VERMONT LABOR RELATIONS BOARD

PETITION OF THE VERMONT STATE EMPLOYEES' ASSOCIATION, INC.; (RE: BARGAINING UNIT FOR DEPARTMENT OF CORRECTIONS EMPLOYEES)	)	DOCKET NO. 89-82

Findings of Fact, Opinion and Order

On December 5, 1989, the Vermont State Employees' Association, Inc. ("VSEA") filed a Petition for Unit Clarification with the Vermont Labor Relations Board. The Petition asks for clarification of the existing Corrections Bargaining Unit by adding to that Unit certain Corrections Department employees who work in the Probation and Parole Offices throughout the State of Vermont, and who are presently included in the Non-Management Unit. The petition for Unit Clarification was accompanied by petitions signed by not less than 30 percent of the eligible Probation and Parole employees, indicating that they wished to be included in the amended Unit. On December 21, 1989, the State of Vermont ("State") filed a response in opposition to the petition.

On June 7, 1990, a hearing was held before Board members Charles McHugh, Chairman; Louis Toepfer and Leslie Seaver. Michael Zimmerman, Staff Attorney, represented VSEA. Michael Seibert, Assistant Attorney General, represented the State. At the hearing, the Board took judicial notice of the record in two previous unit determination cases involving the Corrections Unit: Petition of the Vermont State Employees' Association, Inc. re: Separate Bargaining Unit for Community Correctional Center Employees, Docket No. 81-25, 5 VLRB 82 (1982); and In re Designation Disputes (Correctional Officer C - Community Control Program), Docket No. 88-62, 12 VLRB 191 (1989). Requested Memoranda of Law were filed by the parties on June 25, 1990.

FINDINGS OF FACT

1. The Department of Corrections is responsible for the operation of the correctional facilities and probation and parole offices located throughout the State of Vermont.

2. At the present time, employees of the Department of Corrections are included in three separate collective bargaining units represented by VSEA. The Corrections Bargaining Unit includes approximately 305 employees of the six correctional facilities with the exception of managerial, supervisory and confidential employees. The Non-Management Bargaining Unit includes, along with other non-management employees of the State of Vermont and the non-management employees who work in the Department of Corrections central office, the approximately 130 employees who work in the probation and parole offices who are not managerial, supervisory or confidential employees. The Supervisory Unit includes, along with other supervisory employees in the State, all employees of the Department of Corrections who are designated as supervisory employees.

3. This petition seeks to change the current composition of the Corrections Bargaining Unit by adding to it all eligible employees of the Department of Corrections who work in the probation and parole offices. The job titles of those probation and parole office employees which the petition seeks to add to the Corrections Unit include: Administrative Assistant A & B, Secretary B & C, Case Aide, Correctional Officer C assigned to Community Control, Corrections Services Specialist, Corrections Services Specialist Trainee, Data Clerk, District Office Chief Clerk, Intensive Supervision Probation and Parole Officer, Probation and Parole Officer, and Probation and Parole Officer Trainee (VSEA Exhibits 1, 6, 7, 8 and 9).

4. The existing Corrections Bargaining Unit resulted from a petition filed by VSEA on May 5, 1981, for creation of a separate bargaining unit for employees of the Vermont correctional centers. Prior to the 1981 petition, all eligible employees of the Department of Corrections were included in either the Supervisory or the Non-Management Bargaining Units. VSEA did not seek to include employees working in the probation and parole offices in the Corrections Unit.

5. On March 25, 1982, the Vermont Labor Relations Board granted the petition, finding that a unit comprised of correctional center employees, including shift supervisors but excluding other supervisory employees and managerial or confidential employees, was most appropriate to represent the interests of those employees. Petition of the Vermont State Employees' Association, Inc. re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82 (1982).

6. On December 14, 1983, the Vermont Supreme Court affirmed the Board decision except for that portion of the Board's order that included correctional facility shift supervisors in the bargaining unit. 143 Vt. 636 (1983).

7. On February 21, 1984, pursuant to a unit determination and representation election, the Board certified VSEA as the collective bargaining representative of employees in a bargaining unit consisting of all permanent and limited status employees of the State correctional facilities with the exception of managerial, supervisory and confidential employees (Docket No. 81-25).

8. At all times relevant herein, eligible employees of the Department of Corrections who work in the probation and parole offices have remained in the Non-Management Unit.

9. Since 1982, there have been a series of changes in the Department of Corrections, and in the field of corrections generally.

10. In 1982, there were two divisions within the Department of Corrections: the Division of Adult Facilities and the Division of Probation and Parole. Each division was largely autonomous. In practice, an offender who was incarcerated in one of the facilities was under the supervision of the Division of Adult Facilities; while an offender who was released on probation or parole was under the supervision of the Division of Probation and Parole. There was minimal collaboration between the two divisions in the treatment of offenders. If the services of a probation and parole officer were required during the term of an offender's incarceration in a facility, those services were normally provided by a regional probation and parole officer who had an office in the facility.

11. Subsequent to 1982, the strategy or method of treatment of an offender became an integrated, cooperative function involving both employees of the correctional facilities and employees of the probation and parole offices. In current practice, typically a probation and parole officer and a facility caseworker or corrections counselor work together throughout the offender's term of sentence, a practice which is referred to as "co-case management." Jointly, the probation and parole officer and facility worker will formulate a plan for the offender's treatment, type of custody, and remedial and supportive programs; administer the plan; and supervise the offender's progress. For each offender incarcerated in a facility, the probation and parole officer meets, in the facility, with the offender and the facility worker at least once every 45 days. Similarly, after the offender is released from the facility into

one of the programs administered by the probation and parole office, the originally-assigned facility worker remains part of the supervisory team.

12. Approximately some time during 1986/1987, as part of the movement towards co-case management, the Department of Corrections revised its administrative structure. The administration of the correctional facilities and probation and parole offices was integrated under the control of four Area Manager positions, each of which was given responsibility for all of the facilities and probation and parole offices within one geographic area of the State. Each of the four Area Managers answers to two Department Directors: the Director of Correctional Operations, and the Director of Correctional Programs. These two directors, in turn, answer to the Deputy Commissioner of Corrections and the Commissioner of Corrections.

13. Non-Supervisory employees in the probationary and parole office generally are supervised by either a casework or administrative supervisor, and/or ultimately by the District Director in the office. The District Director is supervised by the Area Manager.

14. Non-Supervisory employees in the correctional facilities are supervised by a security, program or administrative superior, who in turn ultimately report to the Assistant Superintendent or Superintendent of the facility. Facility Superintendents report to their Area Manager.

15. At approximately the same time that the previous Divisions of Adult Facilities and Probation and Parole were merged into a single unit under the control of the four Area Managers, the position of Corrections Service Specialist ("CSS") was created in the Department. Under the CSS job classification, it was possible for Department of Corrections employees to serve in three different positions: CSS/Probation and Parole

Officer; CSS/Facility Caseworker; and CSS/Facility Unit Manager. The CSS/Probation and Parole Officer position is roughly analogous to the Probation and Parole Officer position which existed before creation of the CSS position. The CSS/Facilty Caseworker and CSS/Facilty Unit Manager of the CSS position represent similar job functions, but are performed by employees working within a facility. It was intended that Department of Corrections employees would spend a certain period at each position to gain broader knowledge of what their counterparts do, and that such experience by employees would help to integrate the functions of the correctional facilities and the probation and parole offices. It was also intended that experience in all three variations of the CSS position would form a criteria for promotion from the CSS position. Employees in the CSS position perform duties under the direction of a program superior or director (VSEA Exhibit 7).

16. Intensive Supervision Probation and Parole Officers perform intensive supervision of the most difficult probationers and parolees of the Department of Corrections. Probation and Parole officers supervise somewhat less difficult probationers and parolees of the Department. These two groups of employees have regular contact with probationers and parolees, both in the field and in the probation and parole office. These contacts with convicted criminals pose some level of potential danger to the employees. These employees are supervised by a Casework Supervisor or directly by the District Manager in the Probation and Parole Office. (VSEA Exhibits 6, 8).

17. Generally, over the past decade, the State of Vermont has experienced a large increase in the number of criminal offenders while the capacity of Vermont's correctional facilities has increased only slightly. Due to the danger inherent in overcrowding in a prison environment, the

Department has imposed a cap on the number of offenders who can be incarcerated at any one time in the Vermont correctional facilities.

18. In response to this situation, the Department has developed other treatment and control programs which are administered primarily through the probation and parole offices. These include a community control program and a furlough reintegration program.

19. A component of the community control program is "house arrest", which is designed for minor offenders who are at the beginning of their sentence and who are not considered to be dangerous to society. In lieu of facility incarceration for these offenders, a sentence of house arrest is imposed whereby the offender is confined to his or her home and is monitored by electronic means, by telephone, and/or by daily visits from probation and parole employees.

20. The furlough reintegration program is primarily designed for offenders convicted of misdemeanors and property offense crimes, who are not assaultive, and who are within six months of having served their minimum sentence. The treatment of offenders in the furlough reintegration program is similar to the treatment of those in the house arrest program - the offender is permitted to live at home or in another approved residential facility, and is monitored electronically by telephone and/or by daily visits from probation and parole employees.

21. To effect supervision of offenders in the house arrest and furlough reintegration programs, a Field Supervision Unit ("FSU") has been created under the administrative control of the probation and parole offices. Employees assigned to FSU include Corrections Service Specialists and Correctional Officer C's. Prior to creation of the community control programs, all Correctional Officer C's worked in a correctional facility.

Subsequently, a number of these employees were assigned to the Field Service Unit servicing the community control program, and became employees of the probation and parole offices.

22. Primarily as a result of the increasing number of offenders served by the probation and parole offices, and as a result of the creation of the community control and furlough reintegration programs, working conditions for probation and parole employees have changed over the past decade.

23. Since the number of probation and parole employees has not increased at the same rate as the increase in the number of offenders, and because the number of offenders who can be incarcerated in the Vermont correctional facilities currently remains fairly constant, the probation and parole employees currently carry larger caseloads.

24. For probation and parole employees working in the Field Service Unit and performing house checks, and for employees supervising probationers and parolees, the element of danger is greater than in the past. It is common practice, but not always the case, for probation and parole employees to go alone when making house checks on offenders in the house arrest programs. Such house checks are usually unannounced beforehand, and are frequently made in the evening hours up until midnight. The most likely time for an assault on a probation and parole employee is during an unannounced house check on an offender in the house arrest program. It is Department policy that probation and parole employees are normally not armed, and use of force is discouraged. Many probation and parole employees do carry handcuffs. It is Department policy that police support be requested when trouble occurs or is anticipated through use of a two-way radio in their cars. Some Field Service Units are equipped with at least one hand-held radio.

25. Generally, all employees of the probation and parole offices, including clerical employees, are subject to a greater degree of danger than in the past. Clients of the probation and parole office are convicted offenders, are subject to the Supervisor of Probation and Parole by court order, and at times act hostile to probation and parole employees. Currently, offenders are inclined to act out more, are more verbally and physically aggressive, are more likely to have drug and alcohol related problems, and are more likely to get reinvolved in criminal behavior. Due to the cap on facility capacity, some offenders released into the furlough reintegration program are not as compliant as would otherwise be desired, and hence present a greater danger to those probation and parole employees who they encounter. Additionally, because of the increased caseload, and because of the diverse programs administered by probation and parole employees, the degree of familiarity with each offender has lessened. This makes it more difficult for probation and parole employees to predict an offender's behavior and to be appropriately prepared for assaults and threats which may occur.

26. There is no provision for security within the probation and parole offices. It is a requirement that at least one Probation and Parole Officer be in the probation and parole office with the clerical workers at all times. Generally, Probation and Parole Officers spend a fair percentage of their time in the probation and parole office.

27. Probation and parole employees have been physically threatened and touched by offenders. There is no record of a recent incident of actual harm to a probation and parole employee by an offender.

28. A Correctional Officer working in a facility has a radio at all times, is called and visited frequently by his supervisor, who is a higher

ranking security officer in the facility, for safety checks while on duty, and has on-going training in methods of control and restraint of assaultive offenders. The offenders served by probation and parole offices are generally less dangerous than those incarcerated in the facilities, but the element of surprise is greater in the field due to lack of security and the lack of control of such things as weapons, drugs and alcohol. Many assaults by inmates against Corrections officers have occurred (VSEA Exhibit 9, pages 7-10).

29. Subsequent to creation of the Corrections Bargaining Unit in 1982, as a result of collective bargaining negotiations and/or legislative enactment, a number of special benefits became available to employees working in a correctional facility. These benefits include a competency supplement, which allows certain qualifying employees to be paid up to $1,500 per annum for after-hours training, and a program for early retirement without penalty for employees with 20 years of service inside a correctional facility. Since these benefits are not available to employees in the probation and parole offices, there is a reluctance on the part of facility employees to transfer to positions in probation and parole. As a result of this disparity in benefits, the Department of Corrections does not require experience in each of the three CSS position variations as a prerequisite for promotion, but still encourages such experience.

30. Probation and parole employees normally work eight hours per day. Probation and Parole Officers are required to work evenings and weekends at times as determined by their clients' needs. Intensive Supervision Probation and Parole Officers are subject to more frequent evening work than other employees. Sometimes split hours are required. Correctional Officer C's assigned to community control have a day and an

evening shift - 7:30 a.m. to 4:00 p.m and 3:30 p.m. to 12:00 midnight - seven days per week.

31. Effective October 2, 1988, the Department of Personnel determined that the bargaining unit designation of Correctional Officer C's assigned to community control programs was being changed from the Corrections Bargaining Unit to the Non-Management Bargaining Unit. In re Designation Disputes (Correctional Officer C - Community Control Program), 12 VLRB 193, 194 (Finding of Fact #11).

32. On November 15, 1988, VSEA filed a notice of dispute contending that the State of Vermont erred by designating the position of Correctional Officer C, assigned to community control, as part of the Non-Management Unit. Id.

33. By order dated September 7, 1989, the Board found that the interests, needs and general conditions of employment of Correctional Officer C's assigned to the community control program were more closely aligned with those of probation and parole employees; and ordered that such positions be included in the Non-Management Bargaining Unit along with other positions in the Probation and Parole offices. Id.

34. The Department of Corrections is a department within the Agency of Human Services. Also included in the Agency are the Department of Social and Rehabilitative Services ("SRS"), the Department of Social Welfare, the Brandon Training School, and the Vermont State Hospital. With the exception of employees included in the Corrections Bargaining Unit, all other non-management employees of the Agency of Human Services are included in the Non-Management Unit.

35. The Brandon Training School cares for and treats the mentally retarded. Brandon has a largely young population, and also includes some

adults who have limited mental ability. Brandon residents are not "locked up" and a campus-type atmosphere exists. Residents do not generally have hostilities towards employees; however, employees do suffer some injuries.

36. The Vermont State Hospital treats the mentally ill. It operates on a 24-hour a day, seven days a week basis. Employees are subject to physical attack by some residents and have suffered injuries, but most residents are not dangerous and do not have hostility towards employees. An exception is Unit 1B, which is a secure unit and houses residents who are considered dangerous. The Hospital also has a medium security unit.

37. Generally, with the exception of the Brandon Training School and the Vermont State Hospital, the various offices of the departments and divisions operated by the Agency of Human Services, including probation and parole offices, are clustered together in central locations throughout the State of Vermont. Most frequently, these offices are located within the same building complex. In a few instances, they are located in separate buildings but in close proximity to each other.

38. The underlying philosophy behind co-location of the various offices is that clients frequently have need of several of the services offered by several of the Agency of Human Services' departments, and the Agency seeks to coordinate the treatment of clients by maintaining a relationship between the staff of the various departments for collaboration and case planning.

39. On occasion, clients of the probation and parole offices are also clients of other Agency departments; for example, a parolee or probationer may require the services of SRS or Social Welfare.

40. The majority of the clients of Agency departments other than the Department of Corrections are not convicted offenders, generally are

voluntary recipients of the service provided, and generally do not have hostilities towards employees for prior actions or treatment. The vast majority of interactions SRS employees have with clients in SRS offices are positive.

41. Social workers employed by SRS normally work eight hours per day. There is some required weekend and evening work, but such work is not routinely scheduled. A large portion of the work of social workers is in the field, investigating complaints and supervising the care of clients placed in SRS custody.

42. Social workers are subject to some element of danger when investigating complaints of alleged child abuse. Usually the social worker goes alone to talk with the alleged perpetrator in the perpetrator's home. Social workers do not have power of arrest and do not carry weapons. There have been no instances of actual assault on social workers by SRS clients or alleged perpetrators; however, verbal threats are common.

43. In addition to the element of danger to which some employees of the Agency of Human Services are subject, other State employees who are members of the Non-Management Bargaining Unit are subject to an element of danger in their jobs. Examples include airport firefighters, liquor control board investigators, and fish and game wardens.

OPINION

At issue is whether we should grant the petition of VSEA to add to the existing Corrections Bargaining Unit Corrections Department employees who work in the Probation and Parole offices, and who are presently included in the Non-Management Unit. The existing Corrections Bargaining Unit includes employees of the six correctional facilities with the exception of managerial, supervisory and confidential employes.

At the outset, we address various arguments set forth by the State contending that the Board lacks jurisdiction in this matter. The State first contends that the Board lacks statutory authority pursuant to the State Employees Labor Relations Act ("SELRA") to assert jurisdiction over the petition. The State contends that the Board's authority in such matters is limited by 3 VSA §941(c)(1), which provides in pertinent part:

> (c) A petition may be filed with the board, in accordance with procedures prescribed by the board:
>
> (1) by... an employee organization... alleging... that (employees)...
>
> wish to form a bargaining unit and be represented for collective bargaining, or
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> that the... employee organization currently certified... is no longer supported, or
>
> that they are now included in an approved bargaining unit and wish to form a separate bargaining unit under board criteria for purposes of collective bargaining.

The State interprets this language strictly to mean that, in cases where no question exists of whether a bargaining representative is supported by the majority of employees, the only authority of the Board to act on a petition filed concerning employees already included in an approved bargaining unit is when the petition seeks to have that group included in an entirely separate bargaining unit of their own.

We believe that the State is arguing for too strict an interpretation of §941(c)(1); particularly when that section of SELRA is considered together with other provisions of the Act.

Under SELRA, a "collective bargaining unit" is defined as "such... unit or units as the board may determine are most appropriate to best represent the interests of employees". 3 VSA §902(3). Section 927(a) of the 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".

A logical inference to be drawn from these provisions is that some flexibility necessarily must exist for the Board to decide the "most appropriate" bargaining unit "in each case... to assure employees the fullest freedom in exercising the rights guaranteed" by SELRA. We believe the petition filed here, which seeks to move employees who are part of one bargaining unit to another existing unit subsequent to changed circumstances and a reorganization, is within the requirements of SELRA and Article 14 of the Board's Rules of Practice. Article 14 allows for unit clarification petitions to be filed where there is a "reorganization of the work force". This provision of Board Rules expressly incorporates the needed flexibility contemplated by the provisions of SELRA.

The State further contends that this petition is barred by res judicata, collateral estoppel and considerations of judicial economy. The State contends that VSEA is seeking to relitigate exactly the same issue decided by the Board In re Designation Disputes (Correctional Officer C - Community Control Program), 12 VLRB 191 (1989), and that the rule barring subsequent litigation of claims out of the same cause of action that was previously litigated is recognized in Vermont under the doctrines of collateral estoppel and res judicata.

We disagree that VSEA is seeking to relitigate the same issue decided by the Board in the 1989 case. Therein, the question decided by the Board was whether a small segment of Probation and Parole employees - Correctional Officer C's assigned to the community control

program - should be included in the Corrections Bargaining Unit or the Non-Management Unit. The question before us in this case is whether the bulk of Probation and Parole employees should be included in the Corrections Bargaining Unit or the Non-Management Unit. Thus, the issue is substantially different in this case than it was in the 1989 case. It is true that VSEA could have raised the issue now before us at an earlier time in lieu of the issue raised in the 1989 case. Certainly, this would have saved resources of all concerned, including the Board. However, the failure of VSEA to do so does not result in the instant petition being barred since it involves a substantially different issue.

The State next contends that the Board is barred from considering the petition as it relates to employees of the Probation and Parole offices, other than the Correctional Officer C's assigned to the community control program, because VSEA did not seek to include Probation and Parole employees in the Corrections Bargaining unit approved by the Board in 1982, Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, and affirmed by the Supreme Court in 1983. 143 Vt. 636. We reject the State's argument because it fails to take into account that changed circumstances have occurred since 1982 between Probation and Parole employees and other Department of Corrections employees.

The State also contends that this petition is defective because, while the petition indicates an interest on the part of Probation and Parole employees in joining the Corrections Unit, there is no evidence whether employees currently in the Corrections Unit favor the unit reorganization. It is our practice in processing such petitions

under SELRA that, when the petition is filed, sufficient interest must be demonstrated only by the group of employees seeking to be added to the unit, but that employees in the existing unit need not demonstrate a showing of interest. Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO v. Vermont State Colleges, 10 VLRB 39, 50-51 (1987). Reversed in Part on Other Grounds, ___ Vt. ___ (May 12, 1989). However, in the event that the Board orders that a unit determination election be conducted, both employees whom a union is petitioning to add to the unit and employees in the existing unit vote separately on whether they wish to be included in the expanded unit. Id.

These issues as to the validity of the petition having been decided, we now address the merits. In addition to §902(3) and §927 previously cited, §941(f) of SELRA 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 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.

This language demonstrates 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. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, supra, at 92.

Two of the three criteria to consider in resolving unit determination questions can be summarily addressed. There is no contention Department of Corrections officials lack authority to take positive action on matters subject to negotiations. Also, overfragmentation of units is not an issue in dispute since granting of this petition will result in no more bargaining units in State government, since employees would only be shifted from one bargaining unit to another unit.

The central and remaining issue we need decide is the similarity or divergence of the interests, needs and general conditions of employment of the involved employees. VSEA contends that, since the creation of the Corrections Bargaining Unit, changes both in the Department of Corrections and in society as a whole have combined to create a community of interest among employees of the Department of Corrections, both within and without the six correctional facilities (but excluding central office employees), sufficient to warrant their being included in a single bargaining unit. The State contends that Probation and Parole employees continue to have a greater community of interest with employees of the Non-Management Unit, particularly other employees of Agency of Human Services departments, than they do with employees of the correctional facilities.

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 and skills, job functions and job sites; and whether employees have frequent contact with each other and have an integration of work functions. AFSCME and Town of Middlebury, 6 VLRB 227, 232 (1983).

In applying these factors here, we conclude that the Probation and Parole employees share a greater community of interests with employees in the Corrections Unit than they do with employees included in the Non-Management Unit. We agree with VSEA that changes in both the Department of Corrections and society as a whole, since the Corrections Unit was established, have combined to create this greater community of interests among correctional center employees and Probation and Parole employees sufficient to warrant their being included in the same bargaining unit.

A number of significant changes have occurred since the creation of the Corrections bargaining unit which have had the effect of integrating to a greater degree correctional facilities and probation and parole offices. The chain of command merged at the Area Manager level for both correctional facilities and probation and parole offices, whereas previously no merger existed on a regional level. The strategy or method of treatment of an offender became an integrated, cooperative function involving both employees of the correctional facilities and employees of the probation and parole offices, whereas previously there was minimal collaboration between the two groups of employees in the treatment of offenders. One of the results of co-case management, along with the merged chain of command, was the creation of the Corrections Services Specialist position, under which position it was possible for employees to work in either a correctional facility or a probation and parole office.

Department responses to societal changes since the creation of the Corrections bargaining unit have furthered this trend of increased integration between correctional facilities and probation and parole offices. Due to a large increase in the number of criminal offenders, far surpassing the ability of correctional facilities to hold offenders, the Department has imposed a cap on the number of offenders who can be incarcerated. The Department has developed other treatment and control programs, including a community control program and furlough reintegration program, which are administered primarily through the probation and parole offices. This increases the required integration of correctional facilities and probation and parole offices, and means that probation and parole employees are dealing with offenders who are more likely to have been incarcerated in the past.

These societal and Department changes, along with other societal changes, means that all employees of the probation and parole offices are subject to a greater degree of danger than in the past. Currently, offenders with whom they interact are inclined to act out more, be more verbally and physically aggressive, more likely to have drug and alcohol related problems, and more likely to get reinvolved in criminal behavior. The stress of probation and parole employees has increased because of increasing caseloads and decreasing familiarity with each offender.

As a result, the community of interest between correctional facility employees and probation and parole office employees has significantly increased. The qualifications, training and skills required of the two groups of employees have become more similar, and

are much closer than they are with any employees in the Non-Management Unit. Their job functions have become more and more similar, and their integration of work functions have increased, even though they typically have different job sites. While their immediate supervisor differs, they do have common supervision at the Area Manager level.

A factor which the Board found important in Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, supra, to indicate a community of interests among correctional center employees apart from other State employees was working in a high pressure environment where danger was a way of life. Given the recent developments, probation and parole office employees have seen the element of danger increase, along with working in a more high pressure environment. This is a significant development which, accompanied by the fact that it is a result of working with convicted offenders, indicates a closer community of interests between correctional center employees and probation and parole employees.

Such a community of interests is not evident between probation and parole employees and other non-management employees in State government, even other Agency of Human Services employees. Common supervision is more remote, merging only at the Secretary of Human Services level. Qualifications, training and skills are not similar. Integration of work functions is significantly less. Correctional facility employees and probation and parole employees are both dealing with criminal offenders in an integrated way. Other employees of the Agency of Human Services may have some criminal offenders and their families as clients, but they are dealing with them by providing services, not enforcing their criminal offenses.

Some of these other Agency of Human Services employees haves job sites near probation and parole offices, but this fact by itself is insufficient to indicate a close community of interests. We also are persuaded that, with respect to the element of danger, probation and parole employees are closer to correctional facility employees than to other Agency of Human Services employees.

We thus conclude that probation and parole office employees are more appropriately included in the Corrections Bargaining Unit than the Non-Management Bargaining Unit. 3 VSA §941(e) requires the Board to conduct an election to determine whether the involved employees wish to be organized into this revised Corrections Unit. We believe it is appropriate that the employees presently in the Corrections Bargaining Unit, as well as probation and parole office employees, vote on this question. That is because all employees affected should be involved in the determination whether they wish to be organized into such a unit. VSCFF and Vermont State Colleges, supra, at 50-51. The ballots of probation and parole employees will be counted separately from the ballots of employees presently in the Corrections Bargaining Unit, and the majority of employees voting in each group must vote for the unit for the unit to be approved. Id.

Finally, we recognize that VSEA and the State recently have entered into collective bargaining agreements for the Non-Management Unit and the Corrections Unit, each agreement effective for the period July 1, 1990 - June 30, 1992, and that probation and parole employees are included under the terms of the Non-Management Unit Agreement. If the employees vote to approve the expanded bargaining unit, we believe it is appropriate to handle the timing of unit inclusion and contract

coverage along the lines of the agreement between the State and VSEA in the case where employees voted to abolish the Liquor Store Bargaining Unit and be included in the Non-Management Bargaining Unit (Docket No. 89-22). To wit, probation and parole employees will be deemed included in the Corrections Bargaining Unit as of the date of the Board Order certifying the results of the election. However, the probation and parole employees shall remain covered by the collective bargaining agreement between the State and VSEA for the Non-Management Unit until the expiration of that agreement on June 30, 1992.

ORDER

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

1. The addition of Probation and Parole office employees of the State of Vermont, Department of Corrections, with the exception of managerial, supervisory and confidential employees; to the Corrections Bargaining Unit is appropriate; and

2. The Labor Relations Board shall conduct a secret ballot election pursuant to 3 VSA §941(e), on such date(s), time(s) and place(s) as the Board shall order to determine whether the above-described Probation and Parole office employees and the employees in the existing Corrections Bargaining Unit desire to be organized into a bargaining unit consisting of employees of the Department of Corrections employed in the State correctional facilities and probation and parole offices, with the exception of managerial, supervisory and confidential employees.

Dated this 2nd day of November, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Louis A. Toepfer

Leslie G. Seaver