

VERMONT LABOR RELATIONS BOARD

| | | |
|---------------------------------|---|------------------|
| AMERICAN FEDERATION OF STATE, |) | |
| COUNTY AND MUNICIPAL EMPLOYEES, |) | |
| AFL-CIO |) | DOCKET NO. 83-49 |
| and- |) | |
| |) | |
| TOWN OF MIDDLEBURY |) | |

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 5, 1983, the American Federation of State, County and Municipal Employees, AFL-CIO ("Union") filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board. The petition requested an election among the patrolmen, corporal, sergeant and secretary/dispatcher of the Town of Middlebury ("Town") Police Department. The petition was supported by authorization cards signed by not less than 30 percent of the employees of the proposed bargaining unit.

On July 22, 1983, the Town informed the Board that a question of unit determination existed; specifically that the sergeant should be excluded from the bargaining unit as a supervisor and that the secretary/dispatcher should be excluded because she was not a police officer, had an insufficient community of interest and may be a confidential employee.

A hearing was held before the full Board on August 18, 1983. Ellen David-Friedman represented the Union. The Town was represented by Attorney Allan Drachman. At the hearing, the Town withdrew its claims the sergeant was a supervisor and the secretary/dispatcher was a confidential employee, and agreed the only issue before the Board was

whether the secretary/dispatcher should be excluded from the bargaining unit because of a lack of a community of interest with the rest of the proposed bargaining unit.

The parties waived the filing of memoranda and the Board took the matter under advisement.

FINDINGS OF FACT

1. The Town Police Department has nine full-time police officers, a full-time secretary/dispatcher and six reserve officers. The Department is headed by the Police Chief, Albert Watson, and the full-time officers under him are a lieutenant/investigator, a patrol sergeant, a corporal, and five patrolmen.

2. Patrolmen are responsible for enforcing State laws and town ordinances, maintaining order, preventing crimes, making arrests and performing related work. The patrolmen work rotating shifts, and are required to work on holidays (Town Exhibit 2).

3. The secretary/dispatcher, Bonnie Murray, has two primary duties: 1) typing, and 2) dispatching. Twenty to 50 percent of her time is spent performing dispatching duties and most of the remainder of her duties involve typing.

4. Murray's hours of work are from 7:30 a.m. to 4:00 p.m., Monday through Friday. She is not required to work on holidays. Murray spends most of her work day in the Police Department office.

5. During Murray's hours of work, two patrolmen are on duty; one assigned to a cruiser and one walking a beat.

6. As dispatcher, Murray handles incoming complaints from the public. She solicits the necessary information from the public, then dispatches a police officer. If a fatality is not involved, she dispatches the officer who is working in the cruiser. If a fatality is involved, she contacts the higher officers in the chain of command.

7. A great deal of the safety and effectiveness of the police depends on Murray soliciting the relevant information on phone complaints and relaying it to officers in a timely manner.

8. To be effective, the dispatcher must be knowledgeable of the police code system, the inner workings of the police department, various statutes, the use of the radio and the proper way to handle complaints. A minimum of two months and as much as a year is required to adequately train a dispatcher.

9. If a woman is arrested while Murray is on duty and appears to be dangerous, Murray may be called upon to do a strip search of the woman. She has done this on occasion.

10. The police chief is the regular supervisor of both Murray and the police officers. The police chief conducts performance evaluations and hears the grievances of both Murray and the police officers, and follows the same procedures in this regard for Murray and the officers.

11. When Murray is absent from work, a patrolman performs her dispatching duties. Murray has never been replaced by one of the other Town secretaries. During the hours Murray is not scheduled to work, the State Police perform dispatching duties for the Town.

12. The Town employs four secretaries: 1) secretary to the town manager; 2) secretary to the planning officer, assessor and recreation

director; 3) secretary of the Public Works Department; and 4) secretary/dispatcher of the Police Department (Town Exhibit 5).

13. The jobs of the secretaries are interchangeable in that all of the jobs require a great deal of typing, provide the same workweek (five-day week, 37 1/2 hours a week), do not require holiday work, and have the same minimum and maximum rates of pay (Town Exhibit 4). The secretary/dispatcher of the Police Department and the secretary of the Public Works Department perform different duties than the other secretaries in that they also serve as dispatchers.

14. If a secretarial position becomes available, it would normally be offered to the clerk/typist who works for the Town.

15. All Town employees have the same fringe benefit package.

16. Both secretaries and patrolmen get 1 1/2 times their hourly pay rate for overtime worked.

OPINION

At issue is whether the position of secretary/dispatcher should be excluded from the proposed Police Department bargaining unit because of a lack of community of interest with the other employees in the proposed unit; the patrolmen, corporal and sergeant.

The Town claims the secretary/dispatcher does not share a community of interest with the other Police Department employees and would more appropriately be included in a bargaining unit with other secretaries employed by the Town.

The Municipal Employee Relations Act (MERA) requires the Board to determine whether a bargaining unit is "appropriate". 21 VSA §1722(3).

21 VSA §1724(c). We interpret the work "appropriate" the same way the National Labor Relations Board (NLRB) has in construing the provisions of the National Labor Relations Act:

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". It must be appropriate to ensure the employees in each case the fullest freedom in exercising the rights guaranteed by this Act". Morand Bros. Beverage Co., 91 NLRB 409, 412 (1950).

In determining whether a unit is appropriate, MERA provides that the Board shall take into consideration the following criteria:

- 1) The similarity or divergence of the interests, needs, and general conditions of employment of all employees within the proposed bargaining unit...
- 2) Whether overfragmentation of units will result from certification to a degree which is likely to produce an adverse effect on the effective representation of other employees of the municipal employer or upon the effective operation of the municipal employer.
- 3) In determining whether a unit is appropriate the extent to which the employees have organized is not controlling. 21 VSA §1724(c).

Based on these criteria, the Board's primary concerns are to group together only employees who share a similar "community of interest", at the same time guarding against overfragmentation of units, and allowing individuals to exercise rights guaranteed under MERA.

The NLRB has long recognized the fundamental importance of employees sharing a similar community of interest, stating in Bremen Steel Co., 93 NLRB 720, 725 (1951):

For a group of employees to constitute an appropriate bargaining unit, such group must be at least a readily identifiable and homogenous group apart from other employees.

Although community of interest is not susceptible to precise definition or mechanical application, the NLRB has enumerated the following factors to be considered in determining a community of interest apart from other employees:

(A) difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

In applying those factors here, we believe that the secretary/dispatcher shares substantial mutual interests with the police officers so that it is appropriate to include her in the proposed bargaining unit. The secretary/dispatcher's interests, needs and general conditions of employment diverge from the police officers insofar as she does not work rotating shifts as they do; has dissimilar qualifications, trainings, skills and different job functions; and, unlike the officers, she spends little time away from the office. However, she has similar employment benefits and method of compensation as the officers; the same supervisor in the police chief; and as dispatcher, has frequent contact with the officers and integration of work functions with them. It is particularly noteworthy that a great deal of the safety and effectiveness of the police officers depend on Murray performing her dispatching duties effectively in soliciting the relevant information on phone complaints and relaying it to officers in a timely manner. In weighing these factors, we believe

that, while it is a close question, it is appropriate for the secretary/dispatcher to be included within the bargaining unit with the police officers as the proposed unit constitutes a "readily identifiable and homogenous group apart from other employees" Brenan Steel Co., supra, and this ensures the secretary/dispatcher the fullest freedom in exercising her rights to bargain collectively. 21 VSA §1721.

We also conclude the proposed unit will not result in overfragmentation of units. cf. Champlain Valley Union High School Staff Association, VEA/NEA Local 325 and Champlain Valley Union High School District No. 15 Board of School Directors, 3 VLRB 426 (1980). Police Department employees are sufficiently functionally distinct from other parts of Town government that it is appropriate they have their own bargaining unit.

We have some reservations about placing the secretary/dispatcher in the bargaining unit with the police officers because it will be necessary to negotiate various separate contractual provisions just for that position since, for instance, the secretary/dispatcher does not have statutory appeal rights from dismissal like police officers (24 VSA §1931-1934) and does not work rotating shifts like the officers. If this presents serious problems in negotiations for the collective bargaining agreement, either party may appeal to the Board for reconsideration

ORDER

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

The secretary/dispatcher of the Town of Middlebury Police Department shall be included in the bargaining unit with the Department's patrolmen, corporal and sergeant.

Dated this 25th day of September, 1983, 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