

VERMONT LABOR RELATIONS BOARD

Re: PERSONNEL DESIGNATIONS OF MANAGERIAL,
CONFIDENTIAL, AND SUPERVISORY EMPLOYEES)

DOCKET NO. 78-32S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case

On November 29, 1977 the Vermont State Employees Association, Inc. (hereinafter the "VSEA") filed a grievance with regard to the designation of certain Vermont state employees as managerial, confidential and supervisory pursuant to 3 V.S.A. §906 by the Commissioner of Personnel. On December 15, 1977 the State of Vermont (hereinafter the "State") filed an answer to the grievance.

On February 24 and March 24, 1978 hearings were held before the Labor Relations Board. Present for the Board were Chairman John S. Burgess, Member William G. Kemsley, Sr. and Member Robert H. Brown. By agreement of both parties the hearings were limited to appeals of designations within the Department of Employment Security. Subsequent to those hearings no order was issued by the Board.

Because of a change in the chairmanship of the Board in June of 1978 and because the parties had reached agreement concerning the designation of certain employees which had been contested during the first hearing, it was agreed by the parties that the matter would be reheard de novo before the newly constituted Board on March 29, 1979. A hearing was held on that date before Chairman Kimberly B. Cheney, Member William G. Kemsley, Sr. and Member Robert H. Brown. The VSEA was represented by Alan S. Rome, Counsel for the VSEA, and the State was represented by Bennett E. Greene, Assistant Attorney General. Requests for findings and memoranda of law were submitted by both parties.

FINDINGS OF FACT

1. The VSEA is the exclusive bargaining representative for the Vermont state employees.

2. The Board takes judicial notice of the management and non-management collective bargaining agreements between the State of Vermont and the VSEA.

3. Prior to July 3, 1977 all managerial personnel within the classified system were included in the managerial bargaining unit with the exception of certain positions excluded under 3 V.S.A. §902(5).

4. Pursuant to certain provisions of Act No. 109 passed by the 1977 Vermont Legislature which became effective on July 3, 1977 which excluded managerial personnel from the bargaining unit, the Department of Personnel designated certain positions in the Department of Employment Security as managerial. Among those positions designated by the Department of Personnel as managerial were: Employment Service Managers A, B, & C (hereinafter "E.S. Managers") and Unemployment Compensation Managers A & B (hereinafter "U.C. Managers"). (Grievant's #9)

5. E.S. Managers and U.C. Managers are permanent positions within the State classified system.

6. There are two divisions within the Department of Employment Security: The Employment Services Division (hereinafter the "E.S. Division") and the Unemployment Compensation Division (hereinafter the "U.C. Division"). Both divisions have local field offices which administer the operations of their division in each of 12 geographical areas known as "labor market areas". Labor market areas are organized for the purposes of accessibility according to geography and population centers. Although

the labor market area which that office services are the same for both divisions. Both divisions have a manager in each of their local offices.

7. The organizational flow of the Department of Employment Services as reflected by the Department Table of Organization (Grievant's #1) is as follows:

- a. The Commissioner of Employment Security oversees the Director of Employment Services. (Table 1)
- b. The Director of Employment Services oversees three field operations assistant chiefs who act as liaisons between the managers of the local field offices and the Montpelier central office.
- c. The Field Operations Assistant Chief for the Northwest oversees the E.S. Managers in St. Albans, Middlebury, Burlington and Morrisville. [Table 2a(1)]
- d. The Field Operations Assistant Chief for the Northeast oversees the E.S. Managers in St. Johnsbury, White River Junction, Barre and Newport. [Table 2a(2)]
- e. The Field Operations Assistant Chief for the South oversees the E.S. Managers in Bennington, Springfield, Rutland and Brattleboro. [Table 2a(3)]

8. E.S. Managers A, B & C are responsible for the administration of the same programs within their labor market area. The designation of an E.S. Manager as A, B or C depends upon the size of the local office and the number of people within the labor market area for which that office must provide services. There is only one E.S. Manager C, who supervises over 30 employees in the Burlington office. There are two E.S. Manager B's, who supervise approximately 20 employees in the offices in Barre and Rutland. The remaining nine offices are supervised by E.S. Manager A's. E.S. Manager A's are compensated at Pay Scale 15, E.S. Manager B's at Pay Scale 16 and E.S. Manager C's at Pay Scale 17.

9. There is one E.S. Assistant Manager in Montpelier who is supervised by the Barre E.S. Manager.

10. Robert W. Ware is an E.S. Manager A for the St. Johnsbury field office. The labor market area for his office comprises all of Caledonia County and part of Essex County. Mr. Ware is supervised by Ralph Devenger who is the E.S. Field Operations Assistant Chief for the Northeast.

11. As an E.S. Manager, Robert Ware is responsible for administering the following programs in his labor market area: The Labor Exchange Program (Vermont Job Service); the WIN Program; the CETA Program; Labor Importation Requirements; and the Food Stamp program. The office can service applicants for these programs from any part of the State.

12. The programs which Mr. Ware administers are primarily federally funded. The goals for the programs are set by federal government, state government and to some extent by the local office. The administration of the programs is controlled to a large extent by federal law and regulations.

13. Mr. Ware supervises anywhere from 9 to 15 employees. He has effective supervisory authority to hire and fire and to recommend transfers and promotions.

14. The organizational flow of the Division of Unemployment Compensation as reflected by the Department Table of Organization (Grievant's #1) is as follows:

- a. The Commissioner of Employment Security oversees the Director of Unemployment Compensation.
- b. The Director of Unemployment Compensation oversees two field supervisors who act as liaisons between the managers of the local field offices and the Montpelier central office.
- c. The Field Supervisor for the East oversees U.C. Managers in St. Johnsbury, Brattleboro, Springfield, Newport, Barre and White River Junction. [Table 3b(1)]

- d. The Field Supervisor for the West oversees U.C. Managers in Bennington, Morrisville, Burlington, St. Albans, Rutland and Middlebury. [Table 3b(2)]

15. U.C. Managers A and B have the same responsibilities with regard to the administration of unemployment compensation services in their labor market area. The designation of a U.C. Manager as A or B depends upon the size of the local office and the number of people within the labor market area for which that office must provide services. There is only one U.C. Manager B, who manages the field office in Burlington. The remaining 11 U.C. Managers are all U.C. Managers A. A U.C. Manager A is compensated at Pay Scale 15 and a U.C. Manager B is compensated at Pay Scale 16.

16. David Masi is a U.C. Manager A in Morrisville. The labor market area for his office is comprised of all of Lamoille County. He is supervised by Mr. Clayton Welch, the Field Supervisor for the West.

17. As a U.C. Manager, David Masi is responsible for supervising the processing of all unemployment compensation claims which are directed to his office. Although the claims that are processed by his office come from the Lamoille County area, any claimant in the State could process his or her claim through the Morrisville office.

18. The Unemployment Compensation Office in Morrisville is federally funded. The goals and policies for the office are set by both the federal government and the state government. The administration of the office is controlled to a large extent by federal laws and regulations.

19. Mr. Masi supervises anywhere from one to three employees. He has effective supervisory authority to fire, to recommend promotions and to hire temporary employees. His authority to hire permanent employees is subject to the approval of his field supervisor and department head.

OPINION

This case is an appeal brought by the VSEA from the designation of certain permanent classified positions in the Department of Employment Security as "managerial" by the Commissioner of Personnel. The Commissioner of Personnel has the authority to determine which positions in the classified system should be designated as managerial pursuant to 3 V.S.A. §906. Under 3 V.S.A. §902(5)(F), managerial employees are excluded from the definition of a State employee eligible to be a member of a collective bargaining unit.¹ The 1977 legislation defines a "managerial employee" in 3 V.S.A. §902(18) as follows:

"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."

Any disputes arising from those designations are to be "finally resolved" by the Labor Relations Board (3 V.S.A. §906).

The Commissioner of Personnel designated U.C. Managers and E. S. Managers in the Department of Employment Security as managerial employees. In support of that action the State argues that U.C. Managers and E. S. Managers come within the definition of managerial employees because they are "directors of a district operation". The VSEA, on the other hand, contends that they are not managerial employees because they are supervised by managerial employees who themselves are directors of district operations.

¹ Prior to 1977 the VSEA represented two collective bargaining units of classified State employees known as the Management and Non-Management Units. By Public Act No. 109 the 1977 Legislature excluded managerial State employees from membership in a bargaining unit. It further provided that employees who had been part of the Management Unit who were designated as supervisory employees but not managerial or confidential would be members of a collective bargaining unit known as the Supervisory Unit. Thus when the new collective bargaining agreements between the State and the VSEA become effective on July 1, 1979 the two State employee bargaining units will be known as the Supervisory Unit and the Non-Supervisory Unit.

The VSEA construes the statutory definition of managerial employees as excluding three levels of management in State government: The agency, department or institution head, which in this case is the Commissioner of the Department of Employment Security; the major program or division directors, which in this case would be the Director of Employment Services Division and the Director of the Unemployment Compensation Division; and major sections chiefs or directors of district operations, which in this case would be the E.S. Field Operations Assistant Chiefs for the Northeast, Northwest and South and the U.C. Field Supervisors for the East and West. The VSEA argues that any supervisory employees who are under this third level of the management hierarchy should not be designated as managerial employees. The organization charts of the Department showing these positions are attached as Exhibits A & B.

We agree with the State's position for the reasons which follow. There is no language in the statute to indicate that the Legislature intended that the definition of a managerial employee should be limited to the top three levels of management as they are set forth on a department table of organization. A department or agency in State government may for organizational purposes divide the State into two or three large administrative districts with a number of smaller districts within each large district. There is no language in §902(18) on which to base a distinction between the directors of the smaller district operations and the directors of the larger district operations which encompass the smaller districts.

In essence the problem is that the statute does not define the word "district" at all. In the absence of any legislative history of recorded committee discussions on the subject, we have looked to other statutes dealing with the administrative organization of government for some indi-

cation of the legislative intent in using the word "district" in §902(18).

The Vermont Supreme Court has stated that:

"In the interpretation of statutes, the rule is to give effect to the intent of the Legislature. In this regard, it is our duty to examine other parts of one system of legislation dealing with the same subject matter." State v. Welch 135 Vt 316, 321, 376 A.2d 351 (1977).

The only statutes in which administrative districts in government agencies are consistently defined are contained in Chapter 65 of Title 3 of the Vermont Statutes Annotated. In that chapter, 3 V.S.A. §4001 provides for the creation of administrative districts by dividing the State into seven geographical areas. Section 4002 specifies the town in each of these districts in which a district office shall be located. The purpose of these districts as set forth in §4004 is to provide an organizational structure by which State agencies or departments are to provide services on a regional or local level if they are directed to do so by executive order.

To our knowledge no executive order to use the administrative districts as defined in 3 V.S.A. §4001 has ever been issued to a State agency or department. However, the organizational concept of dividing the State into seven administrative districts is clearly analogous to the organizational concept of the E.S. Division and the U.C. Division in the Department of Employment Security which divides the State into twelve "labor market areas". Both provide for the distribution of services on a regional level through a local field office. E.S. and U.C. Managers actually direct the operations of their division within their respective districts which is a distinctly different function from that of their supervisors, the E.S. Field Operation Chiefs and the U.C. Field Supervisor who act as liaisons between the managers and the central office in Montpelier. Thus these individuals fit the definitional requirement of directing "operations".

Were these the only considerations, we could stop our inquiry into legislative intent at this point and conclude that these employees are "managers".

But we must also consider the merit system. If we believed that excluding the U.C. and E.S. Managers from a bargaining unit would permit them to be discharged without a finding of just cause, we would find the State's position untenable since that result would be contrary to the overall intent of the Legislature in setting up a classified system based on merit. The legislative intent in using the term "district", we believe, must be consistent with protecting the merit system as a pre-existing legislative scheme of long standing importance to the State. In view of the expressed concern of the Legislature for tenure of classified employees on the basis of merit, we do not believe that the Legislature intended that classified positions which are designated as managerial should become objects of changing political fortunes, subject to turnover with the election of a new governor or the appointment of a new commissioner. The efficient functioning of the U.C. and E. S. programs on a local level requires managers with a high degree of management skills and technical expertise with regard to federal and state regulations. The efficiency and stability of these programs would be seriously impaired by a high rate of turnover in these positions.

After carefully analyzing all of the relevant statutes and personnel regulations, however, we believe that the job security of these classified employees is adequately protected even if they are excluded from the bargaining unit. 3 V.S.A. §312(b)(4) sets forth as a principle of the merit system:

"retaining employees based on the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be protected."

This principal is reinforced by Personnel Rule 12.01 which provides:

"An employee will not be subject to dismissal or suspension except for cause stated in writing to the employee."

and Rule 12.06 which provides:

"In dismissals and suspensions for cause like penalties shall be imposed for like offenses."

Classified positions are also protected from discrimination in connection with promotion and tenure by Personnel Rule 3.03.

We are further persuaded that the procedural rights of permanent classified employees are protected by statute. Under the provisions of 3 V.S.A. §1001(b) classified employees excluded from the bargaining unit have the right to appeal grievances existing under the merit systems and personnel rules to this Board.²

Based on this analogy to administrative districts as defined by the Legislature in 3 V.S.A. §4001 et seq., and our conclusion that the Legislature in using the word "district" intended to include these "managers" in the merit system, we conclude that U.C. and E.S. Managers in the Department of Employment Security who supervise the local field offices of the E.S. and U.C. Divisions and are responsible for the implementation of

³ In connection with the due process rights of excluded employees to appeal dismissals, we suggest that it would be appropriate for the Department of Personnel to readopt Personnel Rule 12.05 which sets forth procedures for written notice of intention to dismiss an employee and notice to that employee of his right to appeal the dismissal decision. In view of the issues raised in a recent case before this Board, Grievance of Raymond Henderickson (#77-41S), which involved the dismissal of a managerial employee, we feel that it is particularly important to eliminate any confusion on the part of an employee or an appointing authority as to the rights of the employee to appeal dismissals. In any event, a dismissal not following these procedures would be vulnerable to a due process attack.

state and federal programs on a regional level are "directors of district operations" and are managerial employees within the meaning of 3 V.S.A. §902(18).³

For the reasons given above we conclude that positions in the Department of Employment Security of E.S. Managers and U.C. Managers have been appropriately designated as managerial positions and the decision of the Commissioner of Personnel is affirmed.

ORDER

The designations of the Commissioner of Personnel relating to Employment Service Managers A, B & C and Unemployment Compensation Managers A & B as managerial employees within the meaning of 3 V.S.A. §902(18) is affirmed.

Dated this 24th day of May, 1979 at Montpelier, Vermont.

*Sup-ct
Affirmed Order
June 1980*

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

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

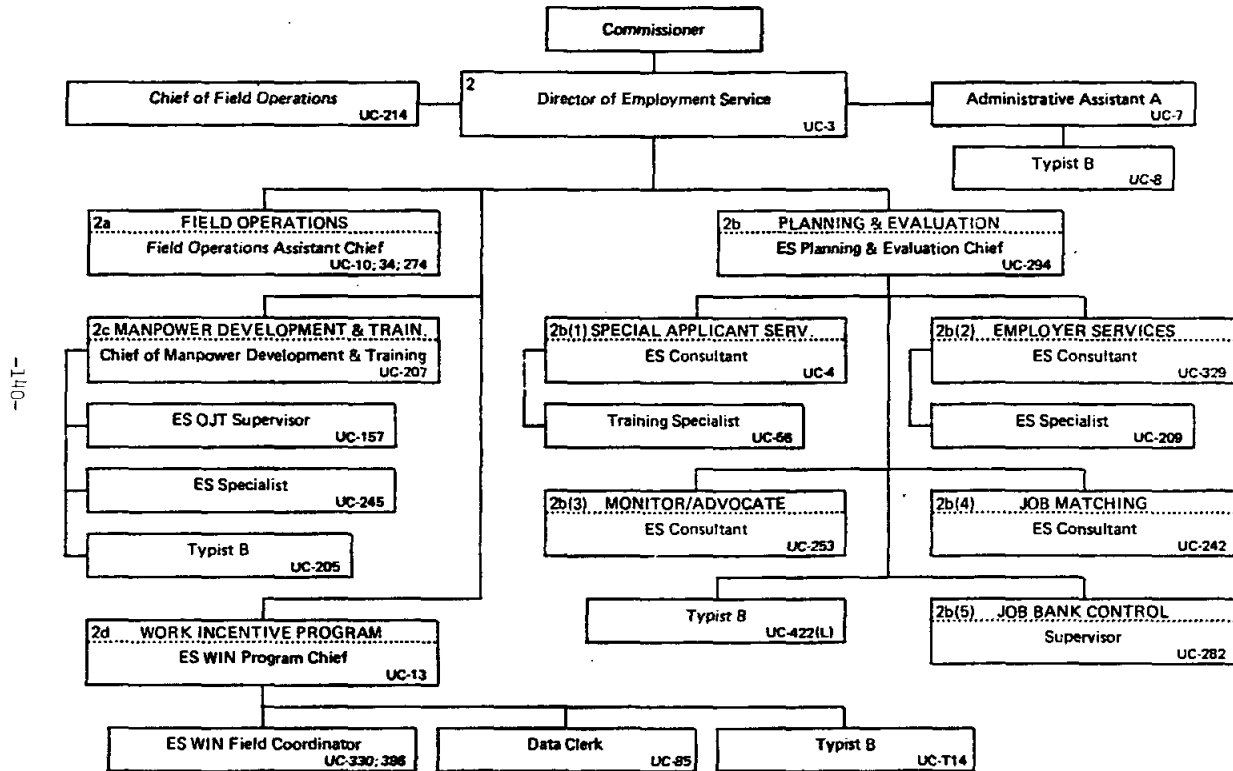
Robert H. Brown
Robert H. Brown

³ Our conclusions would be quite different, however, were we to find that an agency had restructured its organization to provide a multitude of districts which were in fact subdistricts of districts for the purpose of excluding an increased number of personnel from the supervisory unit.

DEPARTMENT OF EMPLOYMENT SECURITY

Table 2
October 1, 1977

Employment Service Division

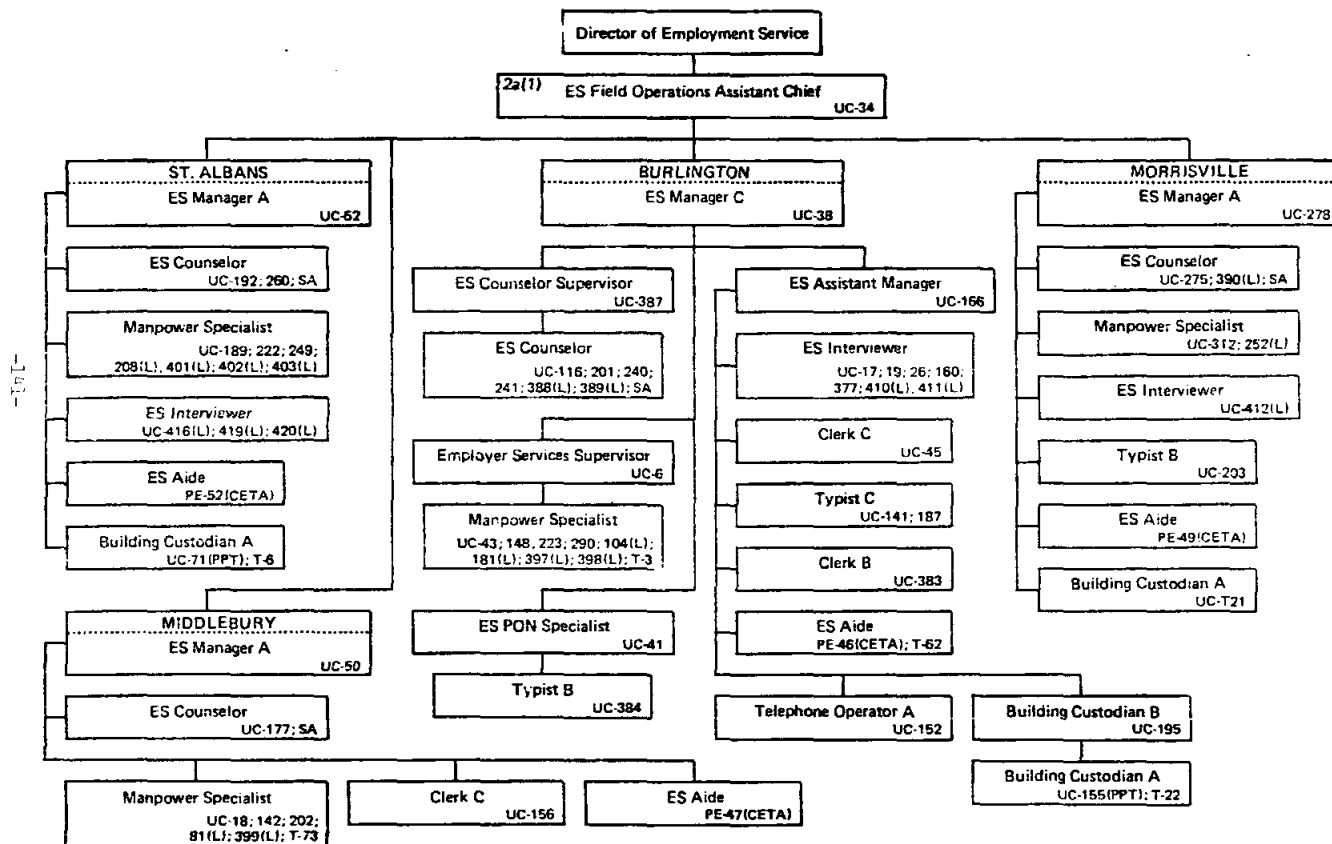


DEPARTMENT OF EMPLOYMENT SECURITY

Employment Service Division

ES Field Supervision – Northwest

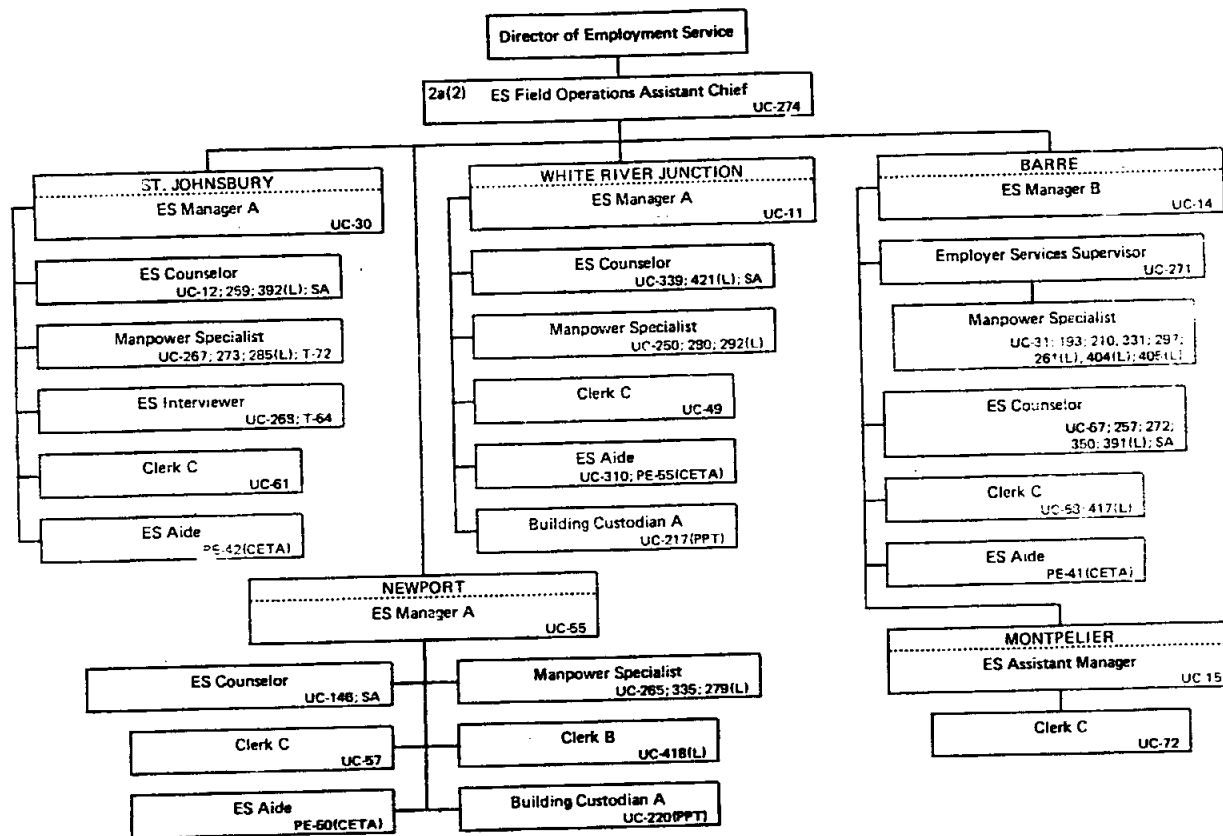
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October 1, 1977



DEPARTMENT OF EMPLOYMENT SECURITY

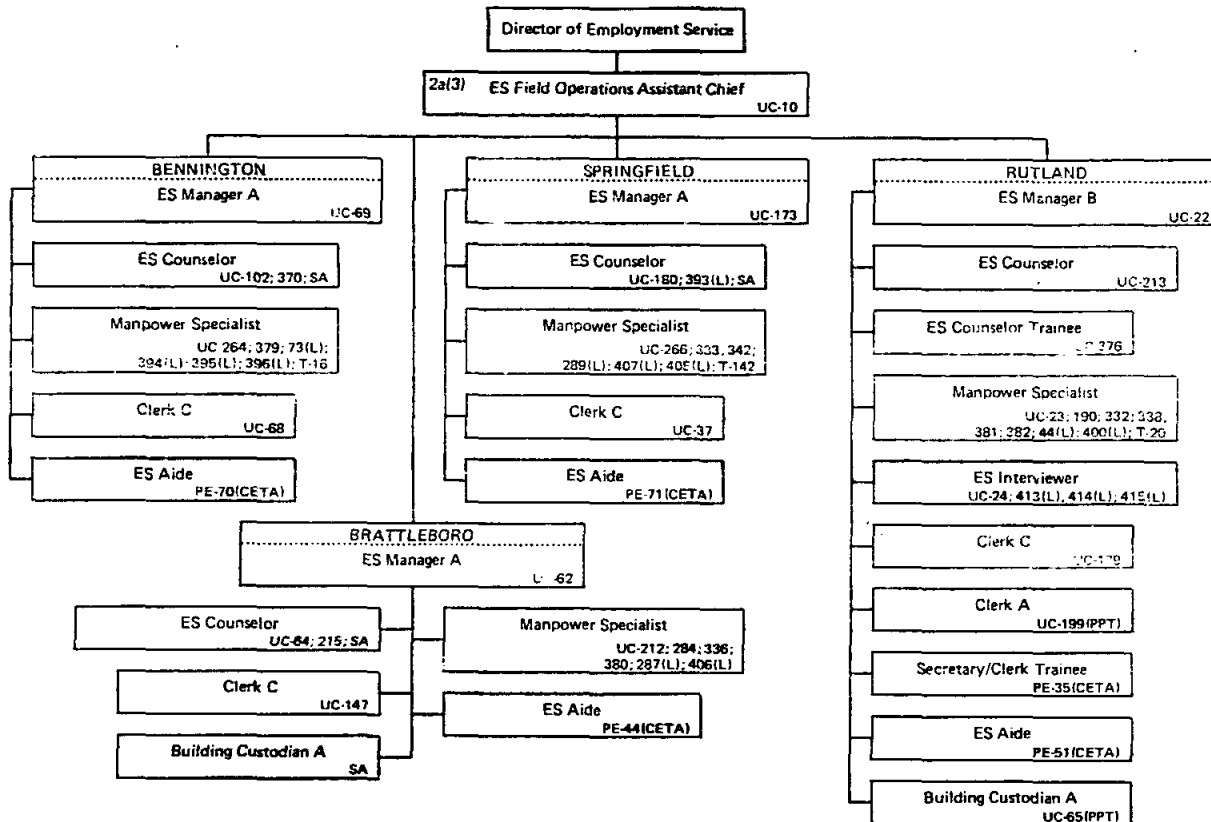
Employment Service Division
Field Supervision -- Northeast

Table 2a(2)
October 1, 1977



DEPARTMENT OF EMPLOYMENT SECURITY
Employment Service Division
Field Supervision - South

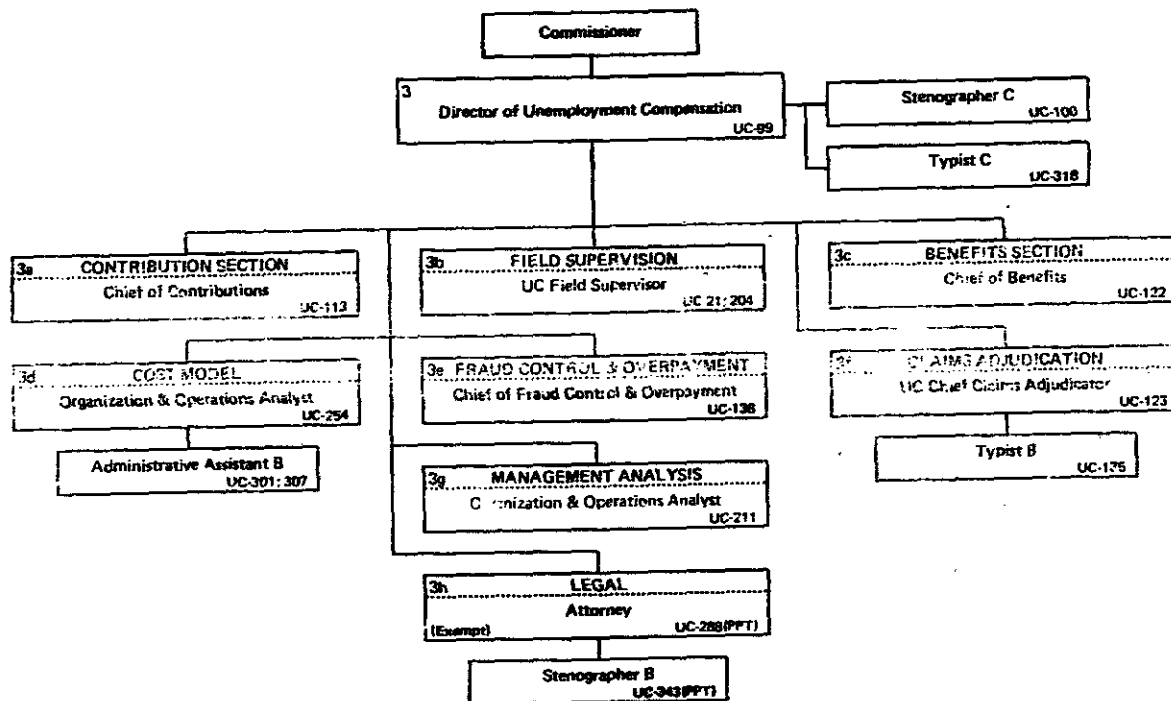
Tab 3(3)
October 1, 1977



DEPARTMENT OF EMPLOYMENT SECURITY

Unemployment Compensation Division

Table 3
October 1, 1977



DEPARTMENT OF EMPLOYMENT SECURITY
Unemployment Compensation Division
Field Supervision -- East

Tab. 10(1)
October 1, 1977

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