

VERMONT LABOR RELATIONS BOARD

VILLAGE OF ESSEX JUNCTION)	
EMPLOYEES' ASSOCIATION)	
)	
and)	
)	
LOCAL 1343, AFSCME, AFL-CIO)	DOCKET NO. 91-17
)	
and)	
)	
VILLAGE OF ESSEX JUNCTION)	

MEMORANDUM AND ORDER

On February 21, 1991, the Village of Essex Junction Employees' Association ("Association") filed a Petition for Election of Collective Bargaining Representative, seeking to represent employees employed by the Village of Essex Junction ("Village") who are currently represented by Local 1343, AFSCME, AFL-CIO ("Union"). The Village filed a response to the petition on March 21, 1991. The Union filed a response to the petition on March 26, 1991. The Union contends that the Vermont Labor Relations Board should dismiss the petition filed by the Association.

The Union first questions whether the Association has made a sufficient showing of interest in this matter. Section 33.3 of the Board Rules of Practice provides that a "petition, or supporting signature cards requesting representation by a collective bargaining representative, shall be signed by not less than 30 percent of the persons in the proposed bargaining unit." The Board has determined that the Association has met the 30 percent showing of interest requirement.

Nonetheless, the Union contends that the Board Rules of Practice are contrary to the Municipal Employee Relations Act, 21

VSA §1721 et seq ("MERA"). The Union maintains that MERA requires that, if employees are presently represented by a union, another employee organization must demonstrate that 51 percent of employees no longer support the incumbent union to call for an election. We disagree, and conclude that the provision of our Rules adopting the 30 percent showing of interest requirement is consistent with §1724(a) of MERA, which provides that a petition for election of a collective bargaining representative and a petition for decertification of a representative must be supported by "not less than 30 percent of the employees" to have an election by stating:

A petition may be filed with the board, in accordance with regulations prescribed by the board: . . . (b)y an employee or group of employees . . . alleging that not less than 30 percent of the employees, wish to form a bargaining unit and be represented for collective bargaining, or assert that the individual or employee organization currently certified as bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit . . .

The Union further contends that the petition is untimely pursuant to Section 33.2 of the Board Rules of Practice because there is presently a collective bargaining agreement in force between the Union and the Village which will remain effective until a successor agreement is signed by the parties. Article 29 of the collective bargaining agreement between the Union and the Village provides as follows:

This agreement shall be effective January 1, 1989 - December 31, 1990, and shall continue in effect pending negotiations for a successor agreement. This agreement shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least 120 days prior to its expiration that it desires to add to or modify this agreement. If such notice is given, the Union shall submit its

original proposals within 105 days prior to the expiration date, and negotiations shall commence approximately 90 days prior to expiration with a view towards concluding negotiations on or before December 1.

It is undisputed that the Village and the Union had not negotiated a successor agreement to this agreement when the Association filed its petition herein. Section 33.2 of the Board Rules of Practice provides in pertinent part as follows:

If a collective bargaining agreement is in effect which covers any or all of the employees to be covered by the petition, a petition shall normally be considered timely . . . if filed . . . after the expiration thereof if a successor agreement has not become effective.

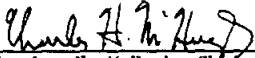
The intent of this provision of the Rules is to provide an opportunity for a petition to be filed after the contractually provided date of "expiration" of a contract even when the contract remains "in effect" as long as "a successor agreement has not become effective." Thus, the petition filed herein is timely even though the contract between the Village and the Union remains in effect since it was filed after the expiration date of the contract and a successor agreement was not effective at the time the petition was filed.

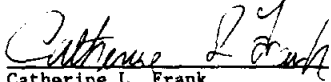
Now therefore, based on the foregoing reasons, it is hereby ORDERED that the Vermont Labor Relations Board shall conduct a representation election at which employees of the Village of Essex Junction presently represented by Local 1343, AFSCME, AFL-CIO, will vote on whether they wish to be represented by

Local 1343, AFSCME, AFL-CIO, or the Village of Essex Junction
Employees' Association, or no union.

Dated this 6th day of May, 1991, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


Leslie G. Seaver