VERMONT LABOR RELATIONS BOARD

MILTON POLICE BENEVOLENT ASSOCIATION	)	
and	)	DOCKET NO. 90-16
TOWN OF MILTON	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 12, 1990, the Milton Police Benevolent Association ("Association") filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board, seeking an election to certify the Association as the collective bargaining representative for all full-time police officers below the rank of lieutenant as well as full-time police dispatchers employed by the Town of Milton ("Town"). In response to the petition, filed on February 23, 1990, the Town contended that the two police sergeants employed by the Town were supervisory employees and, thus, ineligible to be included in the proposed bargaining unit.

A hearing on this issue was held on March 27, 1990, before Vermont Labor Relations Board Members Charles McHugh, Chairman; Catherine Frank and Leslie Seaver, in the Board hearing room in Montpelier. Town Manager Richard Schnaedter represented the Town. Attorney John Shullenberger represented the Association. No briefs were filed by the parties.

FINDINGS OF FACT

1. The Town is governed by a Select Board. The chief executive officer of the Town is the Town Manager, Richard Schnaedter. One of the departments in the Town is the Police Department. The head of the

Police Department is Chief Lyons. The chief reports directly to the Town Manager. In addition to the chief, the Police Department has the following full-time employees: two sergeants, seven patrol officers and two dispatchers. The Department also employs special police officers, who work on a part-time, intermittent basis.

2. The Police Department sergeants have no authority to hire, transfer, lay off, recall or discharge employees, and there is no evidence for us to find that they can recommend such actions.

3. Sergeants are able to recommend the suspension of police officers, but there have been no cases where a sergeant has actually recommended that an officer be suspended. Sergeants cannot issue written reprimands to police officers without the approval of the chief. Sergeants can verbally reprimand officers, but there is no evidence of specific verbal reprimands issued by sergeants.

4. Sergeants can write letters commending officers for performance of an assignment or duty. There is no evidence indicating that, through these letters of commendation, sergeants contribute to rewarding the police officer.

5. There is no evidence indicating that sergeants possess authority to adjust employee grievances or effectively recommend such action. The Town manager has final authority to resolve grievances (Association Exhibit 2).

6. The chief prepares the schedule of shifts that sergeants and patrol officers work. Generally, any changes in scheduled shifts or duty assignments are approved by the chief. The chief also generally approves any leave requested by an officer or sergeant (Association Exhibits 3, 4)

7. Many of the policies and procedures of the Police Department are set out in the Town's Police Manual. In addition, the chief determines other policies and procedures. There is no evidence that sergeants have ever changed policies and procedures due to changed circumstances. On a shift, sergeants assign and direct officers to the extent of ensuring that the policies and procedures set out in the Police Manual and established by the chief are followed. There is no evidence that sergeants exercise independent judgment in this regard (Town Exhibit 1, Association Exhibit 1).

8. Sergeants perform all duties performed by patrol officers on a shift, including directed vehicle patrol, traffic control functions, accident investigations, alleged criminal activity investigations, and response to non-criminal complaints (Town Exhibit 1).

9. If a serious crime or accident occurs within the Police Department's jurisdiction, the chief is called immediately and often immediately comes to the scene. The chief assigns officers to investigate cases.

10. If an incident arises which may cause a person to be cited, the officer who first reports to the scene, who may or may not be a sergeant, determines whether a citation will be issued. If an incident arises which may cause a person to be arrested, the investigating officer, who may or may not be a sergeant, determines whether an arrest will be made. Sergeants do not have authority to overrule these citation or arrest decisions. The ultimate responsibility for taking command of the scene of an incident resides with the senior officer on the shift, who may be a patrol officer or a sergeant.

OPINION

At issue is whether the two sergeants of the Milton Police Department are supervisors and, thus, ineligible to belong to a bargaining unit pursuant to 21 VSA §1722(12)(b).

Supervisor is defined in 21 VSA §1502(13) as:

> An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; theoretical or paper power will not make one a supervisor. Nor do rare or infrequent supervisory acts change the status of an employee to a supervisor. Brattleboro, supra, at 351.

It is clear from the evidence presented that the sergeants do not have authority to hire, transfer, lay off, recall, promote, discharge, reward or discipline other employees, or to adjust their grievances, or to effectively recommend such action.

We also conclude that the Town has not demonstrated that the sergeants' authority to assign and direct other employees requires the use of independent judgment. Sergeants generally perform the same

duties as patrol officers, and their assigning and directing responsibilities are limited to ensuring that the policies and procedures contained in the Police Manual and established by the chief are followed. This responsibility lacks use of independent judgment and does not rise to the level of constituting exercise of supervisory authority. AFSCME Local 490 and Town of Bennington, 11 VLRB 89 (1988); Affirmed, ___ Vt. ___ (December 15, 1989). City of Winooski and Winooski Police Employees Association, 9 VLRB 85, 92 (1988). We recognize that a job description exists for sergeants which may indicate supervisory responsibility. However, theoretical or paper power will not make one a supervisor. Brattleboro, supra. Supervisory status depends on the authority an individual actually exercises. Here, the authority actually exercised by the sergeants falls short of supervisory status.

ORDER

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

1. The sergeants of the Milton Police Department are not supervisory employees as defined in 21 VSA §1502(13) and are appropriately included in the bargaining unit proposed by the Milton Police Benevolent Association; and

2. A representation election shall be conducted by the Labor Relations Board among the full-time sergeants, full-time patrol officers and full-time dispatchers employed by the Town of Milton

Police Department to determine whether they wish to be represented by the Milton Police Benevolent Association or no union.

Dated the 30th day of March, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

/s/ Leslie G. Seaver
Leslie G. Seaver