

VERMONT LABOR RELATIONS BOARD

WESTMINSTER HIGHWAY EMPLOYEES)	
)	
-and-)	
)	
AMERICAN FEDERATION OF STATE,)	DOCKET NO. 83-62
COUNTY AND MUNICIPAL EMPLOYEES,)	
AFL-CIO)	
-and-)	
)	
TOWN OF WESTMINSTER)	

MEMORANDUM AND ORDER

On September 30, 1983, Gary Caggiano ("Petitioner"), an employee of the Town of Westminster ("Town") Highway Department, filed a petition with the Vermont Labor Relations Board alleging that the currently-certified bargaining agent, the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") was no longer supported by at least 51 percent of the employees in the bargaining unit consisting of the employees of the Town Highway Department.¹ The petition was supported by decertification cards signed by not less than 30 percent of the employees in the proposed unit.

Subsequent to the filing of the petition, both the Town and AFSCME informed the Board there was no collective bargaining agreement in effect which would bar an election and that no question of representation or unit determination existed which required a hearing.

A decertification election was conducted by Board Executive Director Timothy Noonan on November 15, 1983, in the Westminster Town Garage.

¹ AFSCME was certified as bargaining representative of the Town Highway employees, excluding the Road Foreman, as a result of an August 23, 1982, election conducted by the Labor Relations Board (#82-38, AFSCME and Town of Westminster).

Town Selectman Preston James observed the election for the Town. Ralph Crippen observed for AFSCME. The results of the election were:

American Federation of State, County and Municipal Employees, AFL-CIO	2
No Union	2

Following the election, the Board provided the parties an opportunity to file memoranda regarding whether a union is decertified or remains certified when there is a tie vote in a decertification election. AFSCME filed a letter on November 23, 1983, taking the position it should not be decertified as a result of the tie vote. The Town, in a memorandum filed on November 28, 1983, asserted AFSCME should be decertified. Petitioner filed no memorandum.

To resolve this question, we turn to the provisions of the Municipal Employee Relations Act regarding election of bargaining representatives.

21 VSA §1724(e) provides, in pertinent part:

In determining the representation of municipal employees in a collective bargaining unit the board shall conduct a secret ballot of the employees... No representative will be certified with less than a 51 percent affirmative vote of all votes cast.

Nonetheless, AFSCME, in essence, contends that this provision does not apply to decertification elections. It maintains that in any parliamentary, legislative or referendum vote, a tie vote is a defeat for the question; and in this case the question was for decertification, not certification. Thus, AFSCME concludes, the question "decertification" is defeated on a tie vote.

We disagree. In construing the provisions of 21 VSA §1724(e), together with 21 VSA §1724(a), we conclude the statutory criterion of 51 percent affirmative vote for the union applies to both the original certification

of a bargaining agent and to decertification elections. §1724(a) provides, in pertinent part:

A petition may be filed with the board...

1) by an employee or group of employees... alleging that not less than 30 percent of the employees... assert that the individual or employee organization currently certified as bargaining agent is no longer supported by at least 51 percent of the employees in the bargaining unit.

Through this provision, it is apparent the Legislature intended the currently-certified bargaining agent would have to demonstrate it represents the majority of employees in the bargaining unit in a decertification election in order to remain certified, not just 50 percent of the employees. A union must obtain a majority of all votes cast to remain certified as well as to become certified. To rule otherwise would be to give no effect to 21 VSA §1724(a)(1).

ORDER

For the foregoing reasons and as a result of the November 15, 1983, election, it is hereby ORDERED:


The American Federation of State, County and Municipal Employees, AFL-CIO, is DECERTIFIED as the collective bargaining representative of the bargaining unit consisting of the employees of the Town of Westminster Highway Department, excluding the Road Foreman.

Dated this 6th day of December, 1983, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson