

VERMONT LABOR RELATIONS BOARD

PETITION OF:	)	
	)	
NEW ENGLAND POLICE	)	DOCKET NO. 15-31
BENEVOLENT ASSOCIATION (RE:	)	
SWORN LAW ENFORCEMENT	)	
OFFICERS)	)	

MEMORANDUM AND ORDER

This matter involves a petition filed by the New England Police Benevolent Association (“NEPBA”) on August 14, 2015, to represent the sworn law enforcement officers of the Vermont Department of Fish & Wildlife, Vermont Department of Liquor Control and Vermont Department of Motor Vehicles. The officers currently are represented by the Vermont State Employees’ Association (“VSEA”) as part of the Non-Management Bargaining Unit, and are covered by a collective bargaining agreement effective July 1, 2014 to June 30, 2016. The petition was filed pursuant to Section 13.2 of Labor Relations Board *Rules of Practice*, which provides: “If a collective bargaining agreement is in effect which covers any or all of the employees to be covered by the petition, a petition shall normally be considered timely only if filed during the period 150 to 120 days prior to the date the General Assembly convenes in regular session for the year during which the collective bargaining agreement expires . . .”

The Labor Relations Board needs to decide whether to grant a motion filed by the VSEA on September 2, 2015, to dismiss this petition. Also, the State of Vermont in response to the petition has taken the position that the bargaining unit proposed by the NEPBA would not be an appropriate bargaining unit. VSEA and the State both rely on the Labor Relations Board decision, Petition of Vermont State Employees’ Association (Re: Sworn Law Enforcement Officers), 32 VLRB 1 (2012). In the decision, the Board held that the same proposed bargaining unit of sworn law enforcement officers involved in this petition would not be an appropriate unit.

The NEPBA filed a response on September 25, 2015, in opposition to the motion to dismiss the petition.

In responding to the motion to dismiss, the NEPBA is required to submit evidence that facts have changed with respect to the situation involving sworn law enforcement officers since the Board decision in 2012 for the Board to find reasonable cause to believe that a question of unit determination or representation exists warranting a Board hearing to reconsider the appropriateness of the proposed bargaining unit. 3 V.S.A. §941(d)(1). Teamsters Local 597 and Champlain Valley Union High School District Board of Directors, 7 VLRB 1, 3 (1984).

In its response, the NEPBA asserts that the facts have changed with respect to the situation involving sworn law enforcement officers since the Board 2012 decision. The NEPBA notes that, at the time of the 2012 decision, the employees in the proposed unit did not have a representative on the Non-Management Unit negotiations team advocating for their interests. Following the Board decision, Officer Michael Davidson of the Department of Liquor Control was appointed to the bargaining team in 2012. However, the NEPBA asserts that, despite having representation on the negotiating team, many of the issues/proposals of importance to the sworn law enforcement officers were ignored and/or not seriously considered by the State and the remaining non-law enforcement employees of the Non-Management Unit due to the fact that these issues were not applicable to the majority of the Non-Management Unit employees.

In support of this assertion, the NEPBA first points out that Davidson proposed that percentage pay steps be shortened in order for law enforcement personnel to be able to reach their top pay scale under the collective bargaining agreement. The NEPBA indicates that this proposal was offered by VSEA during 2012 negotiations but that a State counterproposal on the issue was not accepted by VSEA.

The NEPBA also offers in support of its assertion that Davidson proposed extra disability protection for injuries that occurred on the highway for sworn law enforcement personnel. The NEPBA indicates that a proposal on this issue was made by VSEA in negotiations, but that it was revised to apply to all Non-Management Unit employees, and was ultimately rejected by the State. The NEPBA submits as additional evidence that Davidson proposed during 2012 contract negotiations to amend the collective bargaining agreement to enhance the personal leave time benefit for sworn law enforcement officers, and this proposal was rejected.

The NEPBA further points out in support of its position that the interests of sworn law enforcement officers are not being met in the Non-Management Unit the fact that the officers requested that VSEA establish a labor management committee to address specific issues related to the officers' common needs, and a labor management committee has yet to be established. Moreover, the NEPBA contends in this regard that officers' concerns expressed to VSEA concerning the creation of policies and procedures regarding critical incidents have gone unaddressed.

In sum, the NEPBA contends that facts have changed since the 2012 Board decision so that the separate and distinct community of interests among sworn law enforcement officers should not be superseded by a possibility of overfragmentation of units if the officers are placed in their own bargaining unit. The NEPBA cites the provisions of Vermont Rule of Civil Procedure 12(b)(6), concerning a motion to dismiss a claim based on failure to state a claim upon which relief can be granted, to contend that the petition should not be dismissed at this time.

The NEPBA reliance on Vermont Rule of Civil Procedure 12(b)(6) is misplaced. The Board has not adopted Rule 12(b)(6) in the Board *Rules of Practice*. See Section 12.1, Board

*Rules of Practice*. Further, the Board has not relied on it in ruling on motions to dismiss. Instead, as indicated earlier, the NEPBA is required to submit evidence that facts have changed with respect to the situation involving sworn law enforcement officers since the Board decision in 2012 for the Board to find reasonable cause to believe that a question of unit determination or representation exists warranting a hearing before the Board to reconsider the appropriateness of the proposed bargaining unit. 3 V.S.A. §941(d)(1). Teamsters Local 597 and Champlain Valley, 7 VLRB at 3.

The Board determined in the 2012 decision that the sworn law enforcement officers of the Department of Fish & Wildlife, Vermont Department of Liquor Control and Vermont Department of Motor Vehicles in the proposed unit share a community of interests, and that they also share a community of interests with the other employees in their respective departments who are in the Non-Management Unit. 32 VLRB at 15-16. In any event, the Board concluded that the community of interests among the sworn law enforcement officers is not sufficient to justify a conclusion that they constitute an appropriate bargaining unit. The Board held that approving such a unit, which would constitute just one percent of state employees eligible to be represented by an employee organization for collective bargaining purposes, would result in overfragmentation of units to a degree which is likely to produce an adverse effect on the effective representation of other employees and upon the effective operation of the employer. 32 VLRB at 16-17. The Board stated: “If we were to allow a bargaining unit such as is proposed here, the precedent established would create the potential of setting into motion a significant

expansion of bargaining units in state government and resulting complications of dealing with a multiplicity of units.” 32 VLRB at 17.

The NEPBA has not presented evidence that facts have changed providing reasonable cause to warrant holding a hearing before the Board to reconsider the appropriateness of the proposed bargaining unit. Some of the evidence presented by the NEPBA actually indicates an improvement in the interests of the sworn law enforcement officers being met in the existing Non-Management Unit. A representative of the officers has been appointed to the Non-Management Unit bargaining team since the 2012 decision, and no such representative existed at the time of the decision. Also, the NEPBA mentions a side letter agreement in the current collective bargaining agreement providing that the on-call, standby, available status and holiday articles of the agreement shall not be applicable to Liquor Control Investigators. This indicates that the interests of the officers have been addressed in negotiations.

Further, the proposals cited by the NEPBA concerning step pay increases and disability protection do not support a reconsideration of the 2012 Board decision. VSEA presented proposals on these issues in 2012 during negotiations. The fact that they did not find their way into the collective bargaining agreement in one round of negotiations does not justify placing affected employees in a separate bargaining unit. The sworn law enforcement officers may not be entirely satisfied with the specifics of contract provisions negotiated on issues of concern to them. However, the complete satisfaction of all who are represented is hardly to be expected in the give and take of the negotiation process. Petition of Vermont State Employees’ Association (Re: Sworn Law Enforcement Officers), 32 VLRB at 19.

Also, the issues mentioned by the NEPBA concerning rejected changes in personal leave time accrual, failure to establish a labor-management committee, and absence of activity on critical incident policies and procedures do not constitute changes in facts with respect to the situation of sworn law enforcement officers warranting reconsideration of the 2012 Board decision. There are many competing interests in negotiations and otherwise which may result in some issues affecting specific groups of employees not being addressed. This does not justify by itself calling into question the existing unit structure.

A petitioner seeking to carve out a smaller bargaining unit from a smaller unit must present a compelling case to justify disrupting the existing unit structure in state government. Petition of Vermont State Employees' Association (Re: Sworn Law Enforcement Officers), 32 VLRB at 18. The NEPBA would have a more compelling case if concerns of sworn law enforcement officers were largely ignored. That is not the case. The 2012 decision detailed numerous provisions in the collective bargaining agreement, and an agreement reached outside of negotiations, directed exclusively at the sworn law enforcement officers of the Department of Fish and Wildlife, Department of Liquor Control and Department of Motor Vehicles. 32 VLRB at 9-10, 18. This indicates that the interests of the sworn law enforcement officers have been addressed in negotiations and otherwise.

Based on the foregoing reasons, it is ordered that the petition filed by the New England Police Benevolent Association to represent the sworn law enforcement officers of the Vermont Department of Fish & Wildlife, Vermont Department of Liquor Control and Vermont

Department of Motor Vehicles is dismissed pursuant to 3 V.S.A. §941(d)(1) due to the absence of reasonable cause to believe that a question of unit determination or representation exists.

Dated this 16th day of October, 2015, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

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Gary F. Karnedy, Chairperson

/s/ Edward W. Clark, Jr.

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Edward W. Clark, Jr.

/s/ Robert Greemore

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Robert Greemore