

VERMONT LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO

and

TOWN OF MANCHESTER

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DOCKET NO. 85-43

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 4, 1985, the American Federation of State, County and Municipal Employees, AFL-CIO, ("Union") filed a Petition for Election of Collective Bargaining Representative. The petition requested an election among the sergeants, investigators, corporals, patrol officers, dispatchers and any other full-time employees of the Town of Manchester Police Department, excluding the Chief. The petition was supported by authorization cards signed by not less than 30 percent of the employees in the proposed bargaining unit.

In an Answer to the petition filed with the Board on October 23, 1985, and in an Amended Answer filed on November 27, 1985, the Town of Manchester ("Town") informed the Board that questions of unit determination existed; specifically that 1) the sergeant and corporal should be excluded from the bargaining unit as supervisory and confidential employees, 2) the chief dispatcher should be excluded from the bargaining unit as a supervisory and confidential employee, and 3) the remaining dispatchers did not appropriately belong in a bargaining unit with the police officers.

A hearing was held before the full Board on December 5, 1985. Union Representative Ralph Crippen represented the Union. Attorney Gary Barnes represented the Town. Prior to the hearing, the Union and Town stipulated to the inclusion of the sergeant and corporal in the bargaining unit and the exclusion of the chief dispatcher from the unit as a confidential employee. As a result, the only question left for the Board to decide was whether the remaining dispatchers should be included in the bargaining unit.

The Town filed Requested Findings of Fact and a Memorandum of Law on December 30, 1985. The Union filed no brief.

FINDINGS OF FACT

1. The Town Police Department has eight full-time police officers and four dispatchers, including a chief dispatcher. The Department is headed by the Police Chief and the full-time officers under him are an investigator, a sergeant, a corporal and four patrol officers.
2. Outside of the Police Department, the Town employs the following full-time non-elected employees: Administrative Assistant to the Town Manager, Clerk of the Water and Sewer Department, three other employees in the Water and Sewer Department (Superintendent and two operators) and five employees in the Highway Department (one foreman, one mechanic and three truck operators).
3. Police officers have law enforcement powers within the Town. They respond to requests for police assistance, enforce the criminal and motor vehicle laws, issue citations, arrest suspected offenders, investigate criminal activity, assist in the preparation of criminal prosecutions and serve as witnesses in court. They carry firearms and, with the exception of the investigator, they are all uniformed.

4. Police officers spend most of their employment time out of the police station on patrol. While on patrol, police officers spend time in their vehicles and at locations throughout the Town.

5. Police officers are required to successfully complete a 12-week program of training at the Vermont Police Academy. The program covers such subjects as criminal law, use of firearms, criminal investigation, crime prevention and surveillance, apprehension and handling of criminal suspects, court procedures, motor vehicle law, self-defense and retention of evidence.

6. Police officers work varying shifts. The first shift begins between 6:00 a.m. and 8:00 a.m., and ends between 4:00 p.m. and 6:00 p.m. The second shift begins at 6:00 p.m. and ends at 3:00 a.m. There is no police officer on duty between the end of the second shift (3:00 a.m.) and the beginning of the first shift (6:00 - 8:00 a.m.), although there is always at least one officer "on call."

7. Police officers are subject to the chain of command. On any shift, the officer senior in title is the officer in charge for the shift. The Chief supervises all police officers.

8. The duties of the dispatchers involve answering the telephone, gathering pertinent information needed by a patrol officer when responding to the call, communicating such information accurately to the patrol officers on duty and periodically making radio contact to verify the whereabouts of patrol officers. Dispatchers are required to use the radio codes associated with police communications. If dispatchers do not monitor the radio properly, respond to calls, gather pertinent information or communicate information accurately to the officer, the safety of the officer may be affected thereby and the officers may be unable to efficiently perform their tasks.

9. While on duty, dispatchers remain within the police station. They spend at least 80 percent of their time within the dispatch area where the communications equipment is located, and leave that area only as needed to obtain files, to make coffee or obtain a cup of coffee, or to use restrooms.

10. Dispatchers do not wear uniforms and have no law enforcement powers.

11. Dispatchers receive no outside training. The dispatchers are trained by the chief dispatcher, Margaret Church. The training of dispatchers generally takes 7 - 8 days.

12. While dispatchers primarily dispatch for the Manchester Police Department, they also dispatch for the Manchester Area Rescue Squad, the Manchester Fire Department and the Dorset and East Dorset Fire Departments. In addition, the dispatchers occasionally relay requests for police assistance to the Vermont State Police.

13. Dispatchers work rotating eight hour shifts. The first shift for dispatchers runs from 8:00 a.m., until 4:00 p.m. The second shift runs from 4:00 p.m. until 12 midnight, and the third shift runs from 12 midnight until 8:00 a.m. One dispatcher is regularly employed for the midnight to 8:00 a.m. shift. The other dispatchers rotate between the first and second shift, and work the midnight to 8:00 a.m. shift, on a rotating basis, to cover the two days per week that the regular third shift dispatcher is off duty. Only one dispatcher is on duty at a time, and there is always a dispatcher on duty, 24 hours per day, 365 days per year. An off-duty dispatcher has no job related responsibilities.

14. Police officers and dispatchers are the only Town employees who work rotating shifts.

15. Generally, the Police Department uses part-time back-up dispatchers to fill in when a regularly scheduled dispatcher is unable to work. Police officers do not perform dispatcher duties, except under rare circumstances when back-up dispatchers are unavailable. Town employees outside of the Police Department are never called upon to perform dispatching duties.

16. Dispatchers do not perform patrol officer duties. They do not search individuals taken into custody, nor do they typically have any role in the handling of individuals taken into custody.

17. Dispatchers do not come under the chain of command of the Police Department and are under the direct supervision of the Chief of Police. In the absence of the Chief for an extended period, the chief dispatcher authorizes shift changes if necessary (Union Exhibit 1).

18. All employees of the Town are covered by the same group insurance packages. However, police officers are covered by a special police officers' liability policy. No other Town employees are covered by such a policy.

19. Police officers have statutory appeal rights from dismissal as provided in 24 VSA §1931-1934. No other Town employees have such rights.

20. Police officers are paid on a salaried basis, while dispatchers are paid on a hourly basis.

OPINION

At issue is whether the dispatchers 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 patrol officers, corporal, sergeant and investigator.

The Town contends the dispatchers do not share a community of interest with the police officers and would more appropriately be included in a bargaining unit by themselves.

The Municipal Employee Relations Act (MERA) requires the Board to determine whether a bargaining unit is appropriate. 21 VSA §1722(3), §1724(c). There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit or the most appropriate unit; MERA only requires that the unit be appropriate. AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983).

Based on the criteria provided in §1724(c) of MERA for the Board to take into consideration in determining the appropriateness of units, the Board's primary concerns are to group together only employees who share a similar "community of interest," while at the same time guarding against overfragmentation of units and allowing individuals to exercise rights guaranteed under MERA. Middlebury, supra, at 231.

The following factors are relevant in determining whether a community of interest exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions and job sites; and whether employees have frequent contact with each other and have an integration of work functions. Middlebury, supra, at 232.

In applying these factors here, we believe the dispatchers and police officers share a community of interest. While it is obvious the two groups of employees have dissimilar qualifications, training and job functions, the very nature of their job requires they interact frequently and a high degree of integration of work functions exists. The safety of the police officers and competent performance of their duties depends on the dispatchers soliciting relevant information on phone complaints and relaying the information to officers in a timely manner.

A group of employees must at least be a readily identifiable and homogenous group apart from other employees to be an appropriate unit. Middlebury, supra, at 231. The above-noted considerations, taken together with the fact they are the only Town employees who work rotating shifts and come under the common supervision of the police chief, indicate the dispatchers and police officers are such a group. These factors substantially outweigh any differences among the employees. It is evident dispatchers share a greater community of interest with police officers than with any other group of Town employees.

Placing dispatchers and police officers in the same unit also guards against overfragmentation of units which may result if they were placed in separate units. It is Board policy that public rights are protected by larger units. Teamsters Local 597 and Champlain Valley Union High School Board of Directors, 7 VLRB 1 (1984). Champlain Valley Union High School Staff Association, VEA/NEA Local 325 and Champlain Valley Union High School Board of Directors, 3 VLRB 426 (1980). Separating employees of the same department into two separate

bargaining units may result in excessive competition between the employee groups with resultant Balkanization and whipsaw bargaining, Champlain Valley, supra, a result to be avoided. Where the petitioned for unit is the larger unit and a community of interest exists among employees in the proposed unit, as is the case here, we are inclined to rule the larger unit is appropriate.

Although in no way do we consider it a controlling factor, we are also influenced by the fact the dispatchers and the police officers have petitioned to be grouped together for collective bargaining purposes. 21 VSA §1724(c) does not say the extent to which the employees have organized may not be considered as a factor; it merely provides that it shall not be the controlling factor. Local 300, IBEW v. Burlington Electric Light Department, 133 Vt. 258, 261 (1975). Given the community of interest and overfragmentation considerations evident here, we believe the extent to which the employees have organized themselves here is appropriate.

ORDER

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

1. The dispatchers, excluding the chief dispatcher, of the Town of Manchester Police Department shall be included in a bargaining unit with the Department's patrol officers, corporal, sergeant and investigator; and


2. A secret ballot election shall be conducted by this Board pursuant to 21 VSA §1724(e) on such date as the Board shall order to determine whether the employees in the above bargaining unit desire to be represented for exclusive bargaining purposes by the American Federation of State, County and Municipal Employees, AFL-CIO or no union.

Dated this 15th day of January, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemaley, Sr.


James S. Gilson