VERMONT LABOR RELATIONS BOARD

BARRE TOWN SCHOOL CHAPTER, AFSCME LOCAL 1369	)	
	)	DOCKET NO. 90-46
and	)	
	)	
BARRE TOWN SCHOOL DISTRICT	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 7, 1990, the Barre Town School Chapter, AFSCME Local 1369 ("Union"), filed a unit clarification petition. Therein, the Union requested that the new position of Inventory Clerk be added to the existing bargaining unit of Barre Town School District employees represented by the Union. On August 21, 1990, the Barre Town School District ("Employer") filed a response in opposition to the petition.

A hearing was held before Vermont Labor Relations Board members Charles McHugh, Chairman; Louis Toepfer and Leslie Seaver on November 1, 1990. Ralph Crippen, AFSCME Organizer II, represented the Union. Attorney Anita Tuttle of Downs, Rachlin and Martin represented the Employer. The Union filed a brief on November 8, 1990. The Employer filed Proposed Findings of Fact and Conclusions of Law on November 9, 1990.

FINDINGS OF FACT

1. Pursuant to representation elections conducted by the Vermont Labor Relations Board in 1968 and 1973, the Union is certified as the exclusive bargaining representative of the custodians, maintenance employees, grounds employees, bus drivers and cafeteria employees of the Barre Town School District (Union Exhibits 2, 3).

2. Under collective bargaining agreements effective between the Union and the Employer at all times relevant, the agreements have established wages, hours and other conditions of employment for the following employees of the Barre Town School District: maintenance helper, custodians, leadman, bus drivers, cooks, dishwashers, cafeteria helpers or any combination thereof (Union Exhibit 4).

3. Jack Mitchell has been employed on a full-time basis at the Barre Town School since 1966, and has been a member of the bargaining unit represented by the Union and a member of the Union. At all times relevant herein, Mitchell has performed bus driving, custodial and maintenance duties for the Employer.

4. Also, prior to July 1, 1990, a portion of Mitchell's job duties consisted of ordering, receiving and distributing general supplies for the District. These general supplies consisted of materials such as paper, writing instruments, binders, scissors, rulers, tape, etc. It did not consist of instructional materials or texts (District Exhibit G).

5. During the school year, Mitchell worked approximately two and one-half to three hours per day on general supplies work. During the summer, he worked approximately four to five weeks full time on such duties. In sum, he worked approximately 35 percent of the time on general supplies work. The remaining portion of Mitchell's work time was spent on bus driving, custodial and maintenance duties.

6. In performing the general supplies work, Mitchell worked in the stockroom on the second floor at the west end of the school. The central office of the school is located on the east end of the first floor. He did not use a computer in performing such duties. In doing such work, Mitchell interacted at times with other members of the

bargaining unit represented by the Union as they provided assistance to him in distributing bulk materials. Mitchell also worked in conjunction with the school business office in performing these duties.

7. At all times relevant, in performing all his duties, Mitchell has performed under the supervision of the Custodial/Transportation Supervisor.

8. Prior to July 1, 1990, other items ordered by the District; such as instructional materials and texts, equipment and general office supplies; were not ordered by Mitchell. They were ordered by teachers, secretaries and clerical employees.

9. Beginning in 1988, the Employer began considering the creation of a full-time Inventory Clerk position. Brian O'Regan, District Superintendent, determined that such a position was needed due to a perception by him that better accountability was needed with respect to the ordering and distributing of instructional supplies, materials and books; particularly given the size of the District budget, which has increased from $1.3 million in 1966 to $8 million by 1990. O'Regan also perceived the need for the Inventory Clerk to use a computer for an inventory system (District Exhibits A, B).

10. A full-time Inventory Clerk position was approved and adopted by the Barre Town School Board on June 20, 1990 (Union Exhibit 1).

11. Superintendent O'Regan asked Mitchell if he was interested in filling the position of Inventory Clerk. Mitchell did not express an interest in taking the position. Effective July 1, 1990, the Employer hired Thomas Allard as Inventory Clerk. Mitchell has bee involved in assisting in the training of Allard, but has ceased performing general supplies duties.

12. The hours worked by Mitchell have not been reduced even though he no longer performs the general supplies duties. He now does more custodial work to make up for the transfer of duties to the Inventory Clerk.

13. The Inventory Clerk performs the general supplies work previously performed by Mitchell (described above in Finding #4), and the ordering of instructional materials and texts, equipment and general office supplies, which duties previously were done by teachers, secretaries or clerical employees. The Inventory Clerk works in the second floor stockroom (Union Exhibit 1).

14. In addition to these duties being centralized in the Inventory Clerk position, the Inventory Clerk has assumed duties never previously performed. The Inventory Clerk is responsible for establishing and maintaining a perpetual computerized inventory for all supplies and equipment. The Inventory Clerk is responsible for providing periodic reports, including an annual inventory report on supplies and equipment to the Superintendent. The Inventory Clerk is responsible for pursuing reduced price and bulk purchasing opportunities (Union Exhibit 1).

15. The Inventory Clerk is supervised by the school Principal.

16. Approximately 50 percent of the Inventory Clerk's duties previously were performed by teachers, secretaries or clerical employees. Approximately 25 percent of the Inventory Clerk's duties previously were performed by Mitchell. The remaining approximately 25 percent of the Inventory Clerk's duties previously were not performed.

17. No members of the bargaining unit represented by the Union are required to use a computer to perform their duties. Some of the secretaries and clerical employees are required to use computers in the performance of their job.

18. Employees in the bargaining unit represented by the Union are supervised by the Custodial/Transportation Supervisor or the Maintenance Supervisor. Secretaries and clerical employees are supervised by the school principal, the Superintendent or the Special Education Director.

19. The Inventory Clerk interacts primarily with the secretaries and clerical employees in the performance of duties. Interaction with members of the bargaining unit represented by the Union are conducted through the Custodial/Transportation Supervisor when large bulk orders or equipment need to be distributed.

OPINION

By filing a unit clarification petition, the Union requests that we add the Inventory Clerk to the existing bargaining unit represented by the Union without a representation election. We consider this petition pursuant to Section 34.1 of the Board Rules of Practice, which provides, in pertinent part, that such a petition may be filed where "there has been an accretion to or reorganization of the workforce".

In the past, we have looked to experience under the National Labor Relations Act in deciding unit clarification issues. Local 1343, AFSCME, Burlington Area Public Employees Union, 4 VLRB 391, 396-397 (1981). Accretion is the process whereby new employees, whose work and interests are aligned with those of employees in an existing bargaining unit, are added to that unit. If the duties of the new employees are identical or substantially similar to those of employees in an existing bargaining unit, it is appropriate to find an accretion. NLRB v. Mississippi Power and Light, 769 F2d 276 (5th

Cir., 1985). International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO v. NLRB, 231 F2d 237 (7th Cir., 1956). Granite City Steel, 137 NLRB No. 24 (1962). Western Cartridge Co., 134 NLRB No. 11 (1961). In deciding whether a new employee should be added to the existing bargaining unit by accretion, a determination shall be made whether the new employee shares a community of interest with employees in the existing unit. NLRB v. Magna Corporation, 734 F2d 1057 (5th Cir., 1984). In deciding whether an employee or group of new employees constitutes an accretion to an existing unit, the Board must consider the facts in light of conflicting policies of maintaining stability in bargaining relations and assuring that employees have the right to choose their own bargaining representative. Mississippi Power and Light, supra.

In being guided by this precedent here, we conclude that the Inventory Clerk position should not be added to the existing bargaining unit by accretion. First, the duties of the Inventory Clerk position are not identical or substantially similar to those of employees in the existing bargaining unit represented by the Union. It is true that the Inventory Clerk performs some of the duties previously performed by a member of the bargaining unit, Jack Mitchell. However, such duties only constitute approximately 25 percent of the duties performed by the Inventory Clerk. The bulk of the duties performed by the Inventory Clerk (i.e., approximately 75 percent) were either not done previously or where performed by non-bargaining unit employees.

Also, the interests of the Inventory Clerk are more closely aligned with secretaries and clerical employees, who are not in the bargaining unit, than with employees in the bargaining unit.

The following factors are relevant in determining whether a community of interests exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions and job sites; and whether employees have frequent contact with each other and have an integration of work functions. AFSCME, AFL-CIO and Town of Middlebury, 6 VLRB 227, 231-232 (1983).

The skills and qualifications required of the Inventory Clerk are more similar to the non-bargaining unit office employees, in that proficiency in the use of computers is a shared requirement, than to bargaining unit employees who are not required to use a computer. Also, the Inventory Clerk has different supervision than members of the bargaining unit, but, like some of the office employees, is supervised by the school principal. The Inventory Clerk further will interact primarily with the office employees, rather than employees in the bargaining unit. Finally, the job functions of the Inventory Clerk are more similar to those performed by employees who work in an office than employees who drive a bus, perform custodial or maintenance work, or work in a cafeteria.

In sum, the Inventory Clerk's interests are more closely aligned with the secretaries and clerical employees who work in an office setting than with the employees in the bargaining unit represented by the Union. The policy of preserving the stability of the bargaining relationship between the Union and the Employer in this case does not result in the Inventory Clerk being added to the existing bargaining unit by accretion and not having the right to have a voice in being represented.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the unit clarification petition filed by the Barre Town School Chapter, AFSCME Local 1369, is DISMISSED.

Dated this 20th day of December, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Louis A. Toepfer

Leslie G. Seaver