

VERMONT LABOR RELATIONS BOARD

SOUTH BURLINGTON POLICE)	DOCKET NO. 88-2
OFFICERS' ASSOCIATION)	
)	
and)	
)	
CITY OF SOUTH BURLINGTON)	

MEMORANDUM AND ORDER

On March 24, 1988, the South Burlington Police Officers' Association ("Association") filed a Petition for Election of Collective Bargaining Representative, seeking to add the sergeants, lieutenants, dispatchers and civilian employees employed by the South Burlington Police Department to a bargaining unit of patrolmen and detectives currently represented by the Association. The Association was seeking by the petition to add 13 employees to the present bargaining unit. On July 5, 1988, the City of South Burlington ("Employer") filed a Motion to Dismiss Petition for Election of Collective Bargaining Representative. The Employer's motion was filed subsequent to 7 of the 8 sergeants and lieutenants informing the Labor Relations Board in writing that they did not wish to be represented by the Association. The Association has informed the Board that it would still like to proceed with its request to include sergeants and lieutenants as part of the bargaining unit.

The Employer contends that the petition should be dismissed because 21 VSA §1724(a)(1) requires that a petition for representation allege that not less than thirty percent of the employees to be

represented support the petition, and there is no substantive evidence from which the Board can conclude that thirty percent of the employees the Association is seeking to add to the bargaining unit wish to be included in the bargaining unit.

The Employer cites the following portion of 21 VSA §1724(c)(1) in support of its motion to dismiss:

"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."

It is the Employer's position that the sergeants and lieutenants represent two distinct classes of employees within the police department and, thus, it would be appropriate for the Board to exercise its discretion to require separate votes among these two classes of employees. In light of this, the Employer contends that the Board cannot conclude that thirty percent of the employees wish to be included in the bargaining unit.

We conclude that the Employer's reliance on the above cited portion of §1724(c)(1) is without merit. It is evident by a review of §1724 in its entirety that the separate vote referred to in §1724(c)(1) comes into play only after an evidentiary hearing has been conducted on unit determination questions such as the appropriateness of a proposed bargaining unit and whether petitioned-for employees are, in fact, employees within the meaning of the Municipal Employee Relations Act. Here, such an evidentiary hearing has yet to be held

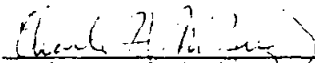
and there is a contention by the Employer that the sergeants and lieutenants are not employees within the meaning of the Act because they are supervisors. Thus, the Employer's reliance on §1724(c)(1) is premature.

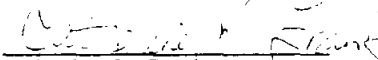
Given this conclusion, we are left to decide whether the Association still meets the showing of interest requirement for the proposed bargaining unit. Pursuant to Section 33.7 of the Board's Rules of Practice, the determination whether a showing of interest requirement has been satisfied shall be made administratively by the Board. Upon review of the authorization cards signed by the employees indicating they desired to be represented by the Association, which were submitted by the Association in support of its election petition, the Board concludes that the 30 percent showing of interest requirement has been met even when 7 of 8 sergeants and lieutenants are considered to not desire representation by the Association.

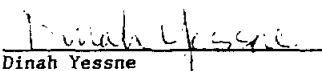
Now therefore, based on the foregoing reasons, it is hereby ORDERED that the Employer's Motion to Dismiss Petition for Election of Collective Bargaining Representative is DENIED.

Dated the 22nd day of July, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


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