

STATE OF VERMONT
LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 490

Petitioner

v.

TOWN OF BENNINGTON

Docket No. 77-46R

UNIT DETERMINATION

FINDINGS OF FACT, CONCLUSIONS AND ORDER

Statement of the Case.

This matter is a re-hearing of a prior determination by the Board involving the composition of a bargaining unit for certain employees of the Town of Bennington (the "Town").

By Order of Certification dated October 14, 1977, following an election held by consent of the parties on June 22, 1977, the Board certified Local 490, AFSCME (the "Union") to be the exclusive collective bargaining representative for certain employees, named by consent of the parties by their employment position in the Order. In the Order, the Board granted either party the right to petition the Board for the exclusion of any employee felt to be a confidential, supervisory, elected employee or similarly subject to exclusion from the unit by law.

The Town brought the instant petition seeking to exclude certain employees from the bargaining unit on grounds made available to the Town by the terms of the October 14, 1977, Order.

For reasons stated below, the Board holds that certain employees specified below are properly excluded from the bargaining unit and that except for said employees, the bargaining unit previously certified is confirmed.

Findings of Fact.

1. The Town is a municipal employer as defined in 21 VSA § 1722 (13).
2. During the course of the hearing of this matter the parties stipulated that the following positions were confidential positions as provided in 21 VSA § 1722 (6): Assistant Treasurer and Administrative Assistant to Listers. At the hearing the parties also stipulated that the following positions were "supervisory" positions within the meaning of 21 VSA § 1502 (13): Superintendent, Water Department and Superintendent, Waste Water Treatment Plant. Evidence as to the supervisory or confidential nature of these positions was introduced in the hearing.
3. Other positions in controversy between the parties are as follows:
 - a. Assistant Superintendent of the Water Department.
 - b. Working Foreman, Highway Department (two positions).
 - c. Assistants to Waste Water Superintendent (two positions).
 - d. Fire Alarm and Traffic Light Superintendent.
 - e. Supervisor, Land Fill.
4. There was insufficient evidence presented to permit the Board to arrive at any findings as to the nature of the duties of the Assistant Superintendent of the Water Department.

5. The Working Foremen, Highway Department, perform the following duties under the direction of the Director of Public Works: To identify, schedule and lay out work; to allocate tasks among crews of six or seven workers respectively; to recommend to the Director of Public Works and consult with the Director on matters concerning hiring, suspension, layoff and firing of subordinates; and to adjust minor grievances among their crew members. The Working Foremen also recommend budget expenditures for materials, equipment and personnel to the Director of Public Works. The Working Foremen are also lead workers for their respective crews.

6. The Director of Public Works supervises the Town's Highway Departments and Water Departments. The Working Foremen in question work directly under the Director of Public Works and are the highest ranking persons in the Town's Highway Department.

7. The Assistants to the Waste Water Superintendent work under the direct supervision of the Waste Water Superintendent. There is one other person employed at the Waste Water Treatment Plant besides the Superintendent and the two assistants in question.

8. There are plans to expand the Town's waste water treatment facility and to enlarge its work force. The duties of the Assistant to the Waste Water Superintendent may change upon such expansion, but these changes are planned for at least two years in the future.

9. The Assistants to the Waste Water Superintendent perform technical work requiring extensive training. They work under the direction of the Waste Water Superintendent and, under the Superintendent's direction, are involved in the operation, testing and maintenance of the Plant equipment. During the absence of the Waste Water Superintendent they perform many of his duties. The Board is unable to find from the evidence, however, that the Assistants exercise

independent judgment and discretion during the absence of the Superintendent rather than merely executing plans for operation previously specified by the Superintendent. The Assistants to the Waste Water Superintendent make recommendations to the Superintendent in the course of his budget preparation efforts.

10. The Fire Alarm and Traffic Light Superintendent has no employees of the Town who are subordinate to him. The Superintendent of Fire Alarms and Traffic Lights does make budget recommendations to the Municipal Manager. The Fire Alarm and Traffic Light Superintendent installs, maintains and repairs Town fire alarms, traffic signal systems and call boxes.

11. The Superintendent, Land Fill, operates bulldozer-like equipment, exercising judgment as to how waste and earth fill are to be placed. One other person works in the Land Fill as his subordinate. The Land Fill Superintendent assists the Municipal Manager in the preparation of the budget for the Land Fill.

Conclusions of Law and Opinion.

12. The Town is a municipal employer as defined in 21 VSA § 1722 (13) and subject to the jurisdiction of this Board.

13. The issue for determination by the Board in this matter is whether any of the positions in dispute for inclusion in the bargaining unit must be excluded by the provisions of 21 VSA § 1722 (12) (B) or (D) as supervisors or confidential employees. "Supervisors" are defined by 21 VSA § 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 responsibility 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 a merely routine or clerical nature that requires the use of independent judgment." A "confidential employee" is defined by 21 VSA § 1722 (6) as an employee whose "responsibility or knowledge or access to information

relating to collective bargaining, personnel administration or budgetary matters would make membership in or representation by an employee organization incompatible with his official duties."

14. The Board concurs in the agreement of the parties as to the Supervisor, Water Department; Superintendent, Waste Water Treatment Plant; Assistant Treasurer and Administrative Assistant, Listers. There was sufficient evidence of supervisory or confidential responsibilities, or both, as to each position sufficient to support the parties' agreement as to exclusion of these positions from the bargaining unit.

15. All of the disputed positions exhibit some characteristics consistent with their classification as a supervisory or confidential employee. The question, which must be decided on a case-by-case basis, is whether the supervisory or confidential aspects of these positions justify exclusion of the officeholder from the bargaining unit.

16. Although there is some involvement in the budgetary process inherent in each of the disputed positions, the Board does not deem this involvement to be of a nature which would make membership in or representation by the Union incompatible with the officeholder's duties. Accordingly, the Board concludes that none of the disputed positions is "confidential" as defined in the statute.

17. The Board finds that the Working Foremen, Highway Department, are supervisory personnel within the meaning of 21 VSA § 1504 (13). The Foremen are in a position effectively to recommend hiring, suspension, layoff, discharge and work assignments and to adjust grievances for their crews and their exercise of such authority requires the use of independent judgment. Even though the Foremen work under the general direction of the Director of Public Works, they share primary responsibility for highway matters in the Town.

18. The Board finds that the Assistant Superintendents, Waste Water

Treatment Plant, are not supervisory personnel. There was insufficient evidence to justify a finding that persons in these positions exercised independent judgment out of the ordinary routine in connection with any authority they may have over other employees of the Town.

19. The Board finds that the Supervisor, Land Fill, is not a supervisor within the meaning of 21 V.S.A. § 1504 (13). There was no convincing evidence that he exercises independent judgment in the exercise of any relevant authority over any subordinate employee.

20 The Board finds that the Fire Alarm and Traffic Light Superintendent is not a supervisory employee within the meaning of 21 V.S.A. § 1504 (13). He exercises none of the relevant authorities over any employee.

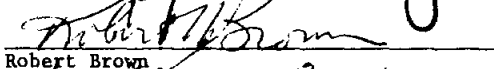
Ordered.

NOW, THEREFORE, IT IS ORDERED that the following employees be excluded from the bargaining unit of the employees of the Town of Bennington set forth in this Board's Order of Certification dated October 14, 1977: Assistant Treasurer (formerly called Clerk, Treasurer's Office); Administrative Assistant, Listers (formerly called Secretary, Lister's Office); Supervisor, Water Department; Working Foremen, Highway Department (two positions) and except as so modified, the composition of said bargaining unit as set forth in the Order of Certification dated October 14, 1977 is hereby confirmed.

DATED this 30th day of June, 1978.

VERMONT LABOR RELATIONS BOARD


John S. Burgess, Chairman


Robert Brown


William Kemsley