

VERMONT LABOR RELATIONS BOARD

PETITION FOR DECERTIFICATION)	
OF COLLECTIVE BARGAINING)	DOCKET NO. 98-56
REPRESENTATIVE (RE: TOWN)	
OF SHELBURNE))	

MEMORANDUM AND ORDER

In this case where a petition has been filed by some Town of Shelburne employees to decertify Local 1343, AFSCME, AFL-CIO ("Union") as exclusive bargaining representative of Town employees, the issue to be decided by the Labor Relations Board is the appropriate action to take in response to the position of the Town of Shelburne ("Town") that the bargaining unit certified by the Labor Relations Board by Order of March 27, 1997, is not appropriate. In the March 27, 1997, Order the Board certified the Union as the exclusive bargaining representative of eligible full-time employees in the Highway, Sewer, Building and Grounds, Water and Finance Departments employed by the Town; and such employees were added to the existing bargaining unit of all eligible Police Department employees employed by the Town and represented by the Union. In responding to the decertification petition, the Town now contends that Police Department employees should be in one, separate bargaining unit; and all other eligible Town employees should be included in a second bargaining unit.

The March 27, 1997, Board Order followed from a Petition for Election of Collective Bargaining Representative filed by the Union on July 24, 1996, to expand the bargaining unit of all eligible Police Department employees employed by the Town, and represented by the Union, to add all Highway, Sewer, Building and

Grounds, Water, Finance and Recreation Department employees of the Town. In response to that petition, the Town initially took the position that there should be two bargaining units because of a lack of community of interest among the police officers and the employees the Union proposed to add to the existing bargaining unit. However, on November 14, 1996, the Town withdrew its objection to there being one bargaining unit. A hearing then ensued on other unit issues, and the Board issued a unit decision. 20 VLRB 15 (1997). The Board then conducted an election in which the Union prevailed, and the March 27, 1997, Board order followed (See VLRB Docket No. 96-66).

The issue before us is one of first impression for the Board, as in no previous case has a party sought to reconfigure the existing bargaining unit structure in response to a decertification petition. We look for guidance to the National Labor Relations Board to determine how the NLRB has handled similar questions. The statutory provisions applied by the NLRB and our Board are similar. §9(c)(1)(A)(ii) of the National Labor Relations Act provides that a petition may be filed where an employee or group of employees "assert that the individual or labor organization, which has been certified or is being recognized by the employer as the bargaining representative, is no longer a representative". The language we are applying; §1724(a)(1) of the Municipal Employee Relations Act, 21 V.S.A. §1721 *et seq.* ("MERA"); provides that a petition may be filed where an employee or group of employees "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".

It is clearly established under National Labor Relations Board precedent that, unless contrary to the statute or Board policy, the bargaining unit in a decertification election must be the same unit as that in which the union is currently certified or recognized. W.A. Foote Memorial Hospital, 230 NLRB 540 (1977). S-B Printers, Inc., 227 NLRB 1274 (1977). Jos. Schlitz Brewing Co., 206 NLRB 928 (1973). The NLRB has indicated that it “would obviously frustrate the Board policy of directing decertification elections in the existing bargaining unit” to have an election in a different unit. Brom Machine and Foundry Co., 227 NLRB 690 (1977).

The only exception the NLRB has carved out to the policy of having a decertification election in the existing bargaining unit is if the existing unit contains individuals expressly excluded from coverage of the National Labor Relations Act, such as supervisory employees or agricultural laborers. Illinois Canning Company, 125 NLRB 699 (1959). Newhouse Broadcasting Corp., 198 NLRB 342 (1972). The NLRB has expressly stated that “community-of-interest factors which would be considered in making an initial appropriate unit determination are not relevant” in decertification petition cases. Fast Food Merchandisers, Inc., 242 NLRB 8 (1979).

We find this guidance persuasive. Questions of unit determination which are appropriate to raise in response to decertification petitions pursuant to Section 33.10 of the Board Rules of Practice are those which reflect changes in positions since the unit was originally certified by the Board. This ensures that any positions added to, or deleted from, the bargaining unit since the time the unit was originally certified

by the Board are properly accounted for so that the defined grouping of employees voting in the decertification election is accurate.

However, a response to a decertification petition is not an appropriate time for a party to seek to reconfigure the existing bargaining unit structure. We conclude, as has the National Labor Relations Board, that the statutory decertification provisions are designed to provide a method for determining whether an existing unit of employees desires to continue their current representation, and it is not permitted to vary that unit and have an election among a different grouping of employees. Brom Machine and Foundry Co., 227 NLRB at 690.

Thus, we deny the Town's request to reconfigure the existing bargaining unit structure to create two bargaining units out of the existing single bargaining unit. This does not mean an employer is never permitted to seek to reconfigure an existing bargaining unit structure. §1724(a)(2) of MERA provides that a petition may be filed, "in accordance with regulations prescribed by the board", by an "employer alleging that the presently certified bargaining unit is no longer appropriate under board criteria".

§34.1 of Board Rules of Practice implements this statutory provision, providing that an employer may file a unit clarification petition where the "employer seeks a reorganization of the existing structure of a bargaining unit or units". However, such a petition may be filed only "where no question concerning the majority status of the exclusive bargaining representative is pending at the time the unit clarification petition is filed". *Id.* Given the circumstances before us of the decertification petition raising questions as to the majority status of the Union as

exclusive bargaining representative of employees, this is not an appropriate time for the Town to seek to reorganize the existing bargaining unit structure.

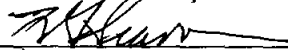
NOW THEREFORE, based on the foregoing reasons, it is hereby
ORDERED:

1. The request by the Town of Shelburne to reconfigure the existing bargaining unit structure of Town employees to create two bargaining units out of the existing single bargaining unit is denied; and
2. The Vermont Labor Relations Board will conduct a representation election among all eligible Police Department employees and all full-time employees in the Highway, Sewer, Building and Grounds, Water and Finance Departments; excluding the recreation director, Sewer Department chief operating engineer and the Highway Department superintendent; of the Town of Shelburne to determine whether they wish to be represented for exclusive bargaining purposes by Local 1343, AFSCME, AFL-CIO.

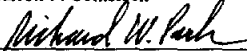
Dated this 19th day of November, 1998, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson


Leslie G. Seaver


Carroll P. Comstock


Richard W. Park