VERMONT LABOR RELATIONS BOARD

IBEW LOCAL 300	)	
	)	
and	)	DOCKET NO. 90-36
	)	
VILLAGE OF MORRISVILLE WATER AND LIGHT DEPARTMENT	)	
	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 19, 1990, IBEW Local 300 ("Union") filed a Petition for Election of Collective Bargaining representative, seeking to add the Accounts Payable Clerk and Payroll Clerk employed by the Village of Morrisville Water and Light Department ("Employer") to the existing bargaining unit of Water and Light Department employees represented by the Union.

In a response filed July 13, 1990, the Employer objected to the petition, raising various issues of unit determination and representation. Subsequently, by letter of August 27, 1990, the Employer withdrew all objections to the petition with the exception of whether the petition is untimely based on the contract bar rule.

On September 19, 1990, the Union and the Employer filed a Stipulation of Facts on the contract bar issue, which facts are included herein, and agreed that no evidentiary hearing was necessary. The Labor Relations Board provided the parties with an opportunity to file memoranda of law on the contract bar issue. The Union filed a brief on October 18, 1990, contending that the petition was timely. The Employer filed a memorandum of law on October 26, 1990, contending that the petition was untimely.

FINDINGS OF FACT

1. The Union is the authorized representative of certain employees of the Morrisville Water and Light Department, representing the employees in those positions which comprise the line crew, maintenance men, plant operators and apprentices.

2. Prior to June 1, 1990, Ernest Robbins, Business Manager of the Union, and James Fox, Superintendent and Manager of the Village of Morrisville Water and Light Department, represented their respective constituents in negotiations for a successor collective bargaining agreement. At no time during these negotiations was the issue of adding additional positions to the unit discussed between the parties. As a result of negotiations, the parties entered into a collective bargaining agreement for the period June 1, 1990 through May 31, 1993 (Exhibit A).

3. On June 19, 1990, the Union filed a Petition for Election of Collective Bargaining Representative, seeking to add two additional positions to the existing bargaining unit at the Department. The two positions which the Union seeks to add to the unit are (a) payroll clerk, cash receipts; and (b) inventory accounts payable clerk. At present, there are no other clerical positions included within the existing unit.

OPINION

The Employer contends that this petition should be dismissed as untimely filed, pursuant to Section 33.2 of the Rules of Practice of the Labor Relations Board, because the parties recently had entered into a three-year collective bargaining agreement prior to filing of the petition, and at no time during negotiations for that agreement

did the Union ever mention its desire or intent to petition for the inclusion of additional employees in the bargaining unit. The Employer contends that the petition should be found untimely in the interests of stability and fairness in the collective bargaining process.

Section 33.2 provides that "if a collective bargaining agreement is in effect which covers any or all the employees to be covered by the petition, a petition shall normally be considered timely only if filed during the period 90 to 60 days prior to the expiration date of the collective bargaining agreement". Previously, the Board has concluded that Section 33.2 does not apply to a petition such as filed here, where an incumbent union is seeking to add employees previously not represented by a union, and not covered by a contract. Local 1369, AFSCME, AFL-CIO and Town of Barre, 12 VLRB 7, 19 (1989). We find no compelling reason to diverge from that precedent here, and conclude that this petition is timely. Obviously, the contract bar exists in part to promote stability. However, logically anything and everything that promotes stability does not necessarily call for application of the bar.

We note that we have not been asked to require that the provisions of the collective bargaining agreement between the Union and the Employer be extended to the inventory accounts payable clerk and payroll clerk, cash receipts, nor will we do so. If the inventory accounts payable clerk and payroll clerk, cash receipts vote to be represented by the Union, we only require that these employees be added to the existing bargaining unit represented by the Union and that the parties negotiate in good faith with respect to wages, hours and conditions of employment of the two employees.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that a representation election shall be conducted by the Labor Relations Board wherein the inventory accounts payroll clerk and payroll clerk, cash receipts employed by the Village of Morrisville Water and Light Department may determine whether they wish to be represented by IBEW Local 300 or no union.

Dated this 1st day of November, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

Louis A. Toepfer