

VERMONT LABOR RELATIONS BOARD

PETITION OF:)	
)	DOCKET NO. 05-50
AFSCME COUNCIL 93, LOCAL)	
1343, AFL-CIO)	

MEMORANDUM AND ORDER

The Labor Relations Board needs to decide, pursuant to Section 33.28 of the Board Rules of Practice, whether to grant the petition filed on November 18, 2005, by AFSCME Council 93, Local 1343, AFL-CIO (“AFSCME”). AFSCME requests that the Board amend the Board certification of the Winooski Police Employees’ Association (“Association”) as the representative of police employees of the City of Winooski to recognize the affiliation of the Association with AFSCME.

Timothy Noonan, Labor Relations Board Executive Director, investigated the petition through obtaining information from George Lovell, Vermont Coordinator of AFSCME Council 93, and reviewing the Board’s own records and files. The following factual background is based on the information provided to the Board pursuant to the Board’s investigation.

Factual Background

On May 5, 1981, the Labor Relations Board certified the voluntary recognition by the City of Winooski of the Association as the exclusive bargaining representative of the police officers, senior police officers, police dispatchers and senior police dispatchers of the City of Winooski. At the time of certification of voluntary recognition, the Association was independent and not affiliated with a national or international union (Docket No. 81-9). On April 8, 1986, the Labor Relations Board issued Findings of Fact,

Opinion and Order in which the Board included the sergeants employed by the Winooski Police Department in the bargaining unit represented by the Association. 9 VLRB 85.

On October 6 and 26, 2005, George Lovell, Vermont Coordinator of AFSCME Council 93, attended meetings of the Association to discuss possible affiliation of the Association with AFSCME. On November 4, 2005, Benjamin Kauffman, Association President, sent an e-mail message to the fifteen non-probationary employees in the bargaining unit represented by the Association. The e-mail message provided:

I have been advised that the Vermont Labor Relations Board requires us to hold a secret ballot vote in regards to affiliation with AFSCME Council 93 Local 1343. This vote will be conducted as required and will take place on November 9, 2005, between 1400 and 2300 hours. The ballots will be pre printed and anonymous with a checklist I will complete as each person votes. The votes will not be counted until the election is closed. If you do not vote during the outlined time you will not be allowed to vote after the fact without an absentee ballot (see me if you need one). Please make every effort to see me during the outlined timeframe.

See sample ballot below.

I vote to affiliate with AFSCME, Council 93, Local 1343

_____ YES

_____ NO

_____ ABSTAIN

Please check only one and no further notes.

Thank you for your patience in this matter, and I apologize for any inconvenience.

Benjamin R. Kauffman
WPEA President

This notice also was posted on the Association notice board at the Winooski Police Department at around the same time as Kauffman sent the e-mail message. The affiliation election occurred as scheduled on November 9, 2005, from 2 p.m. to 11 p.m.,

at the Winooski Police Department. The vote was held by secret ballot on pre-printed ballots with the same content as indicated in the November 4 notice. Kauffman conducted the election. Each employee who voted signed a checklist to receive a ballot, then marked the ballot and placed it in an envelope. All votes were placed in the same envelope. Kauffman represents that all employees voted by secret ballot and he did not observe how anyone voted. 13 of 15 eligible employees voted. Kauffman counted the ballots after the closing of polls at 11 p.m. The employees voted 10 – 3 in favor of affiliating with AFSCME.

After the votes were counted, Kauffman sent an e-mail message to the fifteen bargaining unit employees. The message provided:

As you are all aware the vote concerning affiliation with AFSCME Council 93, Local 1343, took place today. The votes have been counted and the results are as follows. Thirteen (13) votes were cast, ten (10) votes were yes in support of affiliation, and three (3) votes were no against affiliation. Therefore we will be moving forward with the affiliation process and petitioning the Vermont Labor Board to allow us to affiliate with AFSCME Council 93, Local 1343.

Discussion

Section 33.28 of the Board Rules of Practice provides that “a request for amendment of certification may be filed with the Board in the event that an independent employee organization serving as existing bargaining representative of employees affiliates with another employee organization.” It states that the “Board may find appropriate an amendment of certification, recognizing the affiliation, if the following requirements are met: 1) there is a guarantee of continuity of representation, 2) sufficient democratic standards were met to determine whether support existed among employees for affiliation, and 3) the originally certified organization does not remain a presently

functioning, viable entity after the affiliation”. This provision of the Rules is a codification of the Board decision, Petition of AFSCME Local 1369, Council 93 (Re: Stowe Police Department Employees), 16 VLRB 145 (1993), and is derived from standards employed under the National Labor Relations Act, 29 U.S.C. Sections 141 - 187 (“NLRA”).

We conclude that the standards under Section 33.28 of the Rules have been met. A guarantee of continuity of representation is indicated by the continuation in office, after affiliation, of the Association President. Also, a review of the factual background indicates that the originally certified organization no longer is a presently functioning, viable entity. The only presently functioning, viable entity with a claim on representing employees is the Association as affiliated with AFSCME.

In the past, we have looked to the National Labor Relations Board for guidance in examining whether “sufficient democratic standards were met to determine whether support existed among employees for affiliation”. Petition of Barre Town Association of Emergency Medical Technicians, 19 VLRB 273 (1996). The National Labor Relations Board has found these standards satisfied where employees have adequate notice of the impending affiliation vote, employees have sufficient opportunity to discuss the affiliation issue, and the affiliation vote is conducted by secret ballot. Id. at 277. May Dept. Stores Co., 289 NLRB 661 (1988). Providence Medical Center, 243 NLRB 714 (1979). North Elec. Co., 165 NLRB 942 (1967). The U.S. Supreme Court, in NLRB v. Financial Institution Employees, 475 U.S. 192, 199 (1986), has described the NLRB practice as “ordinarily requir(ing) that the affiliation election be conducted with adequate ‘due process’ safeguards, including notice of the election to all members, an adequate

opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy.”

In examining affiliation elections, we do not require the same degree of formality as exists in the union representation elections which we conduct. In Aurelia Osborn Fox Memorial Hosp., 247 NLRB 356, 359 (1980), the NLRB stressed that an affiliation vote basically is an internal union matter, and the strictures which the Board places on the representation elections which it conducts are not applicable in affiliation elections. A secret ballot affiliation vote is the preferred method to ensure sufficient democratic standards are met to ascertain support among employees for affiliation, but there are instances where these standards can be satisfied without a secret ballot election if there is sufficient evidence demonstrating that employees wish to affiliate. Barre Town, 19 VLRB at 277-78.

Here, we conclude that sufficient democratic standards were met given the adequate advance notice of the election to all employees, ample opportunity for employees to discuss possible affiliation and the election, and reasonable precautions to maintain ballot secrecy. There is sufficient evidence demonstrating that employees wish to affiliate with AFSCME to support amendment of certification. This is particularly true when it is kept in mind that the strictures which the Board places on the representation elections which it conducts are not applicable in affiliation elections.

Thus, we are satisfied that the requirements set forth in Section 33.28 of the Board Rules of Practice to find appropriate an amendment of certification recognizing affiliation have been met. Accordingly, it is ordered that the existing certification of the Winooski Police Employees Association to represent eligible employees of the City of Winooski

Police Department is amended to provide that the Winooski Police Employees Association, affiliated with AFSCME Council 93, Local 1343, AFL-CIO, is the exclusive bargaining representative of eligible employees of the City of Winooski Police Department.

Dated this 9th day of January, 2006, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Carroll P. Comstock

Richard W. Park