VERMONT LABOR RELATIONS BOARD

DECERTIFICATION PETITION OF	)	
BELLOWS FALLS VILLAGE	)	DOCKET NO. 18-42
CORPORATION	)	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is what action to take on a petition filed by the Bellows Falls Village Corporation ("Employer") on September 21, 2018, to decertify Local 4473, International Association of Fire Fighters ("Union"), as the representative of village fire department employees. The Employer alleges in the petition that since January 1, 2018, the Bellows Falls Fire Department has consisted of a sole employee, the Fire Chief. The Employer requests as a result that the Labor Relations Board decertify the Union since the bargaining unit members for whom the Labor Relations Board granted certification in 2005 – i.e., "all career fire fighters, the career fire captain and the assistant chief" (VLRB Docket No. 05-40) – no longer exist.

The threshold question in this matter is whether this petition should be dismissed for lack of jurisdiction. The Labor Relations Board only has such adjudicatory jurisdiction as is conferred on it by statute. In re Grievance of Brooks, 135 Vt. 563, 570 (1977). The applicable statute here, the Municipal Employee Relations Act, 21 V.S.A. § 1721 *et seq.*, provides that a "petition may be filed with the Board . . . (b)y an employee or group of employees, or any individual or employee organization purporting to act in their behalf, alleging that not less than 30 percent of the employees . . . assert that the individual or employee organization certified as bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit". 21 V.S.A. § 1724(a)(1).

The Municipal Act does not contain a similar provision allowing a municipal employer to file a petition to decertify an employee organization as bargaining representative. The ability of an employer to file a petition is limited to filing a "petition . . . alleging that the presently certified bargaining unit is no longer appropriate under Board criteria." 21 V.S.A. § 1724(a)(2). This section of the Municipal Act previously allowed a municipal employer to file a "petition . . . alleging that . . . the presently certified bargaining agent is no longer supported by 51 percent of the employees in the bargaining unit". However, this provision allowing the employer to file a petition to decertify the presently certified bargaining agent was deleted in 1990. Act No. 135.

In determining the meaning of this changed statutory language, the Board's overriding objective must be to effectuate the intent of the legislature. IBEW Local 300 and Town of Roxbury, 30 VLRB 125, 132 (2009). In a case under the Municipal Act in which the Act previously had specified several categories of employees as excluded from the definition of employee covered by the Act, and then the Legislature specifically removed the categories of employees from the list of exclusions, the Board concluded that the intent of the Legislature was to amend the statute to now include within the definition of employees those categories of employees previously excluded. Id.

We likewise conclude in this case that when the Municipal Act previously explicitly provided a municipal employer with the ability of file a petition to decertify the presently certified bargaining agent, and then the Legislature removed this provision from the Act, the Legislature intended to no longer allow a municipal employer the ability to file a petition to decertify the presently certified bargaining agent.

There have been many cases where the Board has concluded it has no jurisdiction in cases where authorization for Board jurisdiction is not specifically provided by statute. For

instance, temporary employees are not considered "employees" under the State Employees Labor Relations Act, and the Board has concluded it has no jurisdiction over the grievances of temporary State employees. 3 V.S.A. Sections 311(a)11), 902(5)(A). Grievance of McCluskey, 7 VLRB 359 (1984). Emerson v. Vermont Department of Forests, Parks and Recreation, 20 VLRB 41 (1997). Also, the Board has held that employees exempt from the state classified service are not considered "employees" under the Act eligible to appeal grievances to the Board. 3 V.S.A. §902(5)(A). Grievance of Woolaver, 21 VLRB 219 (1998). The Board has further determined that classified state employees in their original probationary period also are not eligible to file grievances with the Board pursuant to the provisions of the State Employees Act. Grievance of Peplowski, 6 VLRB 16 (1983). Grievance of Cole, 6 VLRB 204 (1983). Grievance of Barrows, 8 VLRB 82 (1985). Here, too, we have no jurisdiction over a petition filed by a municipal employer to decertify a union as representative where authorization for Board jurisdiction over such a petition is not specifically provided by statute.

In so holding, we note that we are not sanctioning one-person bargaining units. The Board determined in a 2014 decision that a one person bargaining unit is not appropriate under the Municipal Act. A union filed a petition for election of collective bargaining representative to represent the one police officer employed by a town. The Board determined that collective bargaining presupposes that bargaining is conducted on behalf of more than one employee, and that a one-person unit is explicitly made inappropriate by the Municipal Act's definition of "bargaining unit", which provides that a bargaining unit "means a group of employees recognized by the municipal employer or certified by the Board as appropriate for exclusive representation by an employee organization as appropriate for collective bargaining." 21 V.S.A. § 1722(3) and (4). New England Police Benevolent Association and Town of Weathersfield, 33

VLRB 139 (2014). We are simply holding that the Municipal Act does not permit a municipal employer to file a petition to decertify a presently certified bargaining agent, and we are without jurisdiction to act on such a petition.

Dated this 15th day of November, 2018, 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