

VERMONT LABOR RELATIONS BOARD

LOCAL 1369, AFSCME, AFL-CIO)	
)	
and)	DOCKET NO. 88-37
)	
TOWN OF BARRE)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 18, 1988, Local 1369, AFSCME, AFL-CIO ("Union") filed a Petition for Election of Collective Bargaining Representative, requesting that the present bargaining unit of Town of Barre Department of Public Works ("DPW") employees represented by the Union be expanded to include the patrol officers, sergeants and dispatchers of the Town of Barre Police Department.

On September 8, 1988, the Town of Barre ("Town") filed an answer to the petition, raising various questions of unit determination and representation, and also filed a motion to dismiss and a motion for a pre-hearing conference.

On September 15, 1988, the Labor Relations Board denied the Motion to Dismiss. A pre-hearing conference was held on October 4, 1988. Hearings were held before Board members Charles McHugh, Chairman; Louis Toepfer and Dinah Yessne on November 10 and 21, 1988. Attorney Henry Vanetti represented the Town. Attorney Alan Biederman represented the Union. At the November 10 hearing, the parties stipulated and agreed as follows:

1. that the Union withdrew the request to include within the unit the Town manager's secretary, whose duties include dispatching for the Police Department;

2. that the Town withdrew its claim that the dispatcher/ clerk/typist was a part-time employee as defined in the Municipal Employee Relations Act;

3. that the Town withdrew its request that the Board determine if the police officers were professional employees, that determination being unnecessary because the parties had agreed that, in the event of a final decision determining that it is appropriate to include police officers in the bargaining unit with DPW employees, no police officer shall be included in the unit with DPW employees unless a majority of police officers vote for inclusion in such unit; and

4. that the Town withdrew its request that the DPW employees vote on the question of whether the DPW employees wish to be organized into the proposed bargaining unit.

As a result of these stipulations and agreements by the parties, the following issues remain for the Board to determine:

1. whether the proposed bargaining unit is appropriate, or whether the appropriate units are the present DPW unit and a separate unit consisting of police department employees;

2. whether it is appropriate to include the police department employees in the bargaining unit prior to the expiration of the present collective bargaining agreement between the Town and the Union, effective July 1, 1988 to June 30, 1991; and

3. whether the provisions of the present collective bargaining agreement shall be extended to the police department employees.

Requested findings of fact and memoranda of law were filed by the Town and Union on November 30 and December 2, 1988, respectively.

FINDINGS OF FACT

1. The present bargaining unit represented by the Union consists of employees of the Town DPW. The petition seeks to add to the unit the positions of police officer, police sergeant and police dispatcher/clerk/typist employed by the Town Police Department. At present, there are three police officers, one police sergeant and one police dispatcher/clerk/typist. The police officer and police sergeant positions are filled by persons who are certified by the Vermont Criminal Justice Training Council and are law enforcement positions, while the police dispatcher/clerk/typist is a civilian position.

2. The Board of Selectmen constitutes the legislative body of the Town. The Town Manager is the chief administrator for the Town. The DPW is a separate department headed by the Director of Public Works. The Police Department is a separate department headed by the Chief of Police. Ultimate responsibility for the work of both the Police Department and the Department of Public Works is vested in the Town Manager (Town Exhibit 2).

3. The Town has a personnel policy, which is set forth in the Barre Town Code, which governs all employees except those employees covered by the collective bargaining agreement between the Union and the Town. While some of the provisions of the personnel policy are specific to police, the majority of issues addressed by the personnel policy are common to all covered employees (Town Exhibit 2).

4. Negotiation of collective bargaining agreements for both the DPW and the Police Department of the Town are the responsibility of the Town Manager. The budget of the Town, including both the DPW and the Police Department, is handled by the Town Manager. Personnel issues - including hiring, firing and other discipline, layoff and grievance procedures - are the responsibility of the Town Manager for both the DPW and the Police Department. While the Director of Public Works and the Chief of Police may impose lesser forms of discipline, employees of the DPW and Police Department may not be dismissed without the approval of the Town Manager and any disciplinary actions taken are reviewable by the Town Manager through the grievance procedure (Town Exhibits 2 and 5).

5. Police Department employees have duties and functions which are different from those of DPW employees in many ways including, but not limited to, the fact that police employees have the following duties and functions which are not shared by DPW employees:

- a) have police powers under state law;
- b) are directed by different supervisors;
- c) have certain appeal rights regarding discipline under Chapter 55 of Title 24;
- d) have separate and complex working rules set forth in a detailed police manual;
- e) must maintain confidentiality in their investigations, especially juvenile matters;
- f) receive extensive training required by law of all police officers;
- g) work in a paramilitary organization;

h) may be required to make many decisions exercising independent judgment, some of which may involve issues of life or death;

i) are deeply involved with public safety issues;

j) interact with numerous other law enforcement agencies; and

k) must be certified on a regular basis as law enforcement officers and must receive training to maintain that certification (Town Exhibits 1, 2, 3 and 6).

6. DPW employees in the existing bargaining unit serve as mechanics, mechanic helpers, heavy equipment operators, light equipment operators, public work persons and laborers. These are positions of varying responsibility and training; some require a high degree of skill and on-the-job training and other positions are unskilled or semi-skilled (Town Exhibits 5 and 7).

7. Police officers are paid a weekly salary based upon rank. The DPW employees are paid an hourly rate based upon job classification.

8. Overtime wages for the DPW employees are paid after eight hours per day or 40 hours per week. Overtime for police officers is paid after 120 hours in a 21-day cycle. Police officers are the only employees of the Town entitled to a choice of compensatory time off in lieu of overtime wages.

9. Due to the nature of their law enforcement duties, police work irregular hours on rotating shifts so that around-the-clock, seven days a week protection is provided. The normal work week of the DPW employees, with the exception of a mechanic, consists of Monday through Friday, 7:00 a.m. to 3:30 p.m.

10. Police Department and DPW unit employees, along with other employees of the Town, have some general categories of benefits in common, such as shortterm income insurance, bereavement leave, military leave, sick leave, holidays, vacations, medical insurance, worker's compensation, life insurance and retirement. The extent and application of benefits between the two groups of employees may differ (Town Exhibits 2 and 5).

11. Police Department employees and DPW employees have a lack of integration of work functions, have different work sites, and generally do not have contact during working hours.

12. Much of the business of the Police Department is confidential. Police generally are prohibited from revealing the names of juveniles or confidential informants. In the instances where an individual's name cannot be publicly used in a grievance, the confidentiality of the individual may be maintained by the use of aliases.

13. In the event of a strike by Police Department employees and/or DPW employees, the following potential avenues of relief are available to the Town to protect public property and safety in lieu of using the Town police: use of State Police, sheriffs or special police officers.

14. If Police Department employees and DPW employees are organized into two separate bargaining units, it likely would take substantially more time and effort for the parties to negotiate two contracts than it would to negotiate one contract if they were in the same unit.

15. If the DPW employees and the Police Department employees are placed in the same bargaining unit, it would be feasible for the parties to negotiate a single contract which, like the Town's personnel policy, contained some common features and some separate features for the employees of the different departments.

16. The Union consists of several chapters, each of which has its own contract with the employer of the bargaining unit represented by the chapter. The Union represents Barre Town Public Works employees, Barre City Public Works employees, Barre City School maintenance employees, Barre Town School maintenance employees, and Montpelier City Public Works employees, with each group having a separate chapter. The principal business of the Union is controlled by its executive board. The executive board is elected from the membership of all the chapters of the Union.

17. The American Federation of State, County and Municipal Employees ("AFSCME"), the parent organization of the Union, represents numerous units of municipal employees within the State of Vermont. Included are police employees in Bennington, Manchester, Rutland, Castleton, Middlebury, St. Albans, St. Johnsbury, Newport, Montpelier and Barre City. In Castleton and St. Albans, the police employees are included in the same unit and are covered by the same contract as non-police employees. In Bennington, Manchester, Rutland, Middlebury, St. Johnsbury and Newport, the police employees are in separate bargaining units from non-police employees, but are included in AFSCME locals which include non-police employees on the executive boards. In Montpelier, the police are the only chapter in the AFSCME local.

OPINION

The primary issue before us is whether it is appropriate to place Police Department employees in the same bargaining unit as DPW employees. The Town contends that the Police Department employees are prohibited from being added to a bargaining unit of DPW employees as a matter of law and that the two groups of employees do not share a community of interest.

At the outset, we reject the Town's contention that Police Department employees are prohibited as a matter of law from being added to a bargaining unit of DPW employees. The Municipal Employee Relations Act (MERA) does not explicitly bar police and non-police employees from belonging to the same bargaining unit. We decline to infer such a bar into MERA, particularly where the Vermont General Assembly has legislated restrictions or bars on certain groups of employees organizing into the same bargaining unit in MERA and other labor relations statutes.

In MERA, the legislature prohibited inclusion of professional employees in bargaining units with non-professional employees without a specific affirmative vote by the professionals. 21 VSA §1724(c)(1). In the State Labor Relations Act, 21 VSA §1501 et seq., the legislature imposed similar restrictions concerning professional employees and craft units, and barred inclusion of guards in the same unit with other employees of the employer. 21 VSA §1543(a). In the State Employees Labor Relations Act, 3 VSA §901 et seq., the legislature explicitly placed supervisory employees into a separate bargaining unit. 3 VSA §907. In the Labor Relations for Teachers Act, 16 VSA §1981 et seq., the legislature provided that teachers would be in separate bargaining units from administrators. 16 VSA §1982.

Given these statutory provisions, the fact that the legislature has not legislated the exclusion of police from bargaining units of non-police employees in MERA leads us to conclude that no per se prohibition was intended. The legislature elected to leave the appropriateness of such groupings to the Board to determine on a case-by-case basis.

NERA 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. 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.

In applying those factors here, it is evident that Police Department employees and DPW employees have many different interests, needs and general conditions of employment. They are in separate departments with different immediate supervisors. Their method of compensation differs; DPW employees are paid on an hourly basis while the police are paid a salary. DPW employees generally work standard day-time hours, Monday through Friday, while police work irregular, rotating shifts so that police services may be provided on an around-the-clock basis, seven days a week. DPW employees and Police Department employees obviously have much different job functions and qualifications and training requirements differ greatly. The two groups of employees have no integration of work functions and generally have no contact with each other during working hours.

However, this does not mean that they completely lack a community of interest. They work for a relatively small employer where effective control of both groups of employees lies with the Town Manager. In key personnel and labor relations matters, such as hiring, discipline, layoff, grievance procedures and contract negotiations, the ultimate responsibility for both Police Department employees and DPW employees is with the Town Manager. Along with this same overall supervision and direction, the Police Department employees and DPW employees likewise share many categories of benefits in common. The Town apparently has recognized that there is some community of interest between police and non-police employees by placing them under the same personnel policy. While some of the provisions of the personnel policy are specific to police, the majority of issues addressed in the policy are common to all non-unionized Town employees.

The community of interest criterion must be considered together with whether overfragmentation of units will result to a degree which is likely to produce an adverse effect on the effective representation of other employees or upon the effective operation of the employer. 21 VSA §1724(c). 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). Placing the employees in separate, relatively small, 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. Moreover, if the DPW employees and Police Department employees are organized into separate bargaining units, it likely will take substantially more time and effort for the parties to negotiate two contracts than it will to negotiate one contract if they are in the same unit.

In weighing the community of interest and overfragmentation criteria - while keeping in mind that the petitioned-for unit only has to be an appropriate unit, not the most appropriate unit - we conclude that the grouping of Police Department employees and DPW employees into the same bargaining unit is appropriate. It will be feasible for the parties to negotiate a single collective bargaining agreement under such an arrangement which, like the Town's personnel policy, contains some common provisions and some separate provisions for the employees of the different departments. It also is evident that placing employees in the same unit will allow for effective representation of all employees while not hindering the effective operation of the Employer.

The Town contends that placing police into a bargaining unit with non-police employees may prejudice the necessary confidentiality of police business. We conclude that where the confidentiality of an individual must be maintained in a grievance proceeding or otherwise, the confidentiality may be maintained by the use of aliases.

The Town further contends that the possibility of a strike by members of a bargaining unit of police department employees and DPW employees may create a serious conflict of interest for the police. The Town contends that it has every right to rely on its own police force to perform police functions during a strike; and that a potential conflict exists between performing these duties and the natural tendency to sympathize with strikers from their own bargaining unit.

We decline to use the potential for a strike as a basis for placing police in a separate bargaining unit. Adequate protection exists for the Town under law and practical reality in the event of such a strike. MERA provides that a municipal employer may petition for an injunction or other appropriate relief in superior court if a strike by its employees "will endanger the health, safety or welfare of the public". 21 VSA §1730. Moreover, in the event that there is a strike by Police Department employees and/or DPW employees, the Town can use State Police, sheriffs or special police officers to protect public property and safety to the extent that it becomes necessary.

We recognize that the Board has held that the primary commitment to law enforcement and the obvious hazards and risks create a specific police community of interest which may produce negotiating demands of

little or no concern to other employees. Petition of VSEA (re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, 97 (1982). However, under the circumstances of this case, and with no evidence before us that any such police interest is likely to conflict with, override or fall victim to the interest of any other group of employees, we are not persuaded, when considered with the deleterious effects of overfragmentation, that it is not appropriate to place the police employees in the same unit as the DPW employees.

The Town requests that the Board reach the following conclusions with respect to the timeliness of the petition filed here: 1) this petition was untimely because it was not filed during the period 90 to 60 days prior to the expiration date of the present collective bargaining agreement between the Union and the Town which is effective from July 1, 1988 to June 30, 1991; 2) employees of the Police Department are not eligible for inclusion in the unit until June 30, 1991; and 3) the provisions of the existing contract will not be extended to the Police Department employees.

We reach the following conclusion with respect to those issues. Section 33.2 of the Board's Rules of Practice - which provides that "if a collective bargaining agreement is in effect which covers any or all the employees to be covered by the petition, a petition shall normally be considered timely only if filed during the period 90 to 60 days prior to the expiration date of the collective bargaining agreement" - does not apply to a petition such as filed here, where an incumbent union is seeking to add employees previously not unionized and not covered by a collective bargaining agreement to an existing bargaining unit represented by the Union and covered by a contract.

The Police Department employees are eligible for inclusion in the bargaining unit at the time they vote to be organized into such a unit and vote to be represented by the Union, and do not have to wait until the expiration of the present contract. AFSCME, AFL-CIO and City of Rutland, 7 VLRB 272 (1984). We have not been asked to and we will not require that the provisions of the Contract be extended to the Police Department employees. If the Union prevails in the election, we only require the parties to negotiate in good faith with respect to wages, hours and conditions of employment of the Police Department employees. City of Rutland, supra, at 281.

Since two of the employees covered by the petition are on probationary status, the Town requests that the Board ascertain that not less than 30 percent of the employees have filed authorization cards in support of the election petition. It is unnecessary to rule on this request because even assuming two of the employees are on probationary status, the requisite showing of interest has been made.

ORDER

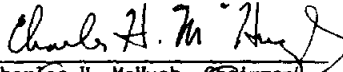
Now therefore, based on the foregoing findings of fact and for the foregoing reasons and pursuant to the stipulation and agreement entered into by the Town and Local 1369, AFSCME, AFL-CIO ("Union") on November 10, 1988, it is hereby ordered:

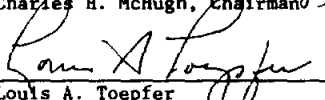
1. The police officers, sergeant and police dispatcher/clerk/typist employed by the Town of Barre Police Department can be appropriately included in the present bargaining unit represented by the Union consisting of employees of the Town of Barre Department of Public Works;
2. A unit determination and representation election shall be conducted by the Labor Relations Board among the

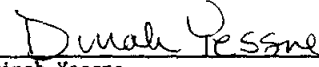
Police Department employees indicated above in Paragraph 1 to determine whether they wish to be represented by Local 1369, AFSCME, AFL-CIO, or no union, and to determine whether they wish to be included in a bargaining unit with Town of Barre Department of Public Works employees.

Dated this 6th day of January, 1989, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


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