

VERMONT LABOR RELATIONS BOARD

STATE OF VERMONT DEPARTMENT
OF CORRECTIONS

and

VERMONT STATE EMPLOYEES'
ASSOCIATION

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DOCKET NO. 19-42

MEMORANDUM AND ORDER

The State of Vermont Department of Corrections (“Employer”) and the Vermont State Employees’ Association (“VSEA”) filed a joint unit clarification petition on November 12, 2019, seeking to shift all Department of Corrections employees currently included in the Non-Management Bargaining Unit represented by VSEA to the Corrections Bargaining Unit represented by VSEA. The Employer and VSEA submit that the petitioned-for employees share at least as great a community of interest with other employees in the Corrections Unit as they do with the most comparable employees in the Non-Management Unit. Moreover, VSEA and the State assert that the petitioned-for employees share a common management with Corrections Unit members, and that is not the case with respect to other employees in the Non-Management Unit.

We concur that community of interest and common management considerations make it appropriate for all Department of Corrections employees currently included in the Non-Management Bargaining Unit to be shifted to the Corrections Bargaining Unit represented by VSEA. This determination is not sufficient by itself to result in the reconfiguration of the bargaining units. 3 V.S.A. §941(e) requires the Board to conduct an election to determine whether the involved employees wish to be organized into this revised Corrections Unit. In re Liquor Control Department Non-Supervisory Employees, 135 Vt. 623 (1978). Petition of the

Vermont State Employees' Association (Re: Bargaining Unit for Department of Corrections Employees), 13 VLRB 287 (1990).

In a previous case where the Board concluded that it was appropriate for probation and parole office employees to be moved from the Non-Management Unit to the Corrections Unit, the Board held it was appropriate that the employees “presently in the Corrections Bargaining Unit, as well as probation and parole office employees, vote on this question”. Petition of the Vermont State Employees' Association (Re: Bargaining Unit for Department of Corrections Employees), 13 VLRB at 308. The Board reasoned: “That is because all employees affected should be involved in the determination whether they wish to be organized into such a unit.” Id.

Nonetheless, VSEA and the State request that the election in this case be limited to just the 36 petitioned-for Department of Corrections employees currently included in the Non-Management Bargaining Unit. VSEA and the State object to a unit-wide election including the approximate 775 employees in the existing Corrections Bargaining unit. They make a number of assertions in support of this objection. These were set forth in a position letter filed by VSEA on December 13, 2019. The State informed the Board on December 16, 2019, that it joined in the position letter.

An oral argument on the parties' joint request was held on December 18, 2019, in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Chairperson; David Boulanger and Karen Saudek. VSEA General Counsel Timothy Belcher represented VSEA. Thomas Waldman, General Counsel for the Department of Human Resources, represented the State.

The State and VSEA contend in the position letter they submitted in support of their request that “(i)f everyone is allowed to vote, those 775 votes will effectively obliterate the rights

of the 36 residual employees to determine their own bargaining rights”. Such a statement implies that the votes will be commingled and counted together. That is not the case. The ballots of the Department of Corrections employees currently included in the Non-Management Unit will be counted separately from the ballots of employees presently in the Corrections Bargaining Unit, and the majority of employees voting in each group must vote for the unit to be approved.

Petition of the Vermont State Employees’ Association (Re: Bargaining Unit for Department of Corrections Employees), 13 VLRB at 308. This is a format ensuring that the wishes of the majority voting in each group are democratically determined. The rights of the Department of Corrections employees currently included in the Non-Management Unit are protected under such a format, not obliterated.

VSEA and the State next assert that, unlike the situation in the 1990 case cited above when a more substantial number of probation and parole office employees were moved into the Corrections Unit, here the petitioned-for employees represent less than 5 percent of the existing Corrections Bargaining Unit. In the 1990 case, there were 125 probation and parole office employees eligible to vote, compared to 322 employees in the existing Corrections. Given the disproportionate ratio between the two groups of employees here, VSEA and the State contend that the proposed change will have no effect, real or theoretical, on the 775 current members of the Corrections Unit.

The extent of the effect the addition of this number of employees to the bargaining unit will have on existing bargaining unit employees is a matter of conjecture. We are not prepared to substitute such a conjecture on our part for the rights of existing unit members to determine whether they wish to be organized into a bargaining unit with the petitioned-for employees.

VSEA and the State further contend that asking the 775 members to vote on the unit determination question creates dangers of confusion and distrust. The possibility of any confusion and distrust can be readily addressed by communications from the VSEA and/or the State to employees eligible to vote concerning the election.

VSEA and the State also assert that a unit-wide election will impose a substantial administrative burden on the Board, the State and the VSEA. Any burden on the parties and the Board does not take precedence over the self-determination rights of employees. Moreover, the Board will conduct a mail ballot election in this matter, substantially reducing the resources necessary to determine the will of the employees.

Finally, we address the effect of the election on bargaining unit inclusion and collective bargaining agreement coverage of petitioned-for Department of Corrections employees currently included in the Non-Management Bargaining Unit. If the employees vote to approve the expanded bargaining unit, the Department of Corrections employees currently included in the Non-Management Unit will be deemed included in the Corrections Bargaining Unit as of the date of the Board Order certifying the results of the election. However, these employees shall remain covered by the collective bargaining agreement between the State and VSEA for the Non-Management Unit until the expiration of that agreement on June 30, 2020. Petition of the Vermont State Employees' Association (Re: Bargaining Unit for Department of Corrections Employees), 13 VLRB at 308 - 309.

Based on the foregoing reasons, it is ordered:

1. The addition of Department of Corrections employees currently included in the Non-Management Unit Bargaining Unit to the Corrections Bargaining Unit would create an appropriate unit; and

2. The Labor Relations Board shall conduct a secret ballot election by mail pursuant to 3 V.S.A. §941(e) to determine whether the Department of Corrections employees currently included in the Non- Management Unit Bargaining Unit and employees in the existing Corrections Bargaining Unit desire to be organized together into a revised Corrections Bargaining Unit.

Dated this 23rd day of December, 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek