VERMONT LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1201, AFL-CIO	)	DOCKET NO. 84-13
and	)	
CITY OF RUTLAND	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On February 21, 1984, the American Federation of State, County and Municipal Employees, Local 1201, AFL-CIO ("AFSCME") filed a petition with the Vermont Labor Relations Board, requesting the addition of two Rutland City Hall custodian positions to the existing Department of Public Works bargaining unit represented by AFSCME. On March 15, 1984, the City of Rutland ("City") informed the Board of its position that it was not appropriate to add the custodian positions to the Department of Public Works unit.

A hearing was held before Board Members William G. Kemsley, Sr., and James S. Gilson on May 24, 1984. Chairman Kimberly B. Cheney was absent from the hearing. Acting Chairman Gilson informed the parties Chairman Cheney would assist in deciding legal issues if necessary. AFSCME Representative Ellen David-Friedman represented AFSCME. The City was represented by City Attorney Frank Zetelski.

The City filed a Memorandum of Law on June 8, 1984. AFSCME filed no Memorandum, and neither party filed a Reply Brief.

FINDINGS OF FACT

1. AFSCME is the exclusive bargaining representative of three units of City employees: 1) the Department of Public Works Unit ("DPW Unit"); 2) the Police Department Unit; and 3) School Maintenance Employees Unit.

2. Until February 11, 1982, AFSCME was also certified as the exclusive bargaining agent for a bargaining unit consisting of all clerical and technical employees in the Department of Public Works, Department of Recreation, Office of the City Clerk, Treasurer, Assessor, Building Inspector and City Hall Maintenance Employees, excluding supervisory and confidential employees (AFSCME Exhibits 3, 4). On February 11, 1982, the Labor Relations Board decertified AFSCME as the collective bargaining representative for the employees in this unit subsequent to a request by AFSCME to decertify it as representative of the unit and after no employees in the unit objected to the decertification (Clerks and Technical Employees, Local 1201, AFSCME and City of Rutland, Docket No. 81-84).

3. The employees in the above "Clerks and Technical Employees Unit" were not all supervised by the same supervisor, but were supervised by the head of the Department for which they worked.

4. The City Hall custodians were included in the Clerks and Technical Employees Unit, and at the time were supervised by the City Board of Finance. Subsequently, the Board of Finance delegated its supervisory authority to the City Treasurer.

5. The Dispatcher for the Department of Public Works was included in the Clerks and Technical Employees Unit. Subsequent to the

decertification of AFSCME as the collective bargaining representative of the Clerks and Technical Employees Unit, AFSCME petitioned the Board for inclusion of the dispatcher in the DPW Unit. The Board denied the request because it concluded the Dispatcher was a confidential employee, Local 1201, AFSCME and City of Rutland, 5 VLRB 296 (1982), but the Vermont Supreme Court reversed the Board and included the Dispatcher in the DPW Unit. In re Local 1201, AFSCME, Rutland Department of Public Works, 143 Vt. 512 (1983).

6. Clerical employees in the Police Department were included in the Clerks and Technical Employees Unit. Subsequent to the decertification of AFSCME as the representative of employees in that unit, the Police Department clerical employees were placed in the Police Unit.

7. With the exception of the Department of Public Works dispatcher and the Police Department clerical employees, no other employees whose positions were included in the Clerks and Technical Employees Unit are included in any other unit represented by AFSCME.

8. The present City Hall custodians, Allan Eddy and Edward Moran, work a midnight to 8:00 a.m. shift. They have worked that shift for approximately one year. Prior to that, they worked a 3:00 p.m. to midnight shift. Eddy and Moran perform the same duties, and their work location is City Hall.

9. The job description for the City Hall Custodian position provides, under "Specific Duties and Responsibilities", the following:

> Works under general supervision.
> Performs simple maintenance duties as required.
> Picks up City's mail and delivers to City Clerk's office.
> Empties waste paper containers.
> Keeps building in good repair performing routine painting, plumbing and other related maintenance activities, using hand tools.

Notifies proper authorities concerning need for major repairs or additions to lighting and heating equipment.
Sweeps, mops and cleans the offices, and other areas of the Municipal Building.
Sets and maintains thermostats to insure proper heating.
Performs messenger duties as required.
Performs chauffer(sic) duties as required.
Performs other related duties as required.

(AFSCME Exhibit #6)

10. Eddy and Moran regularly perform the duties contained in the job description except that they have not performed messenger duties or chauffeur duties since they have been on the midnight to 8:00 a.m. shift.

11. City Treasurer Ronald Graves supervises Eddy and Moran. Eddy and Moran receive very little day-to-day supervision from Graves, who works regular office hours. Graves does see Moran daily because Moran delivers the mail to City Hall, and sees Eddy two or three times a week. Graves supervises no Department of Public Works employees.

12. The Department of Public Works is headed by a Commissioner and is divided into three divisions: 1) Sewage Treatment Plant, 2) Street Department, and 3) Water Department.

13. The Department of Public Works has four custodian positions: one in the Street Department and three in the Sewage Treatment Plant. The custodian in the Street Department is supervised by the Superintendent of the Street Department, Donald Foster. The Sewage Treatment custodians are supervised by Sewage Treatment Manager, Bob Harvey.

14. The job description for the Custodian, Sewage Treatment Plant, position, which was negotiated by AFSCME and the City and which accurately reflects the duties of that position provides:

SUMMARY OF DUTIES AND RESPONSIBILITIES

Performs various cleaning and general maintenance duties in the treatment facility. Sweeps, mops, polishes floors, washes windows, walls, woodwork, cleans restroom, paints, etc. Also keeps bar screen free of debris. Acts as security, checking for equipment malfunctions or situations caused by climatic conditions. Cleans and maintains facility grounds and walks.

Performs all other related duties are required.

(AFSCME Exhibit #2)

15. The job description for the Custodian, Department of Public Works Garage, position, which was negotiated by AFSCME and the City and which accurately reflects the duties of that position, provides:

SPECIFIC DUTIES & RESPONSIBILITIES

Works under General Supervision.
Performs simple maintenance duties as required.
Keeps building in good repair performing routine painting, plumbing and other related maintenance activities, using hand tools.
Notifies proper authorities concerning need for major repairs or additions to lighting and heating equipment.
Sweeps, mops and cleans the office and bays and other areas of the garage.
Sets and maintains thermostats to insure proper heating.
Performs messenger duties as required.
Keeps simple inventory and stockroom records.
Cleans and maintains ground surrounding building.
Helps clean various buildings.
May assist on simple Public Works maintenance projects.
Performs other related duties as required.

(AFSCME Exhibit #1)

16. The Sewage Treatment custodians perform their duties in the Sewage Treatment Plant. The Street Department custodian works in the Department of Public Works Garage.

17. The present City Hall custodians have no opportunity for advancement into other positions in City Hall as they are not qualified for the positions. They are qualified for certain positions in the Department of Public Works Unit.

18. In addition to the City Hall Custodians and the Department of Public Works Custodians, the City employs a Custodian in the City Recreation Department. Also, the City School Department employs custodians, who are represented by AFSCME in a bargaining unit consisting of school maintenance employees.

19. The City Hall Custodians have, on occasion, worked with Department of Public Works employees when those employees are assigned to perform projects in City Hall.

20. Both Moran and Eddy have signed authorization cards designating AFSCME as their "duly chosen and authorized representative on matters relating to my employment in order to promote and protect my economic welfare". These cards are in the possession of the Board.

OPINION

At issue is whether the Board should include the City Hall custodian positions in the existing Department of Public Works bargaining unit ("DPW Unit").

The City objects to the inclusion of the positions in the DPW Unit, primarily because the supervision of the positions sought to be included is by the City Treasurer, whereas all positions in the DPW Unit are supervised by the Commissioner of Public Works. The City maintains it would be more appropriate to include the positions in the unit which was represented by AFSCME until the decertification of AFSCME in 1982, the Clerks and Technical Employees Unit, since that unit primarily consisted of employees in City Hall.

Under the Municipal Employee Relations Act (MERA), we must determine whether a bargaining unit is appropriate. 21 VSA §1722(3). 21 VSA §1724(c). As we held in AFSCME and Town of Middlebury, 6 VLRB 227 (1983), we interpret the word "appropriate" the same way the National Labor Relations Board 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).

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

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).

In balancing these criteria, it is our task to group together employees who share a "community of interest", while at the same time guarding against overfragmentation of units and seeking to "protect the rights of individual employees to self-organization". 21 VSA §1721. AFSCME v. Town of Middlebury, supra.

In determining whether employees share a community of interest, we look to factors such as common supervision; similarity of qualifications, training, skills and job functions; and the interchange and frequency of contact among employees. AFSCME v. Town of Middlebury, supra, at 232.

It is evident the City Hall custodians share a greater community of interest with employees in the DPW Unit than they do with other groups of City employees. Their qualifications, training, skills and job functions are most like custodians in the DPW Unit. While the City Hall custodians have different supervision than DPW custodians and other employees in the DPW Unit and do not frequently interact with those employees, they also do not have frequent contact or share common supervision with any other group of employees. This stems from the unusual hours they work and the unique reporting arrangement they have with the City Treasurer.

We disagree with the City that the City Hall custodians should not be placed in the DPW Unit because they more appropriately belong in the bargaining unit consisting of clerical and technical employees. While most clerical and technical employees may share the common workplace of City Hall with the custodians, an absence of similar interests is indicated by the lack of opportunity for the custodians to advance into other positions in City Hall. On the other hand, they are qualified to move into certain positions in the DPW Unit.

Also, to accept the City's argument that the City Hall custodians belong in the Clerks and Technical Employees Unit would mean to effectively prevent the City Hall custodians from being represented by a union since that unit is defunct. To so rule under the circumstances of this case would be contrary to the custodians' right to self-organization. 21 VSA §1721. This is particularly true given the fact that other employees who formerly belonged in the now-defunct unit are represented by AFSCME in other bargaining units. It would be unfair not to provide the Custodians with the same right; particularly when we are required to place employees in <u>an</u> appropriate unit, not <u>the most</u> appropriate unit.

We also decline to place City Hall Custodians in a bargaining unit separate from any other group of employees. To do so would ignore the "overfragmentation of units" criteria of MERA. To create a unit of two employees would be contrary to a strong public policy favoring the broadest possible unit and lead to the "adverse effect on the effective representation of other employees of the municipal employer or upon the effective operation of the municipal employer", 21 VSA §1724(c)(2),

noted in Champlain Valley Union High School Staff Association and Champlain Valley Union High School Board, 3 VLRB 426 (1980).

We conclude the addition of the City Hall Custodians to the DPW Unit will result in an "appropriate" unit.

The City requests that if the Board places the two positions in the DPW Unit, the Board should order that all provisions of the present collective bargaining contract governing the DPW Unit and City be negotiated with respect to the two new positions. In this matter, we have simply determined the appropriateness of the proposed bargaining unit. We have not been asked to and we will not require that the provisions of the contract be extended to the City Hall custodians. We only require the parties to negotiate in good faith with respect to wages, hours and conditions of employment of the custodians.

The City also requests that all members of the DPW bargaining unit be given the opportunity to vote on the inclusion of the City Hall Custodians in the unit. We believe no need exists for any election. 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). Further, we do not believe any question of representation exists requiring a representation election since the City Hall Custodians have indicated they wish to be represented by AFSCME.

ORDER

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

The Custodians employed in Rutland City Hall shall be included in the City of Rutland Department of Public Works bargaining unit represented by the American Federation of State, County and Municipal Employees, Local 1201, AFL-CIO, ("AFSCME") and AFSCME is CERTIFIED as the exclusive bargaining representative of the City Hall Custodians.

Dated this 28th day of June, 1984, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

William G. Kemsley, Sr.

James S. Gilson