

VERMONT LABOR RELATIONS BOARD

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| LOCAL 1201, AFSCME, AFL-CIO | ) |                  |
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| and                         | ) | DOCKET NO. 90-70 |
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| TOWN OF MIDDLEBURY          | ) |                  |

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

On October 30, 1990, Local 1201, AFSCME, AFL-CIO ("Union") filed a Petition for Election of Collective Bargaining Representative, requesting that the present bargaining unit of the Town of Middlebury Police Department employees represented by the Union be expanded to include all employees of the Department of Public Works and all office employees, excluding the secretary to the town manager, administrative assistant, account clerk II, director of public works, planning officer, recreation director, highway department foreman and utilities superintendent.

On November 13, 1990, the Town of Middlebury ("Town") filed an answer to the petition, contending: 1) that it is inappropriate to include the positions identified by the Union within the existing police bargaining unit; 2) that it is inappropriate to include both clerical and public works employees in the same bargaining unit; and 3) that the secretary to the public works director and the assistant bookkeeper should be excluded as confidential employees.

A hearing was held on February 21, 1991, before Labor Relations Board Members Charles McHugh, Chairman, Catherine Frank, and Louis Toepfer. Attorney Alan Biederman represented the Union. Attorney Richard Goldsborough represented the Town of Middlebury. At the hearing, the Town withdrew its claims that the secretary to the public

works director and the assistant bookkeeper are confidential employees. Requested findings of fact and memoranda of law were requested by the Board to be postmarked by the parties no later than February 28, 1991. The Town's requested findings and memorandum were postmarked by the requisite date. The Union's requested findings and memorandum were not postmarked until March 4, 1991, and therefore, have not been considered by the Board.

#### FINDINGS OF FACT

1. The present bargaining unit represented by the Union consists of non-supervisory employees of the Police Department, which includes seven patrol officers, one sergeant, one lieutenant and two secretary/dispatchers. The police chief and the police captain are not included in the unit.

2. The Board of Selectman set policy and hire the Town manager, who is the Town's chief administrator. The Board also hires all Town department heads, upon the recommendation of the Town manager. All department heads report directly to the Town manager. The Town manager hires all Town employees other than the department heads.

3. The Town manager and two Selectboard members are involved in contract negotiations with the Union concerning the existing police department bargaining unit. The police chief also generally attends negotiating sessions and is consulted during the negotiating process.

4. The Town has Personnel Rules and Regulations which apply to all Town employees not represented by the Union, including the police chief and captain (Union Exhibit 1). The Personnel Rules and

Regulations consist of a 28 page document which governs aspects of employment for employees not represented by the Union, including pay, benefits, recruitment, promotions, lay offs, grievances and disciplinary actions. The responsibility for administering and enforcing the Personnel Rules and Regulations resides with the Town manager. Prior to the Union being certified in 1983 to represent Police Department employees and negotiating a collective bargaining contract, the Personnel Rules and Regulations also applied to the members of the Police Department (Union Exhibit 1).

5. The collective bargaining contract negotiated by the Town and the Union covering Police Department employees is 41 pages along, including attachments. It governs aspects of employment for Police Department employees represented by the Union, including management rights, union rights, working conditions, pay, benefits, grievances and disciplinary actions (Town Exhibit A).

6. The Police Department has a police manual which provides the practices, policies and procedures of the Department.

7. Vacancies are filled in the Police Department according to criteria set out in the collective bargaining contract. This includes provisions for the Town to hire qualified applicants within the bargaining unit first, posting and advertising requirements, as well as written and oral examination for applicants. A hiring panel interviews prospective candidates, and the police chief makes the final recommendation whom to hire to the Town manager. The Town manager makes the final decision whom to hire. Once an officer is hired, he or she is required to be certified by the State. There is a 12 month probationary period for all full-time police officers. There is training required by the State for each newly hired police officer, as well as training required by the Town.

8. Police officers work rotating shifts of 10 hour work days to ensure police protection at all times of the day and week, four days a week, or work 40 hours within a seven day period. Overtime is time worked in excess of the regular work week or work day, and employees are paid at time and one half the straight hourly rate. Police officers may receive compensatory time in lieu of overtime pay (Town Exhibit A).

9. Pursuant to the contract, police department employees are paid on a 7 step pay plan based on longevity and are entitled to receive at least a 4% wage increase if she or he moves to a new classification. Longevity is also available in a lump sum payment after seven years of full time service and ranges from \$300 to \$700 per year. Since 1989, the retirement plan agreed to between the Town and the Union includes a normal retirement age of 65, and an optional retirement age of 55 if employees are fully vested (Town Exhibit A).

10. Police Department employees, by the very nature of their work, are involved in confidential investigations. Police officers also oversee other Town employees in matters of public safety (e.g., ticketing a Town vehicle for operating violations).

11. The police chief and police captain may reprimand Police Department employees. However, employees may only be suspended or dismissed by the Town manager. Police officers whom are dismissed have statutory appeal rights pursuant to Title 24, Chapter 55, of Vermont Statutes Annotated.

12. Pursuant to the contract, the grievance procedure for Police Department employees provides for the following successive levels of appeal: 1) appeal to immediate supervisor, 2) appeal to police chief, 3) appeal to Town manager, and 4) appeal to a private

arbitrator mutually selected by the Town and Union, whose decision is final and binding (Town Exhibit A).

13. The Police Department is physically located on the bottom floor of the municipal office building. A custodial employee, whom the Union is seeking to include in its proposed bargaining unit, has a closet on this floor. Other Town employees in this building work on a separate floor.

14. The Union is seeking to include 16 employees in the Town Department of Public Works ("DPW") in its proposed bargaining unit. One of the employees is the custodian who works in the municipal office building who is not supervised directly by a DPW supervisor.

15. The director of public works is the department head of the DPW, and he reports directly to the Town manager. The DPW has four separate divisions: highway, water, sewer and maintenance. The highway division maintains Town roads and parks and has eight employees, including a foreman whom the Union is not seeking to include in the proposed unit. The water division maintains the Town water system and performs meter work, and has three non-supervisory employees. The sewer division maintains the sewage treatment plant and pumping station, and has four non-supervisory employees. The water and sewer divisions are supervised by a utility superintendent, whom the Union is not seeking to include in the proposed unit. The maintenance division consists of one employee, who maintains all Town vehicles.

16. The employees of the highway division work out of a building approximately one and one half miles from the municipal office building. The sewer and water division employees work in a building located approximately one fourth of a mile from the municipal office building.

17. DPW employees do not work rotating shifts. They work 40 hours a week, 7:30 a.m. - 3:30 p.m., Monday through Friday. Overtime generally is available for emergency situations only. Compensatory time in lieu of overtime pay is not available.

18. Vacancies in the DPW are posted and publicly advertised. The director of public works interviews candidates and makes recommendations to the Town manager. No hiring committee is involved. No physical examination is required for any positions in the DPW. There is no requirement that DPW employees serve probationary periods. Candidates for employment with the highway division generally have construction experience. Prospective water division employees need mechanical skills. The Town generally seek employees for the sewer division who have previous experience at other sewage treatment facilities, and certification by the State is required for such employees.

19. The Union also is seeking to include six office employees within the proposed bargaining unit. Five of the six employees are clerical assistant II's, and the remaining employee is an account clerk I.

20. Clerical assistant II's perform moderately complex clerical work. They type, perform work on computer information systems and perform other basic secretarial work. All clerical assistant II's, except one, work in the municipal office building, reporting to different department heads. The remaining clerical assistant II works for DPW, and reports to the director of public works.

21. The account clerk I performs assistant bookkeeping duties under the supervision of the account clerk II. She works in the municipal office building on the same floor as other office employees. She does tax receipts, water sewer billing and posting. She uses a computer in her position.

22. The office employees do not work rotating shifts. They generally work from 7:30 a.m. - 4:00 p.m., Monday through Friday, for a total of 37 1/2 hours per week, although one office employee whom the Union is seeking to represent does work a flex time schedule. Office employees rarely work overtime. Compensatory time in lieu of overtime is not available to them.

23. Vacancies among office employees are handled similarly to vacancies in the DPW; that is, the involved department head interviews candidates and makes a recommendation to the Town manager, who makes the final decision. No hiring committee is involved. No physical examination is required. Office employees are not required to serve probationary periods.

24. The DPW employees and the office employees whom the Union is seeking to represent are paid according to a 10 step pay plan based on merit, with 2.5 percent increments. Employees at the top of the pay range are eligible to receive up to 2 percent merit increases annually (Union Exhibit 1).

25. The Town retirement plan covering DPW and office employees has an eligibility age of 65.

26. Department heads of DPW and office employees have the authority to reprimand employees, and may suspend employees in certain cases. Only the Town manager may dismiss such employees (Union Exhibit 1).

27. The grievance procedure for DPW and office employees provides for the following successive levels of appeal: 1) appeal to immediate supervisor, 2) appeal to department head, 3) appeal to Town manager, and 4) appeal to Selectboard (Union Exhibit 1).

28. Pursuant to either the collective bargaining contract covering Police Department employees or the Personnel Rules or Regulations covering employees not represented by the Union, employees of the Town are covered by health insurance, dental insurance, life insurance, dental insurance and disability insurance. Employees also are entitled to vacation leave, sick leave, military leave, maternity leave, bereavement leave and paid holidays. Employees not represented by the Union have similar, or identical, coverage to Police Department employees represented by the Union in these areas, except that provisions relating to holiday pay for police differ in recognition that they may regularly work on holidays (Union Exhibit 1, Town Exhibit A).

29. Generally, there is little interaction among office employees, DPW employees and Police Department employees. Occasionally, a Police Department employee will interact with a DPW employee over such things as broken water mains or complaints about odor from the sewage treatment plant, or Police Department and DPW employees may have a question regarding pay and benefit issues with office employees. Employees of the water and sewer division within the DPW does not frequently interact with highway division employees.

30. It is not unusual in Vermont municipalities for employees of different departments to be included in the same bargaining unit represented by a union. In some municipalities, police department employees and employees of other departments are included in the same bargaining unit.



#### OPINION

The issue before us is whether it is appropriate to place Department of Public Works employees and office employees of the Town of Middlebury in the same bargaining unit as Police Department employees. The Town contends that these two groups of employees are distinct and separate from the Police Department employees and lack a community of interest with Police Department employees, as well as with each other. The Town contends that this lack of a community of interest will result in adverse effects upon the operation of the Town and the effective representation of all employees. The Town contends that overfragmentation will not occur if the DPW employees and office employees are in separate bargaining units from each other and from Police Department employees.

The Board has the authority under the Municipal Employee Relations Act ("MERA") to determine whether a bargaining unit is appropriate. 21 V.S.A. §1722(3), §1724(c). There is nothing in the statute which requires that the bargaining unit be the only, or most, appropriate unit; MERA only requires that the unit be appropriate. AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983). Based on the criteria provided in §1724(c) of MERA for the Board to take into consideration in determining the appropriateness of units, the Board's primary concerns are to group together only employees who share a community of interests, while at the same time guarding against overfragmentation of units and allowing individuals to exercise rights guaranteed under MERA. Middlebury, at 231.

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. Middlebury, supra, at 232.

We conclude that there is a community of interests among the Police Department employees, the DPW employees and the office employees. This relatively small number of employees all work for the same employer where effective control of all three groups lies with the Town manager. In key personnel and labor relations matters; such as hiring, dismissal, grievance procedures and contract negotiations; the ultimate responsibility for all three groups of employees is with the Town manager. Along with the same overall supervision and direction, each group of employees have many similar, or identical, benefits as the other groups.

We also find persuasive that, prior to the Union becoming representative of the Police Department employees in 1983, the Town's Personnel Rules and Regulations applied to all Town employees, including the present members of the Police Department bargaining unit, even though there were differences among employees. The Town apparently recognized that there is some community of interest among the Police Department employees, DPW employees and office employees by placing them under the same personnel policy.

We recognize that it is evident that Police Department employees, DPW employees and office employees have many different interests, needs and general conditions of employment. The method of compensation (i.e. pay plan) is the same for DPW employees and office employees, but is different for Police Department employees. DPW employees and office employees work regular day shifts Monday through Friday; Police

Department employees predominately work rotating shifts to ensure police protection at all times of the day and week. It is rare that a DPW or office employee works overtime; Police Department employees frequently work overtime. The retirement plan is different for police officers than other Town employees.

The three groups of employees are physically separate from each other and have different immediate supervisors. Job qualifications and skills vary widely among the three groups of employees. Job functions differ among the three groups of employees. There is little integration of job functions among the three groups of employees, and infrequent interaction on the job.

However, in sum, we conclude that there is a community of interests among the three groups of employees; very similar to what we concluded existed among Police Department employees and DPW employees in Local 1369, AFSCME, AFL-CIO and Town of Barre, 12 VLRB 7, 16 (1989).

The community of interest criterion must be considered together with whether overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of employees or the effective operation of the employer. 21 VSA §1724(c). It is Board policy that public rights are protected by larger units. Town of Barre, supra. at 17. Placing the employees in separate, relatively small, bargaining units may result in excessive competition between employee groups with resultant Balkanization and whipsaw bargaining. Id.

Moreover, we conclude that if the Police Department employees, DPW employees and office employees are placed in two or three separate

bargaining units, it likely will take substantially more time and effort for the parties to negotiate two or three contracts than it will to negotiate one contract if they are in the same unit. In the 1983 decision establishing the Police Department bargaining unit, Middlebury, supra, we concluded that there were many dissimilarities among employees in the present Police Department bargaining unit, yet the Town has managed to operate with one collective bargaining contract which covers these differences. We have found herein that there are many dissimilarities among the DPW employees and office employees the Union is seeking to add to the existing Police Department bargaining unit, yet the Town has managed to operate with a single document of personnel rules and regulations covering these employees. Likewise, we believe it is feasible for the Town and the Union to negotiate a single collective bargaining contract covering the Police Department, DPW and office employees which will address their various needs, interests and conditions of employment, while not adversely affecting the effective operations of the Town.

We conclude, as we did in Town of Barre, supra, that in weighing the community of interests and overfragmentation of units criteria, grouping the DPW and office employees with the Police Department employees into a single bargaining unit is appropriate. It is evident that placing employees in the same unit will allow for effective representation of all employees while not hindering the effective operation of the Employer. Town of Barre, supra, at 17.

We recognize that in Middlebury, supra, at 233, we concluded that Police Department employees are sufficiently functionally distinct from other parts of Town government that it is appropriate they have

their own bargaining unit. By our decision today, we are not overruling the previous Middlebury decision. As the Board noted in the Middlebury decision, at 231, there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be "appropriate." This clearly contemplates that more than one unit configuration involving a particular group or groups may be appropriate. Such determinations must be made on the particular circumstances presented to the Board in each case. Under the circumstances presented to the Board in the previous Middlebury decision, the petitioned-for bargaining unit of just Police Department employees was appropriate. In the case now before us, we conclude that, under the circumstances, adding DPW and office employees to the existing Police Department bargaining unit also is appropriate.

Finally, the Town requests that we exercise our discretion pursuant to 21 VSA §1724(c)(1) to conduct a separate vote of each of the three involved groups of employees to determine whether they wish to be included in the expanded bargaining unit. The statutory provision provides that the "board may, in its discretion, require that a separate vote be taken among any particular class or type of employee within a proposed unit to determine specifically if the class or type wishes to be included." We would exercise our discretion to require such a unit determination vote only rarely. The Board is empowered to determine the appropriateness of a bargaining unit without the approval of the involved employees; 21 VSA §1722(3), §1724(c); AFSCME, AFL-CIO and City of Rutland, 7 VLRB 272, 281 (1984); and we decline to conduct such a unit determination vote among employees under the circumstances.

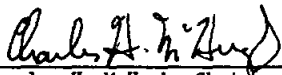
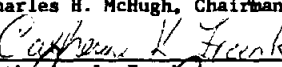
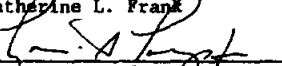
ORDER

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

1. All employees of the Department of Public Works and all office employees employed by the Town of Middlebury; excluding the secretary to the Town manager, administrative assistant, account clerk II, director of public works, planning officer, recreation director, highway foreman and utilities superintendent; are appropriately included in the present bargaining unit represented by Local 1201, AFSCME, AFL-CIO consisting of employees of the Town of Middlebury Police Department; and
2. A representation election shall be conducted by the Vermont Labor Relations Board among the Department of Public Works and office employees indicated in paragraph 1 to determine whether they wish to be represented by Local 1201, AFSCME, AFL-CIO, or no union.

Dated this 11th day of April, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman  
  
Catherine L. Frank  
  
Louis A. Toepfer