VERMONT LABOR RELATIONS BOARD

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 597	)	
and	)	DOCKET NO. 90-4
CHITTENDEN COUNTY TRANSPORTATION AUTHORITY	)	

MEMORANDUM AND ORDER

At issue is an objection to the conduct of a representation election filed by the Chittenden County Transportation Authority ("Employer") on March 7, 1990.

On January 10, 1990, the Chauffeurs, Teamsters, Warehousemen and Helpers, Local 597 ("Union") filed a Petition for Election of Collective Bargaining representative, requesting an election among the mechanics, bus cleaners, parts men and working foreman employed by the Employer.

The Employer and the Union agreed to the conducting of a consent election among employees in a bargaining unit consisting of mechanics, bus cleaners, parts men and the working foreman employed by he Employer. The parties agreed that this bargaining unit is separate from the bargaining unit of drivers currently represented by the Union.

Timothy Noonan, Labor Relations Board Executive Director, conducted an election on February 26, 1990, in the conference room adjacent to the maintenance area, Chittenden County Transportation Authority, Burlington, Vermont. Gary Thompson, Supervisor of Maintenance for the Employer, was present as an observer for the

Employer. Richard Hill, a member of the bargaining unit, was present as an observer for the Union. All ten eligible employees voted.

The results of the election were:

Chauffeurs, Teamsters, Warehousemen and Helpers, Local 597	6
No Union	4

On March 7, 1990, the Employer filed an objection to the conduct of the election pursuant to Section 33.27 of the Board Rules of Practice. The Employer made various factual allegations in support of the objection to the conduct of the election. The Employer requested that the Board investigate the objection and set aside the election.

Upon receipt of the objection, the Board sent a copy of the objection to each person named in the objection and requested that those individuals file an answer to the factual allegations made in the objection which made reference to them. Subsequent to receipt of those answers, and subsequent to an election report submitted by Board election agent Noonan, the Board appointed Board Member Catherine Frank to conduct further investigation into the conduct of the election. Member Frank visited the site of the election, and reported back to the Board concerning the results of her investigation.

Board Members Charles McHugh, Chairman; Louis Toepfer and Leslie Seaver were assigned to decide whether the Employer's objection should be upheld.

We will discuss each of the issues raised by the Employer in turn. First, the Employer contends that immediately prior to the scheduled vote, Union Representatives Earl Nolan and Edward Bluto were observed arguing with Board agent Noonan over the list of eligible voters. The

Employer contends that this discussion was contrary to Section 33.21 of the Board Rules of Practice. Section 33.21 provides that any objections to the list of eligible employees shall be filed by a specified date prior to the election and, if objections are not filed, the Board will consider that list final and no additions or deletions will thereafter be permitted unless agreed to by the parties.

Board investigation has revealed that Union representative Bluto did inform Noonan, prior to the election, that two probationary employees were left off the list of eligible voters. Noonan informed Bluto that the period for objecting to the voter eligibility list had expired, and that employees could be added to the list at this point only by agreement of the Union and Employer. Subsequently, and prior to the election, Noonan summarized for Nolan and Employer observer Thompson his discussion with Bluto. Thompson indicated that the Employer would not agree to let the employees vote because they were probationary employees. Noonan then stated that the employees would not be allowed to vote. Our investigation has revealed no indication that this discussion was an argument or otherwise improper.

We fail to see how a Board agent informing one of the parties to an election of a provision of the Board Rules of Practice constitutes any grounds for questioning the conduct of an election.

Second, the Employer contends that, contrary to Section 33.22 of the Board Rules of Practice, the Union had more than one observer of its selection at the polling place and at the counting of ballots; that Nolan, Bluto and Richard Hill were all on the premises during the voting and that all three men also observed the counting of the ballots. Section 33.22 of the Rules provides that "(e)ach party to an

election shall be permitted to have one observer of its own selection at the election... and at the counting of the ballots".

Board investigation has revealed that only one Union observer was present at the polling place during the balloting, employee Richard Hill. Union Representatives Bluto and Nolan informed Noonan prior to the balloting that they were leaving the premises during the balloting, and our investigation has demonstrated no reason to believe that they were on the premises during balloting. At the time polls closed, Noonan told observers Thompson and Hill that he was going to count the ballots. At that point, Bluto and Nolan came into the voting room and were spectators during the counting of the ballots. It has been Board practice to allow only observers to be present during the balloting itself but to allow the parties to have spectators present during the counting of the ballots.

We do not believe the practice of allowing spectators to be present during ballot counting violates Section 33.22 of the Rules. Even if this practice is contrary to the Rules, it is at most a technical violation which has no effect on the outcome of the election since balloting has concluded by that point.

Third, the Employer contends that the observer on behalf of the Union, Richard Hill, was an employee and a member of the bargaining unit voting at the election. This is true, but it has been Board practice to place no restriction on either unions or employers as to the identity of their observers, nor does it violate any Board rules.

Fourth, the Employer contends that the observers at the actual voting room were not permitted to be inside the room where voting took place. The Employer alleges that, at one point during the election,

voting employee Michael Slingerland asked questions of Noonan which could not be heard by the observers.

Our investigation leads us to conclude that it is not accurate that observers were not permitted to observe inside the room where voting took place. The Employer and Union voluntarily agreed to this procedure, and in fact the Employer observer initiated it. Prior to the election, Union Representatives Bluto and Nolan, in the presence of Noonan and Thompson, objected to Thompson observing the election for the Employer in such a small room because he supervised the employees. Noonan told the Union representatives that the Board did not restrict the identity of the parties' observers at an election and that Thompson could observe. Noonan also told the Union representative that, if they thought the voting room was too small, Noonan would consider moving the election site to an area in the large maintenance area adjacent to the voting room. At that point, Thompson stated that he did not need to be present in the room and would agree to standing in the doorway of the maintenance area leading to the voting room and checking employees off the list of eligible voters as they walked into the room. The Union agreed to this procedure. Subsequently, Noonan instructed the observers to stand in the doorway area during the balloting.

Employee Michael Slingerland did ask Noonan a question when he appeared to vote. He asked Noonan a question to the effect of whether the Union was good for employees. Noonan responded that he had no comment, that he was an impartial agent of the Board there to conduct an election.

The Employer's objection to observers standing outside the voting room is not well taken. The Employer observer not only agreed to this procedure, but actually initiated the idea. It is disingenuous to agree to a procedure beforehand, and then question it after the fact.

Fifth, the Employer contends that Hill, while acting as Union observer, looked into a window which looked into the voting room as employee Halsey Dunton was voting and Dunton may have been aware of Hill's presence.

As the result of the Board investigation, we are not able to conclude definitively whether Hill looked into the window and saw how Dunton was voting. Hill denies looking in the window, while Thompson claims he saw Hill look into the window while Dunton was voting. We are able to conclude only that Hill may have looked in the window and, if he did look in the window, could possibly have seen how Dunton voted. However, even assuming that Hill did look in the window and saw how Dunton voted, we do not believe this warrants setting aside the election. The Board investigation has revealed that Dunton was not aware of Hill's presence at the window while Dunton voted. Thus, any actions of Hill had no effect on how Dunton voted since Dunton had no knowledge Hill could see how he was voting. Since Hill's actions had no effect on the results of the election, we are not inclined to set aside the election on this basis.

We are concerned that the secrecy of the ballot was potentially compromised here. The Board takes very seriously its statutory responsibility to "conduct a secret ballot of the employees" in representation elections. 21 VSA §1724(e). We value and guard carefully the integrity of the elections we conduct. However, since

the employer has not established with any degree of certainty the actual facts that could support evidence of compromise and the results of the election were not affected, we conclude that it would be unwarranted to set aside the election.

Finally, the Employer contends that after employee Michael Slingerland voted, Hill asked him as he was leaving the room "What took you so long?" There is no dispute that this question was indeed posed by Hill to Slingerland. However, we fail to see how this statement, standing by itself, had any effect on the results of the election.

Now therefore, based on the foregoing reasons, it is hereby ORDERED:

> 1. The objection by the Chittenden County Transportation Authority to the conduct of the representation election in this matter, with the accompanying request to set aside the election, is DENIED; and
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> 2. As a result of the representation election conducted in this matter, Chauffeurs, Teamsters, Warehousemen and Helpers, Local 597, is CERTIFIED as the exclusive bargaining representative of the mechanics, bus cleaners, parts men and working foreman employed by the Chittenden County Transportation Authority.

Dated this 31st day of May, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Louis A. Toepfer

Leslie G. Seaver