

VERMONT LABOR RELATIONS BOARD

Chauffeurs, Teamsters, Warehousemen
and Helpers Union No. 597
&
Town of Berlin, Vermont

Docket No. 06-35

MEMORANDUM AND ORDER

This case involves objections to the conduct of a representation election filed by the Town of Berlin, Vermont ("Employer") on November 7, 2006.

On September 7, 2006 the Chauffeurs, Teamsters, Warehousemen and Helpers Union No. 597 ("Union") filed a petition for election of collective bargaining representative (the "Petition"). The Petition sought an election among five police officers and one sergeant employed by the Employer in the Town of Berlin Police Department.

The Employer responded to the Petition by letter dated October 3, 2006 and agreed that the proposed bargaining unit was appropriate and further agreed to a consent election.

On October 20, 2006 Timothy Noonan, Executive Director of the Vermont Labor Relations Board (the "Board"), issued a notice of representation election scheduled to take place on November 1, 2006. The notice included instructions with respect to provisions for absentee ballots which provided as follows:

"... Provision for Absentee Ballots

Any eligible voter who will not be present at the time and place set for the election as a result of a previously-scheduled vacation, long-term illness, scheduled assignment away from the workplace, or because the voter is not scheduled to work during the time of the election, may secure an absentee ballot by making a written request to the Labor Relations Board, setting forth the reason why he/she will be unable to cast a ballot at the designated time. The Labor Relations Board is located at 13 Baldwin Street in Montpelier, and the Board's mailing address is 133 State Street, Montpelier, Vermont 05633-6101. Such request must be made in a timely manner to allow the Board to mail the absentee ballot and for the voter to return the absentee ballot to the Board prior to the deadline for receiving absentee ballots. The Board must receive absentee ballots no later than 1 p.m. on November 1, 2006."

Timothy Noonan, Labor Relations Board Executive Director, conducted an election on November 1, 2006 from 3:30 p.m. to 5:30 p.m. in the meeting room of the Berlin Fire Station. Corporal Ginger Redke was present as an observer for the Union. The Employer elected not to have an observer present. Five of the eligible employees voted. Lindsay Walker did not vote. The results of the election were:

Chauffeurs, Teamsters, Warehousemen and Helpers Union No. 597	3
<u>No Union</u>	<u>2</u>
Total Votes	5

On November 7, 2006 the Employer filed an objection to the conduct of the election pursuant to Section 33.27 of the Board Rules of Practice. The Employer made various factual allegations in support of the objection to the conduct of the election. The Employer requested that the Labor Relations Board investigate the objection and set aside the election.

Upon receipt of the objection, the Board met, and appointed Board Chair Edward R. Zuccaro to conduct an investigation into the conduct of the election. Chairman Zuccaro reviewed the file and contacted the parties by letter on January 5, 2007 for the purpose of scheduling a meeting.

On February 5, 2007 Chairman Zuccaro met with the parties and interviewed both Timothy Noonan, Executive Director of the Vermont Labor Relations Board, who conducted the election, and Officer Ed Page whose complaints with respect to the conduct of the election gave rise to one of the Employer's objections. A second complainant, Lindsay Walker, who is no longer employed by the Employer, but whose complaint gave rise to the Employer's second objection, was not available to participate in the meeting on February 5, 2007. Ms Walker was subsequently interviewed by telephone on February 8, 2007 with both the Union and the Employer participating.

Board Members Edward Zuccaro, Chairman, Joan Wilson, and Len Berliner were assigned to decide whether the Employer's objection should be upheld.

We will discuss each of the issues raised by the Employer in turn.

First, the Employer contends that "Officer Edward F. Page, one of the eligible employees who voted in the contested election, alleges intimidation by the Union's purported representative at the election and by the presence and interference of a deputy sheriff who was also a part time employee of the Berlin Police Department."

The Board investigation has revealed that the election was conducted in the meeting room of the Berlin Fire Station. The room was set up with a line of 6 tables, one behind the other, running from the front of the room to the back of the room. Mr. Noonan and the Union's observer occupied the third table from the front of the room upon which the ballot box was placed. A poling booth was set up on the left side of the room between the fourth table and fifth table. The three sides of the poling booth facing the room were screened with a curtain to ensure the privacy of those casting ballots. The only evidence with respect to the claimed interference with the election was offered by Officer Page. Officer Page objected to the presence of Corporal Redke, the Union representative and the presence of Otto Kinzel, a Deputy Sheriff and occasionally a part-time Berlin Police Officer. Officer Page states that "prior to the vote, I filed a personnel complaint against Ginger Redke. That coupled with the fact that she is my supervisor and I know she is for the Union made me uncomfortable and felt intimidated". He further states "Also Otto Kinzel's presence was a problem. He is a friend of Ginger Redke and I know he wants the Union to come in because he has been pushing to unseat the current police chief".

Mr. Noonan states that when Officer Page arrived in the voting room he was handed a ballot and directed to the polling booth to vote. Shortly thereafter he returned and deposited his ballot in the sealed ballot box. Officer Page then engaged Mr. Noonan in a conversation about Lindsay Walker's attempt to obtain an absentee ballot. He made a statement that he believed it was "unfair that she couldn't vote". At this point Otto Kinzel who at all times was in the front of the room and at some distance from both the voting booth and the ballot box interjected that "it was a fair election". At that point Mr. Noonan asked Otto Kinzel to leave the room. He began to argue, but then left. Kinzel never spoke to Page prior to Page voting. Redke never spoke with Page.

First, we note that the Union is entitled to have a representative observer of its choice present during the balloting. There is no evidence that Corporal Redke in any way intimidated Officer Page or otherwise interfered with the conduct of the election. In fact, it does not appear that Corporal Redke uttered any words at all directly to Officer Page. That Officer Page was unhappy with the Corporal Redke's presence in the room is hardly evidence of intimidation. In the case of Otto Kinzel, there is no evidence that Mr. Kinzel intimidated or interfered with Officer Page's casting of his ballot. While Officer Page was voting Mr. Kinsel was in the front of the room with at least four tables separating him from the private voting booth. Any conversation involving Otto Kinzel occurred after Officer Page cast his ballot, and could not have affected Page's ability to vote.

We now move on to the second objection with respect to the request for an absentee ballot made on behalf of Lindsay Walker. Ms. Walker is no longer employed by the Employer. Ms. Walker desired to vote in the November 1 election. The notice of election was posted on the Police Department bulletin board on October 23, 2006. The notice included a conspicuous statement entitled "Provision for Absentee Ballots". All employees were put on notice that absentee ballots may be secured "by making a written request to the Labor Relations Board, setting forth the reason why he/she would be unable to cast a ballot at the designated time". The Board's mailing address was given. The notice went on to state that a "request must be made in a timely manner to allow the Board to mail the absentee ballot and for the voter to return the absentee ballot to the Board prior to the deadline for receiving absentee ballots." The deadline was 1 pm on November 1, 2006.

On or about October 25, 2006 Lindsay Walker learned that she would be required to attend training in Atlantic City New Jersey. While the details and specific travel arrangements were not at that time known to her, she understood that it was likely that she would be away from the Berlin Police Department on November 1 during the hours scheduled for the election. Ms. Walker states that she desired to vote but was unclear about the procedure for obtaining an absentee ballot. Between the period October 25, 2006 and November 1, 2006 Ms. Walker made no attempts to contact the Labor Relations Board and sent no written request as directed in the notice of election. On Tuesday October 31, 2006 Ms. Walker learned the specifics of her travel arrangements for her attending training in New Jersey. She asked her supervisor, Sergeant

Monteith about getting an absentee ballot. Sergeant Monteith told her to write a letter to the Board requesting the ballot and that he would deliver it. She followed this suggestion and Sergeant Monteith delivered the letter to the Board on November 1, 2006. There was clearly insufficient time to deliver a ballot to Lindsay Walker and have her return the Ballot prior to 1:00 pm on November 1, the time specified in the Board's notice.

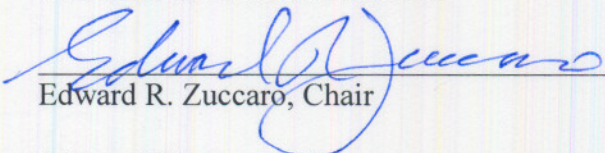
While it is always regrettable when a person who desires to vote is for some reason prevented from doing so, however there is no basis in this case to set aside the election. The notice was clear, a request for an absentee ballot must be made in writing to the Board in sufficient time to permit the ballot to be returned prior to the conduct of the election. Regrettably Ms. Walker got bad advise from Sergeant Monteith. Similarly, it is regrettable that she misunderstood the Board's notice. Either of these could have been cured by a simple telephone call to the Board. While conceding that the Board's telephone number did not appear in the notice it is inconceivable that an Officer of the Berlin Police Department would not be able to go to the local telephone book and discover the appropriate telephone number.

Now therefore, based on the foregoing reasons, it is hereby ordered:

1. The objection by the Town of Berlin to the conduct of the consent election in this matter with the accompanying request to set aside the election, IS DENIED; and
2. As a result of the consent election conducted in this matter, Chauffeurs, Teamsters, Warehousemen and Helpers Union No. 597, is certified as the exclusive bargaining representative of the officers and sergeants of the Town of Berlin Police Department.

Dated this 16th day of February, 2007 at Montpelier, Vermont.

Vermont Labor Relations Board


Edward R. Zuccaro, Chair

S/ Joan Wilson
Joan Wilson

S/ Len Berliner
Len Berliner