VERMONT LABOR RELATIONS BOARD

AFSCME, AFL-CIO	)	
	)	
v.	)	DOCKET NO. 90-39
	)	
BARRE TOWN SCHOOL DISTRICT	)	

MEMORANDUM AND ORDER

On June 22, 1990, AFSCME, AFL-CIO ("Union"), filed an unfair labor practice charge, alleging that the Barre Town School District ("Employer") violated 21 VSA §1726 (a) (5) by refusing to bargain over the newly created position of Inventory Clerk. The Union contends that the duties of the new position concern work currently being performed by Jack Mitchell, an employee in the bargaining unit represented by the Union. On July 16, 1990, the Employer filed a response to the charge. The Employer contends that the new position is a clerical position not included in the bargaining unit represented by the Union.

The Union currently is the exclusive bargaining agent for the following employees of the Employer: maintenance helper, custodians, leadmen, bus drivers, cooks, dishwashers, cafeteria helpers, or any combination thereof. Jack Mitchell performs duties as a custodian and bus driver and, prior to the creation of the new position at issue herein, also spent a minority of his work time on responsibilities relating to general supply orders and distribution. As a result of the newly created position of Inventory Clerk, Mitchell no longer will perform duties relating to general supply orders and distribution. The Inventory Clerk will perform those duties, as well as duties relating to inventory maintenance, developing a bulk order bid process, shipping and receiving. Mitchell will continue to be a bargaining unit employee performing custodial and bus driver duties, and there is no indication that he will receive any loss of pay as a result of the new position.

Under the circumstances, we conclude that the Union, by filing an unfair labor practice charge, has selected the wrong mechanism to have this matter resolved by the Labor Relations Board. At issue is whether a newly created position should be added to the existing bargaining unit without a representation election. The Union contends that the Inventory Clerk position should be so added to the existing bargaining unit. The appropriate way to resolve this issue is through the filing of a unit clarification petition pursuant to Section 34.1 of the Labor Relations Board Rules of Practice. Section 34.1 provides that such a petition may be filed where no question concerning the majority status of the exclusive bargaining representative is pending, and where 1) there is a dispute over the unit inclusion or exclusion of employee(s), or 2) there has been an accretion to or reorganization of the workforce, or 3) the collective bargaining representative or employer seeks a reorganization of the existing structure of a bargaining unit or units. The attempt by the Union to add the Inventory Clerk position to the existing bargaining unit falls within this definition.

Now therefore, based on the foregoing reasons, we decline to issue an unfair labor practice complaint herein, and hereby order this unfair labor practice charge dismissed.

Dated this 14th day of August, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh

Charles H. McHugh, Chairman

Louis A. Toepfer

Louis A. Toepfer, Member

Leslie G. Seaver

Leslie G. Seaver, Member