

VERMONT LABOR RELATIONS BOARD

SOUTH BURLINGTON POLICE)	
OFFICERS' ASSOCIATION)	
)	
and)	DOCKET NO. 94-36
)	
CITY OF SOUTH BURLINGTON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 15, 1994, the South Burlington Police Officers' Association ("Association") filed a Petition for Election of Collective Bargaining Representative, seeking to add patrol sergeants and the Criminal Investigation Services sergeant of the South Burlington Police Department to the bargaining unit of Police Department employees presently represented by the Association. On August 4, 1994, the City of South Burlington ("Employer") filed a response to the petition. The Employer contended that the sergeants are supervisors, and thus ineligible for inclusion in the bargaining unit, and requested that the Labor Relations Board dismiss the petition.

In 1988, the Association sought to add the criminal investigation sergeant and the patrol sergeants to the bargaining unit of Police Department employees represented by the Association by filing a petition with the Labor Relations Board (Board Docket No. 88-2). The parties ultimately agreed in that case to exclude the criminal investigation sergeant from the unit as a supervisory employee, and the Labor Relations Board concluded that the patrol sergeants were supervisory employees and thus ineligible to be included in the unit. South Burlington Police Officers Association and City of South Burlington, 11 VLRB 332 (1988).

Given this history, the Labor Relations Board required the Association to submit substantive evidence that facts have changed with respect to the supervisory duties of the sergeants since the 1988 Board decision. Otherwise, the Board notified the Association that, in accordance with precedents, the Board would not hold a hearing and would "dismiss the petition, based upon the absence of substantive evidence" pursuant to 21 V.S.A. Section 1724(b). South Burlington Fire Officers Association and City of South Burlington, 15 VLRB 425, 426 (1992). Burlington Fire Officers' Association and City of Burlington, 9 VLRB 64, 65 (1986).

Upon review of materials subsequently filed by the Association and the Employer, the Labor Relations Board concluded that the Association submitted substantive evidence that facts have changed with respect to the supervisory duties of the sergeants since the 1988 Board decision. The Board found reasonable cause to believe that a question of unit determination or representation existed warranting a Board hearing on whether the sergeants remain supervisors. Burlington Fire Officers' Association, 9 VLRB at 65.

Hearings were held on November 10 and 22, 1994, in the Labor Relations Board hearing room in Montpelier, before Board members Charles McHugh, Chairman; Louis Toepfer and Carroll Comstock. Attorney Diane Kenney represented the Employer. Attorney Leslie Pratt represented the Association. The parties filed Requested Findings of Fact and Memoranda of Law on December 7, 1994.

FINDINGS OF FACT

1. When fully staffed, the Police Department is comprised of 30 sworn police officers and seven civilians, including five

dispatchers. The sworn police officers are a chief, a captain, three lieutenants, five sergeants, six corporals, and 14 police officers (Association Exhibits D, E).

2. The Police Department underwent a comprehensive reorganization in 1990. Prior to the reorganization, the chief and the captain served as the chief administrators of the Department, and the prevention service functions of the Department were performed by three patrol teams, each assigned to a different shift. Each team was commanded by a lieutenant, with a sergeant reporting directly to each lieutenant. Lieutenants often served as shift commanders. Corporals and patrol officers served under the lieutenant; it was rare for a corporal to serve as shift commander.

3. As a result of the reorganization, each lieutenant was assigned to a specific division. The chief heads the Department, and the captain is directly under the chief. Three lieutenants serve under the captain. One lieutenant manages the Support Services Division, another manages the Criminal Investigation Services Division, and the third manages the Preventive Services Division. The Criminal Investigation Services Division is headed by a lieutenant, and is staffed by a sergeant, two detective corporals, and a detective. The Prevention Services Division is headed by a lieutenant, and is staffed by three patrol sergeants, three patrol corporals, a corporal who serves as Traffic Safety Officer, and 11 patrol officers. The three sergeants in the Prevention Services Division serve as "unit managers" of three different patrol units (Association Exhibits D, E).

4. In another major undertaking, which began around the time of the reorganization, the Department set out to secure national accreditation, a goal which required that the Department make major refinements in its practices and procedures. The Department ultimately secured such accreditation in approximately March of 1994.

5. The practices and procedures which were developed in this process were incorporated into a General Orders Manual. The General Orders Manual contains considerable detail on such matters as discipline, promotion, performance appraisal, search and seizure, vehicular pursuit, and the functions of the various divisions within the department. The General Orders are considerably more detailed than the operation manual which was in place prior to the reorganization. If patrol officers have questions on issues covered by the Manual, the officer in charge of the shift, whether a sergeant or a corporal, is responsible for ensuring that the officer takes action consistent with the Manual (City Exhibits A, F and G; Association Exhibits F, G, H, and I).

6. For purposes of accreditation, it became necessary for the Department to develop a shift schedule which allowed for some overlap between shifts in the Prevention Services Division. The purpose of the overlap was to promote the passing on of information from shift to shift to secure an orderly and adequate transition between shifts.

7. In late June or early July, 1994, the Prevention Services Division switched from an 8 hour shift schedule using the "team" structure (i.e., each team operating under a sergeant and

rotating shifts as a team) to a 10-hour shift schedule with officers rotating into and out of the patrol unit independent of the other members. A scheduling task force developed schedules which placed sergeants, corporals and patrol officers in a pattern of shift assignments, which rotated weekly, which generally resulted in each of these officers working four 10-hour shifts a week, with three days off. The three principal shifts in the work schedule begin at 7:00 a.m., 4:00 p.m., and 10:00 p.m.. One patrol sergeant, one patrol corporal, and typically three patrol officers are assigned to each shift per week. In addition, one patrol officer typically is assigned on any given day to work a so-called "swing shift" commencing either at 1:00 p.m. or 5:00 p.m. Under this schedule, corporals generally are officers in charge nine of the 21 principal shifts a week and sergeants are officers in charge for the remaining 12 shifts. Typically, a principal shift has no more than three officers of the rank of sergeant or lower. Patrol officers are officers in charge on rare occasions; on average approximately one shift per month. Due to the rotating nature of assignments, officers no longer are on a permanent team (Association Exhibit C).

8. Ultimate scheduling responsibility within the Prevention Services Division is the responsibility of the lieutenant directing that division. All leave slips are submitted to the lieutenant for approval, with the exception that a sergeant or corporal may approve leave on short notice if it will not result in overtime being worked by another officer. The lieutenant assigns officers to fill shifts. A patrol officer assigned to work with the lieutenant has authorized

leave time and has assigned officers to shifts, all in the absence of the lieutenant.

9. The officer in charge may have to call in officers to work in situations where an assigned officer calls in sick. Much of the time the shift is covered on a voluntary basis. If no officer volunteers to work the shift, the officer in charge will look to factors such as which officers are going off shift, which officers are coming on shift, which officers have worked overtime recently, and the frequency with which officers have worked overtime. The officer in charge seeks to make a determination based on fairness.

10. On November 7, 1994, three days before the first hearing in this matter, the Police Department management met to discuss the schedule which already was in effect as of July 1994. It was decided that, for 1995, there would be a return to the "team" approach but that overlap and ten-hour shifts would be retained where possible (Employer Exhibit J).

11. The patrol of the City is divided into three zones, to which officers are assigned by the officer in charge. These assignments generally are of a routine nature since they are made on a rotating basis, with the rotation generally determined by reference to the prior day's schedule. When an officer in charge of a shift has questions regarding zone assignments, he or she can typically determine the appropriate zone assignments by checking with the on-duty dispatcher. The patrol sergeant typically is assigned to a zone like other officers on the shift. Generally, the patrol sergeant handles problems in his or her zone, and the other officers handle problems in their zones. Occasionally, sergeants may

direct subordinates in such daily tasks as increasing surveillance of areas due to burglaries or complaints of speeding.

12. Sergeants and corporals generally operate shifts with little input from the chief or captain. During daytime working hours, the lieutenant in charge of the Prevention Services Division occasionally will exercise supervisory authority over shift activities.

13. The combination of the Department reorganization and the revised working schedule has had the effect of requiring sergeants and corporals to assume patrol duties to the point where approximately 80 percent of a sergeant's time is spent on patrol calls and complaints, with the bulk of the remaining 20 percent of time spent on miscellaneous duties such as meetings, ordering supplies, and reviewing reports of subordinate officers on their shifts for accuracy and completeness. A small percentage of time spent by sergeants relates to directing the activities of subordinates.

14. During the period July 1, 1994, to November 3, 1994, the average number of patrol calls responded to by the patrol sergeants was 269. Patrol corporals had an average of 262 patrol calls during this period, and patrol officers had an average of 311 patrol calls (Association Exhibit M).

15. The General Orders Manual establishes policies and procedures to follow for incidents which may arise during a particular shift. Each officer is expected to know the various policies and procedures. Most situations which arise are covered by the manual. For instance, search and seizure situations are covered

in detail in Section 40.6.0 of the manual and high speed pursuits are covered in detail in Section 40.9.0 of the manual. Sergeants have to intervene in such situations to provide guidance only rarely (Employer Exhibit A, Association Exhibit F).

16. Occasionally, the officer in charge will order that back-up assistance be provided to an officer. There are potentially violent situations where a dispatcher will decide to send two officers, instead of one, to a scene. Section 41.4.1 of the General Orders Manual provides the following "criteria for assignment of additional units":

A. It is difficult to assess in advance the number of officers required to adequately deal with a specific incident. Supervisors may assign or cancel additional units based upon their assessment of the situation. The following factors may be used in determining the number of officers to be dispatched to an incident:

1. An assault of an officer
2. On scene arrest for a violent felony or misdemeanor
3. Resistance to arrest
4. Use of Force
5. Crime in progress
6. Fleeing suspect
7. History of location of suspect

B. Constant upgrades from the scene will be made. Units no longer needed will be cancelled and sent back to their respective patrol areas.

C. Final determination of the number of units dispatched rests with the OIC.

(Association Exhibit H)

17. Patrol sergeants and corporals generally perform the same duties when they serve as officers in charge. Exceptions are

that the sergeants participate in the process of evaluating the performance of officers and have access to the personnel files of officers assigned to the Prevention Services Division; corporals do not participate in performance evaluations and do not have access to personnel files.

18. Patrol sergeants perform annual performance evaluations of corporals and patrol officers serving below them. Although the sergeants are permitted to make recommendations in the context of evaluations, the format of the evaluation form does not solicit recommendations and there is no evidence that recommendations are ever made. Although the performance evaluation process theoretically may have a bearing on promotion, during the last round of promotions, each applicant was rated equally with five percentage points on the basis of their performance evaluations. Also, there is no evidence that performance evaluations have played any role in the process of determining pay raises. Officers have the right to appeal their evaluations to the next higher ranking officer (Employer Exhibits G and I, Association Exhibit N).

19. Section 26.4.0 of the General Orders Manual provides as follows with respect to the discipline of officers:

An oral reprimand may be issued by any supervisory rank in the police department including Corporal when acting in the role as shift commander. A written reprimand must be issued and signed by both the Police Chief and the City Manager. The Chief may suspend an employee for no longer than 30 days without pay or indefinitely with pay in the case of criminal allegations . . . Authority to dismiss is limited to the City Manager or his designee upon recommendation of the Chief of Police.

(Employer Exhibit F)

20. Patrol sergeants have never taken disciplinary action against an officer greater than an oral reprimand, and there is no evidence that they have recommended a written reprimand, suspension or dismissal of an employee which has been followed.

21. Officers in charge of a shift have the authority to relieve a patrol officer from duty for the remainder of the shift if the officer is impaired due to alcohol or drug abuse.

22. Patrol sergeants do not have the authority to hire officers. Occasionally, sergeants have participated in interviewing employment candidates, but the captain and chief ultimately decide whom to hire, with the approval of the city manager.

23. Sergeants are not involved in the grievance procedure and have no authority with respect to formal grievances.

24. Monthly staff meetings occur at the Police Department, with the chief, captain, lieutenants, sergeants and corporals present. Organizational matters are discussed. Performance problems relating to specific employees and employee grievances generally are not discussed. These issues are handled separately, and sergeants ordinarily are not involved.

25. Sergeants do not have the authority to transfer or lay off employees, and cannot effectively recommend such action.

26. Although sergeants are encouraged to participate in the New England Law Enforcement programs sponsored by Babson College, it is unclear whether all of the sergeants have so participated (Employer Exhibit H).

27. Prior to the Department reorganization, the Criminal Investigation Services division was headed by a sergeant. Since the

reorganization, a lieutenant has headed the division. The sergeant in the division investigates crimes, maintains the evidence room, and takes care of photographic supplies. Along with the sergeant, two corporals/detectives also investigate crimes. Case assignments are dictated by which officer is available to investigate. The sergeant generally does not direct the corporals/detectives in their investigative work on particular cases. The sergeant conducts performance evaluations of the corporals/detectives. The sergeant has performed internal investigations of officers; he completes a report at the completion of the case which he submits to his superiors for review and action (Association Exhibit I).

OPINION

At issue is whether the patrol sergeants and the Criminal Investigation sergeant of the South Burlington Police Department are supervisors and, thus, ineligible to belong to a bargaining unit pursuant to 21 V.S.A. Section 1722(12)(B).

Given that the Labor Relations Board previously has decided that the patrol sergeants were supervisory employees, and that the parties previously agreed that the Criminal Investigation sergeant was a supervisor; South Burlington Police Officers Association and City of South Burlington, 11 VLRB 332 (1988); the burden is on the Association to demonstrate that circumstances have changed with respect to the supervisory duties of the sergeants since the 1988 Board decision, and convince the Board by a preponderance of the evidence that the sergeants are no longer supervisory employees. South Burlington Fire Officers Association, 15 VLRB at 426. Burlington Fire Officers' Association, 9 VLRB at 65.

Supervisor is defined in 21 V.S.A. Section 1502(13) as:

An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment". Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, 138 Vt. 347 (1980). The statutory test is whether or not an individual can effectively exercise the authority granted him or her; theoretical or paper power will not make one a supervisor. Rare or infrequent supervisory acts do not change the status of an employee to a supervisor. Brattleboro, 138 Vt. at 351.

The existence of actual power, rather than the frequency of its use, determines supervisory status. AFSCME Local 490 and Town of Bennington, 153 Vt. 318, 320 (1989). However infrequently used, the power exercised must be genuine. Id. Also, the Board has discretion to conclude supervisory status does not exist although some technically supervisory duties are performed, if such duties are unimportant or insignificant in comparison with overall duties. Id. at 321-23.

We first discuss the patrol sergeants in the Prevention Services Division. The Employer contends that the patrol sergeants possess supervisory authority in a number of the listed powers in

the statutory definition. First, the Employer contends, contrary to the Board conclusions in the 1988 decision; 11 VLRB at 339; that the sergeants have the authority to effectively recommend the promotion, demotion and transfer of employees.

We disagree. In these areas, it must be demonstrated an employee actually has effectively recommended the actions. Local 1369, AFSCME, AFL-CIO and Kellogg-Hubbard Library, 15 VLRB 205 (1992). Colchester Education Association, Vermont-NEA and Colchester Supervisory District Board of School Director, 12 VLRB 60, 80-81 (1989). Local 1343, AFSCME and City of St. Albans Fire Department, 10 VLRB 99 (1987). Local 1201, AFSCME and City of Rutland, 10 VLRB 141 (1987). The evidence contains no specific instances of a recommendation of a patrol sergeant in any of these areas being made and followed.

Although performance evaluations performed by sergeants on lower ranked officers theoretically may have a bearing on promotions, during the last round of promotions each applicant was given the same credit on the basis of their performance evaluations. Theoretical power will not make one a supervisor, and we conclude that sergeants do not have effective supervisory authority in this regard. Brattleboro, 138 Vt. at 351.

We also conclude, as the Board did in the 1988 decision, 11 VLRB at 339, that patrol sergeants lack supervisory authority with respect to hiring employees. While they may participate as members of a board which interviews employment candidates, it is apparent that any effective authority in hiring decisions lies with the chief and captain. Further, the evidence indicates that patrol sergeants

have no supervisory authority with respect to layoff, recall and adjusting grievances of employees, or effectively recommending such actions. The same conclusion applies with respect to rewarding employees, as there is no evidence that performance evaluations have played any role in the process of determining pay raises.

The Employer contends that the sergeants possess effective authority to discipline employees. Although this is a somewhat closer question than the areas previously discussed, we conclude that the evidence is insufficient for us to conclude that sergeants possess effective authority to discipline employees within the meaning of the statutory definition. The primary disciplinary authority in the Police Department lies with the police chief and the city manager. They possess the effective authority with respect to imposing written reprimands, suspensions and dismissals on employees. The evidence indicates that patrol sergeants have no effective authority to recommend such actions.

Any disciplinary authority possessed by sergeants is very limited. Sergeants may send an employee home for the remainder of the shift if the officer is impaired due to alcohol or drug use. Such limited authority, standing by itself, does not make an employee a supervisor. Brattleboro, 138 Vt. at 351. Sergeants also have orally reprimanded employees. The evidence in this regard is general and vague, and is insufficient for us to conclude that this technically supervisory duty is significant or important in actual practice. Bennington, 153 Vt. at 321-23. In sum, we conclude that the very limited authority of sergeants in disciplining employees, when considered in light of the entirety of the evidence, is

insufficient to change our conclusion reached in the 1988 decision that sergeants do not have supervisory authority with respect to disciplining employees. 11 VLRB at 339.

The final contention of the Employer with respect to the patrol sergeants is that they have the authority to assign and responsibly direct the patrol officers working on their shifts, and that such authority requires the use of independent judgment. It is in this area that the Board concluded in the 1988 decision that the patrol sergeants possessed effective supervisory authority, thus making them ineligible to be included in the bargaining unit. 11 VLRB at 339-41. The Association must demonstrate that circumstances have changed warranting a different conclusion.

In cases where it is alleged that an employee's responsibility to assign work to employees or direct them rises to a level sufficient to make them supervisors, the key determination is whether the employee is exercising independent judgment or is simply ensuring that standard operating procedures are followed. If an employee is relaying instructions from a supervisor or ensuring that subordinates adhere to established procedures, the employee is not a supervisor. City of Winooski and Winooski Police Employees' Association, 9 VLRB 85 (1986). However, if employees' duties go beyond simply ensuring that established policies and procedures are followed, and require use of independent judgment in directing and assigning employees, then the employees meet the statutory definition of supervisor. South Burlington, 11 VLRB at 340.

We are mindful that the existence of detailed regulations cannot itself determine whether a sergeant's duties involve

supervisory responsibility. Bennington, 153 Vt. at 322. Exercise of independent judgment in assigning and directing employees, however, must occur on a more than infrequent basis or be significant in comparison with overall duties to make one a supervisor. Bennington, 153 Vt. at 321-23. Department of Public Safety Personnel Designation Disputes re: State Police Sergeants, 14 VLRB 176, 185-86 (1991).

In applying these standards, we conclude that the Association has met the burden of demonstrating that the assigning and directing responsibilities of patrol sergeants are no longer sufficient to make them supervisors. It is true that sergeants are frequently "in charge" of a shift. This also holds true for corporals, however, contrary to the situation in 1988. We note that corporals are included in the bargaining unit as non-supervisory employees.

Also, the degree to which individuals in charge of a given shift exercise independent judgment in assigning and responsibly directing employees on the shift is more limited than existed in 1988. This is due primarily to the Department 1990 reorganization and the promulgation of the General Orders Manual.

In 1988, sergeants exercised independent judgment in determining which officers would be assigned to which zones, effectively determining whether leave would be granted, and deciding which officers would be called into work if there was a shortage of officers on the shift. 11 VLRB at 340. Now, assignments generally are of a routine nature since they are made on a rotating basis, with the rotation generally determined by reference to the prior day's schedule.

The determination whether leave will be granted also is more limited, as a sergeant or corporal only approves leave on short notice if it will not result in overtime being worked by another officer. Otherwise, approving leave is the responsibility of the lieutenant heading the Prevention Services Division. It is apparent that, with respect to calling officers into work when an assigned officer calls in sick, the responsibility of sergeants is similar to that existing in 1988 (See Finding of Fact No. 9 herein, and Finding of Fact No. 7 in the 1988 decision, 11 VLRB at 335). Nonetheless, on balance the overall responsibilities of sergeants with respect to assignment of employees is decidedly more limited than was the case in 1988.

We reach a similar conclusion with respect to responsibly directing employees. It continues to be rare, as was the case in 1988, to have the captain or chief involved in shift operations, and the division lieutenant only occasionally assumes direction of shift activities. In any event, it is the General Orders Manual, which contains considerably more detail than did the operation manual in place at the time of the 1988 Board decision, that details the procedures used for carrying out shift operations.

In the 1988 decision, the Board stated that the "perhaps most important" component of the ultimate conclusion that the patrol sergeants were supervisors was "directing the police work during the shift - i.e., deciding whether, when and what backup assistance should be provided, directing officers to continue or discontinue high speed pursuits, managing simultaneous events requiring police

response, and determining how search and seizure situations will be handled." 11 VLRB at 340.

Patrol sergeants now are required to exercise substantially less independent judgment in these areas of directing employees due to the General Orders Manual. Search and seizure situations and high speed pursuits are covered in considerable detail in the General Orders Manual. Sergeants rarely have to intervene in such situations to provide guidance. The General Orders Manual provides general guidance in backup assistance situations, thus decreasing to some extent the need for the sergeant to exercise independent judgment, although the Manual explicitly recognizes that judgment calls will have to be made in this regard. In sum, the more detailed General Orders Manual has resulted in patrol sergeants exercising significantly less independent judgment in directing employees during the shift. They direct subordinates in daily tasks occasionally, but to a significantly lesser degree than 1988.

Another significant change since the 1988 decision is the substantial increase in patrol duties performed by patrol sergeants. In 1988, patrol sergeants could be assigned to patrol a zone only if a lieutenant also was on duty, which was the case approximately one-third of the time (See Findings of Fact Nos. 3-4 of 1988 decision, 11 VLRB 333-34). Now, the patrol officer typically is assigned to a zone like other officers on the shift. The combination of the Department reorganization and the revised working schedule has had the effect of requiring sergeants to assume patrol duties during approximately 80 percent of their working time.

The Vermont Supreme Court has determined that it is appropriate to give great weight to a finding that sergeants perform the same duties as patrol officers a significant portion of the time in concluding that sergeants do not meet the statutory definition of supervisory employees. Bennington, 153 Vt. at 323-324. We consider it of considerable importance here that patrol sergeants perform the same duties as patrol officers for the major part of their work day. We recognize that the work schedules for the Prevention Services Division are being revised. Nonetheless, it would only be speculation on our part to draw any conclusions with respect to the effect on sergeants' directing responsibilities, particularly given the evidence that the new schedules had yet to be determined at the time of the hearings in this matter.

In sum, we conclude that, when compared with overall duties, the exercise of independent judgment by sergeants in assigning and directing employees is not significant enough to make them supervisors. Bennington, 153 Vt. at 321-23. Unlike the situation in 1988, patrol sergeants now closely resemble their counterparts in Bennington as more highly skilled individuals who generally perform the same duties as patrol officers but who, because of their experience and skill, ensure that officers on their shift adhere to established policies, procedures and practices. Bennington, 153 Vt. at 320; c.f., South Burlington, 11 VLRB at 340. They are more closely aligned with non-supervisory employees than with management, and are eligible to be included in the bargaining unit. c.f., South Burlington, 11 VLRB at 340.

We reach the same conclusion with respect to the sergeant in the Criminal Investigation Services Division. When the Employer and the Association agreed in 1988 to exclude this sergeant from the bargaining unit as a supervisory employee, the sergeant headed the division. Since the reorganization, a lieutenant has headed the division. The sergeant, like corporals/detectives in the division, investigates crimes. Cases are assigned based on which officer is available to investigate, and the sergeant does not direct the corporals/detectives in their investigative work on particular cases.

Under these circumstances, we conclude that the sergeant does not have supervisory authority with respect to assigning and directing employees. Further, the evidence is insufficient for us to distinguish the level of responsibilities of the Criminal Investigation Services sergeants, with respect to the other listed supervisory powers, from other sergeants in the department.

Finally, we determine that, even though the Association filed a petition for election of collective bargaining representative in this matter, it is more appropriate for us to handle this case as we would an unit clarification petition. This is because the sergeants were excluded from the bargaining unit in 1988 as supervisory employees, pursuant to a Board decision and the parties' agreement. Under such circumstances, this case is most accurately described as a dispute over the unit inclusion or exclusion of employees where there is no question concerning the majority status of the exclusive bargaining representative. This fits the definition of a unit clarification petition under Article 34 of the Rules of Practice of

the Labor Relations Board. Accordingly, we believe it is most appropriate to order that the sergeants be included in the existing bargaining unit without the need to conduct a representation election.


ORDER

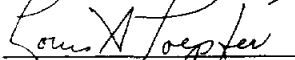
NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

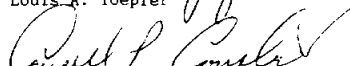
1. The patrol sergeants, and the Criminal Investigation Services Division sergeant, of the South Burlington Police Department are not supervisory employees as defined in 21 V.S.A. Section 1502(13); and
2. The patrol sergeants, and the Criminal Investigation Services Division sergeant, of the South Burlington Police Department are included in the Police Department bargaining unit represented by the South Burlington Police Officers' Association, and the South Burlington Police Officers' Association is certified as the representative of such employees.

Dated this 17th day of February, 1995, at Montpelier, Vermont

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Carroll P. Comstock