial support, receives and sends out correspondence, and interacts with parents of students. She interacts regularly with the Dean.

70. Thompson knows Dean Chesbrough's computer password. She does not check e-mails received by the Dean. She does check his voice mail messages. When Dean Chesbrough is not in his office, he keeps his office door locked.

71. Thompson proofreads and edits correspondence sent out by Dean Chesbrough. This includes performance evaluations completed by the Dean on division directors, which Thompson also copies and distributes. Once the Dean completes a performance evaluation on a director, a hard copy of the evaluation is not kept in the office. The Dean retains the evaluation in his computer.

72. Dean Chesbrough asks Thompson to monitor the student life division budget and keep him abreast if budget accounts are being overspent or underspent. There have been budget reductions during Dean Chesbrough's tenure. Thompson has provided Chesbrough with historical perspective on past budget and staffing reductions, and has served as a "sounding board" for Chesbrough on what plans he has in the event of budget reductions.

73. The bulk of confidential materials handled by Thompson involve student issues. Much of the internal confidential communications by Chesbrough are done by e-mail.

Administrative Assistant to Castleton Dean for Institutional Advancement

74. The Colleges contend that the Administrative Assistant to the Castleton Dean for Institutional Advancement should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that she is a

confidential employee. Alternatively, the Colleges contend that the Administrative Assistant should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit.

75. Donna Wolski has been Castleton Dean for Institutional Advancement since 1998. She has overall management for the external affairs of the college, including fund-raising, alumni affairs, event planning, marketing, and public information and relations. Her work in these areas often takes her away from campus to deal with donors and alumni. Dean Wolski is a member of the President's cabinet. She is responsible for developing her division's budget which is reviewed at the Cabinet meeting with the other Deans. She has seven employees under her direction, including three in the bargaining unit represented by VSEA and four in the proposed bargaining units. She has not been involved in collective bargaining (Colleges Exhibit 5, pages 1 and 5).

76. Dean Wolski has a computer and communicates by e-mail. Among her e-mail communications have been budget planning documents circulated among the Deans and the President.

77. Liz Garside is the Administrative Assistant to Dean Wolski. She is in a pay grade 9 position. She has educational credits equivalent to an Associate's Degree. She performs secretarial functions for the Dean, including receptionist duties, proofreading and finalizing the Dean's correspondence, opening mail and distributing correspondence, and scheduling appointments for the Dean. Dean Wolski has drafted memoranda on performance issues for one member of her staff that Garside has finalized. She maintains the database of donors and alumni, and corresponds with them. Dean Wolski has given her password to her computer to Garside, and on occasion when she is

out of the office requests that Garside check her e-mail messages. Garside monitors monthly budget expenditures. She estimates future expenditures in budget areas which factor into the Dean's budget recommendations.

Administrative Assistant to Lyndon Dean for Institutional Advancement

78. The Colleges contend that the Administrative Assistant to the Lyndon Dean for Institutional Advancement should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that she is a confidential employee. Alternatively, the Colleges contend that the Administrative Assistant should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit.

79. Judith Beaupre has been Lyndon Dean for Institutional Advancement for two years. She has overall management for the external affairs of the college, including fund-raising, alumni affairs and public relations. She also supervises two grant-funded programs, Upward Bound and Americorps. She is responsible for developing her division's budget. Dean Beaupre meets regularly with the President and is a member of the Dean's Council. The Dean's Council sets policies for the college, prepares the college budget, ensures adherence to the college's strategic plan, and deals with crisis situations. She has eight employees under her direction, including two in the bargaining unit represented by VSEA and several in the proposed bargaining units. She has not been involved in collective bargaining (Colleges Exhibit 7, pages 1 and 5).

80. Dean Beaupre has a computer and communicates by e-mail. Among the information she has on her computer are budget planning documents circulated among

the Deans and the President and performance evaluations that she completes on employees. She drafts the performance evaluations herself on her computer.

81. Lynda Morgan is the Staff Assistant to Dean Beaupre. She is in a pay grade 9 position. She has a high school education. She performs secretarial functions for the Dean, including receptionist duties, drafting correspondence for the Dean, opening mail and distributing correspondence, planning events, and scheduling appointments for the Dean. She maintains a confidential database of donors and alumni, has discussions with them, and corresponds with them. Morgan produces a newsletter and other publications concerned with donor and alumni relations.

82. Dean Beaupre has given her password to her computer to Morgan, and on occasion when she is out of the office and does not have access to a remote computer she requests that Morgan check her e-mail messages. Morgan monitors monthly budget expenditures. She discusses budget priorities with Dean Beaupre. In addition to Morgan, there are other staff reporting to Dean Beaupre that are involved in the formulation of the budget.

Lyndon Director of Americorps

83. The Colleges contend that the Director of Americorps at Lyndon should be excluded from the proposed bargaining unit of professional, administrative and technical employees because she does not share a community of interests with employees in the proposed unit.

84. The Director of Americorps, Anne Brown, reports to Dean Beaupre. There are other employees in the proposed bargaining unit of professional, technical and administrative employees who report to Dean Beaupre. Americorps is a federally funded

program which provides community service jobs and funds to persons seeking stipends to become students, students seeking to pay their tuition, or former students seeking to pay off student loans. Brown is involved in setting up the community service jobs, interacting with site supervisors and providing administrative support for the program (Colleges Exhibit 7, page 5).

85. Brown is an employee of the college. She participates in the employee benefits program, and is subject to the rules and regulations of the college. She is paid through a federal grant. There are other employees of the college who are paid through grants.

86. There are other Americorps sites in Vermont. The Americorps program is not routinely administered on college campuses, and none of the other colleges in the Colleges system houses such a program. Lyndon students participate in the Lyndon program, but the program extends beyond Lyndon to service the Northeast Kingdom community. Many of those participating in the program are former students or persons seeking stipends to become students.

Lyndon Case Worker, Reach Up Program

87. The Colleges contend that the Case Worker of the Reach Up Program at Lyndon should be excluded from the proposed bargaining unit of professional, administrative and technical employees because she does not share a community of interests with employees in the proposed unit.

88. Donna Dolan is the Case Worker for the Reach Up Program. Reach Up is a grant-funded program assisting single women to independently provide for themselves. Dolan works with Lyndon students who are eligible for the program and other Vermont

residents who are not connected with the college. Her position is under the direction of the Lyndon Dean of Academic Affairs. There are secretarial positions in the bargaining unit represented by VSEA and many positions proposed for the two bargaining units in this case also under the direction of the Academic Dean (Colleges Exhibit 7, page 2).

89. Dolan is an employee of the college. She participates in the employee benefits program, and is subject to the rules and regulations of the college. She is paid through a federal grant. There are other employees of the college who are paid through grants.

Castleton Administrative Assistant to Associate Academic Deans

90. The Union and the Colleges have agreed to the exclusion of Rita Geno, Administrative Assistant to the Academic Dean at Castleton, from the proposed bargaining unit of professional, technical and administrative employees as a confidential employee. In addition, the Colleges contend that Meredith Trude, Administrative Assistant to the Associate Academic Deans at Castleton, should be excluded from the proposed bargaining unit on the grounds that she is a confidential employee. Alternatively, the Colleges contend that she should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit. The Union objects to the exclusion of the Administrative Assistant to Associate Academic Deans from the unit.

91. Trude has been the Administrative Assistant to the two Associate Academic Deans at Castleton for seven months. This is a pay grade 8 position. Trude has a Bachelor's degree, which is not a requirement for her position. There are employees

under the direction of the Academic Dean who are in the bargaining unit represented by VSEA and in the proposed bargaining units (Colleges Exhibit 5, page 2).

92. The most substantial duty performed by Trude involves organizing the college's overseas study program in London, which runs during one semester of each year. Her duties include arranging accommodations, booking airline tickets, facilitating registration, assisting the involved faculty, and addressing problems that arise while faculty and students are abroad.

93. Among her other duties are frequently answering questions from students and parents on such issues as course requirements, registration problems or taking a leave. She also tracks students' compliance with the college's Writing Standards Program, alerts them to problems, and answers their questions about the program. She also is responsible for developing an orientation handbook for new students.

94. The Castleton Academic Dean and the two Associate Academic Deans divide the work on the evaluation of faculty members. Trude has access to faculty personnel files, which are kept in Geno's office. Trude places classroom observation reports that the Associate Academic Deans do on faculty, and letters concerning reappointment or tenure of faculty, in faculty personnel files. Thirty to forty faculty members are evaluated annually by the Dean and two Associate Deans.

95. Trude does not share responsibilities with Geno, although she does substitute for her on occasion. Trude does not have access to the computer passwords or voice mails of the Academic Dean or Associate Academic Deans. She does not handle or view documents relating to collective bargaining, budget preparation, employee discipline, or salaries and benefits.

Johnson Administrative Assistant to Associate Academic Deans

96. The Union and the Colleges have agreed to the exclusion of Shona Sladyk, Staff Assistant to the Academic Dean at Johnson, from the proposed bargaining unit of professional, technical and administrative employees as a confidential employee. In addition, the Colleges contend that Jo Ann Lamore, Assistant to the Academic Dean at Johnson, should be excluded from the proposed bargaining unit on the grounds that she is a confidential employee. Alternatively, the Colleges contend that she should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit. The Union objects to the exclusion of Lamore from the unit (Colleges Exhibit 6, page 2).

97. Judith Wilder has been acting Academic Dean at Johnson since July 2001. She is responsible for curriculum development and the overall supervision of the college's academic programs. She makes recommendations on appointment, reappointment and tenure of faculty. She is chief administrative officer at the college for the full-time faculty and part-time faculty collective bargaining contracts. She is responsible for developing and administering a budget to fulfill these academic responsibilities, and works closely with the President and Dean of Administration in doing so. Dean Wilder maintains confidential files on her computer relating to sexual harassment cases, budget development, grievances, and appointment, reappointment and tenure issues for faculty. Dean Wilder is not directly involved in collective bargaining. There are employees under the direction of the Academic Dean who are in the bargaining unit represented by VSEA and in the proposed bargaining units.

98. Shona Sladyk, Staff Assistant to Dean Wilder, is in a pay grade 9 position. The personnel files for full-time and part-time faculty are kept in Sladyk's office, and she maintains the files. She works with Dean Wilder on classroom observations and evaluations done by the Dean on faculty, and places them in personnel files and distributes them to faculty. She keeps track of faculty workload, including monitoring whether they are entitled to overload pay.

99. Sladyk maintains budgets for Dean Wilder. She monitors expenditures, and maintains budget spreadsheets. She participates in budget preparation by providing the Dean with statistical information, such as how much a particular department is spending on part-time faculty and what savings would result if certain courses were not offered. Dean Wilder has discussed with Sladyk possible cutbacks in programs due to budget reductions.

100. Jo Ann Lamore, Assistant to Dean Wilder, is in pay grade 11 position. She is involved with sexual harassment complaints which are coordinated by Dean Wilder. She has found and trained sexual harassment investigators, and has investigated sexual harassment complaints herself. Lamore may view materials filed in sexual harassment cases. If there is a formal sexual harassment complaint, Dean Wilder keeps the file locked in her office.

101. Lamore has drafted a variety of letters for Dean Wilder's signature including informing faculty of available grants, clarifying leave policies for faculty, and appointment, reappointment and tenure letters. She drafted one letter of discipline the Dean issued to an employee. Lamore has access to faculty personnel files, and places materials in the files along with Sladyk. She has interpreted the collective bargaining

contract for faculty on appointment, reappointment and tenure issues, including informing them of procedures.

102. Lamore is not involved in budget issues, and has no involvement in collective bargaining. She does not have access to Dean Wilder's computer password. Lamore and Sladyk work in tandem on many issues other than budget issues.

Lyndon Administrative Assistant to Academic Dean

103. The Union and the Colleges have agreed to the exclusion of Maureen Winn, Staff Assistant to the Academic Dean at Lyndon, from the proposed bargaining unit of professional, technical and administrative employees as a confidential employee. In addition, the Colleges contend that Cheryl Goldrick, Administrative Assistant to the Lyndon Academic Dean, should be excluded from the proposed bargaining unit on the grounds that she is a confidential employee. Alternatively, the Colleges contend that she should be excluded from the proposed unit because she does not share a community of interests with employees in the proposed unit. The Union objects to the exclusion of Goldrick from the unit (Colleges Exhibit 7, page 2).

104. There are employees under the direction of the Academic Dean who are in the bargaining unit represented by VSEA and in the proposed bargaining units (Colleges Exhibit 7, page 2).

105. Maureen Winn has served as the Staff Assistant to the Lyndon Academic Dean for many years. Her position is a pay grade 9 position. Winn's desk is located just outside the Dean's office. She acts as a receptionist, handles the Dean's appointments, monitors the budget, opens mail, provides finishing touches on documents and distributes documents, receives and sends faxes for the Dean, and serves as a sounding board for the

Dean on a variety of matters. Among the items contained on the computer of the Academic Dean are budget planning documents, evaluations of faculty and other employees, policy recommendations to the President and misconduct allegations against staff. Winn has the password to the Dean's computer.

106. Winn maintains the official personnel files for full-time and part-time faculty. Winn has helped the Dean prepare some faculty evaluations. She distributes and files evaluations and tenure and promotion recommendations of the Dean. The Dean has discussed issues involved in grievances with Winn and she is aware in advance what decisions the Dean is going to make on grievances. She generally serves as a sounding board for the Dean on issues, including labor relations and personnel issues.

107. Winn monitors and maintains the budget for the Academic Dean. She makes recommendations on disbursements to the Dean, and makes disbursements at the Dean's direction. Winn has advised the Dean on budget matters, and serves as a sounding board for him on possible budget scenarios.

108. Cheryl Goldrick provides support to the Academic Dean's office in her Administrative Assistant, pay grade 8, position. A primary role for her is to support Associate Dean Berryman, the Title III coordinator, who oversees a program for faculty and student technology needs. She also serves as a secondary assistant to the Academic Dean, providing backup to Winn and substituting for her in her absence. Goldrick has access to the personnel files in the Academic Dean's office but rarely has a need to access them. On occasion Goldrick has prepared evaluations and letters of reprimand. Goldrick shares an office with Berryman which is down the hall from the Academic Dean's office.

OPINION

The Union and the Colleges disagree on the inclusion of 34 employees in the proposed bargaining units. The objections made by the Colleges to the inclusion of the employees can be grouped into the following categories: 1) some employees should be excluded as managers; 2) some employees should be excluded as confidential employees; 3) some employees should be excluded from the units because they do not share a community of interests with employees in the proposed units; and 4) some employees should be excluded from the units pursuant to 3 V.S.A. Section 902(5), which provides: “‘State employee’ . . . exclude(s) an individual . . . determined after hearing by the board . . . to be in a position which is so inconsistent with the spirit and intent of this chapter as to warrant exclusion”. The Colleges contend that some employees fit into only one of these categories, and other employees fall into two or three categories. We will discuss the contentions made by the Colleges by category.

Managerial Employees

The Colleges contend that the Physical Plant Directors at each of the four campus-based colleges, and the four Nursing Site Directors employed by Vermont Technical College, should be excluded from the proposed supervisory bargaining unit on the grounds that they are managerial employees.

Section 902(18) of the State Employees Labor Relations Act contains a specific definition for managerial employees, as follows:

"Managerial Employee" is 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.

Individuals employed as managers are ineligible to be included in a collective bargaining unit. 3 V.S.A. §902(5)(f). Although some of the specific functions listed in Section 902(18) do not conform to the organizational structure of the Colleges, we construe this definition to include similar positions in the Colleges. VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB 6, 18 (1985).

The supervisory authority defined in the statute is all clearly encompassed in managerial responsibility as well. In re Personnel Designations, 139 Vt. 91 (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. 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). Department of Corrections Designation Dispute (Re: Corrections Information Systems Chief), 18 VLRB 323 (1995). The definition of "managerial employee" necessarily implies the employee will manage and monitor not only their own time and performance, but that of a significant number of other employees as well. VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB at 18.

We first discuss whether the Physical Plant Directors at each of the four campus-based colleges are managers. The Colleges contend that the Physical Plant Directors probably are most comparable to the "major section chief" referred to in Section 902(18). In determining whether an employee is a "major section chief", the Board examines the structure of a particular section, the responsibilities of the employees within it, and the

relationship of the section and its employees to the larger organizational structure 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).

In making that examination here, we conclude that the Physical Plant Directors are major section chiefs within the meaning of Section 902(18). We previously have concluded that the Community College of Vermont President is comparable to an “institution head” under Section 902(18). VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB at 18. (1985). We believe that the same conclusion is warranted with respect to each state college President. We further conclude that the Dean of Administration at each of the state colleges is equivalent to a “major program or division director” pursuant to Section 902(18).

The Physical Plant Directors are directly beneath the Deans of Administration in the organizational structure. They are responsible for the administration of the largest single department on each of their campuses, and have a significant number of employees - between 24 and 29 - under their direction including two supervisors of maintenance and custodial employees. Given the size and the scope of the operation under the direction of the Physical Plant Directors, we conclude they are major section chiefs pursuant to Section 902(18). c.f. Department of Corrections Designation Dispute (Re: Corrections Systems Information Chief), 18 VLRB 323, 329 (1995).

The managerial nature of their positions is indicated by the discretionary authority they possess, particularly in personnel administration and budget administration. They have broad authority over a significant number of employees in personnel administration

matters of hiring, discipline, assigning and directing work, determining work priorities, coordinating various projects and other areas. They administer large budgets that range from \$1.5 to \$2.5 million on an annual basis. Although much of the budget is dedicated to fixed costs, they do have discretionary authority to spend money without higher approval in such areas as purchase of equipment and tools, maintenance of vehicles and purchase of supplies. Their ability to effectively recommend when and under what circumstances outside contractors may be needed to do work on campus is an example of their discretionary authority in both personnel administration and budget administration.

Although their discretionary authority in policy matters is limited, this does not affect our conclusion that they are managers. In addition to their responsibilities discussed above, there are other indicia of their managerial role. They play a key role in major building renovations on campus that generally involve state capital appropriations. This includes making recommendations on capital projects, and being integrally involved in the planning of renovations and overseeing the renovation work. They are the chief safety officers on campus responsible for ensuring compliance with laws and regulations relating to occupational safety and health, fire and plumbing, environmental protection and public access for persons with disabilities. They are the chief administrators involved when there are emergencies on campus such as snow removal, water problems and furnace shutdowns. In short, they are key state college managers exercising authority in significant areas of responsibility. Thus, they are ineligible to be included in the proposed supervisory bargaining unit.¹

We next address whether the four Nursing Site Directors employed by Vermont Technical College are managerial employees. The Colleges contend that they act as “directors of a district operation” as that phrase may be interpreted under Section 902(18). Where an employer seeks to exclude an individual from a bargaining unit as a manager, a considerable amount of evidence must be advanced to warrant such exclusion. Agency of Transportation Designation Dispute, 17 VLRB at 141. We conclude that the Colleges have not presented such evidence with respect to the Nursing Site Directors.

The Colleges have not demonstrated that the Nursing Site Directors have sufficient discretionary authority in the areas of personnel administration, budget administration and policy matters to meet the statutory definition of a managerial employee. In the area of personnel administration, Site Directors generally supervise the administrative secretary/assistant and the clinical associate at their site. In terms of responsibility, this supervisory role over two employees is not sufficient to justify a managerial designation which necessarily implies managing and monitoring the time and performance of a significant number of employees. VFT, AFT, AFL-CIO and Vermont State Colleges, *supra*.

Examination of the responsibilities of the Nursing Site Directors with respect to budget administration and policy matters reinforces the conclusion that they are not managerial employees. They have limited discretion at their site to purchase supplies and materials within a \$75,000 budget. Managerial responsibility with respect to the Nursing Program budget resides with the Nursing Program Director, who prepares and monitors the total Nursing Program budget of \$1.5 million. Similarly, discretionary authority with

¹ The Colleges also contend that Physical Plant Directors are confidential employees. Given our conclusion that they are excluded from the proposed bargaining unit as managers, there is no need for us to

respect to policy matters resides with the Nursing Program Director who establishes nursing policies for the Nursing Program. Site directors lack discretionary authority in this regard as they do not set policies for the program; they execute policies.

In sum, managerial responsibility as defined by statute in the Nursing Program at Vermont Technical College resides with the Nursing Program Director. The Nursing Site Directors are not managers as defined in Section 902(18).²

Confidential Employees

The Colleges contend that various employees should be excluded from the proposed bargaining units as confidential employees. Under the State Employees Act, individuals who meet the statutory definition of "confidential employee" are ineligible to be included in a bargaining unit. The term "confidential employee" is defined as an employee "having responsibility or knowledge or access to information relating to collective bargaining, personnel administration or budgetary matters that would make membership in or representation by an employee organization incompatible with . . . official duties". 3 V.S.A. §902(17).

A finding that a person assists or acts in a confidential capacity in relation to persons who formulate, determine and effectuate management policies in the field of labor relations is a necessary element under the labor nexus rule if an employee is to be classified as a confidential employee. In re Local 1201, AFSCME and Rutland Department of Public Works, 143 Vt. 512 (1983). The essential issue is whether challenged employees have such a close relation to the employer's management of labor

examine whether they should be excluded from the unit based on confidential status.

² The Colleges also contend that the Nursing Site Directors are confidential employees, and alternatively that they should be excluded from the proposed supervisory unit on community of interest grounds. These contentions of the Colleges are addressed in later sections of this Opinion.

relations that the employer would be prejudiced by their inclusion in a bargaining unit with other employees. Harwood Union High School District and Harwood Education Association, Sup.Ct.Dock.No. 1999-173, slip op. at 11 (April 6, 2001). Employers are entitled to rely upon employees who are not subject to divided loyalties, and employees should not be in a position where they must choose between their loyalties to a union and to their employer. Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60, 68 (1982).

Employees who do not have access to confidential information as part of their regular duties do not meet these tests. Employees whose duties require only occasional access to confidential material and which could be reassigned, or employees who occasionally substitute for confidential employees, do not meet the definition of "confidential" employee. American Federation of Teachers, Local 333 and Washington Central Supervisory Union, 1 VLRB 288 (1978). Castleton Education Association and Castleton Board of School Directors, 1 VLRB 374 (1978). Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Vermont Education Association and Windsor Town School District, 2 VLRB 295 (1979).

Further, an employer must demonstrate not only access to confidential information, but that such access would adversely impact on the employer's conduct of its labor relations policies if employees are included in a bargaining unit. Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 78 (1989).

Information Technology Employees - The Colleges contend that the Directors of Computing Services and all other information technology employees at the four

campuses should be excluded from the two proposed units as confidential employees. In total, the Colleges seek to exclude thirteen information technology employees from the bargaining units.

We first discuss the Directors of Computer Services. They are the chief persons on their campuses responsible for administering campus computer systems. Included among their responsibilities are supervising other information technology employees, and planning and coordinating computer functions. They report directly to either Deans or associate Deans.

In performing these responsibilities, we conclude that they act in a confidential capacity to managers formulating, determining and effectuating management policies in the field of labor relations. On each campus, the President and the Deans communicate with each other by e-mail. Included among these e-mail communications are sharing of confidential collective bargaining, personnel administration and budget information. The Deans and the President also have confidential documents in these areas on the hard drives of their computers. College managers need to be able to rely on the Directors of Computer Services, as the chief persons on campus responsible for administering campus computer systems, to ensure the security of these confidential communications and documents. It would be prejudicial for the Colleges to have them in a bargaining unit represented by a union where the union could gain an unfair advantage by gaining access to such information. The Colleges are entitled to rely upon employees who are not subject to divided loyalties, and the Directors of Computer Services should not be in a position where they must choose between their loyalties to a union and to their employer. Vermont State Hospital Personnel Designation Disputes, supra.

Also, the Colleges have a policy regulating responsible and ethical use of college computers by employees and students, and on occasion have conducted investigations of employees over alleged violations of this policy. In conducting these investigations, college managers need to rely on the technical expertise and assistance of the Directors of Computer Services to determine whether violations of the computer use policy occurred. In performing such a role, the Directors of Computer Services are acting in a confidential capacity to managers in a situation where discipline of employees can result. It would be incompatible with these duties for the Directors to be in a bargaining unit represented by a union who may ultimately represent the disciplined employee.

We next discuss the category of information technology employees whom perform similar network administrator responsibilities. These employees are the Network Administrator at Castleton, the Network Administrator at VTC, the Information Technology Specialist at Lyndon, and the Information Technology Administrator at Johnson. They create e-mail accounts for students and employees. They maintain and manage access to e-mail accounts, network accounts, printer servers, and hubs and connectors on campus. They back up the contents of file servers. They perform troubleshooting on e-mail accounts and generally on problems that arise for end users in using their computers.

In performing troubleshooting responsibilities, there are occasions, such as opening files or e-mail attachments or getting documents printed, where these employees are able to view the contents of documents. They do not need to know a user's password to access an individual's computer. They have the broadest security clearance, and are able to access e-mail accounts and files of users without their knowledge by use of their

own login. They also do not need to be at the user's computer to gain this access; they can obtain access through their own computer on campus or use of a computer off-campus. Also, these employees have access to files that are backed up and need to access them on occasion, and restore and retrieve them, as part of their troubleshooting responsibilities.

It is a close question whether to exclude these network administrators as confidential employees based on these responsibilities since we already have excluded the Directors of Computer Services as confidential employees, and the evidence indicates that on occasion they engage in troubleshooting problems. Ultimately, however, we conclude that, given the size and scope of these computer systems, it is appropriate for each campus to have two information technology employees excluded from the bargaining unit as confidential employees, the Director of Computer Services as the chief administrator of the campus computer system and the network administrator as the chief "hands-on" person maintaining the campus computer system and access to it.

In performing their responsibilities, we conclude the network administrators are effectively acting in a confidential capacity to managers carrying out labor relations policies. As a regular part of their duties, they have access to a broad array of information on computers, including confidential collective bargaining, personnel administration and budget information. They may be called on to "troubleshoot" e-mail accounts and computer files that will provide them access to this confidential information.

We conclude otherwise with respect to the remaining six information technology employees. Although the evidence indicates they also are involved in troubleshooting problems that arise for computer users, we are not persuaded they are needed as a regular

part of their duties to assist or act in a confidential capacity to managers carrying out labor relations policies.

In supervising information technology employees, and planning and coordinating computer functions for computer systems of this size, Directors of Computer Services can feasibly allocate work so that these other information technology employees do not need to access e-mail accounts and files of computer users that have confidential collective bargaining, personnel administration and budget information. Directors also can allocate work so that these employees are not involved in investigations of alleged violations of the computer use policy. Two information technology employees at each college serving in a confidential capacity suffice to ensure that the confidentiality interests of the Colleges are met.

We recognize that these other information technology employees possibly could gain access to confidential information since they have the broadest security clearance on accessing e-mail accounts and files of computer users. Nonetheless, we decline to exclude them from the bargaining unit as confidential employees. They do not need access to confidential information as part of their regular duties since their actual job functions can be limited to non-confidential duties, and the Colleges have not demonstrated that it would be impractical to limit these employees' access to confidential information. Orange Southwest Supervisory Union et al and Orange Southwest Teachers' Association, 11 VLRB 285, 296-97 (1988).³

Directors of Payroll and Benefits - The Colleges contend that the Directors of Payroll and Benefits at the four colleges should be excluded from the proposed

bargaining unit of professional, administrative and technical employees on the grounds that they are confidential employees. We agree. The Directors of Payroll and Benefits perform key human resources functions at their colleges, and as such serve in a confidential capacity to a central manager of labor relations, the Dean of Administration.

In carrying out their responsibility for administering the payroll and benefits operation at their college, the Directors of Payroll and Benefits have unlimited access to the personnel files of non-faculty employees that are kept in their offices. Deans of Administration involve the Directors in budget planning. This includes “what if” scenarios in which Directors determine the cost to the college of possible or projected wage or benefit increases, and calculating projected savings to the college based on not filling a vacant position or reducing a college program. In dealing with health insurance and workers’ compensation claims, Directors gain knowledge of confidential medical treatment of employees and serve as an intermediary on behalf of the college between employees and insurance companies. The insurance company may ask Directors if any further investigation is warranted on workers’ compensation claims.

Directors are the chief persons on campus responding to employee pay and benefit questions. In responding to these questions and in performing their duties, Directors have to act consistent with the applicable collective bargaining agreement or personnel handbook. If they have questions themselves on the interpretation of the Colleges’ wage and benefits policies, they receive guidance from the Colleges’ Director of Human Resources.

³ The Colleges also contend that these six information technology employees should be excluded from the proposed bargaining unit pursuant to 3 V.S.A. Section 902(5). This contention of the Colleges is addressed in a later section of this Opinion.

When these duties of Directors of Payroll and Benefits are considered in their entirety, it is evident they have responsibility, knowledge and access to information relating to collective bargaining, personnel administration and budgetary matters which would make membership in or representation by the Union incompatible with their official duties. As part of their regular duties, they assist in a confidential capacity to Deans of Administration who have managerial responsibility with respect to labor relations policies. We are persuaded that the Directors have such a close relation to the Colleges' management of labor relations that the Colleges would be prejudiced by their inclusion in a bargaining unit with other employees.

We note that employees of the State Department of Personnel are excluded from the definition of state employee under the State Employees Labor Relations Act, and thus are ineligible to be included in a bargaining unit represented by an employee organization under the Act. 3 V.S.A. Section 902(5)(H). This indicates recognition by the Vermont General Assembly that it is inappropriate to have these employees performing human resources functions in a bargaining unit represented by a union. Similarly here, we conclude that the Directors of Payroll and Benefits are ineligible to be included in a bargaining unit due to their human resource responsibilities.

Administrative Assistants to Deans of Students - The Colleges contend that the Administrative Assistant to the Castleton Dean of Students, and the Administrative Assistant to the Johnson Dean of Students, should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that they are confidential employees.

We conclude that the Colleges have presented insufficient evidence to exclude these administrative assistants as confidential employees. A considerable amount of evidence must be presented to exclude an employee from a bargaining unit. VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB at 20-21. The evidence indicates that the administrative assistants handle some materials involving personnel administration matters such as performance evaluations, appointment and reappointment letters. However, the evidence does not indicate that this is on other than an occasional or infrequent basis. Occasional or infrequent access to confidential material does not make membership in, or representation by, a union incompatible with official duties. Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Directors, 12 VLRB 60, 79 (1989).

The evidence also indicates that the administrative assistants on occasion check voice mail and/or e-mail messages for the Dean of Students. The evidence does not indicate whether, or how frequently, these messages include confidential information relating to collective bargaining, personnel information or budgetary matters. The Employer must demonstrate that employees have access to confidential information that would adversely impact on the employer's conduct of its labor relations policies if employees are included in a bargaining unit. Id. at 78. The Colleges have not demonstrated any harm that would result to the Employer in its labor relations dealings, or any undue benefit which would accrue to the Union, if the administrative assistants receiving such voice mail and/or e-mail messages are included in the bargaining unit. Id.

Likewise, the work performed by the administrative assistants with respect to the budget does not result in confidential status. They monitor budget expenditures, keep the

Dean abreast of expenditures, and may provide some historical perspective on past budget issues. The Employer has not demonstrated how the assistants' duties in this regard mean they gain access to confidential information which would make membership in or representation by the Union incompatible with their duties. In sum, the Colleges have not presented sufficient evidence warranting a conclusion that the administrative assistants to the Deans of Students are confidential employees.⁴

Administrative Assistants to Deans of Institutional Advancement - The Colleges contend that the Administrative Assistant to the Castleton Dean for Institutional Advancement, and the Administrative Assistant to the Lyndon Dean for Institutional Advancement, should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that they are confidential employees.

Again, we conclude that the Colleges have presented insufficient evidence to exclude these administrative assistants as confidential employees. There is no evidence that they have responsibility, knowledge or access to confidential information relating to collective bargaining or budgetary matters that would make their inclusion in the bargaining unit incompatible with their official duties. The evidence relating to their involvement in confidential personnel administration matters indicates that this is on an occasional or infrequent basis.

The evidence presented by the Employer falls well short of demonstrating that the administrative assistants have access to confidential information that would adversely impact on the employer's conduct of its labor relations policies if they are included in a

⁴ The Colleges also contend that the Administrative Assistants to the Deans of Students should be excluded from the proposed bargaining unit on community of interest grounds. This contention of the Colleges is

bargaining unit. The administrative assistants do have access to a significant amount of confidential information as part of their regular duties – i.e., confidential information on donors to the college due to maintaining an extensive donor database. However, this is not confidential information relating to collective bargaining, personnel administration or budgetary matters which is necessary to exclude employees from bargaining units as confidential employees.⁵

Castleton Administrative Assistant to Associate Academic Deans - The Colleges contend that Meredith Trude, Administrative Assistant to the Associate Academic Deans at Castleton, should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that she is a confidential employee.

The bulk of Trude's job clearly involves non-confidential duties. The most substantial duty she performs involves organizing the college's overseas program in London. Among her other duties taking up a significant amount of time are frequently answering questions from students and parents, administrative duties concerning the college's Writing Standards Program, and developing an orientation handbook for new students.

The evidence indicates that she does not have responsibility, knowledge or access to confidential information relating to collective bargaining or budgetary matters. Her involvement in personnel administration matters is the only area which raises a plausible question concerning whether she is a confidential employee. She has access to faculty

addressed in a later section of this Opinion.

⁵ The Colleges also contend that the Administrative Assistants to the Deans of Institutional Advancement should be excluded from the proposed bargaining unit on community of interest grounds. This contention of the Colleges is addressed in a later section of this Opinion.

personnel files, which are kept in the office of Rita Geno, the Administrative Assistant to the Academic Dean whom the parties have agreed is a confidential employee. She also places classroom observation reports that the Associate Academic Deans do on faculty, and letters concerning reappointment or tenure of faculty, in faculty personnel files. She further substitutes for Geno on occasion.

We conclude that Trude's involvement in personnel administration matters and substitution for Geno does not warrant her exclusion from the bargaining unit as a confidential employee. As previously indicated, employees whose duties require only occasional access to confidential material which could be reassigned, or employees who occasionally substitute for confidential employees, do not meet the definition of "confidential" employee.

The fact that Trude on occasion handles classroom observation reports is not sufficient to indicate confidential status. In previous cases, the Board has concluded that secretaries who typed classroom observations and/or performance evaluations, which were confidential materials, would not be excluded from the bargaining unit as confidential employees because the employer had demonstrated no harm if such employees were included in the bargaining unit. Colchester, supra. Proctor Education Association/Vermont-NEA/NEA and Proctor School Board, 18 VLRB 174 (1995). Harwood Union High School District and Harwood Education Association/Vermont-NEA/NEA, 22 VLRB 53 (1999); *Affirmed*, ___ Vt. ___ (2001). Here too, the Colleges have not demonstrated that Trude's handling of classroom observation reports would adversely impact on the Colleges' conduct of its labor relations policies if Trude was included in the bargaining unit. Moreover, if the Colleges have concerns about Trude

being in the bargaining unit due to these responsibilities and her access to faculty personnel files, it is evident these responsibilities feasibly could be reassigned to Geno, and Trude's access to personnel files could be limited, without serious disruption to the Colleges. Unite Steelworkers of America, Local 8774, Barre and City of Barre, 5 VLRB 3, 8-9 (1982).⁶

Johnson Administrative Assistant to the Academic Dean - The Colleges contend that Jo Ann Lamore, Administrative Assistant to the Academic Dean at Johnson, should be excluded from the proposed bargaining unit of professional, administrative and technical employees on the grounds that she is a confidential employee. We agree.

We conclude that Lamore acts in a confidential capacity with respect to personnel administration matters to the Academic Dean, a manager responsible for labor relations policies at the college. Lamore is integrally involved with sexual harassment complaints that are coordinated by the Academic Dean, including finding and training sexual harassment investigators and investigating complaints herself. She has drafted a variety of letters for the Academic Dean, including appointment, reappointment, tenure and discipline letters. She also has interpreted the collective bargaining contract for faculty on appointment, reappointment and tenure issues. It is evident that, in performing these duties, Lamore provides substantial assistance to the Academic Dean with respect to confidential personnel administration matters.

Although the Johnson Academic Dean also has the assistance of Staff Assistant Shona Sladyk to perform confidential duties, it is apparent this is not a situation where the confidential duties performed by Lamore feasibly can be reassigned to Sladyk. It is

⁶ The Colleges also contend that Trude should be excluded from the proposed bargaining unit on community of interest grounds. This contention of the Colleges is addressed in a later section of this

apparent that both Sladyk and Lamore perform confidential work as a significant part of their duties, and it would place an unfair burden on the Colleges to have confidential duties assigned to just one of the assistants. We conclude that the Colleges would be prejudiced, and the conduct of its labor relations policies would be adversely affected, by the inclusion of Lamore in the bargaining unit.

Lyndon Administrative Assistant to the Academic Dean - The Colleges contend that Cheryl Goldrick, Administrative Assistant to the Lyndon Academic Dean, should be excluded from the proposed bargaining unit on the grounds that she is a confidential employee. We conclude that Goldrick is not a confidential employee.

Her primary role is to support the associate academic Dean who oversees a program for faculty and student technology needs. There is no evidence that she has responsibility, knowledge or access to confidential information relating to collective bargaining or budgetary matters. Her involvement in confidential personnel administration matters is limited to occasional preparation of evaluations and letters of reprimand and a rare need to access personnel files. She provides backup to the confidential staff assistant to the Academic Dean, Maureen Winn, and substitutes for her when she is absent.

As indicated, employees whose duties require only occasional access to confidential material, or employees who occasionally substitute for confidential employees, do not meet the definition of “confidential” employee. This describes

Goldrick's responsibilities. It is evident that Winn sufficiently fulfills the need for confidential assistance in the Academic Dean's office.⁷

Vermont Technical College Nursing Site Directors - The Colleges contend that the four Nursing Site Directors employed by Vermont Technical College should be excluded from the proposed supervisory bargaining unit on the grounds that they are confidential employees. This contention of the Colleges can be summarily addressed. There is a scarcity of evidence presented by the Colleges on confidential personnel administration, collective bargaining or budgetary responsibilities of the Nursing Site Directors.⁸

Community of Interests Among Employees

The Colleges contend that various employees in the proposed bargaining units should be excluded from the units because they do not share a community of interests with other employees in the proposed units. The State Employees Act provides that the Board "shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein, in order to assure the employees the fullest freedom in exercising the rights guaranteed by this chapter." 3 V.S.A. Section 927(a). The Act provides that the Board shall take the following criteria into consideration in determining the appropriateness of a collective bargaining unit:

- 1) The authority of governmental officials at the unit level to take positive action on matters subject to negotiation.
- 2) The similarity or divergence of the interests, needs and general conditions of employment of the employees to be represented. The Board may, in its discretion, require that a separate vote be taken among any particular class or

⁷ The Colleges also contend that Goldrick should be excluded from the proposed bargaining unit on community of interest grounds. This contention of the Colleges is addressed in a later section of this Opinion.

⁸ The Colleges also contend that the Nursing Site Directors should be excluded from the proposed supervisory bargaining unit on community of interest grounds. This contention of the Colleges is addressed in a later section of this Opinion.

type of employees within a proposed unit to determine specifically if the class or type wishes to be included.

3) Whether over-fragmentation of units among State employees will result from certification to a degree which is likely to produce an adverse effect either on effective representation of State employees generally, or upon the efficient operation of State government. 3 V.S.A. Section 941(f).

This language demonstrates a clear legislative intent to allow employees freedom in selecting the composition of the unit that will best represent their interests as long as the unit is appropriate and will not result in over-fragmentation of units. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, 92 (1982); *Affirmed*, 143 Vt. 636 (1983). The unit need not be the most appropriate unit, only an appropriate unit. *Id.* 143 Vt. at 642-43, 646.

Under the State Employees Act, the criteria an appropriate unit decision most often turn on are community of interests and overfragmentation of units. The community of interests criterion must be considered together with whether overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of other employees or upon the effective operation of the employer. The following factors are relevant in determining whether a community of interests exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions and job sites; and whether employees have frequent contact with each other and have an integration of work functions. Petition of VSEA (re: Bargaining Unit for Department of Corrections), 13 VLRB 287, 304-305 (1990).

The Colleges contend that the four Nursing Site Directors employed by Vermont Technical College should be excluded from the proposed supervisory bargaining unit based on lack of community of interests with other employees in the proposed unit. The

Colleges argument centers on the distance of the Nursing Site Directors from other employees of the Colleges. The Colleges contend that the remoteness of their positions and the isolation of their working conditions militate against a finding of community of interests with other employees in the proposed unit. The Colleges contend that they are more truly like employees in the external programs of the Colleges that the Union has excluded from the proposed units.

We conclude that a sufficient community of interests exists among the Nursing Site Directors and other supervisors of the Colleges in the proposed supervisory unit. In reaching this decision, we note that the Vermont General Assembly has established by statutory amendment of the State Employees Act a bargaining unit of supervisory employees in state government. 3 V.S.A. Section 907. This constitutes a legislative recognition that a bargaining unit composed of supervisors whom are spread throughout the state in different departments and agencies, with little interaction with each other, is an appropriate unit.

Similarly here, the fact that Nursing Site Directors work in different locations than other supervisors in the proposed unit does not defeat the appropriateness of including them in the same unit as other supervisory employees. They share sufficient similarities with respect to job functions, qualifications, working conditions and interests to warrant including them in the same bargaining unit.

The Colleges contend that the Director of Americorps and the Case Worker of the Reach Up Program at Lyndon should be excluded from the proposed bargaining unit of professional, administrative and technical employees because they do not share a community of interests with employees in the proposed unit. The Colleges contend that it

is only happenstance that these positions are located on the Lyndon campus, that they are not positions normally found on college campuses and they have no counterparts elsewhere in the Colleges system. The Colleges contend that these positions are more like external program employees who have been excluded from the proposed units.

We conclude that the Director of Americorps and the Case Worker of the Reach Up Program at Lyndon share a sufficient community of interests with employees in the proposed bargaining unit to include them in the same unit. They are subject to the rules and regulations of the college, and participate in the employee benefits programs, just like other employees of the college in the proposed bargaining unit.

Their supervision is similar to other employees in the proposed unit. The Director of Americorps reports to the Dean of Institutional Advancement, as do other employees in the proposed unit. The Case Worker of the Reach Up Program is under the direction of the Academic Dean, as are other employees in the proposed unit.

They share a general work location, the Lyndon campus, with many other employees in the proposed unit and thus have some interaction with them. The fact that they are paid through federal grants does not weaken their community of interests with other employees in the proposed unit as there are other employees of the college who are paid through grants. In sum, their similarities with other employees in the proposed bargaining unit persuade us that it is appropriate to include them in the same unit.

The Colleges contend that the following employees should be excluded from the proposed bargaining unit of professional, administrative and technical employees on community of interest grounds because they share a greater community of interests with employees in the bargaining unit represented by VSEA than they do with employees in

the proposed unit: Administrative Assistant to the Castleton Dean of Students, Administrative Assistant to the Johnson Dean of Students, Administrative Assistant to Castleton Dean for Institutional Advancement, Administrative Assistant to Lyndon Dean for Institutional Advancement, Administrative Assistant to Castleton Associate Academic Deans, and Administrative Assistant to Lyndon Academic Dean. The Colleges contend that the positions are essentially clerical and non-professional in nature and do not share a community of interests with the rest of the unit to warrant inclusion.

The evidence before us is insufficient to exclude the administrative assistants from the proposed bargaining unit on community of interest grounds. Employees are allowed freedom in selecting the composition of the unit that will best represent their interests as long as the unit is appropriate, even if it is not the most appropriate unit. VSEA is aware of this petition, and has not sought to intervene to represent the employees. Thus, this is not a case where unions are competing to represent the same employees and we have to decide the most appropriate unit placement for employees.

Also, we do not have specific evidence on the job functions of the secretary/receptionists, administrative assistants and staff assistants in the bargaining unit represented by VSEA. This makes it difficult at best to pass judgment on the Colleges' claim that the administrative assistants at issue share a greater community of interests with VSEA-represented employees. The evidence that we do have does not support the Colleges' contention that the positions at issue do not share a community of interests with the rest of the unit due to their essentially non-professional and clerical nature.

The fact the positions are non-professional is not sufficient to show lack of community of interests since there also are technical positions in the bargaining unit that

are not professional positions. The Colleges' claim that the positions are clerical in nature does not accurately reflect the scope of the duties of the administrative assistants. Although many of the assistants have a high school education and there are clerical components to their jobs, the administrative assistants also perform administrative duties of a responsible nature. The administrative assistants in the institutional advancement area maintain extensive databases of donors and alumni, as well as corresponding with donors and alumni and producing publications concerned with donor and alumni relations. The primary role of the administrative assistants to academic Deans at issue is to provide significant administrative support to programs offered by the college, rather than to perform traditional secretarial and clerical duties. There also are responsible administrative duties performed by administrative assistants to Deans of Students, including budget monitoring.

Given this evidence, and absent more specific evidence on the duties of employees in the bargaining unit represented by VSEA, we are not prepared to accept the Colleges' argument that the involved administrative assistants lack a sufficient community of interests with employees in the proposed unit. The administrative assistants share similar employment benefits, working conditions, supervision and job sites with employees in the proposed unit. Also, they have regular contact with employees in the proposed unit, as well as some integration of work functions. Under the circumstances, we conclude these similarities are sufficient to appropriately place them in the same bargaining unit.

3 V.S.A. Section 902(5)(J) Claim

The final issue we need address is the contention of the Colleges that the information technology employees should be excluded from the proposed bargaining units pursuant to 3 V.S.A. Section 902(5)(J), which provides: “‘State employee’ . . . exclude(s) an individual . . . determined after hearing by the board . . . to be in a position which is so inconsistent with the spirit and intent of this chapter as to warrant exclusion”. Given our conclusion that seven of the thirteen information technology employees are confidential employees, and thus ineligible to be included in a bargaining unit, there is no need to address this issue with respect to those seven employees.

In applying Section 902(5)(J) to the remaining six information technology employees, we do not believe these employees are in a position which is so inconsistent with the spirit and intent of the State Employees Act to warrant exclusion from the unit. If we concluded these employees would be subject to an irreconcilable conflict of interest between their obligations to a union and to their employer, we would exclude them from the bargaining unit. VFT, AFT, AFL-CIO and Vermont State Colleges, 8 VLRB at 20-21. However, as we indicated earlier, their actual job functions can be limited to non-confidential duties and the Colleges have not demonstrated that it would be impractical to limit these employees’ access to confidential information. Under these circumstances, we conclude these employees are not subject to an irreconcilable conflict of interest.

ORDER

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

1. The Physical Plant Directors at the four campus-based colleges of the Vermont State Colleges are excluded from the proposed bargaining unit of supervisory employees as managerial employees;
2. The Directors of Payroll and Benefits at the four campus-based colleges of the Vermont State Colleges are excluded from the proposed bargaining unit of professional, technical and administrative employees as confidential employees;
3. The Director of Computer Services at Castleton State College, the Director of Computing Services at Johnson State College, and the Director of Computing Services at Vermont Technical College are excluded from the proposed bargaining unit of supervisory employees as confidential employees;
4. The Network Administrator at Castleton State College, Information Technology Administrator at Johnson State College, Information Technology Specialist at Lyndon State College, and Network Administrator at Vermont Technical College are excluded from the proposed bargaining unit of professional, technical and administrative employees as confidential employees;
5. The Administrative Assistant to the Academic Dean at Johnson State College is excluded from the proposed bargaining unit of professional, technical and administrative employees as a confidential employee;
6. The Nursing Site Directors employed by Vermont Technical College are included in the proposed bargaining unit of supervisory employees;
7. The Micro Computer and Tech Specialist at Castleton State College, Academic Technology Administrator at Johnson State College, Assistant Information Technology Specialists at Lyndon State College, and Coordinator of Computer Support and Technician at Vermont Technical College are included in the proposed bargaining unit of professional, technical and administrative employees;
8. The Administrative Assistant to the Castleton State College Dean of Students, Administrative Assistant to the Johnson State College Dean of Students, Administrative Assistant to the Castleton State College Dean for Institutional Advancement, Administrative Assistant to the Lyndon State College Dean for Institutional Advancement, Administrative Assistant to the Castleton State College Associate Academic Deans, and Administrative Assistant to the Lyndon State College Academic Dean are included in the proposed bargaining unit of professional, technical and administrative employees;
9. The Director of Americorps and the Case Worker of the Reach Up Program at Lyndon State College are included in the proposed bargaining unit of professional, technical and administrative employees;

10. The Vermont Labor Relations Board shall conduct a secret ballot election, pursuant to 3 V.S.A. Section 941(e) and (g), in Docket No. 01-46 among employees in the proposed bargaining unit of supervisory employees, as amended by this decision and agreements reached by the parties, to determine: a) whether they wish to be organized into the bargaining unit; and b) whether they wish to be represented for exclusive bargaining purposes by the United Professions of Vermont/AFT; and

11. The Vermont Labor Relations Board shall conduct a secret ballot election, pursuant to 3 V.S.A. Section 941(e) and (g), in Docket No. 01-47 among employees in the proposed bargaining unit of professional, technical and administrative employees, as amended by this decision and agreements reached by the parties, to determine: a) whether they wish to be organized into the bargaining unit; and b) whether they wish to be represented for exclusive bargaining purposes by the United Professions of Vermont/AFT.

Dated this ____ day of March, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Richard W. Park, Acting Chairperson

Carroll P. Comstock

John J. Zampieri