

VERMONT LABOR RELATIONS BOARD

IBEW LOCAL 300	)	
	)	
and	)	DOCKET NO. 00-49
	)	
TOWN OF STOWE	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 25, 2000, IBEW Local 300 ("Union") filed a Petition for Election of Collective Bargaining Representative to represent all Electric Department employees, Highway Department employees, water employees, waste water employees, library employees, rescue employees, planing and zoning employees, custodial workers and assessors employed by the Town of Stowe; excluding the Highway Superintendent, Public Works Director, Executive Secretaries, Waste Water Plant Superintendent, Fire Chief, Electric Department Superintendent, Electric Department Foreman, and Controller.

On August 17, 2000, the Town of Stowe ("Town") filed a response to the petition, raising various unit determination questions. The Town contended that Electric Department employees should be included in a separate bargaining unit from other Town employees. The Town also contended that the following employees should be excluded from the bargaining unit: Water Works Superintendent, Library Director, Planning Director, Rescue Department Administrative Assistant, Planning and Zoning Secretary, Assessor, Zoning Administrator, and Electric Department Administrative Assistant.

Subsequently, the parties reached agreement on the inclusion of the Water Works Superintendent, Assessor and Rescue Department Administrative Assistant in the

bargaining unit. The parties agreed on the exclusion of the following employees from the bargaining unit: Library Director, as a supervisory employee; Electric Department Administrative Assistant, as a confidential employee; Planning Director, as a supervisory employee; and the Planning and Zoning Secretary. The parties continued to disagree on whether the Electric Department employees should be in a separate bargaining unit from other Town employees, and whether the Zoning Administrator should be included in the bargaining unit.

A hearing on the remaining unit determination issues in dispute was held on September 21, 2000, before Board Members Catherine Frank, Chairperson; and John Zampieri. George Clain, President and Assistant Business Manager of the Union, represented the Union. Attorney Dennis Wells represented the Town. The Union filed a post-hearing brief on October 4, 2000. The Town filed a brief on October 6, 2000.

#### **FINDINGS OF FACT**

1. Prior to July 1, 1996, the Town of Stowe and the Village of Stowe were separate municipalities. The Village was governed by a Board of Trustees, and among the responsibilities of the Village was the providing of electrical service through the Village Electric Department. Effective July 1, 1996, the Village and Town merged into one municipal entity, the Town of Stowe. The Town has a municipal charter set forth in Title 24 of Vermont Statutes, Chapter 153. The charter resulted from the merger of the Village and Town; and became effective July 1, 1996. Under the charter, the Selectboard constitutes the legislative body for the Town (Town Exhibit 1).

2. The charter provides for a Town Electric Utility Department to serve the same area as previously served by the Village Electric Department. The charter provides

for the Electric Department to be managed under an Electric Utility Commission by a General Manager. The Electric Utility Commission is composed of three commissioners appointed by the Town Selectboard. The charter grants the Electric Utility Commission the authority to construct an electric light plant for the purpose of lighting the streets, walks and other public grounds, lighting buildings, and supplying and furnishing electricity for domestic and other purposes (Town Exhibit 1).

3. The Town Administrator has chief management responsibility for the police, fire, road, wastewater, administrative, rescue, grounds keeping, library, water, cemetery, and recreation functions of the Town. The Town Administrator does not have management responsibility over the operations of the Electric Department. Managerial authority over the Electric Department resides with the Electric Department General Manager. In addition to the General Manager, the Electric Department employs five linemen, two meter readers, a secretary and an administrative assistant.

4. Employees of all departments in Town government, including the Electric Department, are subject to Town personnel rules and regulations. The Town Administrator interprets and applies these rules and regulations with respect to all Town employees except Electric Department employees. The Electric Department General Manager interprets the personnel rules and regulations for Electric Department employees without consulting with the Town Administrator. If the personnel rules and regulations were to be changed, the Electric Department General Manager would have input, but not veto power, over any changes. The Electric Department General Manager makes decisions concerning daily supervision, vacation and leave entitlement, scheduling, job descriptions and processing of employee complaints without involving

the Town Administrator. The Town Administrator is involved in these areas for other Town employees.

5. *Electric Department employees operate under a different wage system than other Town employees. Wage increases for Town employees other than Electric Department employees are effective July 1 and are governed by the Town salary structure developed by the Selectboard. Wage recommendations are developed through department processes and action by the Town Administrator, and must be approved by the Selectboard. Electric Department wage increases are not based on the Town salary structure. Increases are recommended by the General Manager, and are approved by the Electric Utility Commission and the Selectboard. Annual Electric Department wage increases are effective November 1.*

6. *Town employees other than the Electric Department are members of a defined contribution retirement plan with a third party administrator. Electric Department employees are members of a separate retirement plan with no third party administrator.*

7. *The Selectboard has final authority over the hiring and dismissal of Electric Department employees. The Selectboard does not interview applicants for Electric Department positions, and has not rejected an applicant recommended by the Electric Utility Commission during the past several years. The Town Administrator plays no role in the hiring of Electric Department employees. The Selectboard is directly involved in the hiring of Town department heads outside the Electric Department (Union Exhibits 2, 3).*

8. *The Town charter provides that the Electric Department "shall have . . . entirely separate financial accounts". The Electric Department has a separate budget*

process from the rest of Town government. The Town budget has a July 1 – June 30 fiscal year, is submitted to the voters for approval in March, and is funded through taxes. The Electric Department budget operates on a calendar year basis, is approved only by the Selectboard after rates are established through review by the Public Service Board, and is funded by user fees. User fees need to be approved by the Public Service Board. The Selectboard always has approved the budget for the Electric Department without modification. The Electric Department makes contributions to the Town in lieu of taxes (Town Exhibit 1).

9. The Electric Department is responsible for purchasing (or leasing) and maintaining its own building and vehicles. The mechanic for the Town does not generally maintain Electric Department vehicles, although on occasion the mechanic has performed some maintenance work on Electric Department vehicles. The Town custodians clean and maintain all Town buildings except the Electric Department building. The Town grounds crew maintains the grounds for all Town property except the Electric Department. The Electric Department contracts for cleaning and maintenance services for its building.

10. The Electric Department administers its own billing system for the services that it provides to customers. The Town contracts with, and compensates, the Electric Department to perform billing services for the Town Water Department.

11. Since the merger of the Village and Town, Electric Department employees have not worked closely with other Town employees on a regular basis. Their required interaction is generally limited to working together during severe storms that result in fallen trees and power line damage, and situations where power lines are located in the area of other Town utilities.

12. The Town municipal charter specifies that the Selectboard shall appoint: 1) members of the zoning board of adjustment, 2) members of the planning commission, 3) Town administrator, and 4) zoning administrator. The charter provides that the terms of all appointed officers shall be not more than three years. The Selectboard has historically appointed the zoning administrator to one-year terms (Town Exhibits 1, 2).

13. The zoning administrator interprets and enforces the Town zoning regulations. Decisions of the zoning administrator are appealed to the zoning board of adjustment. The zoning administrator works in the planning and zoning division of the Town. The director of planning and zoning oversees the work of the zoning administrator, and conducts a performance evaluation of the zoning administrator. The zoning administrator is paid on an hourly basis, and is considered non-exempt under the Fair Labor Standards Act which results in the zoning administrator being eligible for overtime compensation after working 40 hours in a week.

14. At present, Town Police Department employees are the only Town employees included in a bargaining unit represented by an employee organization. The Stowe Police Officers Association represents the sergeants, police officers and dispatchers of the Police Department (See VLRB Docket No. 94-75).

#### OPINION

The first issue is whether it is appropriate to place Town of Stowe Electric Department employees in the same bargaining unit as other Town employees, excluding employees of the Police Department. The Union proposes this unit composition. The Town objects to the one bargaining unit proposed by the Union and contends that Electric

Department employees should be in a separate bargaining unit from other Town employees.

The Municipal Employee Relations Act ("MERA") requires the Board to determine whether a bargaining unit is appropriate. 21 V.S.A. Sections 1722(3), 1724(c). There is nothing in the statute requiring that the unit for bargaining be the only appropriate unit or the most appropriate unit; the Act 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) for the Board to take into consideration in determining the appropriateness of bargaining units, the Board's primary concerns are to group together only employees who share a similar "community of interests", while at the same time guarding against overfragmentation of units and allowing individuals to exercise rights guaranteed under the Act. Middlebury, 6 VLRB at 231. The following factors are relevant in determining whether a community of interests 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. Id., 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. Id. at 231.

The community of interests criterion must be considered together with whether overfragmentation of units will result in an adverse effect on effective representation of employees or the effective operation of the employer. It is Board policy that public rights and interests generally are better 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 employees in separate, relatively small bargaining units may result in excessive competition between employee groups with resultant Balkanization and whipsaw bargaining. Champlain Valley, 3 VLRB at 434-435.

In applying these standards to this case, we conclude that a bargaining unit including Town Electric Department employees and other Town employees is not an appropriate unit. In applying the relevant factors in determining whether a community of interests exists among employees, we conclude that Electric Department employees lack a sufficient community of interests with other Town employees. This case differs from previous cases in which the Board has found broad-based municipal bargaining units appropriate where effective control of all the employees resided with the town manager. United Paperworkers International Union and Town of Wilmington, 19 VLRB 308 (1996). Local 1201, AFSCME, AFL-CIO and Town of Middlebury, 14 VLRB 93 (1991). Local 1369, AFSCME, AFL-CIO and Town of Barre, 12 VLRB 7 (1989). Here, the Town Administrator has no control over the supervision and management of Electric Department employees. Effective control instead lies with the Electric Department General Manager who does not report to the Town Administrator.

In addition to this crucial factor of separate supervision, Electric Department employees operate under a different wage system than other Town employees. Their qualifications, training, job functions and job sites also differ. Further, Electric Department employees have limited interaction and integration of work functions with other Town employees. The autonomous nature of Electric Department operations is



demonstrated by such practices as the Electric Department administering its own billing system for the services that it provides to customers, the Electric Department contracting for cleaning and maintenance services for its building rather than using the Town custodians and grounds crew, and the Electric Department purchasing (or leasing) and generally maintaining its vehicles. The required interaction between Electric Department employees and other Town employees is generally limited to working together during severe storms and situations where power lines are located in the area of other town utilities.

We recognize that Electric Department employees operate under the same personnel rules and regulations as other Town employees and share most of the same benefits as other Town employees. Even in this regard, however, the Electric Department maintains a degree of autonomy. Unlike the rest of Town government where the Town Administrator interprets and applies the rules and regulations, the Town Administrator has no involvement in this regard with respect to Electric Department employees. The Electric Department General Manager interprets the personnel rules and regulations for Electric Department employees without consulting with the Town Administrator. Also, one of the major benefits differs for Electric Department employees as they are members of a separate retirement plan from other Town employees and the plan is administered in a separate and distinct fashion. In any event, the shared rules and regulations and similar benefits do not override the other factors which demonstrate the autonomous and distinct nature of the Electric Department.

In addition to the factors already discussed, the differences in the budgeting process for the Electric Department compared to the rest of Town government indicate

the inappropriateness of including Electric Department employees in the same bargaining unit as other Town employees. The Town budget has a July 1 – June 30 fiscal year, is submitted to the voters for approval in March, and is funded through taxes. The Electric Department budget operates on a calendar year basis, is approved only by the Selectboard after rates are established through review by the Public Service Board, and is funded by user fees that need to be approved by the Public Service Board.

These differences in the budgeting process likely would adversely impact the collective bargaining process if the employees were grouped together in the same bargaining unit. The rates approved by the Public Service Board will have a significant impact on the revenue that the Electric Department will have available for funding employee wages and benefits, and the level of employee wages and benefits can effect the rates charged to Electric Department customers. It would be inappropriate to have the bargaining over these wage and benefit levels included with the bargaining over the wages and benefits of other Town employees, the level of which have no bearing on electric rates.

In addition, Town voters may approve more or less money for wage and benefit increases than would be available to the Electric Department based upon rates approved by the Public Service Board. This could result in differences between the Town and Electric Department as to the ability to pay for wage and benefit increases. Including Electric Department employees with other Town employees in the same bargaining unit under these circumstances may unduly hinder the parties' ability to fashion an acceptable collective bargaining agreement.

In weighing the community of interests criterion together with whether overfragmentation of units will result in an adverse effect on effective representation of employees or the effective operation of the employer, we conclude that such adverse effects are not likely given the autonomous and separate nature of Electric Department operations. The separate supervision, wage systems and budget processes, as well as the limited interaction between Electric Department employees and other Town employees, should result in the Union being able to more effectively represent employees if the two groups of employees are included in separate bargaining units. Further, the effective operation of the Town should not be hindered if Electric Department employees are included in a separate bargaining unit given that the Electric Department already operates in a largely autonomous and separate fashion from the rest of the Town government. A separate bargaining unit is a logical extension of the existing nature of operations.

In sum, we conclude that it is not appropriate to place Electric Department employees in the same bargaining unit with other Town employees. The employees should be placed in separate bargaining units, and will be given an opportunity to determine separately whether they wish to be represented by the Union.

The remaining issue is whether the Zoning Administrator should be included in the proposed bargaining unit. The Town contends that the Zoning Administrator is an "executive officer" within the meaning of that term in Section 1722(12)(A) of MERA, and thus should be excluded from the proposed bargaining unit. The Town contends that the Town municipal charter places the Zoning Administrator on the same level as the Town's other executive officer, the Town Administrator. The Town relies on the charter specifically mentioning only the Zoning Administrator and the Town Administrator as

the two “officers” appointed by the Selectboard, as well as the charter providing that the terms of appointed officers shall be not more than three years. The Town notes that in practice the two officers are appointed to one-year terms, and further contends that they are subject to reappointment at the sole discretion of the Selectboard.

The Union contends that the fact the Zoning Administrator is appointed on a yearly basis should not result in exclusion from the proposed bargaining unit. The Union indicates that it is not requesting permanent employment for the Zoning Administrator, but that the Zoning Administrator should be allowed collective bargaining rights like other Town employees.

MERA does not provide guidance as to the meaning of the term “executive officer”, as such term is not defined in the Act. Absent guidance, we seek to apply the common understanding of that term. In so doing, we conclude that the Zoning Administrator, while a Town officer, is not an executive officer. We note that the Zoning Administrator does not supervise anyone and his work is overseen by the Planning and Zoning Director. Since the Planning and Zoning Director is at a supervisory level below that of Town Administrator, we are not persuaded by the Town’s contention that the Zoning Administrator operates on the same level as the Town Administrator. The fact that the Zoning Administrator is appointed to a fixed term does not foreclose the right to be represented by a union for collective bargaining purposes during the term of that appointment. A union is able to negotiate wages, hours and conditions of employment for the Zoning Administrator. At the same time, the Selectboard’s power to appoint and reappoint the Zoning Administrator as defined by the Town charter is not affected by the Zoning Administrator’s inclusion in the bargaining unit.

### ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is hereby

**ORDERED:**

1) Town of Stowe Electric Department employees shall be placed in a separate bargaining unit from other Town employees;

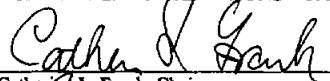
2) The Zoning Administrator is not an executive officer, and thus is eligible to be included in a bargaining unit represented by IBEW Local 300;

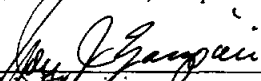
3) The Vermont Labor Relations Board shall conduct a representation election wherein all employees of the Town of Stowe Electric Department; excluding the General Manager, Foreman and Administrative Assistant; may determine whether they wish to be represented for exclusive bargaining purposes by IBEW Local 300; and

4) The Vermont Labor Relations Board shall conduct a representation election wherein all Highway Department employees, water employees, waste water employees, library employees, rescue employees, planing and zoning employees, custodial workers and assessors employed by the Town of Stowe; excluding the Highway Superintendent, Public Works Director, Executive Secretaries, Waste Water Plant Superintendent, Fire Chief, Controller, Library Director, Planning Director, and Planning and Zoning Secretary; may determine whether they wish to be represented for exclusive bargaining purposes by IBEW Local 300.

Dated this 2nd day of November, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Catherine L. Frank, Chairperson

  
John J. Zampieri