



by the Board.

Discussion of Evidence and Credibility of Witnesses.

The evidence presented was generally uncontradictory. Neither party made requests of the Board for Findings of Fact. Any questions tended to center around the appropriateness of including within the bargaining unit one Frances Walker, Secretary to the Town Manager, and one William A. Robenstein, Zoning Administrative Officer.

Findings of Fact.

1. On September 30, 1976 the petitioner filed a Petition for Election of Collective Bargaining Representative dated September 28, 1976, requesting recognition of a new collective bargaining unit consisting of public employees in the Highway and Zoning Department of the Town of Colchester, Vermont, and requested a representation election for that unit.

2. On December 17, 1976 petitioner requested the amendment of the petition in order to add four individuals, being clerical employees in the Administrative and Zoning Departments of the Town of Colchester.

3. The Vermont Labor Relations Board conducted an investigation of employee interest in the proposed unit and the method of obtaining signatures and made a report of its findings on December 17, 1976.

4. The Board found that the petition was, or the Interest Cards, so-called, filed with the petition were voluntarily signed by not less than thirty percentum of the employees in the proposed collective bargaining unit.

5. Employees included in the proposed bargaining unit wish to form a separate bargaining unit.

6. The Town of Colchester is a Charter Town. The Board takes judicial notice of the provisions of No. 147, Acts of 1969, approved April 18, 1969, and in particular, Sec. 404 (b) and (d) and (1) and Sec. 702 with respect to the powers and duties of the Town Manager and the delegation of his authority. No. 147, Acts of 1969, Sec. 701 provides as follows:

"(a) All town employees not elected by the voters shall be appointed, supervised, and removed by the town manager unless otherwise specified in this charter..."

7. Mrs. Walker, as secretary to the Town Manager, has responsibility for, knowledge of and access to information relating to collective bargaining matters, personnel administration, budgetary matters, legal matters and opinions of attorneys employed by the Town of Colchester, and has responsibility for writing the minutes of executive sessions of the Board of Selectmen.

8. Alma Lawrence, a member of the Clerical Staff, does work for Mrs. Walker from time to time, but does not have the responsibility for, general knowledge of or access to information relating to collective bargaining, personnel administration and budgetary matters on a regular basis. Ronald G. Coltran is the Town Manager and has been so employed for one year. He is overseer for the Zoning Administrator, who is appointed by the Board of Selectmen. The road or highway crew is hired directly by the Town Manager, and consists of

Messrs. Carpenter, Siple and Jennings, as heavy equipment operators, Messrs. Lawrence, Loiselle and Cootware, light equipment operators, and Dean and Leno, mechanics. All highway crew personnel are required to wear uniforms.

9. Mr. Robenstein acts as Zoning Administrative Officer and Building Inspector. He has certain judgmental responsibilities. He interviewed and recommended the employment of his own Secretary, but has no responsibility for hiring. He is left alone generally to make his own decisions. He has been employed in various capacities within the town for a period of eight years.

10. The Board takes judicial notice of the provisions of 24 V.S.A., Secs. 4441 and 4442, with respect to the duties and powers of the Zoning Administrative Officer.

11. As Building Inspector, Mr. Robenstein primarily has to do with matters of subsurface water disposal and septic tanks. He does not make policy. His job description has not been finally set by the Town, but his duties include the issuing of permits, the processing of plans coming under the jurisdiction of the Planning Commission, and the suggestions with respect to, draft of and review of ordinances to be adopted by the Board of Selectmen. He also reviews subdivision regulations and health regulations. He submits monthly reports to the Town Manager and Board of Selectmen.

12. The Board finds that the general conditions of employment for Mr. Robenstein are very similar to those of other clerical staff.

13. The Board finds that Mr. Robenstein is not an elected official, board or commission member, or executive officer, nor does he have the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or any responsibility to direct them or to adjust their grievances, or effectively to recommend such action except as to merely routine or clerical matters.

14. The proposed unit is appropriate in regard to similarity of interest, needs and general conditions of employment, keeping in mind, nevertheless, that the road crew works primarily outside and all other members of the proposed bargaining unit primarily inside.

15. There are approximately 13 employees who would be members of the proposed bargaining unit. Representation of these employees in one unit could be done effectively.

16. The proposed bargaining unit would not result in overfragmentation to a degree likely to produce any adverse affect on the effective representation of other employees of the Town of Colchester or upon the effective operation and performance of the municipal functions of the Town of Colchester.

17. The Board ordered an election in accordance with agreement between the parties by Election Notice dated January 25, 1977.

18. The election was held between 12:00 Noon and 1:00 P.M. on the afternoon of Tuesday, February 1, 1977 in the

Town Manager's Conference Room, Bean Building, on the corner of Routes 2A and U.S. 7 in Colchester, Vermont. Commissioner William Kemsley conducted the election in behalf of the Vermont Labor Relations Board, while Town Manager Ronald G. Coltran and Mr. David Chisholm represented the petitionee and petitioners respectively.

19. The Board has certified the following results of the election: number voting, 12; number marking a ballot for Local #1343, AFSCME, AFL-CIO, 12; number marking a ballot for No Union, 0.

20. The exhibits and transcript are made a part of these findings for purposes of review by the Supreme Court.

Conclusions of Law and Opinion.

The Board was first presented with a question on the motion to dismiss filed by the petitionee under the provisions of 21 V.S.A., § 1724 (c). No question of overfragmentation was actually presented, since all personnel who were not in the proposed bargaining unit were actually supervisory personnel. No convincing evidence was produced to the effect that there would be an adverse effect upon the employees in the unit or the remaining employees of the Town or upon the operations of the Town should recognition be granted to the petitioner for the proposed bargaining unit. There was sufficient similarity of interest, needs and general conditions of employment for all the employees within the proposed bargaining unit so that the Board has no concern that most of the employees would be adversely affected either from a representational point of view or from the point of view of the

employer by inclusion in such a bargaining unit.

The question was raised as to the inclusion of Mrs. Walker in the proposed bargaining unit. While the evidence on the record is not conclusive, it appears by a preponderance of the evidence that Mrs. Walker is a "confidential employee" within the meaning of 21 V.S.A., § 1722 (6). She herself submitted a memorandum which has some tendency to dispute the contention of the petitionee in this regard, but it was submitted after the hearing and without the opportunity on the part of the employer for cross examination.

An even closer question arose as to the inclusion of Mr. Robenstein to be in the proposed bargaining unit. He was obviously an energetic and efficient employee, and had been employed in a variety of capacities for a period of almost eight years. At certain times in the past he appeared to have had some supervisory and decision making powers, at least by delegation from the various town managers. At the present time, however, he appears to have no supervisory function, and to have no decision making power except in a statutory or ministerial way. He performs a variety of duties within the town, admittedly of a responsible nature but in general clerical in character. He is to be included in the bargaining unit primarily because his conditions of employment and duties are not sufficiently different from those of other clerical staff to require exclusion, and because he wishes to be included in the unit.

Order.

NOW, THEREFORE, it is hereby ORDERED that petitionee's Motion to Dismiss be denied and that, pursuant to 21 V.S.A.,

§ 1724, a collective bargaining unit for the Highway Crew, Zoning Administrative Officer and Clerical Staff, with the exception of the secretary to the Town Manager, be constituted. It is FURTHER ORDERED and CERTIFIED that Local #1343, American Federation of State, County and Municipal Employees, AFL-CIO shall constitute the exclusive bargaining representative of all highway crew employees, clerical employees, and the Zoning Administrative Officer of the Town of Colchester, Vermont from and after the date hereof.

Dated at Brattleboro, Vermont this 11th day of February, A.D. 1977.

VERMONT LABOR RELATIONS BOARD

BY

John S. Burgess  
JOHN S. BURGESS, CHAIRMAN

William G. Kemsley Sr.  
WILLIAM G. KEMSLEY

H. James Wallace  
H. JAMES WALLACE

STATE OF VERMONT  
LABOR RELATIONS BOARD

In the matter of:

LOCAL # 1343, AMERICAN  
FEDERATION OF STATE,  
COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO

and

TOWN OF COLCHESTER

Docket No. 77-8R

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter came before the Board on the petition of certain employees of the Town of Colchester, Vermont, to amend this Board's Order in this matter of February 11, 1977. The February 11, 1977 Order constituted pursuant to 21 V.S.A. § 1724 a collective bargaining unit for certain employees in the Town of Colchester (the "Town") and certified the American Federation of State, County and Municipal Employees, AFL-CIO (the "Union") as the exclusive bargaining representative for members of that unit.

For the reasons stated below, the Board affirms the bargaining unit composition as set forth in the Order of February 11, 1977, except as to the position of Zoning Officer which the Board holds should be excluded from the unit.

The hearing on this matter was scheduled for September 16, 1977. Only an informal hearing was held on that date, however, because the Union had not been

given prior notice of the hearing. A rescheduled hearing was held on October 28, 1977. At the rescheduled hearing Board member Robert Brown was not present. He has not participated in the decision in this matter.

Findings of Fact.

1. The positions in issue in this hearing are the following: Zoning Administrative Officer, two secretaries to the Police Department and the Administrative Assistant to the Zoning Officer.

2. Since the proceedings which led to the February 11, 1977, Order in this matter, the person holding the position of Zoning Administrator and Building Inspector has changed. In addition, there has been some change in the nature of the duties of the office.

3. There have been no substantial changes in the other positions at issue in this proceeding since February 11, 1977.

4. All of the members of the unit whose positions are in issue prefer now to be excluded from the unit.

Conclusions of Law and Opinion.

5. The question for determination in this matter is whether pursuant to 21 V.S.A. § 1724 (a) (2) the presently certified bargaining unit is no longer appropriate under Board criteria. Stated differently the question is whether the bargaining unit certified on February 11, 1977 should be changed because there has been a change in the factual setting which controlled the composition of the bargaining unit at that time.

6. In its Order of February 11, 1977 the Board stated that it was a very close question as to whether the position of Zoning Administrator and Building Inspector should be included in the bargaining unit. The Board found that the duties of this position might be categorized as either professional or executive

although they were very similar to the duties and responsibilities of other clerical employees who were included in the unit. In its February 11, 1977 Order, the Board deferred to the wishes of the person holding the position and included the position of Zoning Administrator and Building Inspector in the bargaining unit.

7. There was unchallenged evidence introduced at the hearing to the effect that the duties and responsibilities of the position of Zoning Administrator and Building Inspector had changed since the February 11, 1977 certification. Furthermore, the present holder of this position, Mr. Morrie, does not wish to be included in the bargaining unit.

8. The Board is unable to find that the remaining positions in issue have been changed materially since the certification on February 11, 1977.

9. For the foregoing reasons, the Board concludes that the changes in the duties and responsibilities of the position of Zoning Administrator together with the fact that the present holder of that position does not want to be included in the bargaining unit are sufficient to warrant his exclusion from the bargaining unit. As to the other positions at issue, however, the nature of the positions has not changed since the original certification. Accordingly, notwithstanding the preference of the officeholders not to be included in the bargaining unit, the Board must stand by its original decision.

10. The dissatisfaction of the members in the bargaining unit may be more attributable to their perceived lack of effort on their behalf by the Union representative than to the criteria for inclusion in the unit which bind this Board. The concerns of these employees, if well founded, must be addressed by means other than exclusion from the bargaining unit.

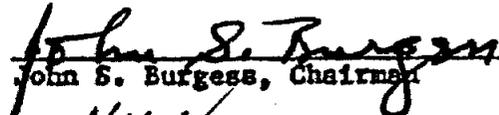
Order.

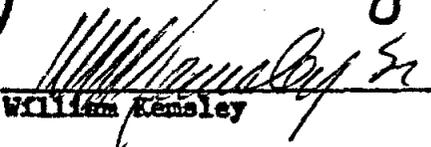
For the reasons stated above, it is ORDERED that the bargaining unit for

the Highway Crew, Zoning Administrative Officer and Clerical Staff of the Town of Colchester certified on February 11, 1977, be amended to exclude from said bargaining unit the position of Zoning Administrator and Building Inspector. With the exception of said position, the bargaining unit as constituted on February 11, 1977, is confirmed.

DATED this 30<sup>th</sup> day of June, 1978.

VERMONT LABOR RELATIONS BOARD

  
John S. Burgess, Chairman

  
William Kensley