

VERMONT LABOR RELATIONS BOARD

VERMONT FEDERATION OF TEACHERS,)
AFT, AFL-CIO)
)
and) DOCKET NO. 84-40
)
VERMONT STATE COLLEGES)

FINDINGS OF FACT, OPINION AND ORDER

On July 31, 1984, the Vermont Federation of Teachers, AFT, AFL-CIO ("Federation") filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board, requesting an election in a bargaining unit of 38 employees at the Community College of Vermont ("CCV").

On August 14, 1984, the Vermont State Colleges ("Colleges") notified the Board that it refused to voluntarily recognize the Federation as bargaining representative for the employees in the unit; that it would not agree to a consent election in the proposed unit; and that it requested a hearing on the petition because substantial questions of unit determination and representation existed.

A hearing was held before the full Board on November 1, 1984. Peter Konkle, Federation Representative, represented the Federation. Attorney Nicholas DiGiovanni, Jr., represented the Colleges.

Requested Findings of Fact and Conclusions of Law were filed by the Federation on November 15, 1984, and the Colleges filed a brief on November 19, 1984.

FINDINGS OF FACT

1. The Colleges have five member institutions: Johnson State College, Lyndon State College, Castleton State College, Vermont Technical College, and CCV.

2. The Federation is the bargaining representative of employees in two collective bargaining units:

a) a unit consisting of full-time faculty and ranked librarians at Lyndon, Castleton, Johnson and Vermont Technical Colleges. Approximately 240 employees are in the unit. No CCV employees are part of the unit.

b) a unit consisting of all non-faculty employees at Castleton, Lyndon, Johnson and Vermont Technical Colleges, excluding the Chancellor, College Presidents, Deans, Business Managers, and all management, supervisory, confidential and professional employees. Approximately 180 employees are in the unit. No CCV employees are part of the unit.

3. When the non-faculty bargaining unit was formed, the Labor Relations Board refused to authorize a unit requested by the Federation which included both professional and non-professional employees. Instead, the Board found that a unit limited to all non-professional employees only would be appropriate. Vermont Federation of Teachers and Vermont State Colleges, 2 VLRB 40 (1979). In that decision, the Board set forth "a list of professional positions which are excluded from the non-faculty bargaining unit but which may be eligible for inclusion in the present collective bargaining unit for faculty or some other bargaining unit". Id., at 52.

4. No CCV employees are part of a bargaining unit represented by an employee organization. Also, none of the 90-120 non-faculty professional employees at the four campus-based colleges are part of a bargaining unit represented by an employee organization.

5. The unit proposed by the Federation consists of the following CCV positions: 17 Coordinators of Instruction and Advisement, three Special Services Coordinators, eight Site Service Coordinators, two Records Clerks, Two Secretaries (Office of External Programs), one Secretary, one Assistant for Academic Services, one Assistant Business Manager, one Financial Aid Officer, one Accounts Payable Clerk, one Payroll Clerk, and one Liaison.

6. Johnson, Lyndon, Castleton and Vermont Technical Colleges are traditional campus-based colleges which have permanent faculties and grant degrees to students. CCV has a statewide network of local offices with no campus and no permanent faculty. CCV offers a wide range of courses open to Vermont residents on an individual basis as well as programs, individually tailored, leading to an Associate Degree. CCV services both degree seekers and "life-long learners".

7. CCV is headed by a President and consists of a central office and a statewide system of 11 site offices. The CCV central office activities include college administration, business services, external program administration, special services, academic support and financial aid. The programs and courses are offered through the site offices which are administratively grouped into three regions (i.e. Northern, Southern and Western), each headed by a Regional Director located in a site office. Coordinators of Instruction and Advisement ("CIA's"), Site Service Coordinators and Special Services Coordinators work out of the site offices (Colleges Exhibit 4).

8. The Regional Directors interview and effectively recommend to the President the hiring of employees for positions within their region. They generally manage the affairs of CCV and supervise CCV staff in the region under their jurisdiction. A major part of a Regional Director's job is to communicate CCV policy to CIA's and ensure they implement it. A Regional Director is responsible for ensuring his or her region operates within its budget guidelines established by the President. Regional Directors approve employee leave requests and administer employee discipline. They also approve the lists of courses available at each site office and hiring of course instructors, although they generally follow the recommendations of CIA's in those instances.

9. CIA's advertise CCV programs and courses; recruit and advise students; provide information and assistance to students in the areas of financial aid, veteran affairs, and registration; monitor student degree plans; recruit, assist and evaluate teachers; and locate classroom space. CIA's work with little direct supervision, seeing or speaking with their Regional Director once or twice in a two-week period (Colleges Exhibits 5, 6, 7).

10. CIA's advertise CCV programs and courses and recruit students through developing and placing ads about CCV in local newspapers, advertising on the radio, speaking to high school student groups and counselors, and speaking to community groups (Colleges Exhibits 8, 9).

11. If a student is interested in obtaining a degree from CCV, CIA's assist the student in developing an individual program of study and in obtaining financial aid. Further, CIA's will monitor the progress of students in fulfilling their degree requirements throughout their enrollment at CCV.

12. Prior to each semester, each CIA drafts a course list for his/her site, derived from a master CCV course list, indicating which courses the CIA would like to offer at the site. In deciding what courses to offer, CIA's consider the training needs of a community, the needs of students, the availability of instructors, and whether the courses will attract enough students so that it will not adversely impact on the budget. These lists are reviewed by the Regional Director, and are usually approved.

13. CCV has a curriculum committee, which is composed of CIA's and a Regional Director. The committee reviews proposed new courses. If the committee approves a new course, it is placed on the CCV master course list.

14. CCV's teachers are independent contractors who generally are practitioners in different fields. Also, some of the Colleges faculty members at the four campus-based colleges teach at CCV. CIA's recruit teachers from a pool of past instructors or place ads in local newspapers. CIA's interview potential teachers, decide whether they are qualified to teach at CCV, and if so, recommend to the Regional Director they be added to the pool of available instructors. A recommendation by a CIA to hire a teacher is generally followed by the Regional Director. If the CIA determines a candidate is not qualified to teach, the Regional Director does not know the candidate has been rejected (Colleges Exhibit 10).

15. CIA's evaluate the performance of teachers primarily through a review of instructor evaluations done by students and also occasionally through classroom visits and talks with students. Through these evaluations, CIA's determine whether teachers will be hired to teach

again. A CIA's recommendation to terminate a teacher is generally followed by the Regional Director (Colleges Exhibit 11).

16. If a vacancy arises in a CIA position, a committee consisting of present CIA's is set up to recommend the person to be hired to fill the vacancy. The committee's recommendation is usually adopted by the Regional Director and the President.

17. CCV requires a minimum of a bachelor's degree and three year's experience in higher education for CIA's (Colleges Exhibit 5).

18. Periodically, the President forms committees (e.g., Publicity and Marketing Committee) and task forces (e.g., Task Force on Programs for the Unemployed, Task Force on the Bookstore Function) to address specific problems. CIA's regularly serve on these committees and task forces (Colleges Exhibits 8, 19, 20, 21).

19. The three Special Services Coordinators employed by CCV work in site offices and perform duties similar to CIA's, except they coordinate services for a more narrowly defined group of "high risk" students who require remedial work or other services not required by other CCV students (Colleges Exhibit 12).

20. The Site Service Coordinators serve as the receptionist for a site office and generally provide support services to CIA's. They answer public and student inquiries; perform typing, filing and mail distribution duties; perform bookkeeping and computer terminal data entry; sell textbooks; make bank deposits; direct part-time work-study aides; work with CIA's in locating classroom space; and may have to provide assistance in more than one site office, requiring regular travel. Site Service Coordinators work with little direct supervision, seeing

or speaking with their supervisor, the Regional Director, once or twice in a two-week period (Colleges Exhibits 2, 14; Federation Exhibit 1).

21. CCV requires Site Service Coordinators to be high school graduates plus have specialized coursework, considerable knowledge of office procedures, practices and equipment, and typing/clerical and organizational skills (Colleges Exhibit 13).

22. CIA's and Site Service Coordinators have regular contact with other CCV employees, primarily with employees of their own site office, but also with employees in other site offices or the CCV central office. They generally have little contact with employees of the four campus-based colleges in the Colleges' system.

23. Some of the functions performed by CIA's, Site Service Coordinators and Special Services Coordinators are also performed by employees of the campus-based colleges in the Colleges' system. However, there are no other positions in the Colleges' system for which the collection of functions performed by CIA's, Site Service Coordinators and Special Services Coordinators are similar (Colleges Exhibit 25).

24. The CCV Financial Aid/Personnel Officer, who works under the supervision of the Business Manager, has the following responsibilities:

- Student financial aid program management including Basic Educational Opportunity Grant, College Work Study, and Supplemental Education Opportunity Grant Programs in accordance with federal guidelines and regulations.
- Administration of Guarantee Student Loan Program and monitoring academic progress of financial aid students.
- Preparation of all institutional, state and federal financial aid reports, and serving as College liaison with state and federal financial aid agencies.
- Providing up-to-date, accurate financial aid information/developments to regional staff in a timely and consistent manner.

- Development, coordination, and maintenance of financial aid reports/information required from the regions necessary for the operation of the financial aid program.
- Training of regional staff on financial aid through periodic workshops.
- Monitoring the academic progress of financial aid students and development of mechanism to alert College staff and the student of potential problems in receiving continued aid.
- Research, development, and dissemination of College policies and other information concerning student rights to insure institutional compliance with applicable state and federal regulations.
- Performance of personnel services, i.e., preparation of appointment letters, orientation for new staff, processing all related payroll information, answering questions and correspondence related to fringe benefits, etc.
- Maintenance of personnel records.
- Other duties as assigned by the Business Manager.

(Colleges Exhibit 27)

25. The CCV Assistant Business Manager, who also works under the supervision of the Business Manager, has the following responsibilities:

- Development and implementation of fiscal/financial policies and procedures which may include budgeting, accounting, personnel administration, purchasing, records management, data processing, space utilization, physical property management, and other support functions generally associated with business and financial services.
- Maintenance of accounts, including posting and balancing of accounts against specific budgets and handling of approved transfers of funds between accounts.
- Maintenance of budget records and assistance in preparation of budget requests.
- Status reports on budgets and accounts to appropriate College officers in order to assist in effective management and control of budgeted funds.
- Establishes and maintains records of financial transactions and prepares regular reports covering such activities.
- Prepares special reports and studies as directed.

- Prepares purchase orders; processes expense requests; processes payroll actions; maintains petty cash funds for designated units.
- Provides information on fiscal/financial policies and procedures.
- Assists in the development of financial forecasts.
- May serve as additional signatory on bank accounts.
- May represent superior in his/her absence.
- Other duties as assigned.

(Colleges Exhibit 28)

26. The governance policy of CCV provides the CCV President is the chief executive officer having final decision-making authority concerning CCV's internal affairs. The policy provides for three major governance bodies: the Administrative Council, the Academic Review Board, and the College Council (Colleges Exhibit 15).

27. The Administrative Council is composed of employees directly responsible to the president (i.e., Regional Directors; Director of Special Services, Director of Office of External Programs, Business Manager, Registrar and Director of Academic Support Services). The Administrative Council proposes and recommends institutional policies and procedures to the President. All proposed administrative policy changes are discussed by the Administrative Council before being acted on by the President (Colleges Exhibit 15).

28. The Academic Review Board consists of the three Regional Directors, the Directors of Special Services and Academic Support Services, and two CIA's. The Academic Review Board monitors consistency and quality among academic programs and plans; effectively recommends to the president approval of or revisions to individual degree plans, effectively recommends students for the award of degrees to the President;

carries out a continuing review of the curriculum and degree requirements; and proposes and recommends academic policies to the President. If students disagree with an Academic Review Board rejection of their individual degree plans, they can appeal to the President (Colleges Exhibit 15).

29. The College Council consists of the President, six field staff (excluding Regional Directors), and two staff members from the Office of the President (excluding Business Manager, Registrar and Director of the Office of External Programs). Presently, the College Council consists of the President, three CIA's, two Site Service Coordinators, the Accountant, and the Financial Aid/Personnel Officer. The College Council is the forum for discussion of collegewide issues and concerns by professional and support staff. Issues concerning the wages and conditions of employment of CCV central office and field staff employees are regularly discussed by the College Council. The Council recommends new and modified policies to the President, reflecting the concerns of student, faculty and staff (Colleges Exhibits 15, 16, 17). Some of the recommendations made by the College Council are accepted by the Administrative Council and the President and become policy.

30. The Colleges have a single wage and classification system which covers all Colleges employees, including CCV employees, except the faculty. The wage and salary classification system classifies each position based upon a systematic assessment of the duties and responsibilities of each position. Each position is ultimately assigned a general title, classification level and salary range (Colleges Exhibit 22).

31. Except for employees in the two bargaining units represented by the Federation, all Colleges employees, including those at CCV, are covered by a uniform set of personnel policies which establishes conditions of employment for covered employees (Colleges Exhibit 23).

32. In early 1984, the Federation held meetings with non-unionized College professional staff at CCV, the central office, and the four campus-based colleges, to discuss formation of a collective bargaining unit represented by the Federation (Colleges Exhibit 26). Outside of the petition at issue, no other petition for election of collective bargaining representative involving Colleges employees has been filed by the Federation with the Board.

33. Stanley Carpenter, Director of Government and Employee Relations for the Colleges, spends approximately half of his time now on collective bargaining matters involving the two bargaining units represented by the Federation, including contract negotiations, grievances and advice to campus administrators. The addition of one more bargaining unit would increase his workload.

OPINION

The Colleges raise various arguments as to the appropriateness of the bargaining unit proposed by the Federation. These arguments fall into two categories; one, that professional employees in the proposed unit should be excluded from collective bargaining under the State Employees Labor Relations Act (SELRA), and the other, that if the Board finds the professional employees are not excluded from collective bargaining, then the petitioned unit is nevertheless inappropriate. We will discuss each of these categories in turn.

Exclusion from Collective Bargaining

The Colleges contend the CIA's, Special Services Coordinators, Assistant Business Manager, and Financial Aid/Personnel Officer are excluded from collective bargaining as managerial or confidential employees or excluded under 3 VSA §902(5)(J), which gives the Board the authority to exclude from collective bargaining an individual who is "in a position which is so inconsistent with the spirit and intent of this chapter as to warrant exclusion".

We first consider whether CIA's and Special Services Coordinators (hereinafter collectively referred to as CIA's), who have similar job duties, are excluded from collective bargaining by the provisions of SELRA. With regard to managerial employees, §902(5) of SELRA provides:

"State employee" means any individual employed...
by Vermont state colleges,... but excluding an individual...

(D) Employed as a department or agency head or deputy officer not included in Section 311 of this title, head of an institution or as a division director in the department of administration, and similar positions in Vermont state colleges...

(F) Employed as a managerial employee.

A managerial employee is further defined in 3 VSA §902(18) as:

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

The Colleges maintain the Board should not necessarily look to the specific titles of §902(18) and try to fit CCV personnel into those titles, since §902(18) was obviously drafted with the State of Vermont classification system in mind rather than the Colleges system. The legislature expressly provided an individual employed by the Colleges

as a "managerial employee" would be excluded from the definition of State employee, 3 VSA §902(5)(F), and thus the definition of "managerial employee" must be applied to them. While some of the specific "functions" listed in §902(18) may not conform to the organizational structure of the Colleges, we construe this definition to encompass "similar positions" in the Colleges. We so interpret the statute because §902(5)(D), which is partially redundant with §902(18) in that it excludes from the definition of "state employee" some of the positions excluded in §902(18), specifically excludes "similar positions in Vermont State Colleges". In construing the statute as a whole, we believe there is justification for concluding the legislature intended the same proviso to apply to the definition of managerial employee.

Under this definition, we conclude the CCV President is comparable to an "institution head", and each Regional Director is a "major section chief" or "director of a district operation", and CIA's are not managerial employees. 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. CIA's do not supervise or manage any employees, although they rely on Site Service Coordinators for support. Clearly, they are professional employees performing work of a difficult and responsible nature in coordinating CCV services in their site offices, and exercise discretion, judgment and independence. However, they are not managers.

Nonetheless, the Colleges contend CIA's exercise of collective authority through their participation on the governance bodies of

the College Council and the Academic Review Board, and their participation on other committees and task forces, is evidence of managerial status. We disagree. The College Council is essentially a forum for discussion of issues concerning CCV staff, students and faculty and has no managerial function. While it can recommend policy changes to the **Administrative Council and President**, there is no evidence their recommendations generally become policy. The Academic Review Board does have more effective authority in effectively recommending to the President the approval or rejection of individual degree plans and whether students should graduate. Also, it has substantial input into the academic policy CCV will pursue. However, CIA's have only two of seven members on this board. We do not believe such minority representation confers on CIA's managerial status; particularly when only two of 17 CIA's are on the Board at any one time. Moreover, the Academic Review Board does not perform a managerial function for CCV but simply serves as an academic review body.

It is evident the only managerial function performed by CIA's is they "manage" curriculum development. They have the ability to approve the addition of new courses to CCV's master course list through their participation on the Curriculum Committee, on which they are a majority of the members. However, this authority is nowhere near that necessary to make them managers under SELRA. This authority does not make them directors of other employees as required by §902(18).

We consider next whether CIA's are confidential employees. 3 VSA §902(17) defines "confidential employee" as:

an employee finally determined by the board as 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 his official duties.

Whether a person assists or acts in a confidential capacity to persons who exercise a managerial function 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, Rutland Department of Public Works, 143 Vt. 512 (1983). No evidence indicates CIA's assist or act in such a confidential capacity. They have no collective bargaining responsibilities, and no evidence indicated they were knowledgeable of confidential budgetary matters not generally available to other CCV employees. The only substantive part of the regular duties of all CIA's involving personnel administration concerns their discretion in the hiring, evaluation, and retention of teachers. However, CCV teachers are independent contractors having no collective bargaining rights under SELRA. There being no potential for a conflict of interest since CCV teachers have no statutory right to be unionized. The duties of CIA's in this regard would not "make membership in or representation by an employee organization incompatible with his official duties". 3 VSA §902(17). We conclude CIA's are not confidential employees.

We also do not believe CIA's are in a "position which is so inconsistent with the spirit and intent of (SELRA) to warrant exclusion" pursuant to 3 VSA §902(5)(J). A considerable amount of evidence must be advanced to exempt an employee from inclusion in a bargaining unit, In re Local 1201, AFSCME, supra, City of St. Albans and Local 1343, AFSCME,

AFL-CIO, 7 VLRRB 48 (1984), and the Colleges have not presented such evidence. If we concluded CIA's would be subject to an irreconcilable conflict of interest between their obligations to a union and to their employer, we would exclude them from a bargaining unit. However, neither their daily job duties nor their participation on governance bodies or other committees convinces us their belonging to a union would be incompatible with their official duties.

The Colleges assert that one conflict immediately apparent is the authority CIA's have to hire instructors. The evidence indicates faculty from the Colleges' four campus-based colleges will occasionally compete for CCV instructor positions, and the Colleges contend CIA's may be pressured to grant a preference to these brother and sister union members when hiring, evaluating and deciding whether to retain teachers. Given the low pay of CCV faculty (i.e., \$500 per three-credit course), and their presumed qualification to teach at CCV, we believe such a conflict is much more theoretical than real.

We now turn to discussing whether the Assistant Business Manager and Financial Aid/Personnel Officer should be excluded as managerial, confidential or under §902(5)(J). Given the CCV organizational structure and the job duties of these employees, it is evident they are part of a cadre of central office employees the CCV President must rely on as a matter of normal administrative routine to handle confidential matters, which would make membership in or representation by an employee organization incompatible with their official duties.

The Financial Aid/Personnel Officer is the CCV employee specifically assigned to perform personnel administration services. It is necessary

for the President to be able to discuss confidential personnel administration matters with this employee (e.g., pending disciplinary action, application of Colleges personnel policies to particular situations, contents of employee's personnel file) without being concerned that information will be known by the union. The Assistant Business Manager is directly involved in the preparation of budget requests and the monitoring of budget performance. The President and Business Manager must be able to rely on this employee to perform such duties as "costing out" the impact on the budget of various economic packages management may propose in negotiations without fear of "tipping their hand" to the union in negotiations. Further, the Assistant Business Manager may be privy to management discussions about possible staffing changes for budgetary reasons. This is a matter of personnel administration which may not be shared with the union.

An employer should be entitled to rely upon employees who are not subject to divided loyalties and employees should not be put in a position where they must choose between their obligations to a union and their employer. Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60, at 68 (1982). Placing the Assistant Business Manager and Financial Aid/Personnel Officer in the proposed bargaining unit would result in such divided loyalties. They are confidential employees and, unlike CIA's, should be excluded from the proposed unit.

Appropriateness of Bargaining Unit

The Colleges contend the proposed unit is inappropriate even if professional employees are not excluded from collective bargaining because it excludes professional staff at the four campus-based

colleges and because CCV professional and non-professional employees do not share a sufficient community of interest to warrant a separate bargaining unit. The Colleges assert CCV professional employees appropriately belong in a Colleges systemwide unit of other non-faculty professionals, and the CCV non-professional employees should have the right to vote for inclusion in the existing unit of non-professional employees at the four campus-based colleges. Thus, the Colleges contend horizontal units on a systemwide basis only are appropriate, while the Federation maintains a vertical unit of CCV employees is appropriate in this case.

The provisions of SELRA pertinent to unit determination cases indicate a clear legislative intent to allow employees the fullest freedom in selecting the composition of the unit which will best represent their interests as long as the unit is appropriate and will not result in over-fragmentation of units. 3 VSA §902(3), §927, §941(f).

Petition of the Vermont State Employees' Association (re: Separate Bargaining Unit for Community Correctional Center Employees), 5 VLRB 82 (1982).

The first statutory criteria the Board shall take into consideration in determining the appropriateness of a collective bargaining unit, "the authority of governmental officials at the unit level to take positive action on matters subject to negotiations", 3 VSA §941(f)(1), requires only brief comment. Even though SELRA mandates that responsibility for negotiating and administering contracts lies with the governor and Colleges chancellor, 3 VSA §905(a), the Board has approved three department-wide bargaining units for State employees (i.e., Liquor Control Department employees, Department of Public Safety members, Correctional Center

employees) and two of these units have been approved by the Vermont Supreme Court. In re Liquor Control Department Non-Supervisory Employees, 135 Vt. 623 (1978). Petition of VSEA, Inc. (re: Correctional Center Employees), 143 Vt. 636 (1983). Given this precedent which apparently has caused no problems, we do not view the fact that the Colleges have systemwide personnel policies and have negotiated contracts on a systemwide basis as weighing against a unit consisting of CCV professional and non-professional employees.

The central issues here are whether employees in the CCV unit share a community of interest and whether the CCV unit will result in overfragmentation of units.

SELRA directs us to take into consideration the "similarity or divergence of the interests, needs and general conditions of employment of the employees to be represented". 3 VSA §941(f)(2). Although community of interest is not susceptible to precise definition or mechanical application, the National Labor Relations Board has enumerated the following factors to be considered in determining a community of interest apart from other employees:

(A) difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

In applying those factors here, we believe a greater community of interest exists among a unit of CCV professional and non-professional employees than would exist if those employees were grouped with other Colleges employees. We so conclude due to the unique nature of CCV as opposed to the more traditional campus-based colleges in the Colleges system.

Unlike any of the other colleges, CCV has no permanent faculty and no campus. Instead, it hires faculty on an individual course basis and has a statewide network of local offices and classroom sites. Also, unlike the other colleges, which primarily service students seeking a degree, CCV offers courses to "life-long learners" on an individual basis as well as programs, individually tailored, leading to an associate degree.

As a result of the unique nature of CCV, the bulk of the positions in the proposed bargaining unit - CIA's and Site Service Coordinators - have no counterparts at the campus-based colleges. While some of the functions performed by the CCV employees are also performed by employees of the campus-based colleges, there are no positions at the campus-based colleges for which the collection of functions performed by CIA's and Site Service Coordinators are similar. Also, CIA's and Site Service Coordinators do not have regular contact with campus-based employees. On the other hand, they do have regular contact with other CCV employees, primarily with employees of their own site office, but also with employees in other site offices or the CCV central office.

Even though CIA's and Site Service Coordinators have dissimilar qualifications, training and skills and different job functions, they have a greater community of interest with each other than CIA's have with campus-based professional employees and Site Service Coordinators have with campus-based non-professional employees. This is due to their frequency of interchange and necessity for them to work as a team in the local offices.

This case is distinguished from Vermont Federation of Teachers and Vermont State Colleges, 2 VLRB 40 (1979), where we refused to authorize a bargaining unit requested by the Federation which included both professional and non-professional employees of the campus-based colleges, and found a unit limited to all non-professional employees only would be appropriate. There, we concluded professional employees had close relationships with faculty and their interests were more closely aligned with the faculty than with the non-professional employees. Here, a close relationship exists among the CIA's and Site Service Coordinators and no permanent faculty exists.

The third statutory criterion we are duty-bound to consider is whether the CCV unit will result "in overfragmentation of units... to a degree which is likely to produce an adverse effect either on effective representation of ... employees generally, or upon the efficient operation of State government". 3 VSA §941(f)(3).

We do not believe the CCV unit would produce an adverse effect on the representation of Colleges employees generally. Instead, the vertical CCV unit should enhance the effective representation of Colleges employees. As discussed above, CCV employees operate in a much different environment than campus-based employees. If CCV employees were to be included in a system-wide bargaining unit or units, the concerns of CCV employees would need to be addressed apart from other staff concerns during negotiations. It is likely those concerns would be subordinate to the interests of the campus-based employees who would constitute a vast majority of the bargaining unit(s). Under such a set-up, the CCV employees may not be effectively represented. Also, the creation of a CCV unit will not adversely effect the representation of unionized

campus-based Colleges' employees. The placement of CCV employees and campus-based employees in the same bargaining unit would likely put the two groups of employees in conflict, given their dissimilar needs, interests and general conditions of employment.

We also do not believe the CCV unit will produce an adverse effect on the effective operation of the Colleges. Our principal concern with regard to overfragmentation is the Colleges have a systemwide wage and classification plan. There is a potential for this system to be split if CCV employees have their own bargaining unit and attempt to change the system through negotiations. However, this is not an insurmountable problem. The correct weighing of positions can be done in negotiations without necessarily upsetting the whole system. The Colleges are only required to bargain in good faith about proposed changes, not necessarily to give into demands. 3 VSA §981. The wage and classification system should be flexible enough to accommodate negotiations for a group of employees organized below a systemwide level. We note non-professional staff at the Colleges' campus-based colleges have their own bargaining unit and they are included within the wage and classification system.

We also recognize the Colleges may incur some additional cost due to increased staff time spent on negotiations. However, the conclusion that fewer units would be preferable as a matter of time and expediency falls far short of establishing an adverse effect upon the effective operation of the employer. Petition of VSEA, Inc. Correctional Center Employees, 143 Vt. 636 (1983). Here, the increased costs to the Colleges are far outweighed by the unique community of interest shared by CCV employees.

We adhere to our established policy that public rights are protected by larger units. Teamsters Local 597 and Champlain Valley Union High School Board of Directors, 7 VLRB 1 (1984). Champlain Valley Union High School Staff Association, VEA/NEA Local 325 and Champlain Valley Union High School Board of Directors, 3 VLRB 426 (1980). However, the unique nature of CCV as opposed to the four campus-based colleges makes a unit consisting of CCV professional and non-professional employees the "most appropriate to best represent the interests of employees". 3 VSA §902(3).

The Colleges contend Board approval of the CCV unit may open the door to as many as four additional bargaining units being formed by Colleges employees; namely professional employees' units at each of the campus-based colleges. By our decision here, we are establishing no precedent for the approval of such units. Each case must be determined on its own circumstances.

ORDER

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

1. A collective bargaining unit consisting of Coordinators of Instruction and Advisement, Site Service Coordinators, Special Services Coordinators, Records Clerks, Secretaries in the Office of External Programs, Assistant for Academic Services, Accounts Payable Clerk, Payroll Clerk, Liaison and Secretary employed by Community College of Vermont is appropriate; and
2. A secret ballot election shall be conducted by this Board pursuant to 3 VSA §941(e) and (g), on such date as the Board shall order, to determine whether the employees desire to

be in the above collective bargaining unit and whether the employees wish to be represented for exclusive bargaining purposes by the Vermont Federation of Teachers, AFT, AFL-CIO, or no union.

Dated this 15th day of January, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

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

James S. Gilson
James S. Gilson