

VERMONT LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 300)	DOCKET NO. 81-41
v. VILLAGE OF ENOSBURG FALLS)	

FINDINGS OF FACT, OPINION AND ORDER

On August 31, 1981, the International Brotherhood of Electrical Workers, Local 300 ("Union") filed an unfair labor practice charge with the Vermont Labor Relations Board against the Village of Enosburg Falls ("Village"). The Union alleged that the Village was in violation of 21 VSA §1726(a)(5) by refusing to bargain the wages, hours, and conditions of employment of the Police Department position in the bargaining unit. On September 4, 1981, the Village filed a letter with the Board. Therein, the Village maintained that the present occupant of the Police Department position was a sergeant, and that the sergeant's position was a supervisory position and thus excluded from the bargaining unit.

On October 16, 1981, the Board, while recognizing there was a question whether the person holding the position in dispute was a supervisor and thus excluded from the bargaining unit, found an unfair labor practice complaint.

A hearing was held November 5, 1981, in the Board hearing room in Montpelier. The full Board was present. James Merrigan represented the Union, and the Village was represented by Garnet Harvey. During the course of the hearing, the Board determined the unfair labor practice complaint would not be pursued, and the sole issue decided would be whether the position was in the bargaining unit.

FINDINGS OF FACT

1. On January 13, 1978, the Board, as a result of a representation election held, certified the Union as the exclusive bargaining representative for all employees in the Public Works Department and Police Department of the Village of Erosburg Falls (Union's Exhibit #2).

At the time of the certification, the Police Department had one full-time employee, Carroll Billado, the Police Chief. He was included in the bargaining unit. Billado reported to the Police Commissioner and, ultimately, the Village trustees.

3. Sometime subsequent to this certification, the Village hired Dale Delisle to be a patrolman in the Police Department. Delisle was included in the bargaining unit.

4. At the hearing on this matter, the parties stipulated and we find that Chief Billado was removed from the bargaining unit by agreement of the parties when Delisle was hired and put in the unit. The Board was not notified at the time this agreement was made.

5. From the time Delisle was hired until the hearing on this matter, there have been two full-time employees in the Police Department.

6. Delisle subsequently left the patrolman's position and was replaced by Richard Jewett. Jewett was included in the bargaining unit.

7. In March, 1981, the Village residents voted on how many police officers the Village would employ. The vote to have two officers instead of one passed narrowly.

8. On April 30, 1981, the Board of Trustees of the Village sent the Police Department a letter, noting instances where Patrolman Jewett had not conformed to his job description, and warned Jewett that failure to comply with the job description would mean immediate dismissal (Union Exhibit #5).

9. Jewett left his job on approximately May 22, 1981.
10. Bruce Dupra was hired by the Police Department on May 22, 1981. When hired, Dupra was told by Chief Billado he would be a special officer with the possibility of advancement. Dupra was told if he passed probation and passed the exam for sergeant, he would be promoted.
11. On June 1, 1981, the Village posted a position opening for full-time patrolman (Union's Exhibit #3). The notice was posted at the Village Clerk's office, the Village Garage, and the Wastewater Treatment Plant. Posting job openings is a requirement of the collective bargaining agreement.
12. The collective bargaining agreement between the parties requires that employees subject to the Agreement shall become a member of the Union within 30 days after the date of their initial employment.
13. Sam Gates, Union Steward, approached Bruce Dupra about joining the Union sometime during the first two months of Dupra's employment. Dupra told Gates he would join the Union if it was necessary to keep his job. Dupra never did join the Union.
14. On July 22, 1981, Dupra was promoted to sergeant. Dupra was promoted after taking and passing a standardized sergeant's exam approved by the Vermont Police Academy.
15. When Dupra was made sergeant, Chief Billado gave him a copy of Police Department Rules and Regulations (Village's Exhibit A). Included in these Rules and Regulations is the statement:

The sergeant will not participate in any union activities
nor will the sergeant become a member of any union...

16. The duties performed by Dupra in the two months prior to becoming sergeant and those he has performed since becoming sergeant are similar. The only significant change in his duties was he became more independent.

17. Dupra's duties involve regular patrol, criminal investigation, accident investigation, and serving as a liason between his Department and the State Police and Sheriff's Departments.

18. When Chief Billado is not on duty, Dupra is in charge of the Police Department. Dupra is in charge of the Police Department 75 to 80 percent of his on-duty hours.

19. Besides their two full-time police officers, the Village Board of Trustees hires, with the recommendation of the police chief, two "Specials" to work on an ad-hoc basis as needed. The Specials typically cover events such as school dances, sports contests, and parades. When doing so they are paid by the person or group running the event. Also, the police department may, on occasion, use the Specials as backup to them. At these times, the Specials are paid by the Village.

20. On an average, the total man-hours worked by the Specials in a month is 30 hours. Thus, on an average, an individual Special works three and one-half hours a week.

21. When a person or group, such as a school, needs a Special to cover an event, they contact the Police Department. Chief Billado or Dupra, in turn, contact one of the Specials. The Special checks in at the police office before going to the event. He is given a portable walkie-talkie to maintain contact with the police officer on duty. He then goes to the event and periodically checks in with the officer on duty.

22. On August 21, 1981, during contract negotiations between the Village and the Union, the town refused to negotiate wages, hours, and conditions of employment for the position held by Sergeant Dupra, and, to date, has not negotiated over the position.

23. The Village maintains that Sergeant Dupra is a supervisor and excluded from the bargaining unit, and that the Police Department position in the bargaining unit is patrolman and this position is vacant.

24. At the hearing on this matter, entered into evidence was a collective bargaining agreement between the Village and the Union signed August 23, 1981, by the Village. Included within this document is the weekly salary for patrolman - \$219.20. The Union did not negotiate this salary and had not, at the date of the hearing, signed the Agreement.

25. Sergeant Dupra is paid \$219.20.

26. There is no dispute the position of patrolman is properly included within the bargaining unit.

27. The Village maintains it will hire a patrolman as soon as finances permit.

OPINION

At issue here is whether Sergeant Dupra is a supervisor as defined in 21 VSA §1502 and, thus, not considered a municipal employee and excluded from eligibility to be part of a bargaining unit pursuant to 21 VSA §1722 (12)(B).

At the outset, we note part of the Village's claim here apparently is the mere fact that Bruce Dupra was made a sergeant makes him a supervisor. There is no validity to this claim. Our task is to examine the actual working relationships, and the title given the individual is not relevant.

21 VSA §1502(13) defines supervisor as:

An individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

The Village maintains Sergeant Dupra fits this definition of supervisor because he acts as supervisor of the two Specials hired by the Village to cover dances, sporting events and occasionally act as backup to the full-time police officers. We disagree with the Village on two grounds.

First, Sergeant Dupra does not possess any of the supervisory powers over the Specials detailed in 21 VSA §1502(13). Specials are not hired by the sergeant. They are hired by the Village Board of Trustees with the recommendation of the police chief. The sergeant may call the Specials and tell them to report to work, but the actual hiring of the Specials occurred when the Village appointed them to the position. There is no indication Specials have ever been laid off, recalled, transferred, or promoted, but it is obvious if any such personnel action was taken, it would be done by the same people doing the hiring - the Village trustees with the recommendation of the police chief. Also, there is no evidence before us of a special being discharged, suspended, or otherwise disciplined. However, it is worth noting that the only evidence before us of a Village police department employee being disciplined, the warning letter sent to Patrolman Jewett, indicates the Village trustees took the disciplinary action. Further, the sergeant has no authority to "reward" Specials. They are typically rewarded, or paid, by the person or groups

running the event. If the Village uses the Specials as backup to the full-time police officers, the Specials are paid by the Village. There may be some argument Sergeant Dupra "assigns" Specials since he may call them and inform them they are needed to work in a particular place. However, this duty is "merely routine or clerical" and does not "require the use of independent judgment".

Sergeant Dupra may be called upon to "direct" Specials to some extent while they are working events, such as dances and sports contests. They are required to maintain radio contact with the police officer on duty, presumably so the officer may direct Specials in the procedure of handling situations that arise. However, there is no evidence Dupra enjoys much latitude in relating to the Specials the proper procedure to use. There is no indication he does anything but simply relate standard operating procedure of the Department. Dupra does direct employees to some extent, but such direction does not rise to the level to constitute exercise of supervisory authority.

We also do not believe Sergeant Dupra is in a position to effectively recommend supervisory actions or adjust employee grievances. The Village Police Department is small and there are two layers of authority above Sergeant Dupra - Chief Billado and the Village trustees. It is obvious any supervisory authority in such a small operation can and is effectively carried out by the chief and the trustees. The fact that Sergeant Dupra is paid at the rate of a patrolman further increases our skepticism that his promotion to sergeant made him a supervisor. In sum, there is no evidence the sergeant does, in fact, effectively exercise supervisory authority or can effectively recommend supervisory actions.

Accordingly, for the foregoing reasons, we find that Sergeant Dupra is not a supervisor pursuant to 21 VSA §1502(13), and should be placed in the bargaining unit.

Concern was expressed at the hearing by the Village and Sergeant Dupra that if the Board placed Dupra in the bargaining unit, then the effect would be to demote Dupra from a sergeant to a patrolman since the parties have negotiated a union shop provision in the Agreement and Village Police Department Rules and Regulations prohibit the sergeant from belonging to a union. The Department Rules and Regulations are in conflict with Vermont statute. 21 VSA §1724 provides that the Board will determine the appropriate bargaining unit. The parties may negotiate the composition of the bargaining unit, as they did here when they removed the police chief from the unit. However, if the parties do not consent to negotiate and agree on the unit, the determination will be made by the Board. Douds v. International Longshoremen's Association, 241 F2d 278, 39 LRRM 2388 (CA2, 1957). There was no agreement by the parties here to remove the sergeant's position from the bargaining unit. The effect of the Department Rules and Regulations; issued unilaterally, is to usurp the Board's power illegally. Where there is a conflict, law supersedes rules and regulations. Thus, our placing Sergeant Dupra in the bargaining unit does not mean he cannot retain his sergeant's rank.

ORDER

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

the Certification issued by the Vermont Labor Relations Board on January 13, 1978, is amended to provide that the Sergeant and Patrolman positions in the Village of Enosburg Falls Police Department, shall be included in the bargaining unit represented by Local #300, International Brotherhood of Electrical Workers, and the Police Chief shall be excluded from the unit.

Dated this 7th day of December, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.
William G. Kemsley, Sr.

James S. Gilson
James S. Gilson