

VERMONT LABOR RELATIONS BOARD

LOCAL 300, INTERNATIONAL)	
BROTHERHOOD OF ELECTRICAL)	
WORKERS)	
)	DOCKET NO. 85-9
and)	
)	
VILLAGE AND TOWN OF NORTHFIELD)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

By petition filed with the Labor Relations Board on February 15, 1985, and by an amended petition filed on February 20, 1985, Local 300, International Brotherhood of Electrical Workers ("Union") requested a representation election among employees of a bargaining unit consisting of certain employees of the Village of Northfield ("Village") and Town of Northfield ("Town").

On February 28, 1985, Edgar Gadbois, Municipal Manager for the Village and Town, informed the Board the Village and Town had questions as to the appropriateness of the proposed unit. Additionally, Gadbois informed the Board the Town took the position the petitioned-for employees were represented by the Personnel Committee for the purposes of collective bargaining.

After an unsuccessful attempt to informally resolve the issues in dispute, a hearing was held before Board members James S. Gilson, Acting Chairman, and William G. Kemsley, Sr., on April 25, 1985. Chairman Kimberly B. Cheney was absent. Gadbois represented the Village and Town. Union Business Representative Ernest Robbins represented the Union. At the hearing, Gadbois announced the Town was withdrawing its claim the petitioned-for employees were represented by the Personnel Committee.

At the conclusion of the hearing, the Board established May 9 as the deadline for submitting Requested Findings of Fact and Memoranda of Law. Neither party submitted briefs.

Chairman Cheney has participated in deciding the legal issues in this case, but has not participated in deciding the facts which have been determined by Members Gilson and Kemsley.

FINDINGS OF FACT

1. The Village and the Town are two distinct government entities. The Village and Town have separate elections, annual meetings, budgets and annual reports. The Village is governed by a Board of Trustees. The Town is governed by a separate Board of Selectmen (Town and Village Exhibit 2).

2. There have been a number of attempts in past years to merge the Town and Village. These attempts have failed despite active efforts by Village Trustees and Town Selectmen to effect the merger.

3. The Village and Town jointly employ a municipal manager, Edgar Gadbois, who administers the daily functions of the Town and Village.

4. In addition to the Municipal Manager, the Village employs the following employees: five Electric Utility employees, one Water Utility Maintenance craftsman, one Water Utility superintendent (who also serves as a Town and Village Highway Superintendent), one Sewer Utility craftsman, one Sewer Utility superintendent, one bookkeeper, one computer operator, one bookkeeper/computer operator, two principal clerks and a parttime personal secretary to the Manager.

5. In addition to the Municipal Manager, the Town employs a Police Officer and the following seven employees of the Highway Department: five equipment operators, one foreman and one mechanic.

6. The Union seeks to include in a single bargaining unit the seven employees of the Town Highway Department, the Town Police Officer and the following seven Village employees: the Water Utility maintenance craftsman, the Sewer Utility maintenance craftsman, the two principal clerks, the bookkeeper, the computer operator and the bookkeeper/computer operator.

7. The five employees of the Village Electric Utility comprise an existing bargaining unit currently represented by the Union. The Board certified the Union as the bargaining representative of the employees on May 28, 1981 (See Board Docket No, 81-7).

8. Anna Finnegan is the Village bookkeeper. She is responsible for all aspects of accounts receivable, accounts payable and disbursements for the Village General Fund, the Village Electric Utility and the Town Highway Department. In addition, she does miscellaneous billing by hand, inventory and job costing for the Village Electric Utility, supplies various information for power authorities and prepares special reports for the Municipal Manager and auditors. When she was hired, Gadbois told her she worked for the Village. She receives her pay from the Village.

9. Sharon Robinson is a principal clerk for the Village. She works in the Utilities office in a customer service position. She handles complaints from the public regarding electric, water and sewer problems and attempts to resolve them. She handles payment and receipts for the various utilities. The electric and water utilities serve both the Village and the Town. When Robinson was hired, Gadbois told her she worked for the Village. She receives her pay from the Village.

10. Carol Brown is a bookkeeper/computer operator for the Village. She does the payroll for the Village, Town and the local school system. She is paid by the Village.

11. The Town pays the Village on a contractual basis for clerical work performed by Village employees. The Town Treasurer and Town Clerk, both elected officials, also do clerical work for the Town.

12. William Lyon is the Superintendent of the Northfield Highway Department and the Superintendent of the Village Water Utility. He oversees the employees of the Town Highway Department and the Water Utility maintenance craftsman. Lyon's duties require that he perform work for the Village and the Town. He receives his regular paycheck from the Village and also gets remuneration from the Town on a yearly basis.

13. Until early January of 1985, two of the Highway Department employees who now work for the Town worked for the Village in a similar capacity. However, in late 1984, due to pressures of performance and cost, the Village Trustees and the Town Selectmen agreed to an arrangement effective in January, 1985, whereby the two Village employees would become Town employees and the Village would enter into a contract with the Town to pay for highway services.

14. The employees of the Town Highway Department in the proposed bargaining unit all perform basically the same duties; duties such as driving trucks, operating equipment, hauling gravel, plowing snow, sanding and digging ditches.

15. The Town Highway Department employees work fulltime throughout the year, with the exception of one Highway Equipment operator, Jamie Demasi. The Town Selectmen hired Demasi in 1982 with the intent he would work only during the winter months of December through March to

clear the roads. The Selectmen intended Demasi would work less than 100 days a year. However, during each of the years 1982, 1983 and 1984, Demasi worked more than 100 days a year for a variety of reasons. Demasi worked 40 to 60 hours per week during the period he worked.

16. The wages, hours and conditions of employment of both Village and Town employees are currently provided for in a single Personnel Plan.

MAJORITY OPINION

There are two issues before us: 1) whether one of the Town Highway employees, Jamie Demasi, is a seasonal employee and thus ineligible to be a member of a bargaining unit under the Municipal Employee Relations Act (MERA), 21 VSA §1721-1735; and 2) whether employees of the Town and Village should be included in a single bargaining unit or placed in two separate units. We will discuss each issue in turn.

The Town contends Jamie Demasi, whose position the Union seeks to include in its proposed bargaining unit, is a "seasonal" employee ineligible to be a member of a bargaining unit under MERA. §1722(12) of MERA provides in pertinent part:

"Municipal employee" means any employee of a municipal employer... except:

...

(C) individuals who have been employed on a probationary, provisional or other non-permanent status, or on a temporary, seasonal, on-call or part-time basis. "Part-time" means 20 hours per week or less. "Seasonal" means fewer than 100 working days in any calendar year...

The evidence indicates Demasi has worked more than 100 working days in each of the past three years. This work history convinces us Demasi is not a seasonal employee despite the Town Selectmen's intention he would work less than 100 days a year when he was hired. Actual practice

is more compelling than intent in our determination. We note the Town has raised no claim Demasi should be excluded from the definition of employee under any of the other exclusionary reasons listed in §1722(12)(C). Thus, we conclude he is a "municipal employee", as defined in MERA, eligible to be part of a bargaining unit.

The second issue before us is one we have not addressed before; whether employees of two distinct government entities should be placed in a single bargaining unit. The Union seeks to include in a single bargaining unit the seven employees of the Town Highway Department, the Town police officer and the following seven Village employees: the Water Utility maintenance craftsman, the Sewer Utility maintenance craftsman, the two principal clerks, the bookkeeper, the computer operator and the bookkeeper/computer operator. The Town and Village take the position two separate bargaining units should exist, one for Town employees and one for Village employees.

It is Board policy that public rights are protected by larger units. Teamsters Local 597 and Champlain Valley Union High School District No. 15 Board of School Directors, 7 VLRB 1 (1984). 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). As stated by the Board in Champlain Valley, supra, 3 VLRB at 434-435:

The case against proliferation of public sector bargaining units includes at least these considerations: 1) the difficulty the employer would have in maintaining a tradition of uniformity in the wages, benefits, and working conditions provided to similarly-situated employees, 2) possible adverse effects of excessive competition among rival employee

organizations which results in Balkanization of employee groups and whipsaw bargaining; and 3) institutional complications of bargaining with a multiplicity of units in view of the need to incorporate the financial impact of negotiated agreements into the budgetary process of the governmental unit, which is usually put to the voters on one statutory date.

It is our view that, as a policy matter, harmonious and productive labor relations would best be served by placing Town and Village employees in a single bargaining unit. It is apparent Town and Village employees share a substantial community of interest. They have historically operated under a single personnel plan, are overseen by a single municipal manager, and some integration of functions between the Town and Village exists. Separating the employees into two bargaining units may result in excessive competition between the two employee groups with resultant Balkanization and whipsaw bargaining.

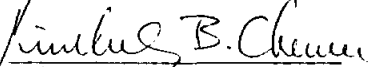
However, Balkanization is a political arrangement agreed to by Town and Village voters. If the citizens are unwilling to end this Balkanization by merging Town and Village governments, we believe MERA prohibits us from imposing a single bargaining unit on the Town and Village. §1722 of MERA contains the following definitions:

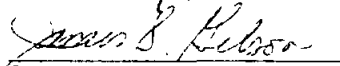
...(3) "Bargaining unit" means a group of employees recognized by the municipal employer or certified by the board as appropriate for exclusive representation by an employee organization for purposes of collective bargaining.
(4) "Collective bargaining" or "bargaining collectively" means the process of negotiating in good faith the wages, hours or conditions of employment between a municipal employer and the exclusive bargaining agent of employee(sic) with the intent to arrive at an agreement which, when reached, shall be reduced to writing.

...(13) "Municipal employer" means a city, town, village, fire district, lighting district, consolidated water district, housing authority or any of the political subdivisions of the state of Vermont which employs five or more employees as defined in this section.

These definitions and other consistent provisions of MERA (i.e. §1724(c), §1725, §1726, §1732, §1733, §1734) make it evident the Legislature intended the Board place employees of one "municipal employer" in a bargaining unit separate from employees of another "municipal employer". Here, the Town and Village are separate "municipal employers". Thus, their respective employees should be in separate bargaining units. A Board order approving a single bargaining unit would lock Town Selectmen and Village Trustees into addressing labor relations issues involving each other's employees. It is evident the Legislature did not intend the Board to force the governing bodies into such a position.

We conclude Town employees should be placed in one bargaining unit and the remaining Village employees should be placed in a separate bargaining unit.¹ We note the Union has submitted authorization cards which indicate at least 30 percent of employees of both the Town and Village desire to be represented by the Union. Thus, a sufficient showing of interest has been established for the Board to hold elections among employees in both the Town and Village units.


Kimberly B. Cheney, Chairman


James S. Gilson


¹This means the Village will have two bargaining units since Village Electric Utility employees comprise an existing bargaining unit currently represented by the Union.

DISSENTING OPINION

I concur with the majority opinion in the first issue before us; that Jamie Demasi is a "municipal employee" as defined in MERA and eligible to be part of a bargaining unit. However, I disagree MERA prohibits the Board from placing employees of two distinct government entities in a single bargaining unit.

NERA nowhere specifically states employees of two municipal employers may not be in the same bargaining unit. While I accept that under MERA's definition of "municipal employer", 21 VSA §1722(13), the Village and Town of Northfield are separate municipal employers, and while MERA consistently refers to a bargaining unit consisting of employees of a "municipal employer" and negotiations occurring between a union and a "municipal employer", this does not mean multi-employer bargaining units are prohibited. If the Legislature intended such a result, it could have affirmatively provided. I believe the majority reliance on "municipal employer" being referred to in the singular rather than the plural is insufficient to indicate the Legislature prohibited multi-employer units.

Given my different interpretation of MERA than my colleagues and given my complete agreement with them that harmonious and productive labor relations would best be served by placing Town and Village employees in a single unit for the reasons stated in the majority opinion, I would place the Town and Village employees in a single bargaining unit. That is clearly an appropriate unit under the criteria contained in 21 VSA §1724(c).


William G. Kemsley, Sr.

ORDER

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

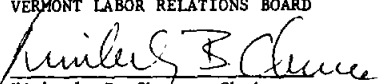
1. A collective bargaining unit consisting of the Town of Northfield police officer and the five equipment operators, one foreman, and one mechanic of the Town of Northfield Highway Department is appropriate; and

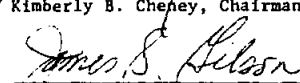
2. A collective bargaining unit consisting of the Water Utility maintenance craftsman, the Sewer Utility maintenance craftsman, the two principal clerks, the bookkeeper, the computer operator and the bookkeeper/computer operator of the Village of Northfield is appropriate; and

3. Separate secret ballot elections among employees in the above bargaining units shall be conducted by this Board pursuant to 21 VSA §1724(e) on such date or dates as the Board shall order, to determine whether the employees wish to be represented for exclusive bargaining purposes by Local 300, International Brotherhood of Electrical Workers, or no union.

Dated this 17th day of July, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


James S. Gilson