

VERMONT LABOR RELATIONS BOARD

UNIVERSITY STAFF UNION-NEA)	
)	
and)	
)	DOCKET NO. 12-22
UNITED STAFF)	
)	
and)	
)	
UNIVERSITY OF VERMONT)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is an objection to the conduct of the election in this matter filed by United Staff.

On May 9, 2012, University Staff Union-NEA filed a petition for election of collective bargaining representative, seeking an election among certain administrative / clerical, technical and specialist employees of the University of Vermont (“Employer”). On May 23, 2012, United Staff filed a petition to intervene in the petition and appear on the election ballot pursuant to Section 13.10 of Labor Relations Board *Rules of Practice*. The Employer filed a response to the petition on June 7, 2012, and raised questions of unit determination. On July 17, 2012, the parties notified the Labor Relations Board that they had resolved all unit determination issues.

Subsequently, Labor Relations Board Executive Director Timothy Noonan had three extensive telephone conference calls with representatives of the Employer, United Staff and University Staff Union-NEA in which the provisions of a proposed Board order setting forth the details of the election, including the particular form and content of the ballot and the procedure for counting ballots, were discussed in detail. The parties had an opportunity to object to provisions of the proposed order in the conference calls and prior

to issuance of the order. No party objected to the particular form and content of the ballot and the procedure for counting ballots set forth in the proposed order.

The Board issued an order on August 10, 2012, setting forth the details of the election. The Board issued a Notice of Election on August 13, 2012, which contained the content of the election ballot. The Notice of Election was posted at the University of Vermont by August 16, 2012, at all places normally used for employer-employee communications. The content of the election ballot and the Notice of Election were consistent with the Board order. The ballot provided:

VERMONT LABOR RELATIONS BOARD

QUESTION 1:

Do you wish to be in a collective bargaining unit consisting of all full-time and regular part-time employees (9, 10, 11 or 12 month employees) in the C Family (Administrative Support or Clerical), T Family (Technical) and Sp Family (Specialized) in the University of Vermont classification system in the following positions:

Business Support Assistant (Job Code # 2061, 2063), Business Support Generalist (Job Code # 2071, 2072), Library Support Assistant (Job Code # 2081), Library Support Generalist (Job Code # 2091), Library Support Senior (Job Code # 2101), Office/Program Outreach Support (Job Code # 2111), Office/Program Support Assistant (Job Code # 2021, 2022), Office/Program Support Generalist (Job Code # 2031, 2032, 2033), Services Support Material Specialist (Job Code # 2121), Technical Support Generalist (Job Code # 2151), Technical Support Specialist (Job Code # 2171, 2172), Scientific Equipment Technician (Job Code # 4141), Scientific Electronics Technician (Job Code # 4131), Biomedical Equipment Technician (Job Code # 4091), Biomedical Equipment Technician Senior (Job Code # 4101), Equipment Technician (Job Code # 4111), Equipment Technician Senior (Job Code # 4121), Media Broadcast Technician (Job Code # 4151), Media Technician (Job Code # 4161), Media Technician Senior (Job Code # 4271), Research Assistant (Job Code # 4181), Research Project Assistant (Job Code # 4191), Laboratory/Research Technician (Job Code # 4201, 4202, 4203), Laboratory/Research Technician Senior (Job Code # 4211), Safety Technician (Job Code # 4231), Environmental Safety Technician (Job Code # 4221), Business/Accounting Specialist (Job Code # 4261, 4262), Data Management Specialist (Job Code # 4001), Facilities Analyst (Job Code # 4011), Information Technology Assistant/Programmer (Job Code # 4031), Medical Laboratory Specialist (Job Code # 4291), Medical Technologist (Job Code # 4051), Nursing Specialist (Job Code # 4061), Process Coordinator (Job Code # 4071, 4073), Program Specialist (Job Code # 4081, 4082), Student Services Specialist (Job Code # 4251), and Interpreter/Translator Specialist (Job Code # 4043); excluding all temporary employees, work-study students, confidential employees, supervisory employees and managers?

YES

☐

NO

☐

QUESTION 2:

Do you wish to be represented for exclusive bargaining purposes by:

United Staff ☐

University Staff Union-NEA ☐

Neither ☐

Both questions 1 and 2 should be answered. Please indicate your choice by placing an “X” in the proper square, then fold your ballot and place it in the ballot box.

The Notice of Election also included among its provisions the following

“Procedure for Counting Ballots”:

Procedure for Counting Ballots

If fifty percent or more of the votes on Question 1 on the ballots is “no”, then no tally will be made of Question 2, and the employees will be deemed to have voted not to be organized into the bargaining unit. If the majority of votes on Question 1 on the ballots is “yes”, then the results of Question 2 on the ballots will be tallied to determine whether the employees wish to be represented by United Staff, University Staff Union-NEA, or neither. If no choice receives a majority of the valid votes cast on Question 2, the Board shall conduct a runoff election. The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast.

The Labor Relations Board conducted an election on September 18 and 19, 2012, at the University of Vermont. The results on Question 1 were: Yes - 339, No – 278, Spoiled Ballot – 1. The results on Question 2 were: United Staff – 168, University Staff Union-NEA – 183, Neither – 260, Spoiled – 7.

On October 3, 2012, United Staff filed an objection to the conduct of the election pursuant to Section 13.23 of Labor Relations Board *Rules of Practice*. United Staff contends that the manner in which the election was conducted failed to safeguard the rights of the employees in the bargaining unit to freely and fairly decide the two questions before them in the election. It asserts that the two-question ballot in question ignored a distinction that was important in a case such as this where two employee

organizations are competing to represent employees compared to the typical case where only one employee organization is seeking to represent the employees.

United Staff contends that the ballot obscured the real choice presented by the situation: By voting yes on Question 1, a majority of employees decided to be represented. Those employees should not then be asked again on Question 2 whether or not they wish to be represented. Question 2 should have asked which of the contending representatives the employees preferred. United Staff contends specifically that the second question on the ballot should have been worded as follows:

If a majority votes for the proposed bargaining unit in Question 1, do you want to be represented by :

- United Staff
- University Staff Union-NEA

In considering United Staff's objection, it is necessary to closely examine Vermont Supreme Court precedent and the pertinent provisions of the State Employees Labor Relations Act ("SELRA").¹ The asking of two questions on the election ballot in cases arising under the State Employees Labor Relations Act stems from the 1978 decision of the Vermont Supreme Court *In re Liquor Control Department Non-Supervisory Employees*², interpreting the following two subsections of the State Employees Act:

...
Section 941(e) – "Whenever as a result of a petition and an appropriate hearing, the board finds substantial interest among employees in forming a bargaining unit, a secret ballot election shall be conducted by the board to be taken in such a manner as to show separately the wishes of the employees in the voting group involved as to the determination of the collective bargaining unit, including the right not to be organized. In order for a collective bargaining unit to be recognized and certified by the board, there must be a majority vote cast by those employees voting."

¹ 3 V.S.A. Section 901 *et seq.*

² 135 Vt. 623.

...
Section 941(g) – “(1) In determining the representation of state employees in a collective bargaining unit, the board shall conduct a secret ballot of the employees and certify the results to the interested parties and to the state employer. The original ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. No representative will be certified with less than a majority of the votes cast.

(2) If in such election none of the choices receive a majority of the votes cast, a runoff election shall be conducted, the ballot providing for a selection between two choices receiving the largest and second largest number of valid votes cast in the original election.”

The Supreme Court interpreted these two subsections in the *In re Liquor Control Department Non-Supervisory Employees* decision to provide for employees to vote on two questions, one whether they wish to be organized into a proposed bargaining unit pursuant to Section 941(e) and the other whether they wished to be represented by a bargaining representative pursuant to Section 941 (g).³

The Court decision also has been adopted in the Board *Rules of Practice*, which provides: “In situations where there is no incumbent bargaining representative, employees voting in an election vote both on the question of representation and the composition of the bargaining unit. They vote on two questions: whether they wish to be included in a particular bargaining unit, and whether they desire to be represented by a particular employee organization.”⁴

Since the Court decision in 1978, the Board has held many elections under SELRA, including three previous elections at the University of Vermont, where employees voting in an election have voted on two questions: whether they wish to be included in a particular bargaining unit and whether they wish to be represented by a particular employee organization.

³ *Id.* at 625-26.

⁴ Section 13.13, Board *Rules of Practice*.

United Staff misapprehends Court precedent, Section 941(e) of SELRA, Board *Rules of Practice*, and the content of the election ballot in this case by asserting that the majority of employees decided to be represented by a union when they voted yes on Question 1. The majority of employees did not decide in Question 1 to be represented by a union; they voted to be organized into a collective bargaining unit consisting of a specified group of employees. They voted on the unit question in Question 1, not whether they wished to be represented by a particular union which was the query in Question 2. Question 1 on the ballot was in line with Court precedent, Section 941(e) of SELRA, and Board *Rules of Practice* in this respect by asking employees whether they wished to be included in a collective bargaining unit consisting of a specified group of employees.

The lack of merit of the United Staff argument is further demonstrated when it asserts that the second question on the ballot should have been worded as follows:

If a majority votes for the proposed bargaining unit in Question 1, do you want to be represented by:

- United Staff
- University Staff Union-NEA

Such a question is directly at odds with the provision in Section 941(g) of SELRA that “(t)he original ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot”. This mandates that employees when voting on the question of representation be provided an opportunity to vote against not being represented by an employee organization as well as to be represented by a particular employee organization or organizations. The question proposed by United Staff would deny employees that choice. The second question which actually appeared on the ballot in this matter presented employees with the choices mandated by Section 941(g).

The argument by United Staff also ignores the reality that Section 941(g) explicitly contemplates the possibility of three choices being on an election ballot with no choice receiving a majority of votes cast, thus necessitating a runoff election, in providing: “If in such election none of the choices receive a majority of the votes cast, a runoff election shall be conducted, the ballot providing for a selection between two choices receiving the largest and second largest number of valid votes cast in the original election.” Section 13.21 of Board *Rules of Practice* tracks this provision of Section 941(g), stating: “A runoff election shall be conducted by the Board when an election, in which the ballot provides for no less than three choices (i.e., at least two representatives and a “no union”), results in no choice receiving a majority of the valid votes cast.” The second question which appeared on the election ballot in this matter was fully in line with these provisions.

In sum, the content of the election ballot in this case was consistent with Vermont Supreme Court precedent, Sections 941(e) and (g) of SELRA, and Board *Rules of Practice*. Further, we note that the election order which was issued by the Board in this matter was developed with full input by the parties. The Board Executive Director had extensive discussions with the parties, including United Staff, on the details of the election contained in the Board order, including the content of the election ballot and the procedure for counting ballots, prior to the order being issued. United Staff was provided the explicit opportunity to object to provisions of the proposed order, and failed to do so. United Staff’s failure to object to the particular form and content of the ballot under such circumstances, and then later contest an election based on the content of the ballot, is

contrary to the cooperative procedure used in this case to establish election details and at odds with fair dealings inherent in such a procedure.⁵

Based on the foregoing reasons, it is ordered:

1. The objection filed by United Staff to the conduct of the election in this matter is denied; and
2. The Labor Relations Board shall conduct a runoff election in this matter in which employees will vote on the following question:

Do you wish to be represented for exclusive bargaining purposes by University Staff Union-NEA?

YES

☐

NO

☐

Dated this 11th day of October, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Gary F. Karnedy

Gary F. Karnedy

/s/ Linda P. McIntire

Linda P. McIntire

/s/ Alan Willard

Alan Willard

⁵ International Union of Operating Engineers, Local 98, AFL-CIO and Windham Solid Waste Management District, 17 VLRB 80, 85 (1994).