

VERMONT LABOR RELATIONS BOARD

UNIVERSITY STAFF UNION/)	
VERMONT-NEA/NEA)	
)	
and)	
)	
UNITED STAFF)	DOCKET NO. 11-66
)	
and)	
)	
UNIVERSITY OF VERMONT)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 19, 2011, the University Staff Union/Vermont-NEA/NEA (“University Staff Union”) filed a petition for election of collective bargaining representative, seeking an election among employees of the University of Vermont in the following job titles to determine whether they wished to be represented by the University Staff Union: Business Support Assistant, Business Support Generalist, Library Support Generalist, Library Support Senior, Office/Program Outreach Support, Office/Program Support Assistant, Office/Program Support Generalist, Technical Support Generalist, and Technical Support Specialist.

On January 20, 2012, the United Staff filed a petition to intervene in the petition and appear on the election ballot pursuant to Section 13.10 of Labor Relations Board *Rules of Practice*. The Labor Relations Board notified the parties on January 27, 2012, that the Board had determined : 1) the University Staff Union had met the required showing of interest that its petition was supported by signature cards signed by not less than 30 percent of the employees in the proposed bargaining unit; and 2) the United Staff had met the required showing of interest that its petition for intervention was supported

by signature cards signed by not less than 10 percent of employees in the proposed bargaining unit.

The University of Vermont (“University”) filed a response to the petition on January 26, 2012. The University contends that the petitioned-for bargaining unit is inappropriate and that the only appropriate unit would be one that consists of the petitioned-for employees and all remaining non-professional staff employees of the University, excluding supervisory, managerial and confidential employees. Further, the University asserted that the petitioned-for unit included confidential and supervisory employees that should be excluded from the proposed unit.

On March 16, 2012, the parties agreed to all the employees in the petitioned-for bargaining unit to be excluded from the unit as supervisory and confidential employees. This left as the only remaining unit determination question whether the bargaining unit proposed by the University Staff Union is appropriate.

Hearings on the appropriateness of the proposed unit were held on March 16 and 29, 2012, in the Labor Relations Board hearing room before Board Members Richard Park, Chairperson; Louis Lacroix and Alan Willard. Vermont-NEA General Counsel James Fannon, Jr., represented the University Staff Union. Jennifer Larsen represented the Intervenor United Staff. Attorney Joseph McConnell represented the University.

The University and the University Staff Union filed post-hearing briefs on April 13, and 16, 2012, respectively. The United Staff did not file a post-hearing brief.

FINDINGS OF FACT

1. The University employs over 1,500 faculty and over 2,300 non-faculty employees (University Exhibit 2).

2. The President serves as Chief Executive Officer of the University and reports directly to the Board of Trustees. The Provost/Senior Vice President and Vice President for Finance and Administration report directly to the President. The Provost serves as the University's Chief Budget Officer. The Vice President for Finance and Administration supports the Provost on budget matters and serves as Treasurer of the University (University Exhibit 1).

3. The University has four bargaining units represented by unions: 1) a police services unit of 22 employees represented by Teamsters Union Local 597; 2) a service and maintenance employees unit of 350 employees represented by the United Electrical, Radio and Machine Workers of America; 3) a full-time faculty unit represented by United Academics (AAUP/AFT); and 4) a part-time faculty unit represented by United Academics (AAUP/AFT) (University Exhibit 2).

4. There is a single Human Resources Services Department for the University providing a broad range of services in areas such as classification of positions, compensation, employment benefits, other terms and conditions of employment, and labor relations. Human Resources Services regularly interacts with University managers and supervisors to provide information and direction on human resources issues. Human Resources Services trains and meets monthly with forty human resources representatives throughout the University who provide front-line human resources services.

5. The classification of new positions and the reclassification of existing positions are performed centrally by the University through the Human Resources Services Department. The University classifies its employees as either exempt or non-exempt under the provisions of the Fair Labor Standards Act ("FLSA"). Non-exempt

employees are covered by the Act, and exempt employees are exempt from coverage. It further classifies its employees under a “Career/Pay” classification system. Under the Career/Pay system, all classified employees at the University fall within one of eight broad job families – E (Executive), P (Professional), C (Administrative Support or Clerical), S (Service), M (Maintenance), K (Skilled Craft Trades), T (Technical), and Sp (Specialized) (University Exhibit 4).

6. C family positions do not require a bachelor’s or associate’s degree and are all non-exempt positions. They perform administrative support and clerical work such as secretarial duties, record-keeping, receptionist duties and general office work (University Exhibit 4).

7. T family positions perform a broad range of technical functions and administer and oversee laboratory and/or field research, multimedia equipment and instrumentation, environmental safety programs, and services or processes. Education and experience equivalent to a minimum of a high school diploma, specialized training or skills, and one to four years related experience is required (University Exhibit 4).

8. Sp Family positions provide routine to complex assistance, coordination and oversight of specific functions that require a specific area of expertise and a minimum of two years of a post-secondary course of study or training. Education and experience equivalent to a minimum of an Associate’s degree, specialized training or skills, and one to four years related experience is required (University Exhibit 4).

9. The vast majority of positions within the T and Sp families are non-exempt. Only four positions (with a total of 14 employees) are exempt – Nursing Specialist, Data Management Specialist, Media Broadcast Technician, and Equipment

Technician Senior. Otherwise, all other T and Sp positions are non-exempt (University Exhibit 7a).

10. The bargaining unit proposed by the University Staff Union is comprised of approximately 440 C family employees spread among the colleges, divisions and offices of the University. The University proposes that an additional group of approximately 375 T and Sp family employees spread among the same colleges, divisions and offices of the University should be included in the unit (University Exhibits 6, 7).

11. The following represents the approximate numbers of employees in the unit proposed by the University Staff Union (with the qualification that the 23 supervisory and confidential employees whom the parties have agreed should not be included in the proposed unit are included in the following totals) and the additional employees proposed to be included in the unit by the University for each college, division, school and office in the University:

<u>College, Division, School, Office</u>	<u>University Staff Union Proposed Unit</u>	<u>University Proposed Additions to Unit</u>
College of Agriculture & Life Science	17	19
College of Arts and Sciences	45	28
Continuing Education	5	9
College of Education & Social Services	26	2
College of Engineering and Math	9	3
Enrollment Management	29	16
Extension	36	3
Finance & Administration	69	29
Honors College	1	0
Libraries & Learning Resources	27	3
College of Medicine	100	175
College of Nursing and Health Sciences	8	6
President's Office	7	1
Provost Office	5	2
Research & Graduate Studies	21	53
Rubenstein School of Environmental/		

Natural Resources	7	9
School of Business Administration	2	2
University Relations & Campus Life (University Exhibit 6)	47	16

12. The C, T and Sp Family employees mostly work on the main University campus in Burlington. There also are 39 employees in these categories working for the University Extension Service spread throughout Vermont. There are some employees based in Colchester. There are six biomedical technicians providing medical equipment services who travel throughout Vermont and into neighboring states performing their duties (University Exhibits 7a, 18).

13. The duties of C, T and Sp Family positions are converging and becoming more similar over time due to technological advancements and their use throughout the University. The administrative and clerical employees are working more with computers and technical equipment than previously. Technical employees are more likely to perform clerical duties such as ordering supplies, completing reports and inputting data.

14. The University currently maintains 165 separate paybands for positions in the classification system. The payband minimum for C Family positions ranges from \$20,000 to \$31,000 annually; the payband maximum for these positions ranges from \$34,000 to \$52,700. The payband minimum for Sp Family positions ranges from \$27,500 to \$37,575 annually; the payband maximum for these positions ranges from \$50,730 to \$71,400. The payband minimum for T Family positions ranges from \$22,500 to \$44,600 annually; the payband maximum for these positions ranges from \$42,750 to \$84,740 (University Exhibit 5a, University Staff Union Exhibit 1).

15. All pay raises for University staff not represented by unions are determined in accordance with annual wage and salary guidelines which are issued on a

University-wide basis. The guidelines have historically provided direction as to minimum wage increases, merit increases, market increases, equity adjustments, and maximum allowable adjustments. The guidelines are uniform for all managers throughout the University to work with in determining wage increases for staff not represented by unions. Individual departments must act within the guidelines (University Exhibit 8).

16. The guidelines for fiscal year 2009 (July 1, 2008, to June 30, 2009) provided for a 2.8 percent across the board increase for all unrepresented employees who had satisfactory performance. In cases of unsatisfactory performance, an employee could receive a lesser or no increase. An additional 1 percent increase was available to be distributed on the basis of market pressure, internal equity and extraordinary merit. The guidelines for fiscal year 2011 provided for a 2 percent increase for unrepresented staff earning \$75,000 or less if their performance was satisfactory; unrepresented employees earning more than \$75,000 did not receive a salary increase. There were no additional increases in fiscal year 2011 for market or equity adjustments and extraordinary merit. The guidelines for fiscal year 2012 provided for no wage increase for unrepresented staff (University Exhibit 8).

17. Classified positions within the University are funded through various sources. They are funded through general fund accounts, income/expense accounts which include income taken in by a department, and restricted funds such as specific research grants. A much greater percentage of T and Sp Family positions than C Family positions are funded by restricted funds.

18. The police employees represented by Teamsters Union Local 597 and the service and maintenance employees represented by the United Electrical, Radio and

Machine Workers of America have the same health benefits, life insurance and dental plans.

19. The University has a single set of benefits for all of its classified employees not represented by unions. These include health insurance, prescription drug plan, post-retirement health care plan, dental insurance, group life insurance, disability insurance and tuition remission (University Exhibit 10, 11).

20. The University has a staff handbook that outlines the common terms, benefits and conditions of employment for all unrepresented classified employees. Included in its provisions are the major benefits, leave policies, compensation policies, evaluation procedures, overtime and on-call policies, and prohibitions of discrimination against employees. The University's policies with respect to holidays, vacations and other leaves are identical for all unrepresented classified employees (University Exhibit 11).

21. The University has kept the benefit plans for all unrepresented classified employees consistent. The University also has strived to maintain consistent benefits between the full-time employees represented by unions and the unrepresented staff. It has done this in accordance with its philosophy of equitable treatment of its employees and for practical reasons of administrative efficiency and costs. The University has advantages in negotiating the cost of insurance plans it obtains for its employees due to the size of its insured population. The larger the group of employees under insurance plans results in less costs.

22. The University Benefits Advisory Council serves in an advisory capacity to the University administration concerning the range of employee benefit programs

offered to University employees. The Council reviews and evaluates the University's benefit programs and makes recommendations to the President and Provost (University Exhibit 9).

23. The University administration recently engaged in a two-year process with the Benefits Advisory Council concerning the University's unfunded liabilities related to post-retirement health benefits provided to University employees. These unfunded liabilities needed to be accounted for under accounting standards and were approximately \$320 million for current employees. In the past year, the University negotiated with the three unions representing the University's full-time employees concerning changes in retiree health benefits to reduce the unfunded liabilities. The negotiations were significantly complicated because the University had to negotiate with three different unions representing different bargaining units. Changes in post-retirement health benefits ultimately were agreed upon and implemented (University Exhibit 10).

24. The recruitment and hiring of new employees at the University is a highly regulated area overseen by the Human Resources Services Department. There is no difference in the recruitment and hiring process for C, SP and T Family positions (University Exhibit 12).

25. The Human Resources Services Department conducts a common orientation for all newly hired classified employees. All new hires go through the same orientation and receive the same orientation packet of materials (University Exhibit 13).

26. Non-exempt employees serve a four or six month probationary period during which their employment may be terminated without just cause.

27. The same disciplinary and dismissal standards apply to all unrepresented classified staff. The University generally follows a progressive discipline policy in disciplining employees. Unrepresented staff whom have completed their probationary period likewise have the same rights to file grievances under the University's Grievance and Mediation Policy (University Exhibits 14, 16).

28. The University offers training opportunities which are available to all staff (University Exhibit 15).

29. The Student Financial Services Unit of the University is in the Enrollment Management Division of the University. It is responsible for the University's financial aid system and other aspects of student finance. 5 C Family employees and 14 Sp Family employees work in this unit. Most of the employees work in cubicles in the same large room. The Sp Family employees process highly regulated student financial aid awards. The C Family employees work closely with these employees by performing such duties as gathering documents and communicating with students and their families to further the processing of financial aid awards. The Financial Services C and Sp Family employees attend the same weekly staff meeting and often participate in the same training. The work performed by Financial Services employees is "deadline-driven". During the early part of each semester, the entire staff work on a Saturday, called "Refund Saturday", to process all outstanding refunds (University Exhibit 19).

30. The University Center for Health and Well-Being is in the Division of University Relations and Campus Life. The Center operates a health and counseling clinic for University students. There are 14 C Family employees and 4 T/Sp Family employees in the Center. They all report to the same supervisor. The C Family employees

perform receptionist and filing responsibilities, and provide administrative support to medical staff. Three Sp Family employees perform licensed practical nurse duties and the T Family employee has information technology responsibilities involving medical records. All the C Family and T/Sp Family employees work together in the management of patient care. They all work in the same area except for the information technology employee whose office is a floor above the other employees. The information technology employee spends a significant amount of time in the clinic troubleshooting (University Exhibit 6).

31. The Athletics office is in the Division of University Relations and Campus Life. Six C Family employees and 3 T Family employees in Athletics work in the same building and have regular interchange with each other. Residential Life is in the Division of University Relations and Campus Life. It has 13 C Family and 2 T Family employees. The C Family employees are located throughout the residence halls at the University. The 2 T employees provide information technology services and are based in a central administration building. The Residential Life C and T/SP employees continually interact to troubleshoot problems which arise in the residence halls that are handled through use of computers. They operate as a close-knit team (University Exhibit 6).

32. The College of Medicine employs approximately 35 percent of the employees of the University, including 100 C Family and 175 T/Sp Family employees. It has a Dean, four Senior Associate Deans, five basic science departments and 11 clinical departments. The College of Medicine employees work in a group of buildings on the main University campus in Burlington adjacent to Fletcher Allen Health Care with the

exception of several laboratories based in Colchester. There are approximately 230 laboratories in the College of Medicine (University Exhibits 6, 20).

33. There are 6 C Family and 8 T/Sp Family employees in the Medical Evaluation Department of the College of Medicine. They all work in the same large room in cubicles. They all provide support to medical students and work together on a daily basis. They all ultimately report to the same Senior Associate Dean.

34. The T family employees in the academic departments of the College of Medicine predominantly are lab technicians. There are 129 lab technicians in the College of Medicine. The lab technicians typically work in laboratories which are near the working area of C Family employees who provide administrative and clerical support to the labs. The technicians and clerical staff work together on ordering supplies and equipment. The technicians are mostly funded through grants. The clerical staff is largely funded through general funds. Pay adjustments for both groups of employees are handled similarly through the University's general wage guidelines. Both clerical staff and technicians both report to the same supervisor in the lab, either the principal investigator who is in charge of the lab, or the research analyst assigned to some labs (University Exhibit 7a).

35. The lab technicians may conduct their lab work at unusual hours of weekdays and on weekends to properly conduct experiments in a timely manner. They do not receive overtime wages for this work but instead receive compensatory time off. This results in varied work hours for them. This differs from C Family employees whose regular work hours generally are the regular office workday. Lab technicians may have

limited interaction with employees outside of their laboratory. Many lab technicians have information technology components to their positions.

36. There are situations where College of Medicine employees work with Fletcher Allen employees. The two groups of employees have differences in regular work weeks (37.5 hours for College of Medicine employees and 40 hours for Fletcher Allen employees), holidays, and days off work. These differences can create issues in workplace relations.

37. Unrepresented employees of the University generally identify themselves by the college, division, department, office or other organizational unit in which they work rather than as an administrative support, clerical, technical or specialized employee.

OPINION

The bargaining unit sought by the University Staff Union is all administrative support and clerical employees – i.e., C Family employees – of the University of Vermont that are not supervisory or confidential employees. The Employer contends that the only appropriate unit including these employees would be one that also included all of the technical and specialized classified employees – i.e., T and Sp employees – of the University that are not supervisory or confidential employees.

In addressing the appropriateness of the bargaining unit proposed by the University Staff Union, the relevant statutory provisions in unit determination cases under the State Employees Labor Relations Act (“SELRA”)¹ are:

Section 902(3) - “Collective bargaining unit” means the employees of an employer, being either all of the employees, the members of a department

¹ 3 V.S.A. Section 901 *et seq.*

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.² The unit need not be the most appropriate unit, only an appropriate unit.³ In analyzing this case, we examine considerations of community of interests, overfragmentation, extent of

² Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, 92 (1982); *Affirmed*, 143 Vt. 636 (1983). United Electrical, Radio and Machine Workers of America and University of Vermont, 20 VLRB 219, 250 (1997).

³ Petition of VSEA re: Community Correctional Center Employees, 143 Vt. at 642-43. United Electrical Workers and University of Vermont, 20 VLRB at 250.

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.⁴ A group of employees must at least be a readily identifiable and distinct group apart from other employees to support a determination that a community of interests exists among them.⁵

The evidence does not support a determination that the administrative support/clerical employees are a readily identifiable and distinct group apart from other employees so that a community of interests exists among them. The administrative support/clerical employees are spread among numerous colleges, divisions, departments, and offices of the University throughout the University campus and beyond the campus. As such, outside of their organizational unit, they have different supervision, do not share common job sites, do not have frequent contact with each other, and do not have an integration of work functions.

Although their job functions are similar, the employees generally identify themselves by the college, division, department, office or other organizational unit in which they work rather than as a clerical or administrative support employee. They share

⁴ Petition of VSEA (re: Bargaining unit for Department of Corrections), 13 VLRB 287, 304-305 (1990). United Electrical Workers and University of Vermont, 20 VLRB at 251.

⁵ Teamsters Local 597 and University of Vermont, 19 VLRB 64, 77-79 (1996). United Electrical Workers and University of Vermont, 20 VLRB at 251-254. Petition of VSEA (Re: Agency of Transportation Highway and Maintenance Employees), 24 VLRB 37, 47 (2001).

similar pay ranges and qualifications, but their pay ranges and qualifications are not so different from the technical and specialized employees to constitute a readily identifiable and distinct group from them. It is also noteworthy in this regard that the duties of administrative support/clerical, technical and specialized positions are converging and becoming more similar over time due to technological advancements and their use throughout the University.

Many of the administrative support and clerical employees appear to have less in common with each other than they have with technical and specialized employees that the University contends should be included in the unit. Technical and specialized employees are spread among the same colleges, divisions, departments, offices and other organizational units of the University as the administrative support and clerical employees. This is significant given that unrepresented employees of the University generally identify themselves by the college, division, department, office or other organizational unit in which they work rather than as an administrative support, clerical, technical or specialized employee.

Also, the evidence indicates that many administrative support/ clerical employees have regular interactions with technical and specialized employees in their organizational units. Administrative support/clerical, technical and specialized employees in Financial Services, the Center for Health and Well-Being, Residential Life, and Athletics work together on a regular basis. Lab technicians typically work in laboratories which are near the working area of the employees who provide administrative and clerical support to the labs. The technicians and clerical staff work together on ordering supplies and equipment.

Further, administrative support/clerical employees in the proposed unit are subject to the same policies and procedures as the technical and specialized employees with respect to hiring, orientation, position classification, method of compensation, determination of wages, benefits, leave policies, evaluation procedures, disciplinary and dismissal standards, and grievance procedures.

In sum, administrative support and clerical employees do not share a distinct community of interests apart from other employees. Instead, they have a community of interests with the other unrepresented employees of the University that are primarily non-exempt – the technical and specialized employees.

Our determination that the administrative support and clerical employees do not have a distinct community of interests apart from other employees is readily distinguished from our decisions in two previous cases that smaller groups of University employees shared a community of interests. In concluding that the police services employees comprised a distinct and identifiable group apart from other employees, the Board recognized that the distinctive nature of law enforcement warranted separate bargaining units for police department employees generally in labor relations settings and that this distinctive nature of law enforcement work overrode any general community of interests which police services employees shared with other non-exempt employees of the University.⁶ Here, the evidence does not support a determination that there is a recognized distinctive nature of administrative support and clerical work warranting a separate bargaining unit from the other primarily non-exempt employees of the University not represented by unions.

⁶ Teamsters Local 597 and University of Vermont, 19 VLRB at 76-81.

In concluding that there was a sufficiently distinct community of interests among service and maintenance employees of the University to warrant their own bargaining unit, the Board held that the shared community of interests derived largely from the primarily blue collar nature of their work which was dissimilar from other non-exempt University employees; a telling indicator of such dissimilarity was that a substantial majority of service and maintenance employees were in lower paid jobs than other non-exempt employees. The Board also found noteworthy that approximately 75 percent of service and maintenance employees were in just two departments.⁷

These characteristics are not present among the administrative support and clerical employees. Neither they nor the other unrepresented staff perform blue collar work. The administrative support and clerical employees are not primarily located in just a few departments. Instead, they are spread among numerous colleges, divisions, departments, offices and other organizational units of the University. Also, the evidence does not demonstrate that a substantial majority of them are in lower paid jobs than technical and specialized employees.

Overfragmentation of Units - The Employer contends that a bargaining unit consisting of only administrative support and clerical employees would cause an overfragmentation of units. The University Staff Union asserts that any overfragmentation argument must fail as a practical matter because the proposed unit will not adversely affect other University employees or the efficient operation of the University.

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

⁷ United Electrical Workers and University of Vermont, 20 VLRB at 251-253.

effect on the effective representation of other employees or upon the efficient operation of the employer.⁸ Board policy generally favors broader units to guard against the potential problems which may arise given a multiplicity of units: 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.⁹

In balancing these considerations against the community of interests criteria, we conclude that overfragmentation of units will result to a degree which is likely to produce an adverse effect on the efficient operation of the University. 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.¹⁰

The Employer has strived to maintain consistency in the central aspects of working conditions and compensation for its entire unrepresented non-exempt staff. It has done this for practical reasons of administrative efficiency and costs, and in accordance with its philosophy of equitable treatment of its employees.

The approval of the University Staff Union's proposed unit has the potential to significantly increase the difficulty of the University in maintaining this consistency. In the past year, the University negotiated with the three unions representing the

⁸ Teamsters Local 597 and University of Vermont, 19 VLRB at 79-80. United Electrical Workers and University of Vermont, 20 VLRB at 251.

⁹ Id.

¹⁰ 19 VLRB at 81.

University's full-time employees concerning changes in retiree health benefits to reduce the unfunded liabilities. The negotiations were significantly complicated because the University had to negotiate with three different unions representing different bargaining units. Although the outcome of any collective bargaining negotiations in this and other areas covering the proposed unit cannot be predicted, it would be more complicated to seek to maintain uniformity in the benefits and working conditions provided to non-exempt staff if the University Staff Union's proposed bargaining unit is approved. We are reluctant to sanction such a unit particularly where the distinct community of interests which exists among police services employees, and among service and maintenance employees, does not exist among administrative support and clerical employees.

Another related consideration is an institutional complication of bargaining with a multiplicity of units. The approval of the proposed unit has a potential adverse effect on the effective and efficient operations of some organizational units within the University. The evidence indicates that many administrative support/clerical employees have regular interactions and work closely with technical and specialized employees in their organizational units. The teamwork required for staff to perform their duties may be hampered if the administrative support and clerical employees worked under different terms and conditions of employment than the other employees. For example, if there were different provisions for overtime or assignment of work, it may increase the difficulty of effectively completing work. There is the potential for the negotiation of such different terms and conditions of employment if the proposed unit is approved. This could result in dissension in the workplace.

We also are mindful of the possible adverse effects of excessive competition among rival employee organizations which results in Balkanization of employee groups and whipsaw bargaining. We recognize the need to guard against the potential problems which may arise given a multiplicity of bargaining units at the University.¹¹ There now are four bargaining units at the University and we need to balance all relevant considerations in approving other units so that the potential adverse effects of excessive competition among unions representing employees are minimized. Keeping in mind those considerations here, we conclude that the University Staff Union's proposed bargaining unit may result in potentially serious overfragmentation problems.

Extent of Organization - Another factor we consider in determining whether a bargaining unit of administrative support and clerical 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 units¹²; and that "(i)n determining whether a unit is appropriate . . . the extent to which the employees have organized is not controlling"¹³. 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.¹⁴

¹¹ Teamsters Local 597 and University of Vermont, 19 VLRB at 80-81.

¹² 3 V.S.A. Section 927(a); Petition of VSEA re: Community Correctional Center Employees, 5 VLRB at 92.

¹³ 3 V.S.A. Section 927(b).

¹⁴ Teamster Local 597 and UVM, 19 VLRB at 82-84. United Electrical Workers and University of Vermont, 20 VLRB at 251.

Given our conclusions with respect to the community of interest and overfragmentation factors, we deny the Union's petition to approve a bargaining unit limited to the administrative support and clerical employees. We would be improperly making the extent of organization the controlling factor if we approved the proposed unit.

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.¹⁵ We consider this statutory criterion along with another provision of SELRA 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"¹⁶.

All of the administrative support and clerical employees ultimately fall under the direct authority of 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. However, given our conclusions regarding other factors discussed above, this is far from sufficient to result in approval of the proposed unit. We note that all of the technical and specialized employees also ultimately fall under the direct authority of the Provost, and thus the statutory requirement of officials at the unit level proposed by the University having authority to take positive action on matters of negotiations likewise is met.

In sum, we conclude that the bargaining unit of administrative support and clerical employees proposed by the University Staff Union is not an appropriate unit.

¹⁵ 3 V.S.A. Section 941 (f)(1).

¹⁶ 3 V.S.A. 905(a).

We further concur with the University that a bargaining unit consisting of all administrative support, clerical, technical and specialized employees of the University that are not supervisory or confidential employees is an appropriate unit. As discussed above, there is a community of interests among these employees including all of the remaining non-exempt employees of the University unrepresented by a union that are eligible to be so represented. Also, overfragmentation of units would not result with this grouping of employees which is nearly twice the size of the proposed unit of administrative support and clerical employees.

Our conclusion in this regard is based on present circumstances and is qualified with the recognition that significantly changed circumstances may result in the University's proposed unit no longer being appropriate in the future. Also, our conclusion does not necessarily mean that the University's proposed unit is the only appropriate unit with respect to the involved employees. The standard under SELRA that a bargaining unit need not be the most appropriate unit, only an appropriate unit, contemplates that there may be different configurations of employees that will constitute appropriate bargaining units.

Our conclusion that the University's proposed grouping of employees constitutes an appropriate 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 clerical and technical employees are included in the same bargaining unit. Boston University, Harvard University, University of Maine System, University of Massachusetts – Amherst, University of Rhode Island, and Yale University are among

the universities in which clerical and technical employees are in the same unit represented by a union.¹⁷

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the petition for election of collective bargaining representative filed by the University Staff Union/Vermont-NEA/NEA, seeking an election among all administrative support and clerical employees – i.e., C Family employees – of the University of Vermont that are not supervisory or confidential employees, is dismissed.

Dated this 30th day of April, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Louis P. Lacroix

Louis P. Lacroix

/s/ Alan Willard

Alan Willard

¹⁷ Boston University – see <http://www.local2324uaw.org>; <http://www.bu.edu/hr/policies/union-contracts/>; Harvard University – see http://www.huctw.org/2010-12_agreement.pdf; University of Maine System – see University of Maine System Labor Relations Act, 21 M.R.S.A. §1201 *et seq.*, §1024-A.; Maine Labor Relations Board Order certifying Maine Teachers Association as bargaining agent for University of Maine Clerical, Office, Laboratory and Technical bargaining unit, September 29, 1980; <http://www.maine.edu/pdf/coltcba.pdf>; University of Massachusetts, Amherst – see Massachusetts Labor Relations Case No. SCR-2115 as amended by CAS 3080 and CAS 3081; <http://www.university-staff-association.org>; University of Rhode Island – see Rhode Island State Labor Relations Board Case No. EEN3109; http://www.uri.edu/human_resources/unions%20contracts/ACT-URI; Yale University – see http://www.yale.edu/hronline/careers.salary_ct.html.