

VERMONT LABOR RELATIONS BOARD

VERMONT STATES COLLEGES FACULTY	)	
FEDERATION, AFT LOCAL 3180,	)	
AFL-CIO	)	DOCKET NO. 86-12
	)	
v.	)	
	)	
VERMONT STATE COLLEGES	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On January 30, 1986, the Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO ("Federation"), filed an unfair labor practice charge against the Vermont State Colleges ("Colleges"). The Federation alleged the Colleges violated 3 VSA §903(a), §961(1) and (5) by unilaterally designating two new positions in the Johnson State College library, Public Services Coordinator/Library Coordinator and Technical Services Coordinator, as excluded from the faculty bargaining unit and without bargaining with the Federation.

The Labor Relations Board investigated the charge and issued an unfair labor practice complaint on July 25, 1986. A hearing was held before a Board panel consisting of Chairman Kimberly Cheney, Member William Kemsley, Sr., and Member Louis Toepfer on September 18, 1986. Dr. Stephen Butterfield represented the Federation. Attorney Nicholas DiGiovanni, Jr. represented the Colleges.

The Federation and the Colleges each filed briefs on October 2, 1986.

### FINDINGS OF FACT

1. The Federation is the exclusive bargaining representative of all full-time teaching faculty and ranked librarians employed by the Colleges, in accordance with the order of certification issued by the Vermont State Employees Labor Relations Board on December 18, 1973 (Joint Exhibit 6, VLRB Docket No. 73-6)

2. The term "ranked" means possessing any one of the four academic ranks of instructor, assistant professor, associate professor or professor (Joint Exhibit 2, Page 2).

3. There are four campus-based colleges in the Colleges' system - Johnson State College, Lyndon State College, Castleton State College and Vermont Technical College. As of 1976, there were two ranked librarians at each of the four campuses. These included a library director and a reference librarian or library assistant on each campus.

4. Over the years, the number of ranked librarians was reduced to four, one librarian on each campus. The Federation did not file any grievances or unfair labor practice charges concerning the reductions. Up until 1984, the four ranked librarians were library directors at each of the campuses. In August, 1984, the library director at Johnson, Paul Gallagher, was made a "faculty librarian". He remained in the faculty bargaining unit. No library director was appointed in his place. The remaining three ranked librarians are library directors at the other three colleges. All ranked librarians have Masters Degrees in Library Science.

5. Over the years, there have been several professional librarians who have not been part of the faculty bargaining unit. In 1974,

the State Employees Labor Relations Board decided the professional librarians employed by the Colleges had the right to vote with other Colleges' professionals as a group in an election to determine whether they wished to be added to the existing faculty bargaining unit (Joint Exhibit 4, VLRB Docket Nos. 74-3 and 74-9). The group of professionals voted against being added to the faculty unit. In 1979, the Board followed the 1974 precedent and decided Colleges professionals could vote on whether to be added to the faculty unit upon filing a petition as a group. [VFT v. VSC, 2 VLRB 40 (1979)].

6. Under Article 19 of the collective bargaining agreement between the Federation and the Colleges, ranked librarians are expected to be evaluated for their performance in teaching, scholarly and professional activity, service to the College and the community and in a series of additional areas considered the "special work of the librarians", which "shall include but not be limited to such work as:"

1. Helping students and faculty use the library;
2. Developing the collection;
3. Working with other librarians within the Vermont State Colleges and outside of it;
4. Training library staff;
5. Managing the library;
6. Overseeing student workers;
7. Coordinating use of audio-visual equipment and teaching faculty, staff and students how to use this equipment.

(Joint Exhibit 2, Page 37)

7. The library staff at Johnson currently includes Louis Beaty, Library Coordinator; Gallagher; Mark Majors, Library Circulation Assistant; Linda Kramer, Reference Librarian; Pam Gonzalez, Library Technician, Circulation; and Judy Cleary, Library Technician, Technical Services. Only Gallagher is in the faculty unit. He carries the rank of associate professor. Major, Cleary and Gonzalez are all in

the staff bargaining unit. Kramer is a professional librarian and not in any unit. Beaty occupies one of the disputed positions in this case.

8. Gallagher has been a member of the faculty bargaining unit since 1975 when he assumed the position of assistant library director. At that time, Kenneth Raymond was the library director, was in the unit and held faculty rank. When Raymond left, Gallagher became library director, a position he held from 1978 to 1984. As Director, Gallagher was responsible for the overall management of the library. He supervised staff, including setting their work schedules, verbally reprimanding them, and evaluating their performance. He developed and administered the library budget.

9. Since August 1984, Gallagher has been locally entitled "faculty librarian". He still carries rank. He performs professional library responsibilities, including reference work and audio-visual work. He works with the faculty and students in these areas. However, he has not carried any supervisory or managerial responsibilities for running the library since 1984. At that time, upon the arrival of Joseph Kennedy, then Associate Academic Dean and now Academic Dean, the responsibility for day-to-day management of the library was taken from Gallagher and assumed by Kennedy. Kennedy carried out those functions from August 1984 until December, 1985, when Beaty was hired to fill the new position of Library Coordinator.

10. Gallagher currently teaches one course and has taught at least one course in all the years he has been ranked librarian.

11. Between July and October of 1985, two members of the Johnson library staff retired. Rather than fill their positions, the Johnson

administration decided to restructure the library due to the perceived need to establish a strong management position to adjust to the rapidly changing nature of the library - i.e. expanding automation, increasing major bibliographic services and rapid development of library collections. Due to this changing nature, two new positions were created: Public Services Coordinator/Library Coordinator and Technical Services Coordinator. Both positions require a Masters Degree in Library Science. As of the date of the hearing on this charge, only the Library Coordinator position has been filled.

12. Lois Beaty was hired as Library Coordinator effective December 9, 1985. She possesses a Masters Degree in Library Science. Her responsibilities include the overall management and direction of the library. Her specific duties include providing direction in developing the library collection and developing and implementing bibliographic instruction; providing reference service and technical assistance in terms of moving the library towards an automated system; supervising and evaluating the performance of library staff; and developing and administering the library budget. She has the authority to effectively recommend the hiring of staff, take disciplinary action against employees (to date she has verbally reprimanded one employee) and to adjust minor employee grievances. If serious grievances arise, Beaty is expected to discuss them with Dean Kennedy. Beaty is a member of the President's Advisory Council, which meets weekly and serves as the Johnson President's advisory cabinet. Besides the President and Beaty, other members of the Council are the academic deans, business manager, plant manager, director of financial aid, director of development, director of admissions and the regis-

trar. The Council reviews reports from each member on their particular areas; may consider faculty and staff disciplinary matters; develops policies on fee structures, admissions, and other areas; interviews new administrative candidates; develops goals and objectives for the academic year; and considers questions of staffing levels and long-range planning.

13. Beatty does no teaching, is not expected to engage in scholarly research or to publish and has no obligation to serve on any College committee.

14. Deway Patterson has served as library director at Vermont Technical College since 1973. The College initially did not consider him to be in the faculty bargaining unit. Pursuant to a grievance filed by Patterson, the State Employee Labor Relations Board ordered that Patterson be added to the faculty bargaining unit. The Colleges added Patterson to the unit pursuant to the Board Order (Joint Exhibit 5, VLRB Docket No. 76-25) and assigned him rank.

15. Patterson's chief responsibility as library director is to establish and maintain a collection of books, periodicals and other materials pursuant to courses of study offered at VTC. His specific duties include selecting library materials; offering reference assistance; overseeing circulation, ordering and receiving, and cataloging and classifying; making staff schedules; interviewing and hiring staff and developing and administering the budget. Patterson meets regularly with the VTC Academic Dean and Department heads. Patterson has disciplined library employees to the extent of verbally reprimanding them. Patterson consults with faculty concerning the acquisition of new materials. He serves on faculty committees.

16. Patterson does not meet with the VTC President as part of an advisory committee or policy-making council. In the past, Patterson's teaching duties consisted of offering non-credit instruction in the use of the library. Patterson currently is not teaching a course.

17. Suzanne Gallagher is the library director at Lyndon State College. She holds academic rank. She is responsible for the overall management and direction of the library. Her specific duties include developing the library collection, developing bibliographic instruction, overseeing reference services, developing the library budget, supervising staff, including evaluating their performance and has effective authority to recommend the hiring of staff. She has verbally reprimanded library staff. Gallagher serves on faculty committees and consults with faculty in acquiring materials for the library. Gallagher is a member of the President's Administrative Advisory Council, which meets monthly and, besides herself, consists of the registrar, dean of continuing education, director of admissions, director of housing, director of physical plant and director of athletics. This Council is not a policy-making body but more of a communications vehicle for the President. The President meets regularly with his cabinet, which consists of the three deans and the director of development. Policy is set at that level.

18. Gallagher is not presently teaching a course. She has taught courses in the past, but not as part of her regular duties as a library director. She was paid overload rates for teaching a course.

19. Currently, the only positions at the Castleton, Lyndon and Vermont Technical College libraries which require the Master of Library Science Degree are the directors of the libraries. Some staff

library employees in the system - two at Lyndon, one at Johnson - have the MLS, but are not required to have it to hold their jobs.

20. Although the Johnson administration created the position of Technical Services Coordinator in 1985, no person has been hired to fill the position. The position description for the position contains the following summary of the functions of the position:

The head of Technical Services Department reports to the library director and is responsible for operation of the acquisitions, cataloguing, serials, binding and gifts and exchange units. In performing these duties, this individual catalogs library materials using the Online Computer Library System (OCLC) and directs activities which assure physical and intellectual access to the library's resources; develops and implements methods and procedures for maintaining files, records and statistics for the Technical Services Department and coordinates budget projections for serials and cataloguing units.

(Colleges' Exhibit 8)

#### MAJORITY OPINION

At issue is whether the Colleges committed an unfair labor practice by unilaterally establishing two new positions without rank in the Johnson State Colleges library. The Federation contends these positions are "ranked librarians" within the meaning of the faculty bargaining unit definition, and that persons appointed to them should be included in the faculty bargaining unit.

Clearly, unilateral alteration of the composition of a bargaining unit violates §961(5) of the State Employees Labor Relations Act (SELRA). This is so because §961(5) makes it an unfair labor practice for an employer to "refuse to bargain collectively with representatives of employees subject to the provisions of (§941) of this chapter", and §941 provides that a representative chosen by a majority of employees "shall be the exclusive representative of all employees



in such unit..." Newport News Shipbuilding and Dry Dock Co. v. NLRB, 602 F2d 73, 76 (1979). AFSCME, Local 490 v. Town of Bennington, 6 VLRB 88, 96-98 (1983).

In support of its position such unilateral alteration has occurred here and to establish the two new positions are bargaining unit librarians, the Federation offers four arguments: 1) the positions meet the Vermont State Employees Labor Relations Board test for determining a professional, faculty-unit librarian; 2) their duties are basically the same as positions which have been included in the faculty unit; 3) the number of unit librarians is decreasing; and 4) the positions are not confidential, supervisory or managerial under SELRA. We address these arguments in turn.

The Federation's equation of professional librarian status with bargaining unit status, and its citation of a 1974 decision of the State Employees Labor Relations Board to support that point, is not apt. The Board decision did not automatically place professional librarian positions in the then-existing faculty bargaining unit of "full-time teaching faculty and ranked librarians", but allowed incumbents of those positions to vote for inclusion in the unit only as part of a total vote among all professionals. The professionals voted not to be included and thus several professional librarians remained outside the unit. Moreover, the evidence indicates there have been several professional librarians over the years who have not been part of the faculty bargaining unit.

"Ranked librarian" status, not "professional librarian" status, must be established for inclusion in the bargaining unit. The 1974

Board decision and the practice of the parties indicates the two terms are not synonymous.

The Federation next points to the similarity of duties and qualifications between one of the disputed positions, the Library Coordinator at Johnson State College, and the library directors at the other colleges in the Colleges' system as evidence of the "ranked librarian" status of the position. However, we do not believe similarity with library director positions at other colleges is controlling. The controlling factor is the meaning of the term "ranked librarian". The term refers to the designation of academic rank, which designation is conferred by the Colleges following the established process for appointing members of the faculty. We disagree with Member Kemsley's view that Article 19 of the parties' Contract is of much assistance in determining the meaning of the term "ranked librarian". The Contract simply provides a listing of non-exclusive general categories of work of unit librarians, insufficient to provide much guidance.

We do not have before us the circumstances which led to the conferring of academic rank on the library director positions at the other colleges. We only note that such designation is not mandated for the library coordinator position at Johnson, where it is evident the incumbent of the position has more in common with management than with faculty. Absent bad faith, the Colleges' exclusion of the position from the faculty unit was not improper.

If the evidence indicated a bargaining unit librarian position became vacant, was abolished by the Colleges and then replaced by a

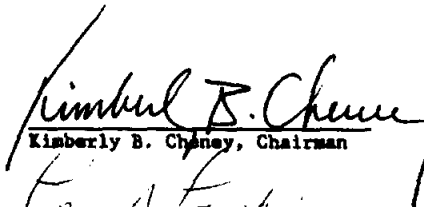
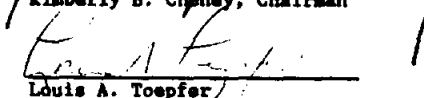
retitled non-unit position with substantially identical duties, we would be more apt to conclude an improper unilateral alteration of the bargaining unit occurred. Here, however, it is evident the Johnson library was undergoing a period of rapid change - expanded automation, growing collections, increased services. In response to these changes, the college administration restructured its operations. This resulted in the creation of a library coordinator position to meet these needs. While the occupant of the position, Lois Beaty, performs many of the managerial functions performed by unit librarian Paul Gallagher in his capacity as library director from 1978 to 1984, her responsibilities are different given the need to adjust to the aforementioned changes. Also, it is evident she has a closer association with management than did Gallagher. This is most clearly evident by her participation on the President's Advisory Council, which meets weekly and serves as the President's advisory cabinet. While Beaty's responsibilities resemble many of the functions performed by Gallagher as library director, her expanded responsibilities in a changing environment indicate that more than a retitling of position occurred here.

We similarly conclude with respect to the Technical Services Coordinator position. While the position is more difficult to analyze since it has yet to be filled, the position description indicates it too seems designed to respond to the changing nature of the library. No evidence before us indicates the duties of the position are like those of a vacated faculty bargaining unit position at Johnson.

The remaining two arguments of the Federation need be addressed only briefly. That the number of unit librarians has decreased over

time is not indicative of an unfair labor practice under the facts before us in this case. The Federation waived any claim concerning the reduction of the number of unit librarians from eight to four by not contesting the reductions as they occurred. In the case at hand, no reduction in the number of unit positions occurred. There were four unit librarians both prior to and after the creation of the two positions.

Finally, given the relevant considerations for the placement of librarians in the faculty bargaining unit, we need not address whether the two positions are managerial, confidential or supervisory under the meanings of those terms in SELRA. Whether or not the positions meet those definitions, we have concluded the Colleges committed no unfair labor practice by not placing them in the faculty bargaining unit. We need go no further.

  
Kimberly B. Cheney, Chairman  
  
Louis A. Toepfer

#### DISSENTING OPINION

I dissent from my colleagues' conclusion there has been no improper unilateral alteration of the faculty bargaining unit here, at least with respect to the Library Coordinator position. I disagree with the apparent majority view that the nature of the term "ranked librarian" means the Colleges are granted discretion as to which librarians will be placed in the faculty bargaining unit, and that an improper unit alteration occurs only if a newly-created position is

simply a retitled position with substantially identical duties to a position vacated by a unit member.

The majority views the meaning of the term "ranked librarian" as limited to the designation of academic rank, which designation is conferred by the Colleges. I disagree. Article 19 of the Contract lists categories of work engaged in by unit librarians. While the categories listed are not all-inclusive, they do provide a frame of reference for determining the work of unit librarians. It gives some meaning to the term "ranked librarian". Under such circumstances, I believe the appropriate scope of review is comparing the duties and qualifications of the newly-created position to the contractually-listed categories of work and to other librarian positions in the bargaining unit to ascertain the working meaning of the term "ranked librarians". If duties and qualifications are similar to unit positions and consistent with the contractual listing of categories of work, the position should be included in the faculty unit.


Here, the duties of Library Coordinator are similar to library directors at other campuses. The essential nature of each of the positions is responsibility for the management and direction of the library. Any differences in duties are minor. Also, the coordinator and the library directors each perform duties consistent with the Contract's listing of categories of work. Qualifications are similar since, in each case, the position occupant must possess a Masters Degree in Library Science.

I further conclude that any managerial, supervisory or confidential elements of the Library Coordinator position do not result in exclusion from the faculty bargaining unit. The working meaning of

the term "ranked librarian", as defined by the parties' Contract and their practice, indicates the Federation and Colleges have essentially agreed the presence of such elements does not prohibit unit status. This is indicated by the library directors at each of the colleges having such elements as part of their job duties.

In my view, the majority decision has opened the door for an even further erosion of the bargaining unit than has occurred to date. Once the "faculty librarian" at Johnson, Paul Gallagher, retires, it is very possible he will not be replaced. This will reduce the number of librarians in the faculty unit to three. Given the Board sanctioning of the "restructuring" of staff at the Johnson library, the potential exists for the same scenario to occur at the other three State Colleges. Ultimately, this could mean there will be no librarians in the faculty bargaining unit. This would be an improper alteration of the very scope of the bargaining unit, which as certified consists of "full-time teaching faculty and ranked librarians". The majority decision has created the distinct possibility of "ranked librarians" being deleted from the definition, not by Board order or agreement of the parties, but by the improper unilateral action of the Colleges. This I cannot condone.

I do agree with the exclusion of the Technical Services Coordinator position from the faculty unit. The evidence indicates the duties of that position are neither consistent with the Contract's listing of areas of work for unit librarians nor similar to duties of unit librarians.

  
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William G. Kemsley, Sr.

ORDER

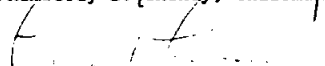
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The unfair labor practice complaint issued in this matter is DISMISSED.

Dated this 19th day of December, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Kimberly B. Cheney, Chairman

  
Louis A. Toepfer