

VERMONT LABOR RELATIONS BOARD

PETITION OF VERMONT STATE	)	
EMPLOYEES' ASSOCIATION (RE:	)	
SWORN LAW ENFORCEMENT	)	DOCKET NO. 11-50
OFFICERS)	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 12, 2011, the Vermont State Employees' Association ("VSEA") filed a petition to organize sworn law enforcement officers of the Vermont Department of Fish & Wildlife ("DFW"), the Vermont Department of Liquor Control ("DLC"), and the Vermont Department of Motor Vehicles ("DMV") into a separate bargaining unit. These employees presently are included in the Non-Management Unit represented by VSEA. In response to the petition, the State of Vermont ("State") contends that the separate bargaining unit proposed by VSEA is not an appropriate bargaining unit.

Hearings on the appropriateness of the proposed bargaining unit were held on November 10 and 21, 2011, in the Labor Relations Board hearing room before Board Members Richard Park, Chairperson; James Kiehle and Gary Karnedy. VSEA General Counsel Michael Casey represented VSEA. Steven Collier, General Counsel of the State Department of Human Resources, represented the State. The parties filed post-hearing briefs on December 12, 2011.

FINDINGS OF FACT

1. State employees are organized into four bargaining units: Non-Management, Supervisory, Corrections, and State Police. VSEA is exclusive bargaining representative of employees in the Non-Management, Supervisory and Corrections Units. The Vermont Troopers Association is the representative of employees in the State Police

Unit. The sworn law enforcement officers of the DFW, DLC and the DMV in the proposed bargaining unit are in the Non-Management Unit. They have been included in the Non-Management Unit since 1969. There are 67 employees in the proposed bargaining unit. The positions in the proposed unit are 32 Game Wardens 1 – IV, 15 Liquor Control Investigators, 17 Motor Vehicle Criminal Investigators, and 3 Commercial Vehicle Enforcement Inspectors (VSEA Exhibits 1, 3 – 9; State Exhibits 4 - 6).

2. There are approximately 4,737 employees in the Non-Management Unit, 783 employees in the Supervisory Unit, 803 employees in the Corrections Unit, and 274 employees in the State Police Unit (State Exhibit 9).

3. An individual must attend basic training at the Vermont Police Academy to become certified as a law enforcement officer in Vermont. The 67 employees in the proposed bargaining unit are certified and sworn law enforcement officers who attended the Vermont Police Academy. All trainees at the Police Academy are subject to the same requirements and expectations. The 16-week basic training course curriculum includes topics such as police procedure, police skills, firearms, use of force and various state laws (VSEA Exhibit 2).

4. All Vermont sworn law enforcement officers are subject to the Rules and Regulations of the Vermont Criminal Justice Training Council in order to maintain their certification. This includes annual training requirements in the areas of firearms and first aid (VSEA Exhibit 2).

5. The sworn law enforcement officers in the proposed bargaining unit have the statewide authority to enforce state laws and exercise general law enforcement

powers. They primarily work in the field, and often work out of their vehicles or home offices. They drive State vehicles, which contain radios allowing them to communicate with other law enforcement agencies. They often work varied hours, and generally set their own schedules necessitated by the nature of their work. They are exposed to various dangers while performing their duties. They come into contact with individuals who are violent, belligerent, or under the influence of drugs or alcohol. They detain or arrest individuals at times (State Exhibits 4 – 6, VSEA Exhibit 2).

6. There are approximately 96 DFW employees in the Non-Management Unit. Thirty-two of the 96 employees are Game Wardens I – IV who work in the Law Enforcement Division of DFW. Game Wardens work in four geographic districts. A Game Warden V, or District Chief, supervises the Game Wardens. The District Chief reports to the Law Enforcement Director who is the director of the Law Enforcement Division. The DFW has five divisions other than the Law Enforcement Division: Legal, Business Office, Public Outreach and Marketing, Wildlife, and Fisheries. The six division directors report to the DFW Commissioner (State Exhibits 1, 9).

7. The DFW is a department within the Agency of Natural Resources (“ANR”). ANR is comprised of three departments: DFW, the Forest and Parks Department, and the Department of Environmental Conservation. The commissioners of the three departments report to the Secretary of ANR. There are approximately 392 ANR employees in the Non-Management Unit (State Exhibits 1, 9).

8. The Game Warden I position is held by newly hired game wardens who are in a training period. Game Warden I’s are automatically promoted to the Game Warden II position upon successful completion of the Game Warden I field training

program. Game Warden II's generally are promoted to the Game Warden III position, or Senior Game Warden, after serving approximately five years in the position. Game Warden III's may be promoted to the Game Warden IV position. A Game Warden IV may serve as a State expert in a specific field related to law enforcement or may serve as the ranking senior member in the Law Enforcement Division, assuming duties as the officer in charge of special details and investigations (State Exhibit 4; VSEA Exhibits 3 - 6).

9. Game Wardens perform law enforcement and conservation work involving the enforcement of Vermont's fish and wildlife laws and regulations within an assigned geographic district. They spend most of their time detecting and correcting fish and wildlife violations. Typical responsibilities include enforcing fish and wildlife laws and regulations; patrolling on foot, boat, vehicle, or snowmobile; responding to complaints; investigating hunting accidents; conducting search and rescue operations; stocking animals, bird, or fish; and eradicating undesirable animals (State Exhibit 4, VSEA Exhibits 3 - 6).

10. Game wardens work more closely with the non-sworn employees in their department than with the sworn officers who work for DLC and DMV. They collaborate with other DFW employees on such matters as participating in wildlife and conservation programs, teaching public educational courses on hunter and firearms safety, collecting field data to assist in species management, assisting department biologists in analyzing fish and wildlife populations, and assisting in establishing season lengths and limits. Game wardens rarely cite a citizen for violating a commercial vehicle registration law or

cite a liquor establishment for violating a liquor law (State Exhibit 4, VSEA Exhibits 3 - 6).

11. There are approximately 187 DMV employees in the Non-Management Unit. Twenty of the 187 employees are sworn law enforcement officers who work in the department's Motor Vehicle Enforcement and Safety Division. Seventeen of the officers are Commercial Vehicle Enforcement Inspectors, and three are Motor Vehicle Criminal Inspectors. The Director of the Enforcement and Safety Division, Glenn Button, manages the sworn law enforcement officers and non-sworn employees of the division (State Exhibits 3, 9).

12. DMV has three divisions. In addition to the Motor Vehicle Enforcement and Safety Division, DMV has an Operations Division and a Support Services Division. Each division is headed by a director. The three division directors report to the DMV Commissioner (State Exhibit 3).

13. DMV is a department within the Agency of Transportation ("AOT"). The DMV Commissioner reports to the Secretary of AOT. In addition to DMV, AOT is comprised of four divisions: Program Development Division, Operations Division, Policy, Planning & Intermodal Development Division, and Finance and Administration Division. There are approximately 967 AOT employees in the Non-Management Unit (State Exhibits 3, 9).

14. DMV's Motor Vehicle Enforcement and Safety Division protects the integrity of the State's roads and bridges, ensures that vehicles are lawfully registered, and promotes highway safety. The principal duties of the Commercial Vehicle Enforcement Inspectors involve preserving the State's infrastructure through field

inspection and investigatory work involving enforcement of federal and state vehicle laws and regulations, hazardous materials and vehicle permit programs. They focus on ensuring that heavy trucks satisfy weight and dimension restrictions imposed by state and federal laws. The Motor Vehicle Criminal Investigators perform investigative and technical work primarily involving cases of document fraud. Duties involve gathering and analysis of evidence, interviewing witnesses, and interrogation of suspects for possible prosecution (State Exhibit 6; VSEA Exhibits 8, 9).

15. The DMV Commercial Vehicle Enforcement Inspectors and Motor Vehicle Criminal Investigators work more closely with the non-sworn employees of DMV than with Liquor Control Investigators or Game Wardens. Commercial Vehicle Enforcement Inspectors rarely receive assistance from Game Wardens or Liquor Control Investigators to enforce commercial vehicle regulations, and rarely issue citations to liquor control establishments or enforce fish and wildlife laws.

16. There are approximately 42 DLC employees in the Non-Management Unit. Fifteen of the 42 employees are Liquor Control Investigators who work in the department's Education, Licensing and Enforcement Division. The Investigators are stationed throughout Vermont. They report to the Director of Education, Licensing and Enforcement, William Goggins, who also oversees five non-sworn employees (State Exhibits 2, 9).

17. DLC has four other divisions – Retail Operations, Liquor Purchasing, Information Technology, and Liquor Warehouse Management. The division directors report to the DLC Commissioner, who is appointed by the Liquor Control Board (State Exhibit 2).

18. Liquor Control Investigators perform investigation, law enforcement and education work involving the regulation of liquor licensees and enforcement of Vermont liquor and tobacco laws. Investigators inspect licensed liquor establishments for alcohol and tobacco violations, investigate other liquor and tobacco violations, and patrol for underage drinking. They also provide educational programs focusing on the use and adverse effects of alcohol and tobacco (State Exhibit 2, VSEA Exhibit 7).

19. Liquor Control Investigators work more closely with each other than with other sworn law enforcement officers. The sworn law enforcement officers in the DFW, DLC and DMV work with each other and other members of the law enforcement community occasionally on such matters as off-duty special details, emergency management, highway speed enforcement measures, and programs to curb teenage drinking.

20. The Vermont Legislature recently considered including the law enforcement officers of the DFW, DLC and DMV within the Department of Public Safety which now includes the State Police. The DFW, DLC and DMV division directors who manage the law enforcement officers and many of the officers opposed the merger. They believed consolidation would dilute department objectives and alter their unique missions. The merger did not occur.

21. The Legislature enacted 20 V.S.A. § 1883, effective May 13, 2010, which provides that the “commissioner of public safety shall develop and execute a memorandum of understanding with the commissioners of fish and wildlife, of motor vehicles, and of liquor control and their respective directors of law enforcement. The memorandum . . . shall at a minimum address . . . maximizing collective resources by

reducing or eliminating redundancies and implementing a methodology that will enhance overall coordination and communication while supporting the mission of individual enforcement agencies.” The commissioners have executed a memorandum of understanding which creates a task force concept to facilitate collaboration in day to day operations among law enforcement agencies by streamlining information involving various levels of statewide law enforcement. Periodically, managers in Vermont’s law enforcement community – including representatives from DLC, DMV, DFW, the State Police, municipal police, and sheriffs – meet to discuss common issues (VSEA Exhibit 11).

22. The VSEA and the State typically negotiate two-year agreements expiring on June 30. Negotiations commence in the late summer prior to the year the agreement expires, and conclude during a period from a couple of months later to near the end of the legislative session in April or May of the year the agreement expires.

23. The Non-Management Unit includes employees from 38 State departments or entities. The Non-Management Unit bargaining team has 15 members who represent employees from different job categories. The sworn law enforcement officers in the DFW, DLC and DMV are included in the law enforcement, legal, inspections, regulations, and protection category. They represent a small minority of this category. The current member of the Non-Management Unit bargaining team from this category is not a sworn law enforcement officer. The job category members on the Non-Management Unit bargaining team are elected by all VSEA members in the Non-Management Unit, rather than solely by members in the job category they are representing (State’s Exhibit 9).



24. The Governor delegates the authority to negotiate collective bargaining agreements for the State through the Secretary of Administration to the Labor Relations Division of the Department of Human Resources.

25. Negotiations between VSEA and the State for collective bargaining contracts usually are carried out on master or coordinated, and bargaining unit, levels. Master or coordinated level negotiations between the State and representatives of the three bargaining units represented by VSEA occur on certain issues if the parties mutually agree to discuss the issues on such basis. Master or coordinated negotiations often deal with the most significant economic issues, such as salaries and benefits, and generic issues. Issues not addressed in master negotiations are bargained in unit level negotiations, including specific issues unique to employees in the unit. Unit bargaining has increased as the contracts have matured, so that more time and resources in recent negotiations have been devoted to unit bargaining than master bargaining.

26. The State and VSEA have negotiated various provisions in the collective bargaining agreements covering employees in the Non-Management Unit directed exclusively at the sworn law enforcement officers in DFW, DLC and DMV. Included among these provisions are the following: a) Article 19 – addresses benefits, leave accruals, holiday compensation, work schedule, work shift, meal reimbursement and overtime for DFW Game Wardens; b) Article 21 – addresses bidding for shift vacancies for DMV employees; c) Article 24 – addresses overtime for Game Wardens and Liquor Control Investigators and addresses compensatory time for Game Wardens; d) Article 33, Section 2 (d) – provides for higher injury pay for Game Wardens and Motor Vehicle Inspectors “injured in hot vehicular pursuit”; e) Article 56, Section 4 – provides a

clothing allowance for DMV inspectors; f) Article 67 – provides for a storage space allowance for certain DMV Commercial Vehicle Enforcement Inspectors; g) Appendix E – addresses benefits, work schedules, holiday compensation, leave accrual and overtime for Liquor Control Investigators; and h) Appendix K – establishes a DFW fitness program with incentive payments (State’s Exhibit 7).

27. The VSEA and the State reached a recent agreement outside of collective bargaining concerning issues affecting Liquor Control Investigators relating to background checks required to access a police database, GPS devices in DLC vehicles, and DLC work rules. The parties agreed with respect to the work rules that DLC Director of Education, Licensing and Enforcement William Goggins and VSEA Senior Field Representative Kathi Partlow would meet and seek to resolve all issues pertaining to the work rules (State’s Exhibit 11).

28. The sworn law enforcement officers in DFW, DLC and DMV have identified the following matters as ones not now provided for in the Non-Management Unit Contract as important to them: a) paid lunch breaks, b) an accelerated pay plan with increased step compensation, c) a physical fitness program with incentive payments for DLC and DMV officers similar to the DFW fitness program for Game Wardens; d) compensation similar to “boots and brass” pay provided to State Troopers for job-related efforts performed off duty; and e) increased home office allowance to recognize the special needs of law enforcement officers working out of their homes.

29. The sworn law enforcement officers in DFW, DLC and DMV are included in Group C for retirement benefits provided under Vermont statutes. They are required to retire at age 55. Group C members are entitled to credit of 2.5% of their average final

compensation for each year worked, instead of the 1.67% generally available to other State employees. As a result, Group C members can earn the maximum retirement benefit of 50% of their average final compensation after 20 years of service, while other State employees have to work 30 years to earn the maximum benefit of 50% of their average final compensation. The retirement benefit for Group C members is based on the average of their highest two years' salaries. The retirement benefit for other groups of state employees is based on the average of their highest three years' salaries.

30. The Non-Management Unit collective bargaining agreement provides for step pay increases for covered employees based on years of service. There is no distinction made in the agreement between sworn law enforcement officers in DFW, DLC and DMV and the other employees in the Non-Management Unit with respect to movement on the step pay plan. An employee in the Non-Management Unit may be employed for 24 ½ years before they reach the maximum rate of pay. Due to the officers retiring after 20 years of service and by age 55, they may not reach the highest steps under the step pay plan before they retire. VSEA has not attempted in negotiations to negotiate an accelerated pay plan for the sworn law enforcement officers in DFW, DLC and DMV so that they move more quickly through the step pay plan than other employees.

31. The State and the State Police Unit have negotiated a different step pay plan for state troopers in the collective bargaining agreement covering the State Police Unit than exists for employees in the Non-Management Unit. The state troopers earn less

on each step than employees in the Non-Management Unit, but have quicker step movement and move more quickly through the pay grid provided in the step pay plan.

32. VSEA made a proposal to the State outside of negotiations for a collective bargaining agreement for a physical fitness program for DMV officers. The State did not accept the proposal, and at present there is no such program for DMV officers.

33. VSEA has not presented a proposal in negotiations for a collective bargaining agreement covering the Non-Management Unit for compensation for law enforcement officers in DFW, DMW and DLC similar to the “boots and brass” pay provided to State Troopers for job-related efforts performed off duty.

34. There are thirteen occupational groups of employees in the Non-Management Unit which have more employees than the proposed bargaining unit of 67 sworn law enforcement officers in DFW, DLC and DMV. The occupational groups and the approximate numbers of employees in them are as follows:

- Office and Administrative Support - 527
  - Engineer - 132
  - Nurse - 246
  - Information Technology - 202
  - Social Worker - 265
  - Environmental Analyst - 98
  - Benefit Program Specialist - 167
  - Financial Administrator - 157
  - Public Safety Dispatcher- 72
  - Psychiatric Technician - 91
  - AOT Technician - 143
  - Custodian - 97
  - Maintenance Technician - 464
- (State Exhibit 8a – 8p)

35. There are eighteen departments in State government which have more employees in the Non-Management Unit than the proposed bargaining unit of sworn law

enforcement officers. The departments and approximate number of employees in them in the Non-Management Unit are as follows:

- Banking, Insurance, Securities – 76
  - Buildings and General Services -290
  - Aging & Independent Living – 193
  - Children & Families – 723
  - Mental Health – 194
  - Education – 118
  - Environmental Conservation – 201
  - Fish & Wildlife – 96
  - Forest, Parks & Recreation – 77
  - Health – 360
  - Labor – 215
  - Military – 107
  - Vermont Health Access – 89
  - Public Safety – 208
  - Taxes - 122
  - Transportation – 782
  - Motor Vehicles – 187
  - Veterans Home - 181
- (State Exhibit 9)

#### OPINION

The issue before us is whether to grant the petition filed by VSEA to remove sworn law enforcement officers of the Department of Fish & Wildlife (“DFW”), the Department of Liquor Control (“DLC”), and the Department of Motor Vehicles (“DMV”) from the Non-Management Unit represented by VSEA and organize them into a separate bargaining unit. We need to decide whether this is an appropriate unit. The relevant statutory provisions in appropriate unit cases under the State Employees Labor Relations Act (“SELRA”)<sup>1</sup> 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.

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<sup>1</sup> 3 V.S.A. § 901 *et seq.*

*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.<sup>2</sup> The unit need not be the most appropriate unit, only an appropriate unit.<sup>3</sup> In analyzing this case, we examine considerations of community of interest, overfragmentation, and whether officials at the unit level have the authority to take action on matters subject to negotiations.

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<sup>2</sup> *Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees*, 5 VLRB 82, 92 (1982); *Affirmed*, 143 Vt. 636 (1983).

<sup>3</sup> *Id.* 143 Vt. at 642-43, 646.

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

We conclude that the sworn law enforcement officers of the DFW, DLC and the DMV in the proposed unit share a community of interests. They all undergo the same training at the Vermont Police Academy and are equally bound by the Vermont Criminal Justice Training Council regulations for training and certification. They all have the statewide authority to enforce state laws and exercise general law enforcement powers. They all primarily work in the field, and often work out of their vehicles or home offices. They each drive State vehicles, which contain radios allowing them to communicate with other law enforcement agencies. They often work varied hours, and generally set their own schedules necessitated by the nature of their work. They are exposed to various dangers while performing their duties which are unique to law enforcement work. These include having contact with individuals who are violent, belligerent, or under the influence of drugs or alcohol; and detaining or arresting individuals.

Although their specific job duties differ in that they primarily are involved in duties which further the specific missions of their different departments, they all are sworn officers involved in the enforcement of state laws and regulations. The distinctive

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<sup>4</sup> Petition of VSEA (re: Bargaining unit for Department of Corrections), 13 VLRB 287, 304-305 (1990).

<sup>5</sup> AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983).

nature of law enforcement results in law enforcement officers having a distinct community of interests.

The sworn law enforcement officers of the DFW, DMV and DLC also share a community of interests with the others employees in their respective departments who are in the Non-Management Unit. They work more closely with other employees in their department than with the sworn officers in the other departments. They collaborate with the non-sworn employees in their department in carrying out the distinct mission of their department. They rarely work together with the sworn officers of other departments who are in different work locations, have different supervision, and are carrying out different department missions.

In any event, the community of interests among the sworn law enforcement officers is not sufficient to justify a conclusion that they constitute an appropriate bargaining unit. The community of interests 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.<sup>7</sup>

Board policy generally favors broader units to guard against the potential problems which may arise given a multiplicity of units – Balkanization, whipsaw bargaining and institutional complications of dealing with a multiplicity of units.<sup>8</sup> In addition, in cases such as this where involved employees have been included in a bargaining unit with extensive bargaining history, we are reluctant to disturb an existing

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<sup>7</sup> Teamsters Local 597 and University of Vermont, 19 VLRB 64, 79; *Affirmed*, 167 Vt. 564 (1997).

<sup>8</sup> Id., 19 VLRB at 81.



bargaining unit if there is evidence of a meaningful and effective history of negotiations for all unit employees.<sup>9</sup>

In balancing these considerations against the community of interests criterion, we conclude that overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of other employees and upon the efficient operation of the Employer. Large groupings of state employees typically would be appropriate in balancing community of interest, overfragmentation, and other considerations in making bargaining unit determinations. The proposed unit is too small a grouping to be appropriate.

Its size of approximately 67 employees constitutes just one percent of the state employees eligible to be represented by an employee organization for collective bargaining purposes. There are thirteen occupational groups of employees in the Non-Management Unit which have more employees than the proposed bargaining unit. There are eighteen departments in State government which have more employees in the Non-Management Unit than the proposed unit. If we were to allow a bargaining unit such as is proposed here, the precedent established would create the potential of setting into motion a significant expansion of bargaining units in state government and resulting complications of dealing with a multiplicity of units.

VSEA cites previous Board decisions approving small police bargaining units to support its contention that the proposed unit here is appropriate. The Board has recognized that police department employees have a distinct community of interests from other employees, and has approved union-proposed bargaining units placing police

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<sup>9</sup> Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB at 96-97.

department employees in separate bargaining units from other employees.<sup>10</sup> However, in those cases, the result was one police unit per employer. A decision approving the VSEA-proposed unit here would result in two law enforcement units for the State – this one and the State Police Unit. This would create an inappropriate overfragmentation of units.

Also, a petitioner seeking to carve out a smaller bargaining unit from a larger unit must present a compelling case to justify disrupting the existing unit structure in state government. This is done by presenting specific evidence that the interests of petitioned-for employees have not been adequately represented in negotiations or otherwise.<sup>11</sup>

VSEA contends that issues important to the sworn law enforcement officers of the DFW, DLC and the DMV have been given low priority and sacrificed for the needs of other employees in the large Non-Management Unit. This contention is not supported by the evidence.

As detailed in Finding of Fact No. 26, there are numerous provisions in the Contract directed exclusively at the sworn law enforcement officers of the DFW, DLC and the DMV. Also, VSEA and the State have reached a recent agreement outside of collective bargaining negotiations concerning issues affecting DLC employees in the proposed unit which demonstrate the meeting of their interests in the existing unit structure. This specific evidence illustrates that the interests of the sworn law enforcement officers of the DFW, DLC and the DMV have been addressed in negotiations and otherwise.

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<sup>10</sup> Teamsters Local 597 and University of Vermont, supra. AFSCME and Town of Middlebury, 6 VLRB 227 (1983).

<sup>11</sup> Petition for Election of Collective Bargaining Representative (Re: Burlington Airport Employees), 28 VLRB 87, 99 (2005).

Nonetheless, employees in the proposed unit have identified several matters (set forth in Findings of Fact No. 28) not provided for in the Non-Management Unit Contract which are important to them. The majority of these matters have not been presented as proposals during negotiations, and we are not persuaded by the evidence that employees in the proposed unit have been persistent in advocating for their inclusion in the contract. Moreover, the fact that other matters have not found their way into the contract does not justify placing the affected employees in their bargaining unit. The law enforcement officers of the DFW, DLC and the DMV may not be entirely satisfied with the specifics of contract provisions negotiated on issues of concern to them. However, the complete satisfaction of all who are represented is hardly to be expected in the give and take of the negotiation process.<sup>12</sup> The evidence does not demonstrate that the existing unit structure unduly hinders the future addressing of issues of specific concern to the sworn law enforcement officers of the DFW, DLC and the DMV.

The final issue is whether officials at the unit level have the authority to take positive action on matters of negotiations pursuant to 3 V.S.A. Section 941 (f)(1). We consider this statutory criterion along with 3 V.S.A. 905(a), which provides that the “(t)he governor, or a person or persons designated by the governor . . . shall act as the employer representatives in collective bargaining negotiations and administration”.

The employees in the proposed unit are in three divisions which are levels removed from having the authority to take positive action on matters of negotiation. The division directors would have to compete with other division directors in their departments to gain support from their department commissioners, agency secretaries

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<sup>12</sup> Lary v. Upper Valley Teachers’ Association, 3 VLRB 416, 420-21 (1980). Legacy v. Southwestern Vermont Education Association, Educational Support Personnel Unit, Vermont-NEA, NEA, 17 VLRB 181, 185-86 (1994).

where applicable, and the Governor on matters of negotiation. Given these realities along with overfragmentation considerations, the proposed unit would unduly complicate the negotiation process.

In sum, we conclude that the proposed unit of the sworn law enforcement officers of the DFW, DLC and the DMV is not an appropriate bargaining unit. Our ruling in no way diminishes our respect for the important work they do. We simply conclude that the grouping of such employees in a separate bargaining unit is not appropriate.

### ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is hereby ordered that the petition of the Vermont State Employees' Association to organize sworn law enforcement officers of the Vermont Department of Fish & Wildlife, the Vermont Department of Liquor Control, and the Department of Motor Vehicles into a separate bargaining unit is dismissed.

Dated this 20th day of January, 2012, at Montpelier, Vermont.

### VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Gary F. Karnedy

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Gary F. Karnedy