

VERMONT LABOR RELATIONS BOARD

LOCAL 1343, AFSCME, AFL-CIO)	
)	
and-)	DOCKET NO. 83-22
)	
CHAMPLAIN WATER DISTRICT)	

MEMORANDUM AND ORDER

On April 6, 1983, Local 1343, AFSCME, AFL-CIO ("Union"), filed a Petition for Election of Collective Bargaining Representative with the Labor Relations Board pursuant to 21 VSA §1724. The petition requested an election among certain employees of the Champlain Water District. On May 2, 1983, the Champlain Water District ("Employer") informed the Board there was a question concerning the composition of the bargaining unit.

A unit determination hearing was held before the full Board on June 9, 1983. At the hearing, the parties stipulated to the composition of the bargaining unit, with the exception of the position of Engineer. The parties have left that question to determination by the Board. The Employer filed a brief on June 20, 1983. The Union filed no brief. Member James Gilson has withdrawn from consideration of this case, and has not participated in the decision.

At the hearing, the parties agreed to the scheduling of an election with the understanding the Board would resolve the question regarding the Engineer prior to the election. An election has been scheduled for July 6, 1983, from 7:45 a.m. - 10:00 a.m. in the Conference Room, Champlain Water District.

At issue is how the position of Engineer will be handled regarding inclusion in the bargaining unit and voting procedure. It is undisputed the employee holding the position of Engineer is a professional employee. 21 VSA §1724(c)(1) provides:

No bargaining unit shall include both professional employees and other municipal employees unless a majority of such professional employees vote for inclusion in such unit.

Pursuant to this section, the parties agree, and we concur, the Engineer has the right to vote whether he wishes to be included in the proposed bargaining unit with other Champlain Water District employees. However, the parties disagree on whether the Engineer may vote for or against the Union on the question of representation for the overall unit. The Union's position is the Engineer has one vote only; whether he wishes to be included in the overall bargaining unit. The Employer contends that if the Engineer votes to be included in the unit, he gets a second vote, whether to vote for or against the Union, and that second vote is counted together with the vote of all other employees in the proposed unit.

We have had no prior cases where this issue has been raised. In interpreting statutory language virtually identical to 21 VSA §1724(c)(1), the National Labor Relations Board (NLRB) and Massachusetts Labor Relations Commission have determined professional employees are given two votes in an election; one to determine whether they wish to be included in the unit with non-professional employees and the other, to vote whether they wish to be represented by the union or no union. Sonotone Corporation, 90 NLRB 1236 (1950). Town of Braintree, 5 MLC 1133 (1978).

The NLRB applied this procedure specifically to a case like the one before us, where only one professional employee was involved, with the added proviso that if the professional employee voted to be excluded from the unit, his vote on whether he wished to be represented by the union or no union would not be counted, as a one-person unit is not appropriate. Mid-Allegheny Corporation, 233 NLRB 1463 (1977).

We disagree with the approach taken by the NLRB and the Massachusetts Commission; at least insofar as in a case like the one before us where only one professional employee is involved and there is no petition pending before the Board for a separate professional unit. To follow the two-vote procedure here would permit an employee who has been legislatively-recognized as having a different community of interests than the proposed bargaining unit of non-professional employees, 21 VSA §1724 (c)(1), to determine whether the larger group is to have a union.

Conceivably, the professional employee could vote to be included in the unit and then illogically vote against being represented by the Union in order to deprive the Union of winning the election. We would not want to create the potential for this to occur. A single employee with a different community of interests than the other employees should not be able to have such an effect on the outcome of the election.

Accordingly, we believe the professional employee should get one vote only; whether he wishes to be included in the non-professional bargaining unit. We recognize such a procedure could also work to the detriment of the Union, and could prevent the Engineer from ever enjoying Union protection. The votes for and against representation by the Union could be even, and the vote of the professional employee would be necessary to give the Union a majority. Given the procedure we have adopted

today, the vote would remain tied, the Union would not be elected as representative of the employees, and the Engineer could not be in a union. A one-person unit is not permitted under the Municipal Employees Relations Act since "bargaining unit" is defined as a "group of employees..." 21 VSA §1722(3). We also believe this result to be just. If the Union cannot achieve majority support from the larger group with its own community of interests, it indicates its support is not sufficient to represent that larger group.

While there is no easy solution to this issue, we believe the procedure adopted today is the nearest we can come to achieving a reconciliation between the interests of the non-professional employees and the professional employee, pursuant to 21 VSA §1724. The larger group of employees should determine its own fate free from the possibility of a disingenuous vote by a person who has no community of interests with them (i.e., for inclusion in non-professional unit, against Union); and the professional employee will be given a vote to decide whether he will be included in the non-professional unit. We also note the impossibility of maintaining secrecy of the Engineer's ballot for or against inclusion in the unit if it is established. 21 VSA §1724(e).

Based on the foregoing reasons, it is hereby ORDERED:

1. The Engineer, Champlain Water District, shall be given the opportunity to cast one ballot by absentee ballot or at the July 6, 1983, representation election. The ballot shall provide:

Do you wish to be included in the same
bargaining unit as non-professional employees
of the Champlain Water District?

Yes

☐

No

☐

2. This ballot shall be segregated from other cast ballots during the course of the election. Once polls have closed, the Board agent conducting the election shall tabulate the ballots cast by non-professional employees to determine whether Local 1343, AFSCME, AFL-CIO, shall be the bargaining representative of those employees. If the Union loses, the Engineer's ballot shall not be reviewed. If the Union wins the election, the Board agent shall review the ballot cast by the Engineer to determine whether the Engineer has voted to be included in the unit with the non-professional employees. The Engineer's ballot shall have no effect on whether the Union has achieved majority status as exclusive bargaining representative.

3. A copy of this Memorandum and Order shall be provided to the Engineer by the Champlain Water District upon receipt of the Memorandum and Order.

Dated this 4th day of June, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.