

VERMONT LABOR RELATIONS BOARD

CHAUFFEURS, TEAMSTERS,	)	
WAREHOUSEMEN & HELPERS	)	
LOCAL 597	)	
	)	DOCKET NO. 98-20
and	)	
	)	
TOWN OF RICHMOND	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 1, 1998, the Chauffeurs, Teamsters, Warehousemen & Helpers Local 597 ("Union") filed a Petition for Election of Collective Bargaining Representative, requesting an election among all police officers under the rank of chief and all employees of the Water and Sewer Department, excluding the Superintendent, employed by the Town of Richmond ("Town"). On April 20, 1998, the Town responded to the petition and raised a question of unit determination, contending that the proposed bargaining unit was inappropriate and that it would be more appropriate to have two separate bargaining units, one consisting of police officers and the other unit consisting of employees of the Water and Sewer Department.

A hearing was held on July 9, 1998, before Labor Relations Board Members Catherine Frank, Chairperson; Leslie Seaver and Richard Park. Attorney Richard Cassidy represented the Union. Attorney Mark Sperry represented the Town. The Town filed a post-hearing brief on July 23, 1998. The Union filed a brief on July 24, 1998.

### FINDING OF FACT

1. The Town employs 18 full-time employees: the town administrator, an assistant to the town administrator, five Highway Department employees, five Police Department employees, three Water and Sewer Department employees, a librarian and two assistants to the elected town clerk. The Town also employs some part-time employees.

2. Ronald Rodjenski is the town administrator. He oversees the Highway Department, the Police Department and the Water and Sewer Department. Rodjenski reports directly to the Select Board. Rodjenski has held the position of town administrator for approximately five years.

3. The Town's personnel policies and procedures are set forth in an employee handbook entitled *Personnel Guidelines*. The *Personnel Guidelines* apply to all provisional, part-time, on call, temporary/seasonal, full-time hourly and full-time salaried exempt employees, including police officers and employees of the Water and Sewer Department. The Guidelines do not apply to elected officials, members of boards or commissions, employees of the school district, election officials or positions which are not compensated. The Town provides a copy of the *Personnel Guidelines* to all newly hired employees, including police officers and employees of the Water and Sewer Department (Union Exhibit 1).

4. The *Personnel Guidelines* set forth the Town's policies with respect to recruitment, selection, appointments and probationary period, promotions, evaluations, disciplinary and discharge procedures, appeal procedures, grievances and conduct of employees, attendance, political activities, receipt of gifts, contracts,

resignation and sexual harassment. The Town's insurance, retirement, leave policies, pay plan, health and safety policies and tuition reimbursement benefits are also set forth in the *Personnel Guidelines* (Union Exhibit 1).

5. All employees, including police officers and employees of the Water and Sewer Department, are subject to the same policies and procedures, except where State statutory provisions control (Union Exhibit 1).

6. Until July 1, 1998, all employees, including police officers and employees of the Water and Sewer Department, received the same benefits. On July 1, 1998, the town began compensating police officers while they were on-call by paying them 10% of their pay during on-call shifts; they are paid "call out" pay if they are called out. Prior to July 1, 1998, the Town did not compensate officers while they were on on-call status; they were only compensated if they were called out (Union Exhibit 1)

7. Police officers are sworn law enforcement officers. They are required to satisfactorily complete a training session certified by the Vermont Criminal Justice Training Council, work with a field training officer and satisfactorily complete annual in-service training requirements.

8. In addition to the *Personnel Guidelines*, the Town established a handbook for police officers which addresses certain issues which only apply to police officers. Such issues include, but are not limited to: search and seizure, use of force, how to set up a roadblock, grooming standards, absenteeism and carrying firearms. Police officers have reviewed this handbook but have not been given a copy.

9. The Police Department is located in the municipal building. The department currently consists of a chief of police, an administrative assistant and two full time police officers. A third police officer position currently is vacant. All employees of the Police Department report directly to the chief of police, who reports to the town administrator. Police officers wear uniforms which the Town furnishes.

10. Police officers generally work eight hour shifts, from 7:00 a.m. - 3:00 p.m. and from 3:00 p.m. - 11:00 p.m., with adjustments for weekend scheduling. Day shift officers often are on-call for four hours before their shift begins and evening shift officers often are on-call for four hours after the completion of their shift. The Vermont State Police are kept informed of which officer is on-call and, in the event of an emergency, calls the identified officer.

11. Police officers generally work independently without the chief's direct supervision. Their responsibilities include, but are not limited to, enforcing local and State laws, making arrests, investigating crimes such as domestic violence, testifying in court, and educating children regarding public safety laws. They must be certified to administer CPR and first aid. Law enforcement officers' duties can be stressful and police officers occasionally must make quick, complex decisions.

12. The Water and Sewer Department consists of three employees, a superintendent and two employee operators. One operator of the waste water treatment facility also is the assistant superintendent. Both employee operators report directly to the superintendent, who directs the daily activities of the department and reports directly to the town administrator. The waste water treatment facility is approximately 1/4 mile from the municipal well and approximately one

half mile from the municipal building. Employees work 7:00 a.m. to 3:30 p.m., Monday through Friday, and work alternating weekends.

13. The waste water treatment operators have a State of Vermont Grade 2 license which requires 40 hours of training over a five year period. The employee operators are not required to wear uniforms, although at one time the Employer tried to institute uniforms for these positions.

14. The Police Department and the Water and Sewer Department share some resources: *the municipal building for training purposes, a fax machine which is located in the Police Department, and a radio frequency.* If there is an emergency in the Water and Sewer Department, such as a broken water main, both departments may work together while the situation is being corrected. If the Water and Sewer Department needs to deliver a termination of services notice to a citizen, a police officer may be asked to accompany the Water and Sewer Department employee when delivering the notice. All Town departments have employee delegates on such Town bodies as the *Personnel Subcommittee and the Safety Committee.*

#### OPINION

At issue is whether it is appropriate to place all police officers under the rank of chief and all employees of the Water and Sewer Department, excluding the Superintendent, employed by the Town of Richmond, in the same bargaining unit. The Union proposes this unit composition. The Town objects to the one bargaining unit proposed by the Union and contends that it would be more appropriate to have *two separate bargaining units, a unit of police officers and a unit of Water and Sewer Department employees.*

The Municipal Employee Relations Act requires the Board to determine whether a bargaining unit is appropriate. 21 V.S.A. Sections 1722(3), 1724(c). There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit or the most appropriate unit; the Act 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) for the Board to take into consideration in determining the appropriateness of bargaining units, the Board's primary concerns are to group together only employees who share a similar "community of interests", while at the same time guarding against overfragmentation of units and allowing individuals to exercise rights guaranteed under the Act. Middlebury, 6 VLRB at 231. Also, Section 1724(c)(3) provides: "In determining whether a unit is appropriate the extent to which the employees have organized is not controlling".

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, 6 VLRB at 232. A group of employees must at least be a readily identifiable and homogenous group apart from other employees to be an appropriate unit. Id. at 231.

The community of interest criterion must be considered together with whether overfragmentation of units will result in an adverse effect on effective representation of other employees or the effective operation of the employer. It is Board policy that

public rights and interests are better protected by larger units. Teamsters Local 597 and Champlain Valley Union High School Board of Directors, 7 VLRB 1 (1984). Champlain Valley Union High School Staff Association, VEA/NEA Local 325 and Champlain Valley Union High School Board of Directors, 3 VLRB 426 (1980). Placing employees in separate, relatively small bargaining units may result in excessive competition between employee groups with resultant Balkanization and whipsaw bargaining. Champlain Valley, 3 VLRB at 434-435.

In considering the extent to which employees have organized, the Board has held that the extent to which employees have organized may be given weight, provided that there are other substantial factors on which to base the unit determination and so long as the extent of organization is not the controlling factor. Teamsters, Local 597 and University of Vermont, 19 VLRB 64, 82 (1996); *Affirmed*, \_\_\_ Vt. \_\_\_ (Sup. Ct. Docket No. 96-254, July 28, 1997).

In applying these standards to this case, we conclude that a bargaining unit consisting of three police officers and two water and sewer employees is not an appropriate unit. Although the Town has apparently recognized that there is some *community of interests among the two water and sewer department employees and the three police officers* by placing them under the same personnel rules and giving them the same benefits, we note that all other nonelected Town employees are covered by these same policies and are recipients of these same benefits. In considering community of interests, a group of employees must at least be a readily identifiable and homogenous group apart from other employees to be an appropriate unit and we find nothing that readily identifies a group of law enforcement

employees with two water and sewer employees as a recognizable and homogeneous group apart from the other Town employees. This is particularly so in light of the fact that, in addition to the water and sewer employees, there are five Town employees who work in the Department of Public Works and also presumably perform nonclerical, or blue collar, work outside the municipal offices.

We recognize that, in three previous decisions under the Municipal Employee Relations Act, the Board has placed police department employees in the same bargaining unit as non-police employees under the Municipal Employees Relations Act. United Paperworkers International Union and Town of Wilmington, 19 VLRB 308 (1996). Local 1201, AFSCME, AFL-CIO and Town of Middlebury, 14 VLRB 93 (1991). Local 1369, AFSCME, AFL-CIO and Town of Barre, 12 VLRB 7 (1989). However, this case is distinguishable. The bargaining unit in the Middlebury case consisted of police employees and all other eligible employees of the Town. The unit in Wilmington consisted of police employees and all eligible blue collar employees. The Barre unit added police department employees to a relatively large established Department of Public Works unit. In each of those cases, the unit approved by the Board guarded against overfragmentation of units. The Union's proposed bargaining unit consisting of police officers and two water and sewer employees does not guard against overfragmentation of units given that the majority of employees eligible to be represented by a union would be excluded from the unit.

The most significant factor weighing in favor of the unit proposed by the Union is the extent to which the employees have organized. However, this factor alone cannot be the controlling factor. Teamsters, 19 VLRB at 82. If we were to

approve the Union's proposed bargaining unit, we would be giving improper weight to the extent of the Union's organizing. Thus, we conclude that the bargaining unit of all police officers under the rank of chief and all employees of the Water and Sewer Department, excluding the Superintendent, is not an appropriate unit.

We also reject the Town's contention that it would be appropriate to have two separate bargaining units, a unit of three police officers and a separate unit of two water and sewer employees. A community of interests exists between the two water and sewer employees, as it does among the three police officers. However, the community of interests criterion must be considered together with whether overfragmentation of units would result. The Town's proposed unit configuration could result in an obligation to negotiate and administer two collective bargaining contracts for five of the Town's 18 full-time employees. There likely would be an adverse effect on the effective representation of employees, as well as on the effective operation of the employer. Such a unit configuration would disregard Board policy and precedent which favors larger bargaining units as long as sufficient community of interests exists among employees.

Thus, in the absence of an appropriate unit, we dismiss the petition filed by the Union.

**ORDER**

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Union's Petition for Election of Collective Bargaining Representative is DISMISSED.

Dated this 17~~th~~ day of September, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Catherine L. Frank  
Catherine L. Frank, Chairperson

/s/ Leslie G. Seaver  
Leslie G. Seaver

/s/ Richard W. Park  
Richard W. Park