

STATE OF VERMONT
LABOR RELATIONS BOARD

In the matter of:

LOCAL # 1343, AMERICAN
FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO

and

TOWN OF COLCHESTER

Docket No. 77-8R

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case.

This matter came before the Board on the petition of certain employees of the Town of Colchester, Vermont, to amend this Board's Order in this matter of February 11, 1977. The February 11, 1977 Order constituted pursuant to 21 V.S.A. § 1724 a collective bargaining unit for certain employees in the Town of Colchester (the "Town") and certified the American Federation of State, County and Municipal Employees, AFL-CIO (the "Union") as the exclusive bargaining representative for members of that unit.

For the reasons stated below, the Board affirms the bargaining unit composition as set forth in the Order of February 11, 1977, except as to the position of Zoning Officer which the Board holds should be excluded from the unit.

The hearing on this matter was scheduled for September 16, 1977. Only an informal hearing was held on that date, however, because the Union had not been

given prior notice of the hearing. A rescheduled hearing was held on October 28, 1977. At the rescheduled hearing Board member Robert Brown was not present. He has not participated in the decision in this matter.

Findings of Fact.

1. The positions in issue in this hearing are the following: Zoning Administrative Officer, two secretaries to the Police Department and the Administrative Assistant to the Zoning Officer.

2. Since the proceedings which led to the February 11, 1977, Order in this matter, the person holding the position of Zoning Administrator and Building Inspector has changed. In addition, there has been some change in the nature of the duties of the office.

3. There have been no substantial changes in the other positions at issue in this proceeding since February 11, 1977.

4. All of the members of the unit whose positions are in issue prefer now to be excluded from the unit.

Conclusions of Law and Opinion.

5. The question for determination in this matter is whether pursuant to 21 V.S.A. § 1724 (a) (2) the presently certified bargaining unit is no longer appropriate under Board criteria. Stated differently the question is whether the bargaining unit certified on February 11, 1977 should be changed because there has been a change in the factual setting which controlled the composition of the bargaining unit at that time.

6. In its Order of February 11, 1977 the Board stated that it was a very close question as to whether the position of Zoning Administrator and Building Inspector should be included in the bargaining unit. The Board found that the duties of this position might be categorized as either professional or executive

although they were very similar to the duties and responsibilities of other clerical employees who were included in the unit. In its February 11, 1977 Order, the Board deferred to the wishes of the person holding the position and included the position of Zoning Administrator and Building Inspector in the bargaining unit.

7. There was unchallenged evidence introduced at the hearing to the effect that the duties and responsibilities of the position of Zoning Administrator and Building Inspector had changed since the February 11, 1977 certification. Furthermore, the present holder of this position, Mr. Morris, does not wish to be included in the bargaining unit.

8. The Board is unable to find that the remaining positions in issue have been changed materially since the certification on February 11, 1977.

9. For the foregoing reasons, the Board concludes that the changes in the duties and responsibilities of the position of Zoning Administrator together with the fact that the present holder of that position does not want to be included in the bargaining unit are sufficient to warrant his exclusion from the bargaining unit. As to the other positions at issue, however, the nature of the positions has not changed since the original certification. Accordingly, notwithstanding the preference of the officeholders not to be included in the bargaining unit, the Board must stand by its original decision.

10. The dissatisfaction of the members in the bargaining unit may be more attributable to their perceived lack of effort on their behalf by the Union representative than to the criteria for inclusion in the unit which bind this Board. The concerns of these employees, if well founded, must be addressed by means other than exclusion from the bargaining unit.

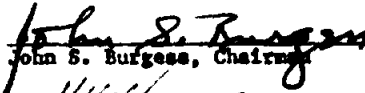
Order.

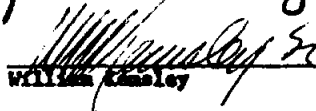
For the reasons stated above, it is ORDERED that the bargaining unit for

the Highway Crew, Zoning Administrative Officer and Clerical Staff of the Town of Colchester certified on February 11, 1977, be amended to exclude from said bargaining unit the position of Zoning Administrator and Building Inspector. With the exception of said position, the bargaining unit as constituted on February 11, 1977, is confirmed.

DATED this 30th day of June, 1978.

VERMONT LABOR RELATIONS BOARD


John S. Burgess, Chairman


William Kinsley