VERMONT LABOR RELATIONS BOARD

PETITION OF THE NEW ENGLAND POLICE BENEVOLENT ASSOCIATION (RE: TOWN OF NORTHFIELD POLICE DEPARTMENT)	))))	DOCKET NO. 13-20

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by the International Brotherhood of Electrical Workers Local 300 ("IBEW") to dismiss a petition for election of collective bargaining representative filed on July 5, 2013, by the New England Police Benevolent Association ("NEPBA") to represent all employees of the Town of Northfield Police Department excluding the Chief of Police. The police department employees currently are in a bargaining unit which includes other Town of Northfield employees represented by IBEW.

There is a question whether this petition should be dismissed due to a Memorandum of Agreement in effect between IBEW and the Town of Northfield. At the time IBEW and the Town executed the Memorandum of Agreement, they were parties to a collective bargaining agreement with a term of July 1, 2010, to June 30, 2013. The Memorandum of Agreement provides in its entirety as follows:

> The purpose of this Memorandum of Agreement is to memorialize the following mutual agreement between the Town of Northfield, Vermont (the Town) and the International Brotherhood of Electrical Workers, Local #300 (the Union).
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> Whereas; the Town and Union are engaged in good faith bargaining for the purpose of creating a successor labor agreement between the parties, and in consideration of the fact that health insurance coverage represents a major part of these negotiations, it is in the best interest of parties to have access to the most comprehensive and accurate information regarding the available options for health coverage and the associated costs. In consideration of the fact that all applicable rate information may not be available until July 31, 2013, the Town and the Union hereby agree to extend the current labor agreement between the parties, through August 30, 2013. The parties further agree there will be a Cost of Living

> Adjustment made to the hourly wage rates for all covered positions of 1.5%, effective July 1, 2013.

The Memorandum of Agreement was "(a)greed to for the Town", and signed on May 28, 2013, by Town Manager Robert Lewis. It was "(a)greed to for" IBEW, and signed on June 3, 2013, by IBEW Business Manager Jeffrey Wimette.

IBEW contends that the petition filed by the NEPBA on July 5, 2013, should be dismissed as untimely filed because IBEW and the Town reached an agreement on the important issue of employee wage increases, and entered into a successor collective bargaining agreement to the July 1, 2010 – June 30, 2013 agreement, through the July 1, 2013 – August 30, 2013, Memorandum of Agreement before the petition was filed. IBEW further asserts that, given that the successor agreement expires on August 30, 2013, and Section 33.2 of Board *Rules of Practice* provide that an election petition normally should be filed 90 to 60 days prior to an agreement's expiration date, the 30 day window for filing a petition ran from June 2, 2013, to July 2, 2013. Alternatively, should the Board conclude that the Memorandum of Agreement does not serve as a successor agreement for purposes of barring the petition, then IBEW requests that the Board exercise its discretion and further the interests of fairness and stability in collective bargaining by allowing IBEW and the Town the opportunity to complete their negotiations by dismissing the petition.

The NEPBA replies in opposition to the motion to dismiss that the Memorandum of Agreement cannot constitute a successor agreement barring the election petition when IBEW and the Town admittedly entered into the Memorandum of Agreement as a direct result of their failure to come to terms on matters like health insurance coverage. Further, the NEPBA asserts that once the parties were three years removed from the July 1, 2010,

date the collective bargaining agreement became effective, an agreement to extend the collective bargaining agreement beyond that of three years would have no impact on the timeliness of the petition filed by the NEPBA. The NEPBA contends that the Memorandum of Agreement essentially preserved the status quo between the parties for purposes of continuing negotiations for a successor collective bargaining agreement, but that it does not represent a new agreement. NEPBA asserts that the employees in the proposed bargaining unit have the right to exercise their free choice of representative at reasonable intervals, and the filing of the July 5, 2013, petition was in furtherance of this right.

Generally, the filing of election petitions is not subject to specific time frames. There are two notable exceptions to this general rule. First, no election may be conducted in a bargaining unit, or subdivision of a bargaining unit, within which an election has been held in the preceding 12 months.[1] Second, an existing collective bargaining contract normally bars a petition either to replace an existing exclusive bargaining representative with another union, or to decertify the existing representative where the petitioner is not seeking the election of another employee organization as bargaining representative, for most of the term of the contract. Section 33.2 of Labor Relations Board *Rules of Practice*, which applies to election petitions filed under the Municipal Employee Relations Act such as the one at issue in this case, provides:

> **Contract Bar**
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> 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 only if filed during the period 90 to 60 days prior to the expiration date of the collective bargaining agreement, or after the expiration thereof if a successor

[1] 21 V.S.A. § 1724(h).

agreement has not become effective. A petitioner filing a petition at any other time shall justify why the normal time period should be waived.

The Board has issued several decisions applying this contract bar policy, although none of the decisions are directly on point to the specific issue presented in this case. Nonetheless, it is instructive to review Board precedents to consider the underlying purposes of the contract bar policy. Under the Municipal Employee Relations Act ("MERA") and Section 33.2 of Board *Rules of Practice*, the Board has found petitions either to replace an existing exclusive bargaining representative with another union, or to decertify the existing representative where the petitioner is not seeking the election of another employee organization as bargaining representative, as untimely when they were filed shortly after a successor agreement has been executed.[2] The Board discussed at length the purpose of the contract bar policy in one of these cases:

> The objective of this contract bar doctrine is to achieve a reasonable balance between the competing interests of stabilizing the employer-union relationship and free employee choice of a representative. The "open" period of ninety (90) to sixty (60) days prior to a contract expiration date provides employees with an opportunity for a free choice of bargaining representatives at reasonable intervals. The barring of a petition for the remainder of a contract term provides a settled work environment and stabilization of the employer-union relationship necessary for productive labor relations. . . (T)he establishment of such time limits is consistent with the overall intent of MERA.
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> It is the "purpose and policy" of MERA to "provide orderly and peaceful procedures for preventing the interference by either (municipal employees and municipal employers) with the legitimate rights of the other". 21 V.S.A. § 1721. MERA provides the municipal employer and the exclusive bargaining agent of employees "shall bargain in good faith with respect to wages, hours and conditions of employment, and shall execute a written contract incorporating any agreement reached". 21 V.S.A. § 1725(a). See also 21 V.S.A. § 1722 (4) and (8). A necessary implication arising from these provisions is that the parties negotiating the contract shall be entitled to peaceful implementation of it during its term. Otherwise, the purpose of MERA to "provide orderly and peaceful

[2] St. Albans Police Officers Association and Local 1343, AFSCME, AFL-CIO and City of St Albans, 8 VLRB 46 (1985). Petition for Decertification of Collective Bargaining Representative (Re: Town and Village of Ludlow Employees), 32 VLRB 48 (2012).

procedures" governing relations between employers and employees would be violated.[3]

Contracts of definite duration for terms up to three years normally will bar a petition for their entire period except for the period 90 to 60 days prior to the contract expiration date.[4] The Board has qualified the contract-bar policy in cases where contracts have terms longer than three years. In such cases, contracts operate as a bar to petitions only the first three years. The contract bar will no longer apply as of the third year anniversary date of the effective date of the contract and petitions will be considered timely if filed between that date and until at least the expiration date of the contract. The Board stated that "this achieves the desired balance between stabilizing the employer-union relationship and providing employees with an opportunity for a free choice of bargaining representative at reasonable intervals."[5]

The contract bar policy will not necessarily be one that the Board will apply in all situations. It is a policy that the Board may apply or waive as the facts of a given case may demand in the interest of stability and fairness in collective bargaining agreements.[6]

The Memorandum of Agreement which IBEW claims is a bar to the election petition filed by the New England Police Benevolent Association is effective for 61 days – i.e., from July 1, 2013, to August 30, 2013. We previously have not considered whether an agreement of such a short duration can operate as a bar to a representation election. We look to the experience of the National Labor Relations Board ("NLRB") under the

[3] St. Albans, 8 VLRB at 52-54.
[4] Enosburg Falls Water and Light Department Employees Association and Local 300, IBEW and Enosburg Falls Water and Light Department, 11 VLRB 77 (1988).
[5] Id. at 85-86.
[6] St. Albans, supra.

National Labor Relations Act[7] for guidance on this issue. Federal precedent has been used by the Vermont Supreme Court and the Board as persuasive authority in construing provisions under MERA which are similar to National Labor Relations Act provisions.[8] We conclude likewise that NLRB contract bar rules may constitute persuasive authority since NLRB rules in this regard are similar to our *Rules of Practice*.

The NLRB has held that contracts of less than 90 days do not constitute bars to elections for any period of time.[9] The NLRB explained its reasoning in a case in which it concluded that an agreement which was effective for 62 days did not bar an election petition during the term of the agreement:

> One objective of the Board's contract-bar rules is for a collective-bargaining agreement to have a fixed term on its face so that anyone can immediately ascertain when the open period begins and ends and can know when a representation petition may be appropriately filed. Thus, the contract-bar rules provide for an open period from 60 to 90 days prior to the expiration of the existing contract during which the existence of the contract will not act as a bar to a petition for an election within the unit covered by the contract. *(citations omitted.)* Thereafter, to enable the parties to reach a new agreement, the final 60 days of the existing collective-bargaining agreement is an "insulated period" during which the contract bars petitions for elections. *(citation omitted.)* These rules provide a balance between dual objectives. First, they further industrial peace and stability by assuring that the labor relations environment will not be disrupted during the term of a collective-bargaining agreement and by providing the parties with a period just before the expiration of the contract during which they can negotiate a new agreement free from such disruption. Equally important, however, the rules provide a set opportunity for employees who are disenchanted with the performance of their collective-bargaining representative to seek its removal or replacement with another representative.
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> Judged against these objectives, agreements of less than 90 days, even if they are for a definite period, fail to meet either objective. Because of their short

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[7] 29 U.S. Code §141-187.
[8] Firefighters Local 2628 and Brattleboro Fire Department, 138 Vt. 347 (1980). In re Southwestern Vermont Education Association, 136 Vt. 490 (1978). Vermont State Colleges Faculty Federation v. Vermont State Colleges, 138 Vt. 451, 454-56 (1980). Woodstock Union High School Teachers Organization, Educational Support Personnel Unit and Woodstock Union High School District, 22 VLRB 186, 193-194 (1999).
[9] Crompton Co., 260 NLRB 417 (1982).

> duration, they provide little in the way of industrial stability. Because they are for less than 90 days, they provide for either an abbreviated period, or . . no period during which employees may act to remove a bargaining representative with which they are disenchanted. Therefore, such agreements will not bar a petition filed during the term of the agreement. This rule applies even if the agreement is for a fixed duration of less than 90 days and without regard to whether the agreement is an extension of an existing contract or a new contract.[10]

We conclude that this reasoning of the NLRB is reasonable and results in a sensible standard. Just as the NLRB contract bar rules provide a balance between the dual objective of furthering industrial peace and stability and establishing a set opportunity for employees to remove a bargaining representative with which they are disenchanted, our contract bar doctrine has the dual objectives of achieving a reasonable balance between the competing interests of stabilizing the employer-union relationship and free employee choice of a representative at reasonable intervals. Judged against these objectives, agreements of less than 90 days generally fail to meet either objective. Given their brevity, they provide little in the way of stabilizing the employer-employee relationship. Further, because they are less than 90 days, they provide for either an abbreviated period, or no period, during which employees may act to remove a bargaining representative with which they are disenchanted.

There may be exceptional circumstances where parties may be able to successfully challenge the standard that agreements of less than 90 days do not bar a petition filed during the term of the agreement. There is no statutory requirement creating such a standard and we have discretion to waive it in appropriate cases in the interest of stability and fairness in labor relations.

[10] Id. at 418.

We are not persuaded that this is an appropriate case to exercise our discretion to dismiss the petition filed by the NEPBA. We are sympathetic to what the IBEW and the Town of Northfield were attempting to accomplish in extending their existing collective bargaining agreement by entering into the 61 day Memorandum of Agreement. This allowed the parties to have access to the most comprehensive and accurate information regarding the available options for health coverage and the associated costs. We recognize that there is great uncertainty in these times on health care coverage and costs, an issue with a serious impact on the ability of parties to successfully conclude collective bargaining negotiations. However, the parties did have other options. For instance, they could have extended their contract for 90 days or longer with an option to reopen for issues related to health coverage for employees and associated costs.

We conclude that exceptional circumstances are not present to waive the standard that agreements of less than 90 days will not bar a petition filed during the term of the agreement. Since the Memorandum of Agreement entered into by IBEW and the Town of Northfield has a duration of 61 days, it does not bar the election petition filed by the NEPBA during its term.

Based on the foregoing reasons, it is ordered:

1) The motion filed by the International Brotherhood of Electrical Workers Local 300 to dismiss the petition for election of collective bargaining representative filed on July 5, 2013, by the New England Police Benevolent Association is denied: and
2) The International Brotherhood of Electrical Workers Local 300 and the Town of Northfield shall notify the Labor Relations Board in writing by

August 28, 2013, whether any unit determination questions exist in this matter, which questions shall be specified.

Dated this 13th day of August, 2013, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Chairperson

/s/ Gary F. Karnedy

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Gary F. Karnedy

/s/ Edward W. Clark, Jr.

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Edward W. Clark, Jr.