

VERMONT LABOR RELATIONS BOARD

PETITION FOR ELECTION OF)
COLLECTIVE BARGAINING)
REPRESENTATIVE (RE: BURLINGTON)
AIRPORT EMPLOYEES))

DOCKET NO. 05-26

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 5, 2005, Teamsters Local 597 (“Teamsters”) filed a Petition for Election of Collective Bargaining Representative seeking to represent employees of the Burlington International Airport presently included in a bargaining unit of City of Burlington employees represented by Local 1343, AFSCME, AFL-CIO (“AFSCME”). Specifically, the Teamsters seek to represent the vehicle mechanics, operations specialists, electricians, working foremen, maintenance workers and the ground maintenance foreman employed at the airport.

The City of Burlington (“Employer”) and AFSCME filed responses to the petition on August 11 and 22, 2005, respectively. The Employer and AFSCME both contend in their responses that the petition is barred by the terms of the existing collective bargaining agreement between the Employer and AFSCME, and alternatively that the bargaining unit proposed by the Teamsters is inappropriate.

The Labor Relations Board conducted a hearing on September 29, 2005, in the Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Carroll Comstock and John Zampieri. Teamsters Secretary-Treasurer Ronald Rabideau represented the Teamsters. Attorney Jaime Lynn DiPaola represented AFSCME. Attorney Joseph McNeil represented the Employer. AFSCME filed a motion to dismiss the petition at the hearing. The Board deferred ruling on the motion. The Board

established October 14, 2005, as the date for the parties to postmark post-hearing briefs. None of the parties filed briefs.

FINDINGS OF FACT

1. The Labor Relations Board issued an order on October 24, 1968, certifying AFSCME as the exclusive bargaining representative of custodians and non-supervisory employees of the Water Department, Park Department and Street Department of the Employer.

2. In 1989, employees at the Burlington International Airport expressed interest in being represented by AFSCME. Approximately 90 percent of airport employees of the Employer eligible to be represented by a union signed “application for membership/authorization for representation” cards which provided in pertinent part: “I, the undersigned, hereby designate the American Federation of State, County and Municipal Employees, AFL-CIO, as my duly chosen and authorized representative on matters relating to my employment in order to promote and protect my economic welfare” (AFSCME Exhibits 1, 2).

3. After receiving the signed cards, AFSCME President Lindol Atkins went to Employer Attorney Joseph McNeil to seek voluntary recognition of AFSCME as the exclusive bargaining representative of the airport employees. The Employer agreed to voluntarily recognize AFSCME as the exclusive bargaining representative of eligible airport employees based on AFSCME demonstrating the support of the majority of airport employees. The Burlington City Council passed a resolution in late 1989 indicating that eligible employees in the airport were admitted into the collective bargaining unit represented by AFSCME. In the resolution, the Council agreed to amend

the collective bargaining agreement between the City and AFSCME to include provisions applicable to eligible airport employees. AFSCME did not seek to have the Labor Relations Board certify the voluntary recognition.

4. There are approximately 187 employees in the bargaining unit represented by AFSCME. The bargaining unit proposed by the Teamsters would remove 21 airport employees from the AFSCME bargaining unit. In addition to the bargaining unit of employees represented by AFSCME, different unions represent employees of the Employer in three other bargaining units. The Burlington Firefighters Association represents 72 or 73 uniformed firefighters. The Burlington Police Officers' Association represents approximately 85 uniformed police officers. IBEW Local 300 represents Burlington Electric Department employees.

5. The Burlington International Airport is located in South Burlington. It is a department of the City of Burlington under the direction of the Mayor and subject to the City Council. The Mayor appoints an airport manager who is subject to the direction of the Mayor. Under a city charter revision approved by the Vermont General Assembly in 2001, there is a Burlington Airport Commission which has an advisory role.

6. Airport operations are not funded by the Employer's General Fund. The airport operates pursuant to an enterprise fund consisting of airport revenues and government grants. This provides sufficient revenues for the airport to meet its expenses. The airport does not require a property tax subsidy. Any annual surpluses at the airport go back into airport operations.

7. The Water Department, Wastewater Department and Parking Division of the Employer are not funded by the Employer's General Fund. Employees of these government units are represented by AFSCME.

8. Airport employees in the Teamsters-proposed bargaining unit regularly interact with each other and with their supervisors whom work at the airport. They do not regularly have contact with the employees in the AFSCME-represented bargaining unit whom are not assigned to work at the airport. Their contact is generally limited to emergencies. Airport employees regularly have contact with police officers of the Employer whom are assigned to the airport.

9. Parking attendants at the airport garage are employed in the Employer's Public Works Department. They have been in the bargaining unit represented by AFSCME since 1998 pursuant to a voluntary recognition by the Employer after a majority of the parking attendants signed authorization cards indicating they desired to be represented by AFSCME. They do not regularly interact with airport employees in the Teamsters-proposed bargaining unit.

10. Airport employees in the Teamsters-proposed bargaining unit are subject to rules established by the federal government. They have to receive certification pursuant to federal law. Police officers, police dispatchers and wastewater employees of the Employer have to be certified.

11. Airport employees are part of a 24 hours a day operation. Police officers, firefighters, water treatment operators and police dispatchers of the Employer also are part of 24 hour operations. Police dispatchers are included in the AFSCME-represented bargaining unit.

12. During the period that airport employees have been represented by AFSCME, there always has been an airport employee serving as an AFSCME steward representing airport employees. Prior to collective bargaining contract negotiations, the steward has developed bargaining proposals based on feedback from airport employees. AFSCME has presented the proposals in negotiations with the Employer. Stewards from the airport generally have been on the AFSCME negotiations team.

13. AFSCME has represented airport employees in many grievances since the employees have been represented by AFSCME. The AFSCME Executive Board makes the decision whether to pursue such grievances to arbitration.

14. Citywide seniority determines longevity pay, vacations and order of layoff pursuant to the collective bargaining contract between the Employer and AFSCME. If there is a vacancy at the airport, the job vacancy is posted at the airport. If airport employees are eligible for the job, they have first preference for the job. If no one at the airport is eligible, preference is then given to other employees of the Employer ahead of outside applicants. Some current airport employees have transferred from the Public Works Department to airport positions. Other employees in the AFSCME-represented bargaining unit have transferred between City departments.

15. There is a uniform pay classification system that covers all employees represented by AFSCME as well as managers in those departments. Over the last two years, there have been citywide reclassification upgrades of maintenance workers represented by AFSCME, including those at the airport. The upgrades occurred pursuant to collective bargaining contract provisions allowing reclassification questions to be raised by employees.

16. Health care plans are uniform for employees represented by the various City unions with minor exceptions. This has resulted in administrative efficiencies and lower costs. Dental and retirement plans also are similar.

17. In preparing for collective bargaining negotiations with the unions representing City employees, the Employer's Chief Administrative Officer solicits input from department managers, including those at the airport. He then develops the Employer's bargaining proposals in conjunction with the City Attorney. Negotiations with the unions extend from at least March through June of the contract expiration year, and typically extend beyond the June 30 expiration date.

18. The Chief Administrative Officer spends between 1 to 1 ½ days preparing for negotiations sessions for each day spent in negotiations. If another bargaining unit was established, there would be a significant increase in the time that the Chief Administrative Officer spends preparing for, and participating in, negotiations.

19. Article XXII, Section 4, of the existing collective bargaining contract between the Employer and AFSCME provides:

This agreement shall be effective as of the first day of July, 2002, unless otherwise noted and shall remain in full force and effect until the 30th day of June, 2005. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin as set forth in this article and this Agreement shall remain in full force and be effective during the period of negotiations and until the new Agreement is signed by the parties.

20. AFSCME and the Employer are in negotiations for a successor contract to the 2002 – 2005 contract. They have proceeded through the mediation stage of the dispute resolution process, and are awaiting a session with a fact-finder.

OPINION

AFSCME first contends that the petition filed by the Teamsters in this matter should be dismissed because the petition lacks the 30 percent showing of interest required under the *Rules of Practice* of the Labor Relations Board. AFSCME maintains that the Teamsters have to submit a showing of interest from 30 percent of the employees in the existing bargaining unit represented by AFSCME of approximately 187 employees, rather than the smaller grouping of 21 airport employees that the Teamsters are seeking to represent. Since the Teamsters have submitted a showing of interest from only the smaller grouping of airport employees, AFSCME contends that the petition is not supported by a sufficient showing of interest.

In support of this contention, AFSCME cites the provision of the Board *Rules* that states in pertinent part: “A petition for an election to decertify a collective bargaining representative, where the petitioner is not seeking the election of another employee organization or individual as bargaining representative . . . shall contain . . . (a)n allegation that not less than 30 percent of the employees assert that the individual of employee organization currently certified as bargaining agent is no longer supported by a majority of the employees in the bargaining unit”. Section 33.4, Board *Rules of Practice*. AFSCME also relies on the Board decision, Petition for Decertification of Collective Bargaining Representative (Re: Town of Shelburne), 21 VLRB 233 (1998), in which the Board stated:

(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 . . . 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. *Id.* at 236.

The rule and decision cited by AFSCME relate to situations where a petition has been filed for an election to decertify a collective bargaining representative where the petitioner is not seeking the election of another bargaining representative. That is not the case here since the Teamsters are seeking to represent the airport employees. Accordingly, we do not believe that the rule and decision cited by AFSCME have any applicability to this case.

In addressing AFSCME's motion, the Board needs to consider Section 1724(a)(1) and (h) of the Municipal Employee Relations Act. Subsection (a)(1) provides in pertinent part that "(a) petition may be filed with the board . . . (b) by an employee or group of employees, or any individual or employee organization purporting to act in their behalf, alleging . . . that not less than 51 percent of employees now included in an approved bargaining unit wish to form a separate bargaining unit under board criteria for purposes of collective bargaining." Subsection (h) states: "No election may be conducted in this section in a bargaining unit or a subdivision within which in the preceding 12 months a valid election has been held."

Since these statutory provisions contemplate that a petition may be filed to carve a smaller bargaining unit out of a larger bargaining unit, the question arises whether the contention made by AFSCME would frustrate the legislative purpose to allow such carveouts in appropriate cases. If the required 30 percent showing of interest is based on the established unit, as AFSCME contends, this would mean it would be impossible to file a valid petition for a separate bargaining unit unless the proposed carved-out unit was at least 30 percent of the size of the established unit. We conclude that such a result would be contrary to the intent of the Vermont General Assembly to allow petitions to be

filed seeking to form a smaller bargaining unit of employees whom are presently included in a larger bargaining unit. Instead, the result consistent with the provisions of the Municipal Act is that the 30 percent showing of interest is based on the bargaining unit proposed by the petitioner. Here, the Teamsters have met that showing of interest.

The next issue before the Board is to address the contentions of AFSCME and the Employer that the petition is barred by the terms of the existing collective bargaining agreement between the Employer and AFSCME. The Board has precedent on point with respect to this issue since the same question was presented to the Board in Village of Essex Junction Employees' Association and Local 1343, AFSCME, AFL-CIO and Village of Essex Junction, 14 VLRB 157 (1991). In that case, an association filed a petition to represent employees currently represented by a union. The Board decision provided in pertinent part as follows therein:

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 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. . .

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. Id. at 158-59.

Section 33.2 of the *Rules of Practice* has not changed since the Essex Junction decision. The language of the collective bargaining agreement at issue in this case is identical in essence to the Essex Junction agreement in providing that the agreement “shall remain in full force and be effective during the period of negotiations and until the new Agreement is signed by the parties”. Given these circumstances, we conclude that the petition filed herein is timely, even though the contract between the Employer 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. .

We now turn to deciding the merits of whether it is appropriate to carve a separate airport employees bargaining unit out of the larger bargaining unit represented by AFSCME. Initially, the Teamsters appear to contend that considerations in favor of finding the proposed unit appropriate are that the airport employees never voted in an election whether to be represented by AFSCME and the Labor Relations Board did not certify AFSCME as the bargaining representative of the airport employees. In addressing this contention, we consider Section 1723 of the Municipal Act. It provides:

Nothing in this chapter shall prevent a municipal employer from voluntarily recognizing an employee organization as the exclusive bargaining agent. Voluntary recognition may be granted at the request of an employee organization if:

- (1) The employee organization demonstrates the support of a majority of the employees and(sic) the bargaining unit it seeks to represent; and
- (2) No rival employee organization seeks to represent the same individual employee or the same job or positions for which recognition is being sought; and
- (3) The bargaining unit is appropriate under the standards set forth in subsection 1724(c) of this title. This section shall not require voluntary recognition of an employee organization by a municipal employer.

The Employer voluntarily recognized AFSCME as bargaining representative of the airport employees in 1989 consistent with this statute. Accordingly, there is no statutory support for the Teamsters position that the absence of an election and lack of Board involvement in the voluntary recognition should be a factor supporting the appropriateness of the bargaining unit proposed by the Teamsters.

In considering the central question whether it is appropriate to carve a separate airport employees bargaining unit out of the larger bargaining unit, the Board is guided by the following criteria set forth in the Municipal Act for determining the appropriateness of bargaining units:

1) The similarity or divergence of the interests, needs and general conditions of employment of all employees within the proposed bargaining unit. The board may, in its discretion, require that a separate vote be taken among any particular class or type of employee within a proposed unit to determine specifically if the class or type wishes to be included. No bargaining unit shall include both professional employees and other municipal employees unless a majority of such professional employees vote for inclusion in such unit.

2) Whether overfragmentation of units will result from certification to a degree which is likely to produce an adverse effect on the effective representation of other employees of the municipal employer or upon the effective operation of the municipal employer.

3) In determining whether a unit is appropriate the extent to which the employees have organized is not controlling. 21 V.S.A. Section 1724(c).

Based on the criteria provided in Section 1724(c), the Board's primary concerns are to group together only employees who share a similar "community of interests", while at the same time guarding against overfragmentation of units and allowing individuals to exercise rights guaranteed under the Act. AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983). Local 1201, AFSCME, AFL-CIO and Town of Middlebury, 14 VLRB 93, 105 (1991).

The Board has considered the following factors relevant in determining whether a community of interests exists among employees: differences and similarities in method of compensation, hours of work, employment benefits, supervision, qualifications, training, job functions, and job sites; and whether employees have frequent contact with each other and have an integration of work functions. Petition of VSEA (re: Bargaining unit for Department of Corrections), 13 VLRB 287, 304-305 (1990). A group of employees must at least be a readily identifiable and homogenous group apart from other employees to support a determination that a community of interests exists among them. AFSCME and Town of Middlebury, 6 VLRB 227, 231 (1983).

We conclude that a community of interests exists among airport employees in the proposed bargaining unit. Their job site at the airport in South Burlington is isolated from other employees in the AFSCME-represented unit whose job duties normally keep them within City of Burlington limits. The airport employees regularly interact with each other and with their supervisors whom work at the airport. They do not regularly have contact with the employees in the AFSCME-represented bargaining unit whom are not assigned to work at the airport. They are a sufficiently distinct group apart from other employees in the city-wide bargaining unit represented by AFSCME to support a determination that a community of interests exists among them.

Nonetheless, their similar community of interests is not sufficient to justify a conclusion that they constitute an appropriate bargaining unit. Petition of VSEA (Re: Agency of Transportation Highway and Maintenance Employees), 24 VLRB 37, 48 (2001). The community of interests criterion must be considered together with whether overfragmentation of units will result to a degree which is likely to produce an adverse

effect on the effective representation of other employees or upon the efficient operation of the employer. Id. Teamsters Local 597 and University of Vermont, 19 VLRB 64, 79 – 81 (1996); *Affirmed*, 167 Vt. 564 (1997).

Board policy generally favors broader units to guard against the potential problems which may arise given a multiplicity of units – Balkanization, whipsaw bargaining and institutional complications of dealing with a multiplicity of units. Id. In addition, in cases such as this where involved employees have been included in a bargaining unit with extensive bargaining history, the Board has expressed reluctance to disturb an existing bargaining unit if there is evidence of a meaningful and effective history of negotiations for all unit employees. Petition of VSEA (Re: Agency of Transportation Highway and Maintenance Employees), 24 VLRB at 48. Petition of VSEA re: Separate Bargaining Unit for Community Correctional Center Employees, 5 VLRB 82, 96-97 (1982). A petitioner seeking to carve out a smaller bargaining unit from a larger unit must present a compelling case to justify disrupting the existing unit structure. Petition of VSEA (Re: Agency of Transportation Highway and Maintenance Employees), 24 VLRB at 49. This is done by presenting specific evidence that the interests of petitioned-for employees have not been effectively represented in negotiations or otherwise. Id.

The Teamsters have failed to present such evidence here. During the period that airport employees have been represented by AFSCME, there always has been an airport employee serving as an AFSCME steward representing airport employees. Prior to collective bargaining contract negotiations, the steward has developed bargaining proposals based on feedback from airport employees. AFSCME has presented the

proposals in negotiations with the Employer. Stewards from the airport generally have been on the AFSCME negotiations team. The Teamsters have not presented specific evidence indicating that this involvement by the airport steward in the negotiations process has deficiencies resulting in the interests of airport employees not being adequately accommodated. Also, the evidence does not demonstrate that the existing unit structure unduly hinders the future improvement of wages, hours and other conditions of employment of specific concern to airport employees.

Moreover, the Teamsters have failed to demonstrate that airport employees have not been effectively represented by AFSCME in the administration of the collective bargaining agreement. AFSCME has represented airport employees in many grievances since the employees have been represented by AFSCME. The Teamsters have not presented specific evidence indicating that this representation has been deficient. To the contrary, there is specific evidence indicating that airport employees recently have derived benefits resulting from administration of the contract. Over the last two years, maintenance employees at the airport have received reclassification upgrades pursuant to collective bargaining contract provisions allowing reclassification questions to be raised by employees.

Further, we conclude that the proposed bargaining unit is likely to have an adverse effect on the efficient operation of the employer. If another bargaining unit was established, there would be a significant increase in the substantial amount of time that the Chief Administrative Officer of the Employer already spends preparing for, and participating in, negotiations. Before sanctioning such a result, we would have to be persuaded by the Teamsters that it is likely there would be a substantial corresponding

enhancement in the representation of airport employees. Again, the Teamsters have failed to present specific evidence that the interests of airport employees would be so served.

In sum, we conclude that the Teamsters have failed to demonstrate that it would be appropriate to disrupt the existing bargaining unit structure by carving out the proposed bargaining unit of airport employees.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Petition for Election of Collective Bargaining Representative filed by Teamsters Local 597 in this matter is dismissed.

Dated this 15th day of December, 2005, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Carroll P. Comstock

John J. Zampieri