

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

DECISION NO. 4625

TOWN OF WALLINGFORD

-AND-

DECEMBER 7, 2012

UNITED PUBLIC SERVICE EMPLOYEES UNION

-AND-

LOCAL 1183, COUNCIL 4, AFSCME, AFL-CIO

Case No. ME-29,621

A P P E A R A N C E S:

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for the Town

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for UPSEU

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for Local 1183, Council 4, AFSCME, AFL-CIO

DECISION AND DISMISSAL OF PETITION

On January 20, 2012 United Public Service Employees Union (UPSEU) filed a petition, amended on April 4, 2012, with the Connecticut State Board of Labor Relations (the Labor Board) seeking to represent a bargaining unit of certain clerical employees employed by the Town of Wallingford (the Town.) Specifically, UPSEU seeks to “carve out” a unit from an existing wall to wall unit of employees currently represented by Local 1183, Council 4, AFSCME, AFL-CIO (AFSCME).¹

¹ UPSEU’s amended petition describes the proposed unit as follows: “[A]ll positions traditionally labeled clerical employees working for the Town of Wallingford including but not limited to the following positions: assistant town clerk, account clerk, chief clerk planning and zoning, senior clerk, secretary[,] senior stenographer, council secretary, clerk typist II, clerk typist I.”

At investigatory conferences conducted by a Labor Board assistant agent the Town and incumbent AFSCME objected to the petition arguing that the claimed unit was inappropriate because the proposed members do not have the necessary community of interest to justify separation from the existing unit.

This matter came before the Labor Board for a hearing on April 11, 2012. All parties appeared, were represented and allowed to present evidence, examine and cross examine witnesses and make argument. All parties filed post hearing briefs, the last of which was received by the Labor Board on August 2, 2012. The City filed a reply brief on August 17, 2012.

THE HEARING

An evidentiary record was established from which certain facts were adduced. In 1966 the Labor Board issued *Town of Wallingford*, Decision No. 671 certifying AFSCME as the collective bargaining representative of employees in the Town's Highway Department, Park Department, Landfill Department, and Sewer Department but excluding certain positions² including "clerical employees." (Ex. 4). In 1970 the Labor Board issued *Town of Wallingford*, Decision No. 965 modifying the unit to a "wall to wall" unit containing "[a]ll employees not already included in an existing bargaining unit" and excluding part-time employees and certain other³ positions. (Ex. 5). The recognition clause of the current collective bargaining agreement between AFSCME and the Town maintains this definition of the bargaining unit except for the exclusion of certain additional⁴ positions. (Exs.8, 9).

The existing multi-departmental, multi-classification unit encompasses approximately 126 employees in locations throughout the City and employee duties vary depending upon position and departmental assignment. The collective bargaining agreement contains separate pay plans for "Public Works", "Sewer", "Clerical",⁵ "Ambulance", and "Engineering". (Exs. 7, 8). Some positions in the Public Works pay plan require a high school diploma while some positions in the Sewer, Clerical, and Engineering pay plans require an associate's degree or high school diploma. (Exs. 7, 8).

Of the approximate 50 employees in the claimed unit, 30 work in Town Hall and 20 work at different locales depending upon department assignment. Clerical work hours

² The excluded positions were "superintendents, assistant superintendent, foremen *and clerical employees* . . ." (emphasis added).

³ Specifically excluded were "supervisory personnel, the town treasurer, building-plumbing/heating inspectors, building sanitary inspectors and the executive secretaries to the Mayor, Public Utilities Commissioner, Personnel Director and the Town Attorney . . ."

⁴ Additionally excluded from the bargaining unit are "Personnel Technicians and all other employees of the Personnel Department (excluding Risk Management Division of the Personnel Department) and the executive secretaries to the . . . Comptroller, Director of Public Works, and the Police Chief."

⁵ The claimed unit consists of those positions enumerated in the Clerical pay plan.

coincide with assigned office or section and clerical employees are afforded compensatory time or overtime pay for work in excess of the regular schedule. All positions in the existing unit except clerical and certain engineering positions are afforded an annual clothing allowance. Those employees that are required to use OSHA compliant safety shoes are afforded annual reimbursement for shoe replacement expenses up to a fixed amount.

Non-clerical positions in Public Works perform manual labor and/or operate, maintain, and repair Town machinery. Most such positions, however, are also required to file reports, maintain related paperwork, and interact with the public. Sewer department employees holding non-clerical positions operate and repair equipment necessary to maintain the Town's sewage infrastructure and certain positions are also required to input computer data, file reports, and keep accurate records. After collecting survey data in the field, Engineering division employees analyze the data in an office setting in order to generate survey reports. Similarly, while many employees in the Clerical pay plan work in an office setting performing purely administrative tasks, certain of those positions do not. For example, the Property Appraiser conducts on site inspections of personal and real property. The Social Services Caseworker must maintain a driver's license in order to process applications for public assistance and provide outreach referral and follow-up services. The Buyer must occasionally travel to various Town facilities to attend pre-bid meetings.

Most clerical employees assigned to Town Hall do not use the common lunchroom provided. AFSCME conducts regular union meetings without written agendas at a local restaurant that serves alcoholic beverages. Certain clerical employees feel that these union meetings are dominated by Public Works employees who occasionally act inappropriately.

DISCUSSION

In accord with *City of Middletown*, Decision No. 3759 (2000) and our statutory obligations under Conn. Gen. Stat. §7-471(3)⁶ we first assess whether the claimed unit is appropriate before we consider employees' wishes for separate status or change of representative:

Our case law is clear that employees must possess a community of interest in order for a bargaining unit to be considered appropriate. In determining the existence of a community of interest, the Labor Board first must be satisfied that the petitioned-for employees share certain objective characteristics,

⁶ Section 7-471(3) states, in relevant part:

The State Board of Labor Relations shall have the following power and authority in relation to collective bargaining in municipal employment . . . (3) The board shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by sections 7-467 to 7-477, inclusive, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the municipal employer unit or any other unit thereof . . .

such a similarity of jobs and working conditions and common supervision, before it will consider the desire of the employment to be represented in a separate unit.

City of Middletown, *supra* at p. 6. These rules apply in circumstances such as the instant case where the petitioner seeks to remove a group of employees from an existing unit to create a new unit:

With regard to the objective factors required to show a community of interest, the Labor Board requires a particular showing in cases where the petition seeks to carve out a smaller group of employees from an existing unit. In this regard, the proposed new group must be shown to have a community of interest all its own sufficient to justify the inherent destabilization that [secession] brings about. Otherwise stated, there must be something sufficiently unique about the type, condition, nature, or location of the work of the petitioning employees to give them separate status; to form what may be called the unit's natural boundaries.

Id. at p. 8 (citations omitted). A petitioner's burden to show that the work performed by members of the proposed smaller unit is "sufficiently unique" is not insignificant. "Certainly a stronger showing may fairly be required to split an existing unit than to create a smaller unit in the first place." *City of Bridgeport*, Decision No. 1440 p. 4 (1976) (citation omitted); *appeal dismissed, Council 4 AFSCME v. Board of Labor Relations*, Superior Court, judicial district of Fairfield at Bridgeport, No.114261 (1980). "Normally the Board would be reluctant to allow the carving out or splintering of a relatively small group from an otherwise appropriate bargaining unit." *City of Norwich*, Decision. No. 1158-B p. 2 (1973)

UPSEU initially argues that the recognition clause in the collective bargaining agreements specifically excludes clerical employees and serves as an admission by AFSCME and the Town that such employees have a community of interest distinct from those in the existing unit. We disagree. The recognition clause consists of two sections, each of which respectively tracks the language of the Labor Board's unit determination decisions in 1966 and 1970. The latter modifies the former by encompassing clerical employees as "employees not already included in an existing unit" as is evidenced by the existence in the agreements of a "PAY PLAN FOR CLERICAL" and "Hours of Work for General Clerical."

Turning to the record before us we find that the employees in the claimed unit have insufficient community of interest to justify the carve-out UPSEU seeks. While a majority of clerical employees work at Town Hall, many work at different locales. All appear to perform a variety of functions that vary with the assigned division or department. All appear to answer to different supervisory positions. Even if the broad concept of "office" duties was sufficiently unique to establish natural parameters for the claimed unit, the evidence before us does not allow differentiation of clerical employees on such a basis. Nearly all employees in the existing unit process paperwork as part of their regular duties and many file reports, input computer data, and exchange information with the public. Conversely, some employees in the claimed unit must leave their offices

to perform essential job functions in the field. Nor do existing work schedules offer a sound basis for differentiation. While police dispatchers work nontraditional hours as do certain other members of the existing unit during emergencies, most employees share the same work schedules and the collective bargaining agreement dictates that “[t]he hours of work for clerical employees shall coincide with the assigned office or section . . .” All employees are compensated for work in excess of their regular schedules and with the exception of a clothing allowance,⁷ all appear to receive the same benefits.

Nor do we find the necessary community of interest in the existence of a separate wage schedule for clerical employees in the collective bargaining agreement. Wage scales for every position in the existing unit are organized in separate “pay plans” for each department. Four wage scales, however, are applicable to multiple clerical positions and use of a separate “Clerical” pay plan avoids unnecessary repetition.

Based on the record before us we agree with AFSCME and the Town that the requested carve-out does not meet our long established standard:

With respect to community of interest . . . a showing confined to a single job category is too narrow . . . Every category of worker almost by virtue of their work has some unique features. However if we find appropriate a bargaining unit composed of a single job category almost every group of employees with a job description would be able to claim a separate unit. To prevent this and the attendant chaos that would ensue from a proliferation of bargaining units, we instead require that there be an objectively demonstrated community of interest in the proposed unit and that such showing not be shared by other employees . . . In essence it must be clear that the proposed unit should be independent and is not merely a segment of some larger and more appropriate unit.

City of Willimantic, Decision No. 1852 p. 2 (1980) (citations omitted). Pursuant to our power to determine appropriate bargaining units under Section 8-471(3) we find that the claimed unit is inappropriate and that the employees at issue should remain in the existing unit.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal employee Relations Act, it is hereby

ORDERED that the petition filed herein be and the same hereby is **DISMISSED**.

⁷ While clerical employees do not receive a contractual clothing allowance, nor do Engineering draftspersons. UPSEU’s reliance on the lack of a “boot allowance” for clericals is misplaced because that contractual benefit is limited to reimbursement for required safety shoe costs and the record does not reflect which employees in the wall to wall unit are subject to OSHA footwear restrictions.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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Patricia V. Low
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Wendella Ault Battey

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Board Member

Barbara J. Collins

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Board Member

