

VERMONT LABOR RELATIONS BOARD

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| PETITION OF: |) | |
| |) | |
| NATIONAL ORGANIZATION OF |) | |
| LEGAL SERVICE WORKERS, |) | DOCKET NO. 93-4 |
| DISTRICT 65, U.A.W. |) | |
| (RE: DEFENDER GENERAL |) | |
| EMPLOYEES) |) | |

MEMORANDUM AND ORDER

On February 1, 1993, the National Association of Legal Service Workers, District 65, U.A.W. ("Union"), filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board to represent the attorneys, investigators and support staff employed by the Defender General. By letter of February 1, the Board requested that the Union indicate to the Board the basis of the Union's apparent claim that the Board had jurisdiction in this matter.

The Union filed a response to such request on February 5, 1993. Therein, the Union indicated that the petition was being filed under the State Employees Labor Relations Act, 3 V.S.A. §901 et seq ("SELRA"). The Union contends that the proposed bargaining unit consists of state employees as that term is defined in SELRA since the employees of the Defender General are not specifically exempted from the definition of "employee" under SELRA. We disagree, and conclude that we are without jurisdiction in this matter.

The Board only has such jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). Under SELRA, "(e)m~~pl~~oyees . . have the right . . . to bargain collectively through representatives of their own choice." 3 VSA §903(a). The Board has jurisdiction over a petition for election of collective bargaining representative "filed . . . by

an employee or group of employees, or any individual or employee organization purporting to act in their behalf." 3 VSA §941(c)(1). Thus, the Board has jurisdiction over an election petition only if it is filed to represent "employees" within the meaning of SELRA.

"Employee" means a state employee as defined by 3 VSA §902(5) except as the context requires otherwise. 3 VSA 902(4). 3 VSA 902(5)(A) defines "state employee" in pertinent part as "any individual employed on a permanent or limited status basis by the state of Vermont . . . but excluding an individual . . . exempt or excluded from the state classified service under the provisions of section 311 of this title . . ." 3 VSA §311(a) provides that "(t)he classified service to which this chapter shall apply shall include all positions and categories of employment by the state, except as otherwise provided by law (emphasis added), and except the following. . ." Following this language, sixteen categories of employees are listed.

The Union contends that Defender General employees are not included within any of the sixteen categories set forth in §311(a), and therefore the employees are not exempted from the Board's jurisdiction. The Union's argument ignores the "except as otherwise by law" language of §311(a) by focusing solely on the sixteen categories of employees specifically listed in §311(a). In addition to the sixteen categories, other employees are excluded from the state classified service, and thus from the coverage of SELRA, if it is "otherwise provided by law" that the employees are excluded from the classified service.

The law does otherwise provide that Defender General employees are excluded from the classified service. Title 13,

Chapter 163, the Public Defenders statute, provides in pertinent part as follows at 13 VSA §5254:

(a) The defender general, deputy defender general, public defenders and deputy public defenders shall be exempt from the classified service.

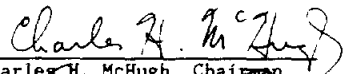
(b) Clerical and office staff in the office of the defender general and in all local offices shall be hired by and shall serve at the pleasure of the defender general. Clerical and office staff shall be state employees paid by the state, and shall receive those benefits available to classified state employees who are similarly situated but they shall be exempt from the classified service . . .

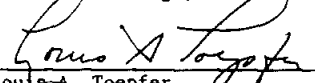
These statutory provisions make it clear that employees of the Defender General are exempt from the classified service. Thus, they are not "employees" within the meaning of SELRA, and under the present statutory provisions the Board is without jurisdiction in this matter.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Petition for Election of Collective Bargaining Representative filed by the National Association of Legal Service Workers, District 65, U.A.W. to represent the attorneys, investigators and support staff employed by the Defender General is DISMISSED.

Dated this 2nd day of March, 1993, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Carroll P. Comstock