VERMONT LABOR RELATIONS BOARD

NEW ENGLAND POLICE BENEVOLENT ASSOCIATION	)	
and	)	
AFSCME COUNCIL 93	)	DOCKET NO. 18-17
and	)	
TOWN OF BRANDON	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On April 3, 2018, the New England Police Benevolent Association ("NEPBA") filed a Petition for Election of Collective Bargaining Representative seeking to represent all employees of the Town of Brandon Police Department holding the rank of patrol officer, sergeant, corporal and dispatcher. The NEPBA seeks to remove the police department employees from an existing bargaining unit with other Town of Brandon employees represented by AFSCME Council 93 ("AFSCME"), and to represent them in a separate bargaining unit.

AFSCME filed a response to the petition on April 20, 2018. AFSCME contended that a unit determination question existed since the petition seeks an election in a unit different than the existing unit. AFSCME asserted that a hearing was warranted at which the NEPBA should be required to present a compelling case to justify disrupting the existing bargaining unit structure. The Town of Brandon ("Employer") filed a response to the petition on April 20, 2018, stating that the Employer had nothing to submit in addition to the information provided by AFSCME in its response.

The Labor Relations Board conducted a hearing on June 14, 2018, in the Board hearing room in Montpelier before Board Members Richard Park, Chairperson; James Kiehle and Alan

Willard. Attorney Susan Edwards represented the NEPBA. AFSCME Council 93 General Counsel Joseph DeLorey represented AFSCME. Attorney Constance Tryon Pell represented the Employer. During the hearing, the NEPBA clarified that it was seeking to include the Police Department secretary/records clerk, rather than the dispatcher, in the proposed bargaining unit.

AFSCME and the NEPBA filed post-hearing briefs on July 6 and July 9, respectively. The Employer did not file a post-hearing brief.

FINDINGS OF FACT

1. In 1991, the Employer and AFSCME agreed to the conducting of an election among all employees of the Town of Brandon Police Department, excluding the Chief of Police and special officers, to determine whether the employees wished to be represented by AFSCME. AFSCME prevailed in the March 20, 1991, election conducted by the Labor Relations Board. The Board issued an order on April 4, 1991, certifying AFSCME as the exclusive bargaining representative of these employees (VLRB Docket No. 90-78, NEPBA Exhibit 4, AFSCME Exhibit 2).

2. AFSCME and the Employer entered into a collective bargaining agreement covering these employees effective June 30, 1995 to June 30, 1999 (AFSCME Exhibit 12).

3. In December 1996, AFSCME filed a petition to expand the existing bargaining unit of Police Department employees to add all office employees and Department of Public Works and Recreation Department employees, excluding the Director of Public Works, of the Employer. In February 1997, the Employer and AFSCME agreed to the conducting of an election among the employees AFSCME sought to add to the unit. The employees voted to be represented by AFSCME in an election conducted by the Labor Relations Board. The Board

issued an order on March 27, 1997, certifying AFSCME as the exclusive bargaining representative of all office employees, Department of Public Works and Recreation Department employees, excluding the Director of Public Work, and adding these employees to the existing bargaining unit of Police Department employees represented by AFSCME (VLRB Docket No. 96-94, NEPBA Exhibit 5, AFSCME Exhibit 3).

4. AFSCME and the Employer entered into collective bargaining agreements covering employees in the expanded bargaining unit effective: December 22, 1997, through June 30, 2001; July 1, 2001, through June 30, 2004; July 1, 2004, through June 30, 2007; July 1, 2007, through June 30, 2008; July 1, 2008, through June 30, 2011; July 1, 2011, through June 30, 2012; July 1, 2013, through June 30, 2014; and July 1, 2015, through June 30, 2018 (AFSCME Exhibits 4 through 11, NEPBA Exhibit 6).

5. The July 1, 2015, through June 30, 2018, collective bargaining agreement between AFSCME and the Employer contains the following Recognition clause:

> The (Employer) recognizes (AFSCME) as the exclusive bargaining representative of the non-probationary employees of the Town of Brandon Police Department, Town Office employees, Department of Public Works and Recreation Department employees, excluding the Director of Public Works, Director of Recreation, Administrative Assistant to the Town Manager, Chief of Police, Police Lieutenant and Special Officers. The parties agree that temporary, seasonal or regular part-time employees who work less than twenty-four (24) hours per week are not recognized as represented by the Union or covered by this Agreement (NEPBA Exhibit 6, AFSCME Exhibit 4).

6. There are four employees of the Police Department in the existing bargaining unit represented by AFSCME – i.e., a sergeant, corporal, police officer and secretary/records clerk. There also is a police officer in a probationary period who will be included in the bargaining unit upon successful completion of the probationary period. There is another vacant full-time police officer position that is eligible for inclusion in the bargaining unit as well once a police officer

successfully completes a probationary period for the position. The Police Department Chief and lieutenant are excluded from the bargaining unit.

7. Police officers perform general police responsibilities furthering the safety and good order of the community. Duties include identifying and apprehending criminal offenders, performing patrols and other measures to prevent crimes, aiding persons who are in danger of physical harm, facilitating traffic movement, promoting and preserving the peace, and providing other emergency services. Police officers perform duties under the direction and guidance of superior officers (NEPBA Exhibit 6, p.41-48).

8. The police sergeant assists and instructs subordinate police officers in properly performing their duties. The sergeant reports misconduct of officers to the Chief of Police. The sergeant responds to emergencies, incidents and dispatches as required. The Chief of Police and the lieutenant supervise the sergeant (NEPBA Exhibit 6, p.50-52).

9. The police corporal is subordinate to the sergeant and is considered the Senior Patrol Officer. The corporal performs all work required of a police officer. The corporal may serve as acting sergeant in the absence of the sergeant (NEPBA Exhibit 6, p.53-55).

10. The sergeant, corporal and police officers have to be certified by the Vermont Criminal Justice Training Council. They are assigned to shifts so that there is daily police coverage in the Town between 6 a.m. and 2 a.m. They complete specific training courses for aspects of their job, including successful completion of a multi-week training course at the Vermont Police Academy at the inception of their police officer employment. There are statutory provisions governing discipline of police officers. These characteristics of police officers' jobs do not apply to non-police members of the existing bargaining unit (NEPBA Exhibits 7, 8).

11. The secretary/records clerk of the police department performs secretarial and clerical work under the direction of the Chief of Police. Duties include typing, billing, filing, receiving and providing receipts for monies, data base and spreadsheet operations, answering the telephone, computer operations, and dealing with the public on a general basis. Dispatching duties for the Police Department are mostly performed by the State of Vermont Department of Public Safety. The secretary/records clerk performs some minor dispatching duties (NEPBA Exhibit 6, p.39-40).

12. There also are five employees of the Town Department of Public Works and Recreation Department and two office employees who are in the existing bargaining unit represented by AFSCME.

13. The highway maintenance foreman/equipment operator, highway maintenance equipment operator and laborer are Department of Public Works and Recreation positions in the bargaining unit. They perform general maintenance and repair work on Town highways, storm drainage systems, Town buildings and grounds, sidewalks and sewer lines using heavy equipment, trucks, hand tools, and other equipment and materials. They also perform winter snow and ice removal on Town roads and sidewalks (NEPBA Exhibit 6, p.58-67).

14. The wastewater treatment plant operator and assistant wastewater treatment plant operator also are Department of Public Works and Recreation positions in the bargaining unit. They perform specialized skilled and semi-skilled technical work in the operation and maintenance of the Town sewage treatment plant, pump station and collection systems (NEPBA Exhibit 6, p.68-72).

15. The two non-Police Department office employees in the bargaining unit are administrative secretaries/records clerks performing work under the general direction of a

department director and/or chairperson of a Town board. Their work involves typing, transcription, billing, filing, receiving and providing receipts for monies, word processing, accounting functions under the direction of the Town bookkeeper, answering telephones, and dealing with the public on a daily basis (NEPBA Exhibit 6, p.75-76).

16. The Police Department is in a separate building from other Town employees. Police Department employees regularly interact with each other. They interact infrequently with other Town employees.

17. Brandon Police Department Sergeant David Butterfield inquired of AFSCME beginning in 2016 about police officers moving from Group B to Group C for their pensions under the Vermont Municipal Employees Retirement System. Group B generally requires 30 years for normal retirement. Employees in Group C generally are eligible for normal retirement in 20 years. Butterfield received little response or guidance from AFSCME representatives on this issue. This appears to be attributable to frequent turnover of AFSCME representatives serving the Brandon bargaining unit during this period. Sergeant Butterfield, the corporal and police officer began exploring seeking other union representation due to the lack of response from AFSCME on the pension issue.

18. AFSCME hired Christopher Kilmer to serve as AFSCME representative in April 2017 to serve the Brandon bargaining unit among other bargaining units in Vermont and New Hampshire. He previously served for 18 years a law enforcement role in New Hampshire police departments. He was active during that time in two local police unions. Kilmer was the seventh representative to serve the Brandon unit in four years. He has continued to serve as AFSCME representative to the Brandon unit to the present.

19. On October 19, 2017, Sergeant Butterfield, the corporal and the police officer sent a letter to AFSCME Council 93 Executive Director Frank Moroney. The letter provided in pertinent part:

> We the undersigned Sergeant, Corporal and patrolmen (sic) of the Brandon Police Department desire to revert back to our police bargaining unit as was certified in Docket Number 90-78. We will be known as the Brandon Police Association. In December of 1996, AFSCME petitioned the labor board and added the rest of the town employees to our bargaining unit and contract in Docket No. 96-94 which we . . believe was a mistake in the long term of the police bargaining unit. It is our desire to disaffiliate ourselves with AFSCME Council and to affiliate with a national, police only, union. We have taken the initial steps in educating ourselves on the process of going back to our own local. We understand the 60 to 90 day window for us to file with the Vermont Labor Board to disaffiliate ourselves with the current Local and AFSCME Council 93. We also understand that when we do file, it is going to freeze all negotiations with the Town of Brandon for **ALL** members of the bargaining committee, including the AFSCME members that are not part of the police department and are not planning on leaving AFSCME. *(emphasis in original)*
>
> Therefore, in order to prevent a slowdown in negotiations for the other members of AFSCME Council 93 in Brandon, the members of the police department would request that you release us effective January 1, 2018 to be able to find new representation. We would hope you and the Town of Brandon would concur with the need for the police department to be uniformly represented as a single police entity and to support our request to this end. We would request a response in writing by December 8, 2017 so that we can take the necessary next step to accomplish our desire.
> . . .
> (NEPBA Exhibit 10)

20. Steve Lyons, the AFSCME Coordinator for New Hampshire and Vermont, and Kilmer met with Sergeant Butterfield shortly after this letter was sent. Butterfield indicated that the Brandon police did not believe they were being adequately represented by AFSCME. Discussion occurred on negotiations with the Town for a successor collective bargaining contract to the 2015-2018 contract which were to begin in November or December 2017. Butterfield mentioned a wage increase, elimination of the requirement for Town employees to reside in Brandon, and the pension move to Group C as significant issues for the police employees. Lyons and Kilmer invited Butterfield to be involved in negotiations. Butterfield declined.

21. In February 2018, AFSCME and the Employer tentatively agreed to a collective bargaining agreement covering the period July 1, 2018, through June 30, 2021. The tentative agreement included a 2 percent wage increase, elimination of the residency requirement, a provision moving police officers from Group B to Group C, and cost provisions of the health insurance plan that would result in health insurance cost increases exceeding wage increases by the third year of the contract. The employees in the bargaining unit represented by AFSCME voted to not ratify the tentative agreement (NEPBA Exhibit 9).

22. AFSCME and the Employer subsequently agreed to another tentative contract providing for minimal changes to the non-ratified tentative agreement. The provisions on wages, residency and pension contained in the renegotiated agreement were not changed from the non-ratified tentative agreement. The employees in the bargaining unit and the Employer have not acted to ratify the renegotiated agreement (Employer Exhibit 1).

23. NEPBA has a critical response team which provides legal assistance and other services to employees it represents in the event of a critical incident. AFSCME also has a critical response team providing services to employees it represents. Sergeant Butterfield was not aware that AFSCME had a critical response team.

OPINION

The issue before the Labor Relations Board is whether to approve a bargaining unit proposed by the NEPBA which would consist of the sergeant, corporal, police officers and secretary/records clerk of the Town of Brandon Police Department. These police department employees currently are in a bargaining unit represented by AFSCME which also includes Department of Public Works and Recreation and office employees. AFSCME opposes the

proposed bargaining unit. The Employer indicated at the hearing that it is “somewhat neutral” in this matter but has concerns about disrupting the existing bargaining unit structure.

The Municipal Employee Relations Act provides that the Board shall take into consideration the following criteria in determining appropriate bargaining units:

1) The similarity or divergence of the interests, needs and general conditions of employment of all employees within the proposed bargaining unit. The board may, in its discretion, require that a separate vote be taken among any particular class or type of employee within a proposed unit to determine specifically if the class or type wishes to be included. No bargaining unit shall include both professional employees and other municipal employees unless a majority of such professional employees vote for inclusion in such unit.

2) Whether overfragmentation of units will result from certification to a degree which is likely to produce an adverse effect on the effective representation of other employees of the municipal employer or upon the effective operation of the municipal employer.

3) In determining whether a unit is appropriate the extent to which the employees have organized is not controlling. 21 V.S.A. §1724(c).

Based on these criteria, 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 over-fragmentation of units and allowing individuals to exercise rights guaranteed under the Act. AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983). Local 1201, AFSCME, AFL-CIO and Town of Middlebury, 14 VLRB 93, 105 (1991). 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. Id. This clearly contemplates that more than one unit configuration involving a particular group or groups may be appropriate.

Under the Municipal Act, the criteria appropriate unit decisions most often turn on are community of interests and over-fragmentation of units. 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. Middlebury, 6 VLRB 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 over-fragmentation 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. It is Board policy that public rights generally are protected by broader units to guard against the potential problems which may arise given a multiplicity of units – Balkanization, whipsaw bargaining and institutional complications of dealing with a multiplicity of units. Petition of Vermont State Employees' Association (Re: Agency of Transportation Highway and Maintenance Employees), 24 VLRB 37 (2001). Teamsters Local 597 and University of Vermont, 19 VLRB 64, 79; *Affirmed*, 167 Vt. 564 (1997). 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).

However, this does not preclude the Board from carving out an additional bargaining unit from a large bargaining unit if the Board concludes there is not an adverse effect on the operation of government or the effective representation of employees. The conclusion that fewer units "would be preferable as a matter of time and expediency falls far short of establishing an adverse effect upon the effective operation of the . . . employer." International Association of Firefighters, Local 2287 v. City of Montpelier, 133 Vt. 175, 178 (1975). Petition of VSEA, 143 Vt. 636, 645 (1983).

The Board, in interpreting the statutory provision that "in determining whether a unit is appropriate . . . the extent to which the employees have organized is not controlling", has held that the extent to which employees have organized may be given weight, provided there are other substantial factors on which to base the unit determination and so long as the extent of organization is not the controlling factor. Teamsters Local 597 and University of Vermont, supra. United Electrical, Radio and Machine Workers of America and University of Vermont, 20 VLRB 219, 258-259 (1997). Teamsters Local 597 and Town of Richmond, 21 VLRB 169, 176-77 (1998). Employee and union choices as to the extent of organizing for collective bargaining purposes can be a significant factor underlying unit determinations, but this factor alone cannot be the controlling factor. Id.

The Board has recognized that police department employees have a distinct community of interests from other employees, and the Board and the Vermont Supreme Court have approved union-proposed bargaining units placing police department employees in separate bargaining units from other employees. Teamsters Local 597 and University of Vermont, supra. AFSCME and Town of Middlebury, 6 VLRB 227 (1983). IAFF, Local 2287 and City of Montpelier, 133 Vt. 175 (1975).The Board stated that "law enforcement employees' interests may be better served by having their own bargaining unit, given the primary commitment to law enforcement and the obvious hazards and risks inherent in such work distinct from other lines of work." Teamsters Local 597 and University of Vermont, 19 VLRB at 83.

An example of the distinct community of interests among police officers is reflected in the challenges faced by municipalities in attracting and retaining police officers to provide stability and experience for their police departments. In AFSCME Council 93, Local 1201, AFL-CIO v. Town of Castleton, 32 VLRB 98 (2012), the Board considered whether a municipal

employer violated its duty to bargain in good faith with an union by entering into an agreement with an individual, without involvement of the union, before employing him as a full-time police officer. The agreement required the individual to reimburse the employer for training costs at the Vermont Police Academy should he leave employment with the municipal employer within three years of completing training. The municipal employer enforced the agreement when the individual left employment with the employer shortly after completing training.

The Board recognized that the employer had a legitimate interest in maintaining and improving the quality of policing by discouraging police officers from leaving employment to work for other police organizations but that, in meeting that interest, the employer ignored the interest of the union as exclusive bargaining representative of police officers in negotiating over conditions of employment directly affecting the economic circumstances of employees. This case illustrates the interests shared by municipal police officers on a significant matter which is not an issue for other municipal employees.

Due to the distinctive nature of law enforcement, it is not unusual for police department employees to have their own bargaining unit. As previously recognized by the Board, there are numerous municipal police department bargaining units throughout the state. Teamsters Local 597 and University of Vermont, 19 VLRB at 78. *See also* the section on union certifications on the Board website at http://vlrb.vermont.gov which lists the large number of Vermont municipal police department bargaining units represented by unions.

There have been situations as well in which the Board has approved placement of police department employees in bargaining units with other employees. In three cases involving relatively small municipal employers where the Board was asked to determine whether it was appropriate to place police department employees in the same bargaining unit as non-police

employees, the Board concluded that it was appropriate. 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). We emphasize that the petitioning union in these cases sought such unit placement. In approving the unit proposed by the petitioning union, the Board noted that the petitioned-for unit only has to be an appropriate unit, not the most appropriate unit. Wilmington, 19 VLRB at 306. Middlebury, 14 VLRB at 105. Barre, 12 VLRB at 17.

A consideration in this case is that the Brandon Police Department employees have been in the same bargaining unit as other Town employees for more than 20 years. AFSCME relies on this fact to support its contention that the Board should not approve the NEPBA petition to now establish a separate bargaining unit of police department employees. In four cases where involved employees had been included in a bargaining unit with extensive bargaining history, the Board has expressed reluctance to disturb an existing bargaining unit if there was evidence of a meaningful and effective history of negotiations for all unit employees. Petition of Vermont State Employees' Association (Re: Sworn Law Enforcement Officers), 32 VLRB 1, 16-17 ((2012). Petition for Election of Collective Bargaining Representative (Re: Burlington Airport Employees), 28 VLRB 87, 99 (2005). Petition of VSEA (Re: Agency of Transportation Highway and Maintenance Employees), 24 VLRB 37, 48 (2001). Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, 96-97 (1982).

In three of these cases, the Board indicated that a petitioner seeking to carve out a smaller bargaining unit from a larger unit must present a compelling case to justify disrupting the existing unit structure. Petition of Vermont State Employees' Association (Re: Sworn Law Enforcement Officers), 32 VLRB at 18. Petition for Election of Collective Bargaining

Representative (Re: Burlington Airport Employees), 28 VLRB at 99-100. Petition of VSEA (Re: Agency of Transportation), 24 VLRB at 49. This is done by presenting specific evidence that the interests of petitioned-for employees have not been effectively represented in negotiations or otherwise. Id. The Board concluded in these three cases that the petitioning union had not presented a compelling case to justify disrupting the existing unit structure. Id.

We emphasize that two of these three cases did not involve police department employees so there was no consideration of the distinctive nature of law enforcement when the Board decided the cases. Burlington Airport Employees. Highway and Maintenance Employees. The third case, Petition of Vermont State Employees' Association (Re: Sworn Law Enforcement Officers), did involve law enforcement employees. VSEA sought to remove the sworn law enforcement officers of the Vermont Department of Fish & Wildlife, the Vermont Department of Liquor Control and the Vermont Department of Motor Vehicles from the broadly-based Non-Management Unit represented by VSEA, and organize the law enforcement officers into a separate bargaining unit. The Board dismissed the VSEA petition which, as discussed in more detail below, involved significantly different considerations than are present in the case before us.

In the fourth case cited above in which the Board expressed reluctance to disturb an existing bargaining unit if bargaining in those units has been successful over a period of time, Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB at 96-97, the Board ultimately did disturb the existing bargaining unit and granted the petition of a union to create a separate unit of state correctional center employees and remove these employees from a broader unit consisting of non-management employees of state government.

In so ruling, the Board credited the general rule that evidence of a meaningful and effective history of negotiations can be a dispositive factor retaining an established overall unit and against breaking off a separate unit from the broader unit. Id. at 97. However, the Board also credited "(a)nother general rule" which "recognizes that the primary commitment to law enforcement and the obvious hazards and risks creates a specific police community of interest which is likely to produce negotiating demands of little or no concern to other employees and, therefore, put the two in conflict." The Board determined it was evident that such a conflict existed between the correctional employees and the other employees in the broader unit.

The circumstances of the case now before us are much more similar to the Community Correctional Center Employees case than the Highway Maintenance Employees, Burlington Airport Employees and Sworn Law Enforcement Officer cases. Similar to the correctional center employees, the Brandon Police Department employees have a distinct community of interests from other employees in the existing bargaining unit. As previously recognized by the Board, law enforcement employees' interests may be better served by having their own bargaining unit, given the primary commitment to law enforcement and the obvious hazards and risks inherent in such work distinct from other lines of work.

This distinct community of interests among police employees from other employees is sufficiently strong under the circumstances of this case to override a reluctance to disturb a long-established broader bargaining unit. Although the specific evidence presented by the NEPBA that the interests of petitioned-for employees have not been effectively represented could have been stronger, the evidence before us does indicate that expressed serious concerns of police department employees concerning retirement were not responded to in a timely manner by AFSCME. This evidently was caused by frequent turnover by AFSCME representatives. The

police department employees are likely to be better served by having their own bargaining unit. The evidence before us also does not demonstrate that this will have an adverse effect on the representation of other Town employees who have different interests and concerns.

We further conclude that over-fragmentation of units will not result to a degree which is likely to produce an adverse effect upon the effective operation of the Employer. We have considered the concern articulated by the Town Manager at the hearing that the formation of a separate police unit may increase the time that must be spent on negotiations but have concluded that his opinion in this regard does not defeat the appropriateness of the separate unit. As set forth above, the conclusion that fewer units would be preferable as a matter of time and expediency falls far short of establishing an adverse effect upon the effective operation of an employer. We would need more substantial evidence than exists in this case to determine that a separate police unit will have an adverse effect upon the effective operation of the Employer.

Our holding with respect to the over-fragmentation issue distinguishes this case from Petition of Vermont State Employees' Association (Re: Sworn Law Enforcement Officers). There, contrary to this case, the Board determined that approving the proposed unit of law enforcement officers would result in over-fragmentation of units to a degree which was likely to produce an adverse effect on the effective representation of other employees and upon the efficient operation of the employer. Id. at 17. In so concluding, the Board relied on the fact that the proposed unit constituted just one percent of the state employees eligible to be represented by an employee organization. The Board stated: "If we were to allow a bargaining unit such as is proposed here, the precedent established would create the potential of setting into motion a significant expansion of bargaining units in state government and resulting complications of dealing with a multiplicity of bargaining units." Id. The Board also distinguished its previous

decisions approving union-proposed bargaining units placing police department employees in separate bargaining unit employees, stating: "(I)n those cases, the result was one police unit per employer. A decision approving the VSEA-proposed unit would result in two law enforcement units for the State – this one and the State Police Unit. This would create an inappropriate over-fragmentation of units."

The circumstances of the case before us are substantially different from the state employee case. The proposed unit of Brandon Police Department employees constitutes over one-third of town employees eligible to be represented by a union, much higher than the one percent in the state employee case. The potential of setting into motion a significant expansion of bargaining units in Brandon does not exist. Also, one police unit will result in this case. The over-fragmentation concern of two police units present in the state employee case is absent here.

A subsidiary question in this matter is whether the Police Department secretary/records clerk should be included in the separate bargaining unit with the sergeant, corporal and police officer. We conclude that the secretary/records clerk shares substantial mutual interests with the police officers so that it is appropriate to include her in a unit with them. Although her hours of work, qualifications, training and job functions differ, she has frequent contact with the officers, integration of work functions with them and common supervision. She has a greater community of interests with them than with other Town employees. It is appropriate to include the secretary/records clerk in the unit with the officers as they constitute a readily identifiable and homogenous group apart from other employees. AFSCME and Town of Middlebury, 6 VLRB at 232-33.

In sum, we hold that on balance the NEPBA has presented a case that is sufficiently compelling to warrant establishing a separate bargaining unit of police department employees.

The distinct community of interests among police department employees, the evidence on effective representation under the existing bargaining unit structure, and the lack of a demonstrated adverse effect on the effective representation of employees generally or the effective operation of the Employer combine to override a reluctance to disturb the existing bargaining unit structure. There may be cases where separating municipal police department employees from a larger employee unit is not appropriate, but this is not one of them.

ORDER

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

1. A bargaining unit consisting of the sergeant, corporal, police officers and secretary/records clerk of the Town of Brandon Police Department is appropriate; and

2. The Vermont Labor Relations Board shall conduct a secret ballot election among these employees to determine whether they wish to be represented for exclusive bargaining purposes by AFSCME Council 93, the New England Police Benevolent Association, or neither.

Dated this 22nd of August, 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Alan Willard

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Alan Willard