

VERMONT LABOR RELATIONS BOARD

UNITED ELECTRICAL, RADIO)	
AND MACHINE WORKERS OF)	
AMERICA)	
)	
and)	DOCKET NO. 97-23
)	
UNIVERSITY OF VERMONT)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 30, 1997, the United Electrical, Radio and Machine Workers of America ("Union") filed a Petition for Election of Collective Bargaining Representative, requesting an election among service and maintenance employees of the University of Vermont ("Employer" or "University"). The Employer responded to the petition on May 21, 1997, contending that the proposed bargaining unit was inappropriate. The Employer contended that the only appropriate unit including the service and maintenance employees would be one that included all non-professional staff employees of the University, excluding supervisory, managerial and confidential employees. In addition, the Employer contended that the Union's proposed unit inappropriately included certain individuals who are supervisory or managerial.

Subsequent to the Employer response to the petition and prior to the hearing, the parties reached various partial agreements as to exclusion of individuals from, and inclusion of employees in, the proposed bargaining unit. The amended proposed bargaining unit sought by the Union is "all full-time and regular part-time nonexempt service and maintenance employees of the University of Vermont, who make up Job

Groups 350, 510, 520, 610, 630 and the Parking Operations Coordinator in Job Group 620, excluding all faculty, professional, clerical and technical employees, police and security, confidential employees, managers and supervisors". The list of positions proposed by the Union to be included in the unit are attached as Attachment A. Attachment B is the list of positions agreed upon by the parties to be excluded from the petitioned for service and maintenance unit. The Employer continues to contend that the only appropriate unit including the service and maintenance employees is one that includes all non-professional staff employees of the University, excluding supervisory, managerial and confidential employees. Appendix C is the list of positions which the Employer would add to the unit. The Employer also contends that two positions which the Union is seeking to include in the proposed bargaining unit, the Medical Bookstore Supervisor and the Electronic Control Systems Specialist, are supervisory and should be excluded from the unit.

Hearings on the disputed unit issues were held on August 21, 22, 25, and 26, 1997, in the Vermont Labor Relations Board hearing room in Montpelier before Labor Relations Board Members Richard Park, Acting Chairperson; Leslie Seaver and Carroll Comstock. Attorney Nicholas DiGiovanni, Jr., represented the Employer. Union staff attorney Polly Halfkenny represented the Union. The parties filed post-hearing briefs on September 17, 1997.

FINDINGS OF FACT

1. The University, which is covered under the State Employees Labor Relations Act, 3 V.S.A. Section 901 et seq. ("SELRA"), employs approximately 2,900 full time employees and approximately 6,000 part time employees.

2. The President serves as chief executive officer of the University and reports directly to the Board of Trustees. Reporting directly to the President are the Provost/Senior Vice President and the Vice President for University Advancement. Also reporting directly to the President are the Affirmative Action and Equal Opportunity Office, the Public Relations Office, the General Counsel, the Women's Center, and various governance and advisory bodies. The Vice President for Administration and the Vice President for Student Affairs each report to the Provost, as do various academic schools and colleges, as well as other administrative departments such as Admissions, Financial Aid and the Registrar (University Exhibit 2).

3. Certain employees of the University Police Services Department currently are represented by the Chauffeurs, Teamsters, Warehousemen, Helpers Union Local 597 pursuant to the Labor Relations Board Order of Certification in VLRB Docket No. 95-79. There are 18 employees in this bargaining unit. This is the only group of employees represented by a union at the University.

4. There are approximately 305 employees in the bargaining unit proposed by the Union; these employees are employed in 18 of the departments in the University. Approximately 75 percent of the employees in the proposed bargaining unit are in two departments: Physical Plant and Residential Life. There are approximately 1050 employees in the bargaining unit proposed by the Employer. Approximately 150 of the employees whom the Employer would add to the bargaining unit work in the 18 departments containing the employees in the Union's

proposed bargaining unit; the remaining employees to be added by the Employer work in the many other departments of the University (University Exhibits 2, 3).

5. Some of the departments containing employees in the proposed bargaining unit are under the Vice President for Administration, some are under the Vice President for Student Affairs, and the remaining departments ultimately report to the Provost. The Physical Plant Department, University Store, Mail Services, Transportation and Parking Services, University Graphics and Printing, and the Purchasing Department are under the Vice President for Administration. The Residential Life Department, which includes Ethan Allen Housing, and the Athletic Department, which includes the PFG Complex, are under the Vice President for Student Affairs. The Plant and Animal Biology Facility and the Animal and Food Sciences Department report to the Provost, through the Dean of the College of Agriculture. The Vermont Cancer Center, the Pathology Department, and the Microbiology and Molecular Genetics Department report to the Provost, through the Dean of the College of Medicine. The Instrument and Modeling Facility reports to the Provost, through the Dean of the Graduate College. The Bailey/Howe Library reports to the Provost, through the Library and Media Services. The Art Department reports to the Provost, through the Dean of the College of Arts and Sciences. The Animal Care Management Department reports to the Provost (University Exhibits 2 & 3).

6. The University classifies its employees as either exempt or non-exempt in accordance with the federal Fair Labor Standards Act. All the employees in the Union's proposed bargaining unit are non-exempt. The departments that have

employees included in the proposed unit have other nonexempt employees not included in the unit. There are 149 nonexempt employees in these departments who have been excluded from the unit. The employees in the proposed unit work at numerous locations throughout the University campus (University Exhibits 3, 25 & 30).

7. With the exception of faculty and some higher level administrators, the Employer further classifies its employees, both exempt and non-exempt, in accordance with a formal job classification system, called the Hayes Job Classification Evaluation System. Job analysts in the University Human Resources Department perform the classification of all classified positions within the University. There are 20 pay ranges; a Pay Range 1 position is at the lowest end of the compensation schedule, and a Pay Range 20 position is at the highest level of the compensation schedule. Generally, Pay Ranges 1 - 9 are non-exempt positions, Pay Ranges 10 - 12 are both exempt and non-exempt, and all pay ranges above Pay Range 12 are exempt. The employees in the Union's proposed bargaining unit are in Pay Ranges 1 - 12. Approximately 70 percent of the employees in the Union's proposed bargaining unit are in Pay Range 5 or lower. Approximately 6 percent of the employees the Employer is proposing to be added to the bargaining unit are in Pay Range 5 or lower (University Exhibits 1, 3, 4; Union Exhibit 1, Section R, pages 23-27, 29-31).

8. An employee's placement within one of the pay ranges determines his or her rate of compensation. Pay raises for classified employees are determined annually in accordance with wage and salary guidelines issued annually by the

University administration to "budget directors", who generally are vice presidents. Individual department heads generally are given authority to recommend wage increases within the guidelines (University Exhibits 5, 6).

9. In addition to the Hayes classification system, the Employer classifies all positions by Job Group in accordance with federal affirmative action requirements as part of an effort to redress underemployment of women and minorities in the workforce. All of the service and maintenance employees in the Union's proposed bargaining unit fall within the following job groups: Job Group 350 - Stocks and Stores Support; Job Group 510 - Senior Campus Facilities Support; Job Group 520 - Campus Facilities Support; Job Group 610 - Farm, Lab and Research Support Services; the Parking Operations Coordinator position in Job Group 620; and Job Group 630 - Grounds and Custodial Services. All of the positions which the University would add to the bargaining unit fall within the following job groups: Job Group 310 - Senior Administrative Support Staff; Job Group 315 - Administrative Support Staff; Job Group 320 - Senior Clerical Staff; Job Group 330 - Clerical Staff; Job Group 410 - Medical Technical Support; Job Group 420 - Miscellaneous Technical Support; and Job Group 440 - Research Laboratory Technicians (Union Exhibits 1-13).

10. As part of the classification by job groups in accordance with federal affirmative action requirements, each position is designated by primary occupational activity as defined by the Equal Employment Opportunity Commission. All of the positions in the Union's proposed bargaining unit are categorized as either "K" for "skilled crafts" or "S" for "service/maintenance" except for those positions within

Job Group 350 - Stocks and Stores Support, which are categorized as "C" for secretarial/clerical. All of the positions which the Employer would add to the bargaining unit are categorized as either "C" for "secretarial/clerical" or "T" for "technical/paraprofessional. The bulk of employees which the Employer would add to the bargaining unit are secretaries, staff assistants, administrative assistants, records and/or information specialists, accountants, financial assistants, research assistants, or laboratory/research technicians, and similar positions (Union Exhibits 1 - 13, 60).

11. The Employer has a single set of benefits for all of its non-exempt staff. The benefit plans include a complex set of insurance plans and options, retirement plans, and tuition remission plans; there are various options for employees with respect to certain benefit plans. The relatively large size of its workforce allows the Employer to negotiate favorable rates to participate in such plans (University Exhibits 8, 26, 28).

12. Administering the existing plans is complicated and time consuming because the Employer offers its employees several benefit plans. Also, eligibility for benefits, extent of benefits and cost of benefits vary according to whether an employee is a full-time, part-time or temporary employee (University Exhibits 8, 26, 28).

13. No vice president, director, department head or supervisor has the authority to modify any of the University's employee benefits. Any modification of benefits would have to be approved by the Board of Trustees and, any time such

addition or modification of benefits has occurred, it has applied uniformly to all non-exempt staff (University Exhibits 8, 26, 28).

14. The Employer's policies with respect to holidays, vacations and other forms of leave are identical for all non-exempt employees within the University. Also, various University services offered to employees are identical for all classified employees. These include dependent care, flexible spending accounts, and the use of the University's library, recreational and sports facilities, dining halls and credit unions (University Exhibits 9, 11, 26, 28).

15. Professional exempt employees of the University share many of the benefits of non-exempt employees, but also receive additional benefits. For example, professional exempt employees accrue vacation days and personal leave days at a greater rate than non-exempt employees. Faculty and officers of the University also receive different benefits. Although the health, disability, dental and life insurance plans are the same, faculty have different policies regarding sick leave and there are differences in eligibility for contributions to the pension plan. There are additional differences between tenure track and non-tenure track faculty (University Exhibit 26; Union Exhibits 16, 17).

16. The University maintains a common staff handbook that outlines the major benefits, leave policies, compensation policies and other terms and conditions of employment of all classified employees. It is distributed to all classified employees. The handbook can only be modified with the approval of the University President. While some discretion is accorded to departments in implementing some policies set forth in the handbook, no department can contradict overall University

policies. Although some departments maintain their own departmental handbooks, these handbooks cannot supersede the benefits and policies outlined in the University staff handbook. Most often, department handbooks address practices specific to that department (University Exhibit 26, Union Exhibit 18).

17. Department heads do not have sole authority to hire classified staff. Hiring involves coordinated efforts between the department, the University Human Resources Department and the Affirmative Action Office. The Affirmative Action Office oversees all hiring to determine whether minorities and women are underemployed in the particular job classification. The Office has the authority to reject a hiring recommendation and require that a position be posted or re-advertised. If a job is to be posted, the department head works with an employment recruiter from the Human Resources Department to develop a proper posting. Once the department has interviewed candidates for a position, any choice made on a new hire still has to be approved by the budget director responsible for that department and reviewed again by the Affirmative Action Office (University Exhibit 27).

18. The University hires approximately 300 - 350 employees each year. The Human Resources Department conducts a common orientation program for all new classified employees and provides them with a packet of orientation materials. All classified employees go through the same orientation and receive the same orientation materials (University Exhibit 28).

19. There is a four month probationary period for classified employees during which time an employee may be terminated with or without cause. Once an employee passes his or her four month probationary period, the University uses a

"just cause" standard for discipline which is set forth in its Constructive Discipline Handbook for Management. The handbook sets forth procedures and standards for supervisors to follow in determining whether to discipline employees. An employee who is dismissed or otherwise disciplined can file a grievance over the discipline (University Exhibit 29).

20. Performance evaluations are performed on classified employees. The evaluation affects an employee's annual wage increase. In conducting evaluations, departments may use a University-wide general performance report form. However, departments can, and some do, develop their own forms (Union Exhibits 19 -21).

21. The University has a Staff Council consisting of 18 elected classified staff employees. The Staff Council serves as a conduit for information between the staff and the administration. The Council has several committees which review and monitor such things as benefits, employment policies and wage recommendations. Various non-exempt staff have served on the Council and committees of the Council (University Exhibits 10, 12).

22. There is a single grievance procedure for all classified staff which is set forth in the University Staff Handbook. If a grievance is not resolved at an early stage, the Staff Grievance Hearing Panel is convened to conduct a hearing on the grievance. The panel is made up of seven employees serving three year terms, five appointed by the Staff Council and two appointed by the President. The panel makes findings and recommendations to the Provost for a decision on the grievance. The employee may appeal an adverse decision by the Provost to the President. An employee may grieve the President's decision to the Vermont Labor Relations Board.

A number of non-exempt employees from various departments within the University, both included in and excluded from the Union's proposed bargaining unit, have served as members of the Staff Grievance Hearing Panel (University Exhibit 26).

23. The Employer offers training opportunities for all classified employees (University Exhibit 7).

Physical Plant Department

24. 166 of the 305 employees whom the Union is seeking to include in the bargaining unit work in the Physical Plant Department which is responsible for operating various trade shops and performing grounds and custodial functions on campus. The Director is the department head. Reporting to the Director are an Associate Director, Assistant Director for Services, Assistant Director for Physical Plant Administration, and Assistant Director for Maintenance. The Associate Director is generally responsible for areas such as energy management, painting, ventilation, carpentry, heating (University Exhibits 2, 3).

25. The Assistant Director for Maintenance supervises heating, plumbing, ventilation, electrical and carpentry maintenance services performed by the Department, and oversees the Medical Complex maintenance staff. The Assistant Director for Services oversees Material Management, Custodial/Housekeeping, Solid Waste, Grounds and the Automotive Shop. The Assistant Director for Physical Plant Administration oversees administrative matters in the Department, including the budget.

26. The Physical Plant Department does not operate out of a single facility. Rather, Department employees report to various shops stretching across the University campus.

27. Approximately one-half of the Physical Plant employees the Union is seeking to include in the proposed bargaining unit are Custodian/Housekeepers. The Custodian/Housekeepers maintain approximately 65 buildings on campus, excluding Residential Life and athletic complex buildings. Custodian/Housekeepers dispose of trash, clean and wax floors, dust and vacuum offices, clean rest rooms and other rooms, and keep the entrances and walkways clear. Custodian/Housekeepers use a variety of machines in their work such as buffers, scrubbers, pressure sprayers, window washing poles and ladders, and are required at times to lift heavy objects. Due to the chemicals they work with and the physical labor involved, Custodian/Housekeepers receive training from the University's Risk Management Department in back injury prevention and safe use of chemical products (Union Exhibits 6, 15).

28. Most Physical Plant Custodian/Housekeepers work second shift or third shift. There are three different second shift schedules: 2 p.m. to 10:30 p.m., 4 p.m. to 12:30 a.m., and 6 p.m. to 2:30 a.m. Custodian/Housekeepers are assigned to teams of six to ten Custodian/Housekeepers responsible for a series of buildings. Each team generally is self-directed, deciding among themselves how to complete tasks. Assistant Custodial/Housekeeping Supervisors, who are excluded from the Union's proposed bargaining unit as supervisory employees, inspect the work performed by the teams (Union Exhibit 6).

29. The Union is seeking to include in the bargaining unit the two Fixture Specialists who work in the Physical Plant Department. They work as a team on second shift. They are responsible for maintaining light fixtures in over 60 buildings on campus. They change bulbs, make simple repairs to broken fixtures, wash and dust lighting fixtures, monitor and maintain lamp inventory, and prepare maintenance request forms for more complex repairs of lamp fixtures. They drive a University vehicle, and use ladders, light bulb poles, and various hand tools. They wear protective safety goggles, gloves and hard hats. They regularly interact with custodians, and also interact at times with a variety of other University employees (Union Exhibit 6).

30. The Union is seeking to include within the bargaining unit trades and maintenance employees of the Physical Plant Department. Work within the Physical Plant trade and maintenance groups - electrical, plumbing, heating and ventilation, carpentry, painting, moving, auto and grounds equipment maintenance, energy management - is performed through a system of work orders that originate from various sources around the campus. Mechanics and trades employees generally receive their work orders through their shop supervisor, but they may be contacted directly at times. In performing their various duties, the trades and maintenance employees interact with each other, other Physical Plant employees and the contact persons who ordered the work. The work performed by trades and maintenance employees generally requires a great deal of physical labor (Union Exhibits 3, 4, 6).

31. Each of the trades and maintenance shops has a Physical Plant Assistant. Physical Plant Assistants are not included in the Union's proposed

bargaining unit. Physical Plant Assistants are responsible for typing, answering and making telephone calls, clarifying work orders and ordering materials and supplies. Physical Plant Assistants interact regularly with the trades and maintenance employees in their shops concerning such things as work orders and ordering materials and supplies. The Physical Plant Assistants maintain a small stock room with limited supplies for their shop.

32. Physical Plant trades and maintenance employees respond to plumbing, electrical and other maintenance problems throughout the University campus, including the PFG athletic complex, married student housing, dorms and the other Residential Life complexes. When responding to problems in the dorms or residences, trades and maintenance workers may interact with custodian/housekeepers, residents or secretarial staff.

33. The Medical Complex maintenance staff is separate from the rest of the Department maintenance staff to allow an immediate response to experiment and research needs in the Medical Complex. The staff of 15 or 16 employees consists of electricians, plumbers, heating and ventilation workers, receiving employees, painters and carpenters.

34. The Maintenance Mechanic for Physical Plant in the Union's proposed bargaining unit maintains all of the grounds equipment used on campus. This includes preventive maintenance and making repairs. The Maintenance Mechanic works in a garage next to the Grounds office, and also works throughout campus where grounds machines have become inoperable. He further works on special projects such as assisting grounds employees in watering athletic fields. He

works first shift from 7:00 a.m. to 3:00 p.m. The Maintenance Mechanic works a substantial amount of overtime, and is on call around the clock during winter months. He wears safety equipment and regularly uses a variety of tools in performing his duties (Union Exhibit 3).

35. The Union's proposed bargaining unit includes Groundspersons and Grounds/Heavy Equipment Operators. Grounds employees perform tasks such as general cleanup of University grounds, mowing lawns, trimming hedges, moving equipment and furniture, and caring for shrubs, trees and flowers. During the winter months, they are responsible for snow removal (Union Exhibit 6).

36. Physical Plant Electricians in the Union's proposed bargaining unit perform all aspects of electrical installations and repairs on campus. Electricians employed by the University are required to have a high school diploma, four years of apprenticeship training, 2 - 3 years experience in the field, and an electrician's journeyman license from the State of Vermont. Electricians work under the direction of the Supervisor of the Electrical Department. They interact regularly with other trades and maintenance employees on campus, other members of the campus community, and outside vendors (Union Exhibit 3).

37. The Union is seeking to include the Physical Plant Stock Inventory Clerk in the bargaining unit. The Stock Inventory Clerk works in one end of a Physical Plant building stocking and shelving plumbing, electrical and custodial supplies and materials. He ships and receives materials, and uses a computer to locate inventory on shelves and in various cabinets. He uses a truck to pick up materials from various vendors. He also uses a forklift, electric jacks, pallets, hand carts and

other moving equipment. The work is physically demanding, involving regular lifting of heavy materials. The Stock Inventory Clerk has received training in back injury prevention, forklift safety and computer use (Union Exhibit 2).

38. Richard Wolbach, the Energy Management Engineer at the University, and the employees working under him are responsible for the operation within the Physical Plant Department that oversees the energy management and central monitoring systems at the University. The Union seeks to include in the bargaining unit the five employees who report to Wolbach: Electronic Control Systems Specialist, Electronic Control Systems Assistant, and three Electronic Control System Operators (Union Exhibits 3, 4, 35 - 39).

39. The Electronic Control Systems Specialist, Carmyn Stanko, and the Electronic Control Systems Assistant, Tim Gingras, perform the field work necessary to keep the various building systems functioning. The Electronic Control System Operators monitor the Honeywell and Johnson Control building systems, fire alarms, security systems, and temperature control systems. They also receive work order requests from University departments (Union Exhibits 3, 36, 37).

40. Stanko has primary responsibility for the skilled electrical field work necessary to support the Honeywell and Johnson Control building systems. Stanko is required to have an electrician's journeyman license, and has received extensive training to maintain her license and safely and competently perform her job. Stanko is on call around the clock. She receives on-call compensation, and works significant overtime. In performing her duties, Stanko has regular interaction with many members of the campus community (Union Exhibits 3, 36, 40, 41).

41. Stanko shares an office with Gingras, works daily with him, assigns him work, and has trained him. Gingras is required to have an electrician's journeyman license to perform his duties of assisting Stanko in the field work necessary to keep the various building systems functioning. Stanko has completed performance evaluations on Gingras, as well as Gingras' predecessor in the Assistant position. Stanko makes no recommendation as to whether the Assistant should receive a performance-based salary increase. Stanko approves the Assistant's leave requests, and signs the Assistant's time cards verifying hours worked. Stanko also determines the overtime to be worked by the Assistant. The Assistant has never been disciplined (Union Exhibits 3, 37; University Exhibits 21 - 24).

42. Stanko was part of the interview team when Gingras was hired. Wolbach made the decision to hire Gingras. He gave Stanko's hiring recommendation a little greater weight than other members of the hiring team.

43. Stanko has attended many supervisory training sessions offered by the University. Stanko has never received training on the University's Constructive Discipline Handbook for Management, and has not received a copy of it (University Exhibit 29).

44. When Stanko is working in the field, the Electronic Control System Operators regularly provide Stanko with information on the Johnson Control and Honeywell buildings systems. Stanko has been involved in the training of two of the Operators concerning the operation of the systems which they are monitoring. Stanko does not do performance evaluations of Operators, and does not approve their leave requests or time cards. Stanko cannot promote, reward, discipline, layoff or recall

operators. Wolbach has never told Stanko that she has supervisory authority over the Operators. Stanko has been a member of interview teams when Operators have been hired. Hiring recommendations were made by the team as a whole, and the actual hiring decision was made by Wolbach and his superiors (Union Exhibit 38).

Residential Life Department

45. The Union's proposed bargaining unit includes approximately 62 employees employed by the University's Residential Life Department. The included employees primarily are either Custodian/Housekeepers or Assistant Custodial/Housekeeper Supervisors responsible for cleaning and maintaining the student housing and residence halls. The Custodian/Housekeepers are assigned to the 7 residential dormitory complexes at the University. An Assistant Custodial/Housekeeper Supervisor is the lead worker at each complex. Three Custodial/Housekeeping Supervisors, who are excluded from the proposed bargaining unit as supervisory employees, are in charge of the seven complexes. The Custodial/Housekeeping Supervisors report to the Housekeeping Service Manager, who reports directly to the Assistant Director of Facilities. The Residential Life Department is headed by a Director of Residential Life who reports to the Vice President of Student Affairs (University Exhibits 2, 3; Union Exhibits 6, 18).

46. During the academic school year, Custodian/Housekeepers and Assistant Custodial/Housekeeper Supervisors perform duties in their assigned residences/buildings such as cleaning and vacuuming stairs and hallways, cleaning bathrooms, emptying trash barrels, taking care of bottles and cans that need to be recycled, dusting and waxing. During the summer when students are not in residence,

Custodian/Housekeepers and Assistant Custodial/Housekeeper Supervisors work in teams to clean common areas, strip and wax floors, and complete other major cleaning tasks. Custodian/Housekeepers and Assistant Custodial/Housekeeper Supervisors use buffers, vacuum cleaners, buckets, ladders and other cleaning equipment as well as a variety of cleaning products which may contain toxic or hazardous materials. The University's Risk Management Department provides Custodians/Housekeepers and Assistant Custodial/Housekeeper Supervisors with training on hazards they may face in their jobs (Union Exhibits 6, 15).

47. Custodian/Housekeepers and Assistant Custodial/Housekeeper Supervisors are scheduled to work 40 hours per week. Most work on first shift. They are expected to eat meals and take breaks in break rooms in their assigned building. Custodian/Housekeepers and Assistant Custodial/Housekeeper Supervisors interact regularly with students and residential assistants. They report damage in their buildings or other issues to their supervisor or a secretary in their assigned building.

48. Custodian/Housekeepers and Assistant Custodial/Housekeeper Supervisors do not generally interact with custodial employees in the Physical Plant Department or the Athletic Department. The custodial employees in the different departments are separately trained and supervised.

PFG Athletic Complex

49. The Union's proposed bargaining unit includes 13 employees at the PFG Athletic Complex. The complex includes a swimming pool, hockey rink, gymnasium, playing fields and tracks. The employees are either Athletic Custodians, Athletic Equipment Specialists, or Athletic Facility Specialists. These employees

clean and maintain athletic facilities, maintain and distribute athletic equipment and supplies, set up for athletic events, and move furniture, equipment and supplies. They often work together as a team preparing sports playing surfaces, setting up and taking down athletic equipment, moving equipment and supplies, and generally preparing for and cleaning up after events. In the course of their work, they may use tractors, lining equipment, machines, cleaning equipment, post hole diggers, hand tools, and hazardous cleaning products. Athletic complex employees rarely interact with custodians from other departments (University Exhibits 2 and 3; Union Exhibits 2 and 6).

University Store

50. The Union's proposed bargaining unit includes 21 employees of the University Store: 10 Sales Assistants, four Preparing/Receiving Clerks, two Stock Inventory Supervisors, one Stock Inventory Clerk, one Shipping/Receiving Clerk, one Register Operator Supervisor, one Register Operator, and the Medical Bookstore Supervisor. None of the University Store positions in the Union's proposed bargaining unit require education beyond a high school diploma. The University Store also has seven other non-professional, non-supervisory employees who are excluded from the proposed bargaining unit: three Records Specialists, two Bookkeepers, one Computer Operator/Programmer, and one Secretary. The University Store is directed by the University Store Manager. The University Store is divided into a number of different sections: Textbooks, Merchandise, Finance, Computer Operations, and the Medical Bookstore. The Medical Bookstore is located in a different building than the University Store (University Exhibits 2, 3, 14).

51. The Sales Assistants at the University Store work in either the Textbook or Merchandise sections of the Store. They assist customers in locating and purchasing merchandise; receive, price and stock inventory; assist in ordering supplies or books; clean shelves and counters; and set up displays. In performing their duties, Sales Assistants regularly interact with students and other University employees (Union Exhibit 2; University Exhibit 14).

52. The Preparing/Receiving Clerks at the University Store work in the Textbook section of the Store. They are responsible for receiving books and verifying that the order is correct, unloading the boxes of books, inspecting the condition of books, placing the books on the shelves, and assisting customers (Union Exhibit 2; University Exhibit 14).

53. The Stock Inventory Supervisors report respectively to the Book Manager and the Merchandise Manager. They are responsible for checking and pricing books and merchandise, shelving books and supplies, shipping books and supplies, and maintaining stock inventories. The Stock Inventory Clerk checks, prices and shelves merchandise in the Merchandise section of the University Store (Union Exhibit 2; University Exhibit 14).

54. The Shipping/Receiving Clerk works on the loading dock of the University Store. The Shipping/Receiving Clerk receives boxes of books, supplies and other merchandise, and delivers the unopened boxes to the appropriate section of the Store. The Shipping/Receiving Clerk also packages mail orders, weighs outgoing packages and applies proper postage (Union Exhibit 2; University Exhibit 14).

55. The Register Operator Supervisor trains University employees to serve as register operators, schedules part-time register workers, and supervises the daily activities of register operators in the University Store. There are four Register Operator positions at the Store, but only one is filled at present. All staff at the University Store are trained in operating the register, and all have operated the registers (Union Exhibit 2; University Exhibit 14).

56. Two of the Records Specialists excluded from the Union's proposed bargaining unit report respectively to the Book Manager and the Merchandise Manager. These positions require an associate's degree and secretarial experience. They are responsible for either textbook or merchandise acquisition, working with vendors, developing purchase orders, processing records and returns, and answering the telephone. In carrying out these duties, the Records Specialists regularly interact with other Store employees (Union Exhibit 9; University Exhibit 14).

57. The other Records Specialist excluded from the Union's proposed bargaining unit works with the two Bookkeepers excluded from the unit. The three employees work in the Accounting Office of the University Store. The Records Specialist records daily cash deposits, pays bills, and reconciles disparities among sections of the Store. In carrying out these duties, the Records Specialist regularly interacts with other Store employees. The position requires a high school diploma, and secretarial/business experience. The Bookkeepers reconcile daily financial records, review invoices, and process invoices for payment. They periodically meet with Preparing/Receiving Clerks to verify that materials were received. Bookkeepers

are required to have a high school diploma, and general office experience (Union Exhibit 10; University Exhibit 14).

58. The Computer Operator/Programmer at the University Store excluded from the proposed bargaining unit is required to have a bachelor's degree and computer knowledge. The Computer Operator/Programmer is responsible for operating the University computer, computer programming, diagnosing problems with the operating programs or equipment, and training other Store employees to operate the computer (Union Exhibit 12).

59. The University Store Secretary excluded from the Union's proposed bargaining unit types, answers telephones, and maintains files for the University Store Manager. The position requires a high school diploma and secretarial experience (Union Exhibit 8; University Exhibit 14).

60. The University Store employs a "team" approach. Store staff are cross-trained and substitute for each other, and assist each other, at times. University Store staff generally work the same hours, with rotating coverage for the Store's Saturday operations.

61. University Store employees interact daily in the course of their employment with individuals from throughout the University.

62. The Medical Bookstore is located in the Given Medical Building, which is several buildings away from the University Store. The Medical Bookstore carries text and reference books and supplies used by students, staff and faculty in the various medical areas of the University. The Medical Bookstore has three employees: William Gay, Medical Bookstore Supervisor; Holly Olmstead, Sales

Assistant; and John Nyberg, Preparing/Receiving Clerk. Gay reports directly to the University Store Manager. Gay has been Medical Bookstore Supervisor for approximately 17 years. Olmstead has worked at the Medical Bookstore for 10 years. Nyberg has worked there for just over a year (University Exhibit 30).

63. Gay directs the Medical Bookstore's daily activities, coordinates seminars on particular subjects, orders books and supplies, assists customers, oversees the sale of merchandise, maintains the inventory system and reconciles the financial records of the bookstore. He assigns and directs the work of Olmstead and Nyberg to the extent necessary. Gay agreed that he spends 30 -35 percent of his time supervising other employees. Gay has attended several "senior staff" meetings of the University Store (Union Exhibits 2, 26).

64. Although classified as a Sales Assistant, Olmstead's duties extend beyond assisting customers. She performs duties such as opening and closing the store, answering the telephone, stocking shelves, setting up and operating the register, and performing Gay's duties in his absence. Olmstead is an independent, experienced worker who needs minimal direction on a daily basis (Union Exhibits 2, 28).

65. Among Nyberg's duties are receiving books and merchandise, verifying that the order is correct, unloading the boxes of books and merchandise, inspecting the condition of books and merchandise, placing the books and merchandise on the shelves, and assisting customers (Union Exhibit 27).

66. The Medical Bookstore has a computerized inventory system. Gay, Olmstead and Nyberg all input data into this system.

67. Gay has performed annual performance evaluations on Olmstead. In doing so, he has not made any wage increase recommendations for Olmstead based on her performance. The University Store Manager has determined the extent of the wage increase. Gay has yet to do a performance evaluation on Nyberg, but will do so in the future (University Exhibit 20).

68. Gay trained Olmstead in performing her duties at the Medical Bookstore. Gay and Olmstead both have trained Nyberg since his arrival at the Medical Bookstore.

69. No disciplinary action has been imposed against Medical Bookstore employees. The University Store Manager has not informed Gay that he has the authority to discipline employees. Gay has not received training on the University's Constructive Discipline Handbook for Management, and has not received a copy of it (Employer Exhibit 29).

70. Both Olmstead and Nyberg worked at the University Store immediately prior to being transferred to work at the Medical Bookstore. At the times Olmstead and Nyberg were selected to work at the Medical Bookstore, Gay did not make the decision to select them, and did not make a recommendation concerning their selection. Prior to Nyberg being selected, Gay and Olmstead were the only Medical Bookstore employees. Gay requested of the University Store Manager that a third employee be assigned to the Medical Bookstore. The assigning of Nyberg to the Medical Bookstore followed from that request. Prior to the hiring of Nyberg, there were two occasions where part-time employees were hired by the University

Store Manager to work at the Medical Bookstore at the request of Gay (University Exhibits 18, 19).

71. Gay authorizes vacations and other leave for Olmstead and Nyberg (University Exhibit 16).

72. The University Store Manager visits the Medical Bookstore once or twice a year on average.

73. Gay has attended several supervisory training sessions offered by the University.

Graphics and Printing Department

74. The University Graphics and Printing Department performs photocopying, design, offset printing and bindery functions. It fulfills approximately 40 percent of the University's copying and printing needs. The Graphics and Printing Department is located in the basement of the Waterman Building. The Union is seeking to include two bindery specialists, two offset press operators, and one office machine specialist in the proposed bargaining unit. In addition to the Graphics and Printing Manager, five employees of the Department are excluded from the proposed unit: Production Supervisor, Graphics Assistant, Staff Assistant, Production Specialist, and Department Information Specialist (University Exhibits 2, 3).

75. The Graphics and Printing Department is divided into two separate areas: the office area and the shop. All the employees the Union is seeking to include in the bargaining unit, plus the Production Specialist excluded from the bargaining unit, work in the shop. All the other employees excluded from the bargaining unit work in the office area.

76. The Graphics and Printing Department employees included in the Union's proposed bargaining unit are primarily responsible for production work such as operating the photocopying machine, running the offset presses, and performing the cutting and binding functions. None of these jobs require education beyond a high school diploma (Union Exhibit 4).

77. The Graphics and Printing Department Manager, Production Specialist and Information Specialist primarily perform selling functions. The Information Specialist also provides general information to potential customers regarding the Department's services. The Production Specialist also does paste up, plate making, stripping and other pre-press functions. The Production Specialist position requires an associate's degree in graphics and related experience (Union Exhibits 8, 12).

78. The Graphics Assistant assists in the design and production of a variety of publications. This position requires an associate's degree and experience in graphics layout or designing publications (Union Exhibit 12).

79. The Staff Assistant assists the Manager in working with customers, gathering pertinent information on new orders, providing guidance to customers and determining how best to fulfill customers' requests (Union Exhibit 7).

80. Graphics and Printing Department employees are cross-trained in a variety of skills so that they can substitute for other employees, or assist other employees, when the need arises. This is particularly so with respect to training in the lower-skilled jobs. All Department employees have performed the Office Machine Specialist's role of operating the photocopying machine at times; the Staff

Assistant is the primary person to step into this role when necessary. Also, the Staff Assistant and Department Information Specialist are able to operate the offset presses. Further, employees other than the bindery specialists have performed binding functions.

81. Graphics and Printing Department employees interact daily with individuals from throughout the University to service their orders.

Microbiology and Molecular Genetics Department

82. The Union's proposed bargaining unit includes two preparation room assistants and one preparation room specialist employed by the Microbiology and Molecular Genetics Department. The Department also employs many employees excluded from the proposed unit: 12 Laboratory Technicians, three Secretaries, one Financial Assistant, one Laboratory Research Assistant and faculty and professional researchers (University Exhibits 2, 3).

83. The Preparation Room Assistants and Preparation Room Specialist work in the Department preparation room. They are the only employees in the preparation room. They collect dirty and contaminated glassware from the various Department laboratories, wash and dry the glassware, sterilize the contaminated glassware in an autoclave, and return the clean and sterilized glassware to the laboratories. They also prepare media for the growth of organic materials in the laboratories. The tasks performed by the Preparation Room Assistants and Preparation Room Specialist are easy to learn and can be mastered in minimal time. These positions do not require a high school diploma or previous experience (Union Exhibit 5).

84. The Laboratory Research Assistant in the Department provides materials and performs experiments for student laboratories. The Assistant interacts regularly with the preparation room staff, including bringing materials there to be cleaned. The Assistant position requires an associate's degree. The Laboratory Technicians in the Department visit the preparation room on a regular basis. The Laboratory Technicians prepare media and sterilize glassware, although this is not the primary component of their jobs. The Laboratory Technicians usually have a bachelors degree and related experience when they are hired (Union Exhibits 11, 13).

Animal Care Management

85. The Union's proposed bargaining unit includes four Laboratory Animal Aides and one Laboratory Animal Technician employed by the University's Animal Care Management section. These Animal Care employees work in the basement of the Given Medical Building in a room separate from other employees. They clean and sanitize the cages of the animals used for laboratory research, sanitize the rooms where the animals are housed, monitor the air flow and temperature in the animal rooms, and provide (or assist in providing) the caging, feeding, watering and bedding of animals. Animal Care employees also check the animals and let research staff know of any problems. Animal Care employees regularly interact with laboratory technicians (University Exhibits 2, 3; Union Exhibit 5).

Other Departments

86. In addition to the departments discussed in detail above, the Union's proposed bargaining unit includes the following positions in other departments:

- one Mechanic and three Repairpersons working in Ethan Allen Housing;
- three Mail Service Specialists and two Assistant Mail Services Supervisors;
- four Shuttle Drivers, three Transportation and Parking Officers, one Automotive Mechanic, and one Parking Operations Coordinator employed in the Transportation and Parking Services Department;
- a Farm Assistant, Farm Maintenance Specialist, Greenhouse Assistant, and Crop & Machine Specialist in the Plant and Animal Bio Facility;
- two Field Service Technicians in the Instrument and Model Facility;
- two Horse Specialists in Animal & Food Sciences;
- one Laboratory Animal Technician in the Vermont Cancer Center;
- one Preparation Room Assistant in the Pathology Department;
- one Preparing/Receiving Clerk in the Bailey/Howe Library;
- one Shop Technician in the Art Department; and
- one Stock Inventory Clerk in the Purchasing Department.

(University Exhibits 2, 3)

OPINION

The bargaining unit sought by the Union is all full-time and regular part-time non-exempt service and maintenance employees of the University of Vermont, who make up Job Groups 350, 510, 520, 610, 630 and the Parking Operations Coordinator in Job Group 620; excluding all faculty, professional, clerical and technical employees, police and security, confidential employees, managers and supervisors.

The Employer contends that the only appropriate unit including the service and maintenance employees would be one that included all non-professional staff employees of the University, excluding supervisory, managerial and confidential employees. The Employer also contends that two positions which the Union is seeking to include in the proposed bargaining unit, the Medical Bookstore Supervisor and the Electronic Control Systems Specialist, are supervisory and should be excluded from the unit.

Appropriate Bargaining Unit

We first address the appropriateness of the bargaining unit proposed by the Union. The relevant statutory provisions in unit determination cases under the State Employees Labor Relations Act ("SELRA"), 3 V.S.A. Section 901 *et seq.*, are:

Section 902(3) - "Collective bargaining unit" means the employees of an employer, being either all of the employees, the members of a department or agency or such other unit or units as the board may determine are most appropriate to best represent the interest of employees.

Section 927 - (a) 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.

(b) In determining whether a unit is appropriate under subsection (a) of this section, the extent to which the employees have organized is not controlling.

(c) The board may decline recognition to any group of employees as a collective bargaining unit if, upon investigation and hearing, it is satisfied that the employees will not constitute an appropriate unit for purposes of collective bargaining or if recognition will result in over-fragmentation of state employee collective bargaining units . .

Section 941 - . . . (f) In determining the appropriateness of a collective bargaining unit the board shall take into consideration but not be limited to the following criteria:

(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 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 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, 5 VLRB 82, 92 (1982); *Affirmed*, 143 Vt. 636 (1983). The unit need not be the most appropriate unit, only an appropriate unit. *Id.* 143 Vt. at 642-43, 646. In analyzing this case, we examine in turn considerations of community of interest, overfragmentation, extent of organizing and whether officials at the unit level have the authority to take action on matters subject to negotiations.

Community of Interests - The Board has considered the following factors relevant in determining whether a community of interests exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions, and job sites; and whether employees have frequent contact with each other and have an integration of work functions. Petition of VSEA (re: Bargaining unit for Department of Corrections), 13 VLRB 287, 304-305 (1990).

We conclude that a community of interests exists among the service and maintenance employees in the Union's proposed bargaining unit. The shared community of interests derives largely from the primarily blue collar nature of their work. The bulk of employees in the proposed unit primarily work in custodial, maintenance, skilled trades or other blue collar jobs where a significant amount of physical labor is required. Their job qualifications are similar in that the educational requirement for most of the proposed unit jobs is limited to a high school education.

The Employer questions the community of interests among employees in the proposed unit on grounds of different supervision, different job sites, and resultant lack of interaction and integration of work functions among employees. It is true that employees in the proposed bargaining unit are from 18 different departments within the University, the different departments each have their own supervisors, and the employees work in numerous locations scattered throughout the University campus.

Given the nature of employment at the University, however, these characteristics do not defeat the employees' community of interests. It would be impractical to limit unions to organizing University employees along department

lines where characteristics of common supervision and job sites, interaction of employees and integration of employees would prevail. Obviously, to so restrict unions would create the problem of multiplicity of units which the Employer is seeking to prevent given the large numbers of departments in the University. Instead, it is appropriate for unions to proceed as the Union did in this case, and organize employees among functional job groups.

Also, there is more commonality of supervision and job sites, interaction among employees, and integration of work functions in the proposed unit than the larger unit proposed by the Employer. In this regard, it is noteworthy that approximately 75 percent of employees in the proposed unit are in just two departments - Physical Plant and Residential Life. Further, although the degree of interaction among employees across department lines varies, employees in the proposed unit generally are more likely to interact with each other than with employees outside the bargaining unit.

We recognize that the service and maintenance employees share some community of interests with other nonexempt employees at the University. All nonexempt University employees work in the same geographical area, the University campus. They are subject to the same policies and procedures with respect to hiring, orientation, position classification, method of compensation, benefits, grievance procedures, use of services and policies set forth in the Staff Handbook. In addition, service and maintenance employees interact to various degrees with other University employees.

Nonetheless, we conclude that the community of interests among employees in the proposed unit is sufficiently distinct from other non-exempt University employees. This is due to the substantially different nature of their work. As noted, the employees in the proposed unit work in primarily blue collar jobs. By contrast, the employees the Employer would add to the bargaining unit primarily work as secretaries, staff assistants, administrative assistants, records and/or information specialists, accountants, financial assistants, research assistants, laboratory/research technicians, and other secretarial/clerical and technical jobs. There generally is a marked difference with respect to job functions, working conditions, qualifications and training between these jobs and those in the proposed unit. A telling indicator of the dissimilar nature of the work is that approximately 70 percent of the employees in the Union's proposed unit are in Pay Range 5 or lower jobs, whereas only approximately 6 percent of the employees the Employer is proposing to add to the bargaining unit are in such jobs.

We recognize that the line between jobs in the proposed unit and those excluded from the unit is not distinct in some cases. This is particularly so with respect to the University Store and the Graphics and Printing Department. Some employees in the University Store included in the unit perform more clerical-type work, such as selling merchandise and books and operating registers, mixed with their blue collar work. Also, Store staff are cross-trained and substitute for, and assist each other, at times. This cross training, and resultant substituting for and assisting other employees, also prevails in the Graphics and Printing Department.

In these cases, the distinction between employees in the unit and employees excluded from the unit is more difficult to draw. Nonetheless, we are not inclined to reconfigure the proposed bargaining unit. In any complex organization like the University, there are bound to be some positions where the applicable unit placement is difficult. We conclude that the University Store and Graphics and Printing Department positions are sufficiently similar to positions in the proposed unit to warrant their grouping with them.

Our conclusion that there is a sufficiently distinct community of interest among employees in the proposed unit is bolstered by the experience elsewhere concerning composition of university bargaining units. There are many instances in private sector and public sector universities where service and maintenance employee bargaining units separate from other employees have been approved. *See e.g., University of Hartford*, 295 NLRB 797, 798 (1989). *Georgetown University*, 200 NLRB 215 (1972). *Tuskegee Institute*, 209 NLRB 773 (1974). *University of Massachusetts and University of Massachusetts Chapter Massachusetts State Employees Association and AFSCME Local 1776*, Cases Nos. SCR-3, SCR-4 (1968). *University of Maine Labor Relations Act*, 21 M.R.S.A. Section 1201 *et seq.*, Section 1024-A. *State of Connecticut and CSEA and AFSCME Council 16*, Case Nos. SE-3450 and SE-3297 (1976). *State of Connecticut and CSEA and The Independent Union and Intl. Union of Oper. Engineers*, Case No. SE-4725 (1979).

This does not mean that placing university service and maintenance employees in their own separate unit is the only appropriate unit. As cited in the Employer's brief, there are instances elsewhere where broader or narrower units have

been established. However, given the standard that the proposed bargaining unit has to be *an appropriate bargaining unit*, the fact service and maintenance employee units are common elsewhere constitutes persuasive guidance as to the community of interests among such employees.

Overfragmentation of Units - The Employer contends that a bargaining unit consisting of only service and maintenance employees would cause an overfragmentation of units. The community of interest criterion must be considered together with whether overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of other employees or upon the efficient operation of the employer. Teamsters Local 597 and University of Vermont, 19 VLRB at 79.

The Employer relies on the Board policy favoring broader units to support the position that the unit of service and maintenance employees will result in overfragmentation of units. *Id.* at 79-80. The case against proliferation of public sector bargaining units includes these considerations: 1) the difficulty the employer would have in maintaining a tradition of uniformity in the wages, benefits and working conditions provided to similarly situated employees; 2) possible adverse effects of excessive competition among rival employee organizations which results in Balkanization of employee groups and whipsaw bargaining; and 3) institutional complications of dealing with a multiplicity of units. *Id.* at 80.

In balancing these considerations against the community of interests criteria, we conclude that overfragmentation of units will not result to a degree which is likely to produce an adverse effect on the effective representation of other employees or upon the efficient operation of the Employer. As we indicated in Teamsters Local 597 and University of Vermont, large groupings of employees at the University typically would be appropriate in balancing community of interest, overfragmentation, and other considerations in making bargaining unit determinations. *Id.* at 81. The Union's proposed bargaining unit of over 300 employees, approximately 30 percent of the non-exempt employees at the University, constitutes such a large grouping. If the Union prevails in the representation election, one of the largest certified bargaining units in the state will result.

The Employer contends that it has placed a great premium on maintaining consistency in the central aspects of working conditions and compensation for all of its non-exempt staff, and that it would be difficult to maintain a tradition of uniformity in the wages, benefits and working conditions provided to non-exempt staff if the Union's proposed bargaining unit is approved. We do not believe any difficulty which the Employer may have in this regard is sufficient to defeat the appropriateness of the Union's proposed unit.

Although there is a common set of benefits and services available to non-exempt staff, the administration of the existing benefit plans already is complicated and time-consuming. There are various options for employees with respect to certain benefit plans. Eligibility for benefits, extent of benefits and cost of benefits vary according to whether an employee is full-time or part-time. There are some

differences in benefits afforded faculty and professional exempt employees of the University compared to non-exempt employees. The fact that the Union may negotiate some differences in benefits for the service and maintenance employees may complicate administration of wage and benefit plans further, but not to a degree sufficient to defeat the appropriateness of the unit. The collective bargaining process should be able to balance competing considerations, including economic, so that workable arrangements result.

The Employer raises the potential for serious dissension in the workplace given that almost every involved department has non-exempt employees both included in the proposed unit and excluded from the unit, and a negotiated collective bargaining agreements will create different terms and conditions of employment. Once again, although workplace management probably will be somewhat more complicated, differences in terms and conditions of employment already exist among employee groups within departments (e.g., faculty versus non-faculty staff, management versus non-management employees). Any detrimental effects on workplace harmony which may result from the collective bargaining process are outweighed by allowing employees sharing a community of interests to fully exercise their collective bargaining rights under SELRA.

The Employer further contends that the danger of excessive competition among rival unions, resulting in Balkanization of employee groups and whipsaw bargaining, is readily apparent in this case. The Employer presents a possible scenario where a Board decision favorable to the Union in this case could set into a motion the ultimate creation of ten separate bargaining units at the University. The

Employer maintains that this would create the potential for highly contentious and whipsaw bargaining, great inefficiencies and high costs.

We are sensitive to the Employer's concerns with respect to overfragmentation of units, and recognize the need to guard against the potential problems which may arise given a multiplicity of bargaining units at the University. Teamsters Local 597 and University of Vermont, 19 VLRB at 80-81. In keeping in mind those considerations in this case, we conclude that the relatively large grouping of employees in the Union's proposed bargaining unit does not result in the potentially serious overfragmentation problems feared by the Employer.

The Employer also contends that the "institutional complications of bargaining with a multiplicity of units" looms large in this case. The Employer contends that the need of the University to plan its budget well in advance of the upcoming fiscal year would be considerably hindered with a proliferation of bargaining units and the resulting fiscal uncertainty concerning total employee compensation costs. It is undoubtedly true that fiscal uncertainty in the budget process often results from the unionization of a workforce. However, this consideration commonly faced by employers dealing with unions does not defeat the appropriateness of the bargaining unit. Employers in such situations need to have budget contingencies in place to deal with the fiscal impact of any negotiated collective bargaining agreement.

Extent of Organization - Another factor we consider in determining whether a bargaining unit of service and maintenance employees is appropriate is the extent to which the employees have organized. SELRA provides both that employees be

given freedom in selecting the composition of the unit which will best represent their interests so long as the unit is appropriate and will not result in overfragmentation of units; 3 V.S.A. Section 927(a), Community Correctional Center Employees, 5 VLRB at 92; and that "(i)n determining whether a unit is appropriate . . . the extent to which the employees have organized is not controlling". 3 V.S.A. Section 927(b). Under these provisions, the extent to which employees have organized may be given significant weight, provided there are other substantial factors on which to base the unit determination and so long as the extent of organization is not the controlling factor. Teamster Local 597 and UVM, 19 VLRB at 82-84.

We find significant, although not controlling, that the Union has elected to petition for a bargaining unit of service and maintenance employees separate from other non-exempt employees. When considered together with community of interest and overfragmentation factors, the granting of the Union's request to approve a bargaining unit limited to the service and maintenance employees is appropriate.

Authority to Take Action at the Unit Level - Finally, we consider under SELRA whether officials at the unit level have the authority to take positive action on matters of negotiations. 3 V.S.A. Section 941 (f)(1). We consider this statutory criterion along with 3 V.S.A. 905(a), which states that the "the president, or a person or persons designated by the president for the University, shall act as the employer representative in collective bargaining negotiations and administration".

All of the service and maintenance employees either fall under the direct authority of Provost or under the Vice President for Administration and the Vice

President for Student Affairs who report directly to the Provost. Since the Provost reports directly to the President, the statutory requirement of officials at the unit level having authority to take positive action on matters of negotiations is met.

Further, the bulk of positions in the Union's proposed bargaining unit are concentrated in four departments - Physical Plant, Residential Life, University Store, and Athletics. This allows the efficient participation in negotiations of the department heads with the most direct knowledge of service and maintenance employees' conditions of employment.

We do not believe that the Employer should be unfairly prejudiced, or the efficiency of its operations hindered, under the structure created by the Union's proposed bargaining unit. Further, this grouping of employees should provide effective representation for the service and maintenance employees sharing a community of interests while not adversely affecting the representation of other employees. In sum, we conclude that the bargaining unit of service and maintenance employees proposed by the Union is an appropriate unit.

Supervisory Issues

The Employer contends that the Medical Bookstore Supervisor and the Electronic Control Systems Specialist are supervisory employees and should be excluded from the bargaining unit. Section 902(16) of SELRA defines "supervisory employee" as follows:

an individual finally determined by the board as having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances or effectively to recommend such action, if in connection with the

foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; theoretical or paper power will not make one a supervisor. Id. at 351.

The existence of actual power, rather than the frequency of its use, determines supervisory status. AFSCME Local 490 and Town of Bennington, 153 Vt. 318 (1989). However infrequently used, the power exercised must be genuine. Id. Also, the Board has discretion to conclude supervisory status does not exist although some technically supervisory duties are performed, if such duties are insignificant in comparison with overall duties. Id.

In applying these standards to the Medical Bookstore Supervisor, William Gay, we are faced with a decidedly close question whether he is a supervisory employee. Effective supervisory authority has not been demonstrated with respect to the supervisory areas of hiring, transferring, suspending, laying off, recalling, promoting, discharging, rewarding or disciplining other employees, or adjusting their grievances. This leaves the question whether Gay has effective supervisory authority to assign, and responsibly direct, employees.

Ultimately, we conclude that he does possess such authority over the two employees working under him in the Medical Bookstore. It is significant to our conclusion that the satellite Medical Bookstore largely operates autonomously from the University Store of which it is part. The Medical Bookstore is in a separate building from the University Store, and the University Store Manager visits the Medical Bookstore only once or twice a year. This results in Gay exercising substantial independent authority in directing the medical store's daily operations.

Although one employee under Gay, Holly Olmstead, is an independent, experienced worker requiring minimal direction, we conclude by a preponderance of the evidence that his effective supervisory authority is sufficient to make him a supervisor under SELRA. We find significant Gay agreeing that he spends 30 -35 percent of his time supervising other employees. It is apparent from the evidence that Gay does not use an authoritarian style of management, and prefers a more relaxed, collegial approach to directing the activities of the Bookstore. Nonetheless, as the person responsible for directing and assigning work to the employees of the Bookstore, training them and evaluating their performance, and using independent judgment in directing the Bookstore's activities on a daily basis, Gay possesses supervisory authority.

We conclude differently with respect to Carmyn Stanko, the Electronic Control System Specialist. Stanko has primary responsibility for the skilled electrical field work necessary to support the energy management and central monitoring

systems at the University. Similar to the situation involving Gay, the Employer has not demonstrated that Stanko possesses effective authority with respect to the supervisory areas of hiring, transferring, suspending, laying off, recalling, promoting, discharging, rewarding or disciplining other employees, or adjusting their grievances.

We further conclude, unlike the situation involving Gay, that Stanko does not possess sufficient supervisory authority with respect to assigning, and responsibly directing, employees. Stanko does have substantial authority to direct and assign the work of the Electronic Control Systems Assistant who assists Stanko in field work. This authority, however, is insufficient to make her a supervisor. Stanko is part of a six employee operation, headed by an Energy Management Engineer, responsible for overseeing the energy management and central monitoring systems at the University. Effective supervisory authority in this small operation resides with the Energy Management Engineer.

The Employer contends that Stanko has supervisory authority over three other employees in this operation, the Electronic Control Systems Operators, but the evidence does not support this claim. The Energy Management Engineer has never told Stanko that she has supervisory authority over the Operators. In performing the field work necessary to keep the various building systems functioning, Stanko interacts with the Operators to obtain information from them on the buildings systems. In this regard, Stanko is better viewed as using the Operators as a conduit for information rather than supervising their activities.

In sum, Stanko primarily is a skilled craftsman whose authority to direct and assign work to one employee under her is insufficient to make her a supervisor.

Health Department Personnel Designation Dispute (Re: Supervisory Chemist, Toxicology), 5 VLRB 245, 247 (1982).

ORDER

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

1. All full-time and regular part-time nonexempt service and maintenance employees of the University of Vermont, who make up Job Groups 350, 510, 520, 610, 630 and the Parking Operations Coordinator in Job Group 620; excluding all faculty, professional, clerical and technical employees, police and security, confidential employees, managers and supervisors; constitute an appropriate bargaining unit. The positions to be included in the unit are listed in Attachment A, except that the Medical Bookstore Supervisor is excluded from the bargaining unit.; and

2. The Vermont Labor Relations Board shall conduct a secret ballot election, pursuant to 3 V.S.A. Section 941(e) and (g), among the employees in the above-described bargaining unit to determine: a) whether they wish to be organized into the above-described bargaining unit; and b) whether they wish to be represented for exclusive bargaining purposes by the United Electrical, Radio and Machine Workers of America.

Dated this 24th day of October, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD



Richard W. Park, Acting Chairperson



Leslie G. Seaver



Carroll P. Comstock

**ATTACHMENT A: UNION'S CORRECTED LIST OF POSITIONS INCLUDED
IN THE PETITIONED FOR SERVICE AND MAINTENANCE UNIT¹**

Job Group 350: Stocks and Stores Support

Job Title	Grade Range
Register Operator	1
Preparing/Receiving Clerk	3
Shipping/Receiving Clerk	3
Mail Services Specialist	4
Stock Inventory Clerk	4
Asst Mail Services Supervisor	5
Register Operator Supervisor	5
Sales Assistant	5
Stock/Inventory/Supervisor	5
Athletic Equipment Specialist	7
Medical Bookstore Supervisor	9

Job Group 510: Senior Campus Facilities Support

Automotive Mechanic	10	
Carpenter II	10	
Carpenter/Welder	10	
Electrician I	10	
Electronic Control Systems Assistant	10**	
Plumber I	10	
Refrigeration Mechanic II	10	
Service Technician I	10	
Shop Technician	10	
Electrician II	11	
Field Service Technician	11	
HVAC System Mechanic	11	
Plumber II	11	
Service Technician II	11	
Welder/HVAC System Mechanic	11	
Control System Specialist	12	
Electronic Control Systems Specialist	12	
Senior Mechanic (non-supervisory)	12	(Excluding the positions filled by Babcock, Buttles, Eastman and Montgomery)

¹ The following positions no longer exist at UVM and have been deleted from the petitioned for unit: Job Group 510, Welder; Job Group 630, Groundsperson IV and Groundsperson V.

Job Group 520: Campus Facilities Support

Parking Services Assistant	3**	
Bindery Specialist	4	
Shuttle Driver	5	
Transportation and Parking Officer	5	
Apprentice, Carpenter	6**	
Apprentice, Painter	6**	
Office Machine Specialist	6	
Apprentice, Electrician	7**	
Apprentice, Plumber	7	
Electronic Control Sys. Operator	7	
Fire Protection Mechanic	7	
Maintenance Mechanic	7	
Mechanic	7	
Offset Press Operator	7**	
Painter I	7**	
Locksmith	8	
Maintenance Specialist (non-supervisory)	8	(Excluding the position in Physical Plant)
Offset Press Operator II	8	
Painter II	8	
Asbestos & Lead Technician	9	
Carpenter I	9	
Glazier	9	
Offset Press Operator III	9	
Oil Burner Service Mechanic	9	
Operating Engineer	9	
Preventive Maint. Mech.	9	
Refrigeration Mechanic I	9	
Roofer	9	

Job Group 610: Farm, Lab & Research Support Services:

Preparation Assistant	1**
Preparation Room Assistant	3
Laboratory Animal Aide	4
Preparation Room Specialist	4
Assistant Lab. Animal Technician	5**
Farm Assistant	7
Horse Specialist	7
Laboratory Animal Technician	7
Farm Maintenance Specialist	8
Farm Research Asst	8**
Greenhouse Asst	8**
Lab. Animal Technologist	8**
Farm Mechanic	9**
Crop & Machine Specialist	11

Job Group 620: Campus Security Staff

Parking Operations Coordinator	8**
--------------------------------	-----

Job Group 630: Grounds & Custodial Services

Custodian/Housekeeper	3	
Custodian/Solid Waste Assistant	3	
Fixture Specialist	3**	
Solid Waste Specialist	3	
Athletic Custodian	4	
Groundsperson I	4	
Mover	4	
Repairperson	4	
Asst Cust'l/Housekeeping/Supervisor (non-supervisory)	5	(Excluding the three (3) positions in Physical Plant)
Athletic Facility Specialist	5	
Groundsperson II	5	
Grounds/Heavy Equipment Operator I	6	
Maintenance Worker	6	
Moving Coordinator	6	
Grounds/Heavy Equipment Operator II	7	

**These positions, the majority of which are not currently filled, have been added to the proposed unit since the Union filed its petition. Two additional positions, which are in job group 610 and are currently vacant, are not proposed to be added at this time. The Union feels that these positions may be supervisory and would prefer to deal with whether these positions are appropriately in the unit through a unit clarification petition when and if the positions are filled. The two positions are Laboratory Animal Facility Office Coordinator, Grade Range 9 and Laboratory Animal Facility Supervisor I, Grade Range 9.

ATTACHMENT B: UNION'S AND EMPLOYER'S LIST OF JOB TITLES EXCLUDED FROM THE PETITIONED FOR SERVICE AND MAINTENANCE UNIT

ALL EXECUTIVE POSITIONS, including but not limited to all Job Group 110 positions

ALL ACADEMIC ADMINISTRATORS, including but not limited to all Job Group 112 positions

ALL OFFICERS OF ADMINISTRATION, including but not limited to all Job Group 115 positions

ALL MANAGERS, STUDENT & ALUMNI AFFAIRS, including but not limited to all Job Group 120 positions

ALL MANAGERS, ADMINISTRATIVE AFFAIRS, including but not limited to all Job Group 130 positions:

ALL MANAGERS, PROVOST/NON-INSTR., including but not limited to all Job Group 140 positions

ALL PROFESSIONAL/EXEMPT EMPLOYEES
INCLUDING THE FOLLOWING SPECIFIC POSITIONS:²

Job Group 350, Athletic Equipment Supervisor

Job Group 630, Athletic Facilities Supervisor

Job Group 610, Natural Areas Manager and the Herd Management Supervisor

ALL PROFESSORS, including but not limited to all Job Groups 700 & 701 positions

ALL ASSOCIATE PROFESSORS, including but not limited to all Job Groups 710, 711, 712, 713, and 715 positions

ALL ASSISTANT PROFESSORS, including but not limited to all Job Groups 720, 721, 722, 723, 724, 725, 726, & 727 positions

ALL VISITING FACULTY, including but not limited to all JOB GROUP 820 positions

ALL EXTENSION FACULTY, including but not limited to all JOB GROUP 830 positions

² The following positions previously were incorrectly listed as professional/exempt positions, but are non-exempt supervisory positions: Job Group 510, Supervisor, Automotive Shop; Job Group 520, Asst. Transportation Services Supervisor

ALL LIBRARY FACULTY, including but not limited to all JOB GROUP 840 positions

ALL LECTURERS, including but not limited to all Job Groups 740, 741 positions

ALL INSTRUCTORS, including but not limited to all Job Groups 730, 731 positions

ALL CLINICAL FACULTY, including but not limited to all Job Groups 800 positions

ALL RESEARCH FACULTY, including but not limited to all Job Group 810 positions.

ALL CAMPUS POLICE AND SECURITY EMPLOYEES including but not limited to Job Group 620 positions, with the exception of the Parking Operations Coordinator, located in Transportation and Parking Services.

ALL MANAGERS, SUPERVISORS, AND CONFIDENTIAL EMPLOYEES, specifically the following non-exempt staff in or related to Job Groups 350, 510, 520, 630, and 610:

Stock Clerk Supervisor, Job Group 350

Production Supervisor, Job Group 510

Supervisor, Automotive Shop, Job Group 510, and/or Automotive Supervisor, currently filled by Richard LaClair

Project Manager, Medplex Cons., Job Group 510

Supervisor, Asbestos/Lead Management Program, Job Group 510

Supervisor, Sr. Mechanic and/or Supervisor Carpenters/Painters, Job Group 510, including those positions currently filled by David Birchmore, Roy Monta, Theodore Darul

Ass. Trans. Svcs Supervisor, Job Group 520, currently filled by Michael Altman

Athletic Maintenance Supervisor, Job Group 630

Cust'v/Housekeeping Supervr, Job Group 630

Grounds Supervisors I & II including those positions currently filled by Ronald Prouty and Richard Weston

Asst Manager, Maintenance, Ethan Allen Housing, Job Group 630, currently filled by James Widener

Lab Animal Facilities Supervisor II, Job Group 610, currently filled by Paula Horton

The following Senior Mechanics, Job Group 510: Mark Babcock, John Buttles, John Eastman, Tim Montgomery

The Maintenance Specialist in Physical Plant, Job Group 520

The three (3) Assistant Cust'v/Housekeeping/Sup. in Physical Plant, Job Group 630

The Facilities Supervisor, Job Group 630

Supervisor within the Material Management Department, currently filled by Andy Marshall

Residential Life Supervisors currently filled by Joan Napolitano, Lois Cline, Joan Poquette

Appendix C

ADDITIONAL NON-EXEMPT POSITIONS WHICH UNIVERSITY WOULD ADD
TO PETITIONED UNIT

	Pay range
Access Services Assistant	05
Access Services Specialist	09
Access Services Technician	07
Accountant I	06
Accountant II	08
Accounting Analyst	09
Accounts Payable Clerk	05
Administrative Assistant	09
Archaeological Tech I	07
Archaeological Tech II	09
Assistant Computer Oper. Mgr.	08
Assistant Library Supervisor	09
Assistant Manager CATCard Srv.	10
Asst. to Dean, Nursing	10
Asst. Facilities Coordinator	09
Asst. to Dir. Comp & Info Tech	10
Asst. to Dana Library Director	10
Asst. to Dir. A & E Services	10
Asst. to Institutional Research	11
BMET Trainee	12
Biomedical Equip. Tech I	13
Biomedical Equip. Tech II	14
Bookkeeper	05
Budget Assistant	08
Cashier I	05
Cashier II	06
Clerk/Typist	03
Chemistry laboratory Tech	08
Clinical Inventory Tech.	05
Collection Analyst	09
Collections Asst. I	05
Collections Asst. II	06
Collections Clerk	01
Collections Specialist I	09
Collections Technician	07

Computer Operator Trainee	07
Computer Operator I	08
Computer Operator II	09
Computer Operator/Programmer	09
Crop Management Proj Coordn	12
Data Entry Operator	04
Data Entry Specialist	05
Dept Information Specialist I	06
Dept Information Specialist II	09
Develop. Records Supervisor	10
Dispatcher/Clerk	07
Editorial Assistant	09
Elec. Instrumentation Coordinator	14
Electronic/Computer Tech	10
Englesby Events Coordinator	08
Environmental Safety Tech	10
Facilities Coordinator	11
Financial Aid Analyst	09
Financial Assistant	08
Grants/Contract Administrator	10
Grants/Contract Admin. Offrc.	12
Graphic Asst.	09
Gynecology Clinic Coordinator	08
Head Cashier	07
Information Systems, Asst.	09
Lab Assistant	04
Lab Research asst.	06
Lab Technician I	09
Lab Technician II	11
Lab Technician III	12
Lab Technician IV	14
Leasing Coordinator	10
Library Assistant I	05
Library Assistant II	07
Media Scheduler	08
Media Scheduler Asst.	07
Medical Illustrator	11
Medical Office Asst.	07
Medical Scheduling Asst.	07
Patient Records Auditor	08
Payroll Records Op Sp Tr	07
Payroll Records Oper Spec	08
Photographer	10
Photo Technician	09
Physical Plant Asst.	05

Production Assistant	09
Production Specialist	08
Program Development Asst.	07
Program Outreach Asst.	09
Purchasing Agent I	08
Purchasing Agent II	09
Purchasing Specialist I	05
Purchasing Specialist II	06
Radiation Safety Tech Trainee	07
Radiation Safety Tech	08
Receptionist	04
Records & Info Specialist	07
Records Asst.	05
Records Coordinator	09
Records Spec/Field Asst.	09
Records Specialist I	04
Records Specialist II	06
Records Specialist III	08
Research Assistant	08
Research Assistant Programmer I	09
Research Assistant Programmer II	11
Research Data Specialist	10
Research Field Tech I	09
Research Field Tech II	11
Research Interviewer	08
Research Project Asst.	11
Scientific Instrument Maker	13
Secretary I	05
Secretary II	07
Secretary III	08
Senior Nutrition Assistant	06
Senior Technician	12
Special Asst. Physical Plant	10
Sr. Environmental Safety Tech	11
Sr. Program Development Asst.	08
Sr. Accounts Payable Clerk	07
Sr. Radiation Safety Tech	11
Sr. Research Interviewer	09
Sr. Video Tech	11
Staff Assistant I	09
Student Services Rep	10
Student Records & Info Specialist	09
Supervisor, Publication/Inventory	09
Surgical Equipment Specialist	12

Systems Programmer I	14
Technical Secretary I	07
Technical Secretary II	08
Technical Typist	06
Technician I	08
Technician II	10
Telecomm Info Supervisor	06
Telecomm Info Asst. Trainee	04
Telecomm Info Asst.	05
Telecomm Spec. III	10
Telecomm Spec. II	08
Telecomm Spec. I	07
<i>Ticket Manager</i>	10
Ticket Store Manager	10
Treasury Specialist II	09
Treasury Specialist III	10
Work Study Coordinator	10

The parties reserve their right to argue that some of the above positions and/or individuals holding such positions are supervisory, confidential or managerial in nature and should be excluded from any unit of non-exempt employees. The parties also reserve their right to argue that certain positions and/or individuals holding such positions not included in this list should be included in a unit of all non-exempt employees.