

VERMONT LABOR RELATIONS BOARD

NEW ENGLAND POLICE)	
BENEVOLENT ASSOCIATION)	
PETITION FOR ELECTION OF)	DOCKET NO. 14-12
COLLECTIVE BARGAINING)	
REPRESENTATIVE (RE: SWORN)	
LAW ENFORCEMENT OFFICERS))	

MEMORANDUM AND ORDER

There is a question concerning the timeliness of the petition for election of collective bargaining representative filed by the New England Police Benevolent Association ("NEPBA") in this matter on January 30, 2014, to represent the sworn law enforcement officers of the Vermont Department of Fish and Wildlife, the Vermont Department of Liquor Control and the Vermont Department of Motor Vehicles. The employees in the proposed unit in this petition are among the employees in the Non-Management Bargaining Unit covered by a collective bargaining agreement between the Vermont State Employees' Association ("VSEA") and the State of Vermont ("State") which will expire on June 30, 2014. The NEPBA indicated in a letter accompanying the petition that the Non-Management Unit was scheduled to conduct a ratification vote on a successor collective bargaining agreement to the 2012–2014 agreement on January 31, 2014. The NEBPA asserted that the employees in the proposed unit in the petition wished to form their own bargaining unit and requested that the petition be filed prior to the scheduled ratification vote.

Section 13.2 of Labor Relations Board *Rules of Practice* provides:

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 150 to 120 days prior to the date the General Assembly convenes in regular session for the year during which the collective bargaining agreement expires or if filed after the expiration date of the agreement

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

As discussed above, the employees in the proposed unit in this petition are among the employees in a bargaining unit covered by a collective bargaining agreement which will expire on June 30, 2014. Accordingly, the normal time period for filing a petition would have been 150 to 120 days prior to the January 7 date the legislature convened this year—i.e., August 9, 2013, through September 8, 2013. Since the petition here was filed on January 30, 2014, months after the normal time period, Board Executive Director Timothy Noonan requested the NEPBA to provide justification in writing by February 14, 2014, why the normal time period of filing the petition should be waived.

In its response, the NEPBA did not provide justification why the normal time period should be waived. Instead, the NEPBA incorrectly asserts that the petition was filed *prior* to the normal time period in which to file petitions. VSEA and the State filed memoranda in opposition to the petition on March 10, 2014.

Thus, the Board considers whether to dismiss this petition as untimely filed in the absence of the Association providing justification why the normal time period should be waived. The objective of the contract bar policy established in Board Rules 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 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.¹

The rationale behind barring the filing of petitions following the “open” period prior to the expiration of the agreement is to allow the parties to negotiate free from the threat of a challenge to the majority status of the employee representative.² 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.³ The burden is on the petitioner to present sufficient justification for waiving the normal time period.⁴

The employees in the proposed unit covered by the petition had an opportunity during the “open” period August 9, 2013, through September 8, 2013, to have a petition filed to seek to form their own bargaining unit and be represented by a different employee organization. No such petition was filed, and the NEBPA did not file a petition here until months later when the existing collective bargaining representative had negotiated a tentative collective bargaining agreement and scheduled a ratification vote on it.

If we were to consider this petition timely in the absence of NEBPA providing justification why the normal time period should be waived, it would be unfair to incumbent representative VSEA and the State who negotiated a contract at a time following the open period in which they were entitled to negotiate free from the threat of

¹ St. Albans Police Officers Association and Local 1343, AFSCME, AFL-CIO and City of St. Albans, 8 VLRB 46, 52-54 (1985).

² Vermont State Housing Authority, 4 VLRB 257 (1981).

³ St. Albans, *supra*.

⁴ Petition for Decertification of Collective Bargaining Representative (Re: City of Montpelier Public Works Employees), 23 VLRB 162, 163 (2000).

challenge to the majority status of the employee representative. This would be contrary to the settled work environment and stabilization of the employer-union relationship necessary for productive labor relations.

Based on the foregoing reasons, it is ordered that the petition for election of collective bargaining representative filed by the New England Police Benevolent Association in this matter is dismissed.

Dated this 28th day of March, 2014, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park
Richard W. Park, Chairperson

/s/ James C. Kiehle
James C. Kiehle

/s/ Alan Willard
Alan Willard