

VERMONT LABOR RELATIONS BOARD

SOUTH BURLINGTON FIRE OFFICERS)		
ASSOCIATION)		
)	
and)		DOCKET NO. 92-31
)	
CITY OF SOUTH BURLINGTON)		

MEMORANDUM AND ORDER

On July 1, 1992, the South Burlington Fire Officers Association ("Association") filed a Petition for Election of Collective Bargaining Representative, requesting an election among fire captains employed by the City of South Burlington ("Employer"). On July 8, 1992, the City filed a response to the petition. Therein, the Employer requested that the Labor Relations Board dismiss the petition pursuant to the Board decision, South Burlington Career Firefighters Association and City of South Burlington, 15 VLRB 93 (March 23, 1992), in which the Board concluded that the fire captains were supervisors and, thus, ineligible to belong to a bargaining unit pursuant to §1722(12(B) of the Municipal Employees Relations Act ("MERA"), 21 VSA §1721 et seq. By letter filed with the Board on August 18, 1992, the Association contended that the March 23, 1992, decision of the Labor Relations Board was not "determinative of whether or not the captains can formulate a collective bargaining group that contains only captains", and requested a hearing on the petition.

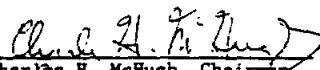
We disagree with the Association, and conclude that the March 23, 1992, Board decision was determinative on the issue of whether captains are eligible to be included in a bargaining unit under MERA. The right to be organized into a bargaining unit and be represented for collective bargaining purposes extends to a "municipal employee" as that term is defined in MERA. 21 VSA §1721; §1722(3), (4), (7); §1724. "Municipal employee" is defined in pertinent part as "any employee of a municipal employer... except... individuals employed as supervisors". 21 VSA §1722(12)(B). In the March 23, 1992, decision, the Board concluded that the fire captains were supervisors and, thus, were ineligible to belong to a bargaining unit pursuant to MERA. 15 VLRB 102-106.

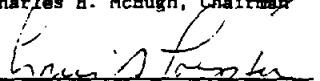
Given this Board decision issued less than six months ago, the Association is required to submit substantive evidence that facts have changed with respect to the supervisory duties of the captains since the Board decision or, otherwise, the Board will not hold a hearing and will "dismiss the petition, based upon the absence of substantive evidence" pursuant to §1724(b) of MERA. Burlington Fire Officers Association and City of Burlington, 9 VLRB (1986). The Association has not submitted such "substantive evidence". Neither the petition of the Association, nor the letter filed by the Association in response to the Employer's motion to dismiss the petition, allege that the duties of captains concerning supervisory status have changed.

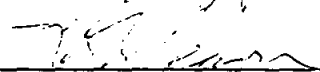
Now therefore, based on the foregoing reasons, it is hereby ORDERED that the Petition for Election of Collective Bargaining Representative filed by the South Burlington Fire Officers Association is DISMISSED.

Dated this 17th day of September, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Leslie G. Seaver