

VERMONT LABOR RELATIONS BOARD

ST. ALBANS POLICE OFFICERS)	
ASSOCIATION)	
)	
and)	
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LOCAL 1343, AFSCME, AFL-CIO)	DOCKET NO. 84-48
)	
and)	
)	
CITY OF ST. ALBANS)	

FINDING OF FACT, OPINION AND ORDER

Statement of Case

On October 17, 1984, the St. Albans Police Officers' Association ("POA") filed a Petition for Election of Collective Bargaining Representative with the Vermont Labor Relations Board. The petition alleged the eight full-time and four part-time police officers employed by the City of St. Albans desired to be represented for collective bargaining by the POA.

Filed with the petition was a copy of a collective bargaining contract between the City of St. Albans ("City") and Local 1343 of the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"), effective January 1, 1984, thru June 30, 1985. The contract was signed on October 4, 1984. The police officers (with the exception of the sergeants) are covered by the contract along with Public Works Department employees, Fire Department employees and other employees of the Police Department.

Subsequently, the Board appointed Timothy Noonan, Board Executive Director, as a hearing officer to determine the relevant facts regarding the timeliness of the petition and to ascertain the parties' positions on the timeliness of the petition and the reasons for their positions.

Noonan met with the parties on December 4, 1984, in the City Council Room, St. Albans City Hall. Present at the meeting were: City Mayor F. E. Handy, City Manager William Chioffi, AFSCME President Lindol Atkins, AFSCME Steward David McWilliams, and City Police Officers Roland Webb, Theodore Breure and Dennis Zielinski, appearing on behalf of the POA. Subsequent to the meeting, Noonan had phone conversations with all parties on December 18 and 21, 1984, to gather additional information.

By letter of December 26, 1984, Noonan submitted to the parties proposed findings of fact and a statement of the parties' respective positions. Noonan requested the parties to file any objections to his factual findings by January 11, 1985, and informed them that if no objections were filed, he would turn the matter over to the Board for decision as to the timeliness of the petition filed by POA. No party filed objections. Accordingly, the Board has decided this matter, without the need for a hearing, based on Noonan's findings and a review of all the material filed in this matter.

FINDINGS OF FACT

1. AFSCME is the collective bargaining representative for the non-exempt City employees in the Public Works, Police and Fire Departments.
2. The contract between AFSCME and the City, effective January 1, 1982, to December 31, 1983, provided in pertinent part:

1. This Agreement shall be effective as of the first day of January, 1982, and shall remain in full force and effect until the 31st day of December 1983.

2. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing ninety (90) days prior to the expiration date of this Agreement that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin not later than sixty (60) days prior to the expiration date. This Agreement shall remain in full force and be effective during the period of negotiations and until a successor agreement is signed by all parties.

3. The City and AFSCME began negotiations for a successor contract to the 1982-83 Contract at some point before December 31, 1983. Negotiations continued after the December 31, 1983, expiration date of the 1982-83 Contract and the provisions of that Contract remained in effect.

4. The AFSCME bargaining team throughout negotiations consisted of AFSCME President Lindol Atkins and David McWilliams, AFSCME Steward. Atkins is not employed by the City, and McWilliams is an employee of the City's Public Works Department.

5. At some time prior to August 1984, the City and AFSCME reached impasse on the remaining issues in dispute, and the parties proceeded to mediation in August, 1984. Prior to going to mediation, AFSCME's negotiators went to AFSCME members twice with the City's latest proposals and the members told them to go back to the table for further negotiations.

6. Mediator Alan Rome met with the parties in early August 1984. He advised the parties they were not that far apart on the issues remaining in dispute and it would be fruitful for them to return to the bargaining table. The City and AFSCME were agreeable to Rome's suggestion and returned to the bargaining table.

7. At some time during August 1984, the City's police officers had a meeting at which a majority of the police officers present voted to remove themselves from AFSCME. Subsequent to this meeting, Police Officer Dennis Zielinski called the Labor Relations Board office in Montpelier and spoke to Timothy Noonan, Board Executive Director. Zielinski informed Noonan of the status of negotiations between the City and AFSCME and told him the police officers were interested in breaking away from AFSCME and forming their own association to represent them.

Noonan told Zielinski it was unclear under existing Vermont law whether a petition to decertify AFSCME and elect another association as bargaining representative of the police officers would be timely at that time. Noonan sent Zielinski the material necessary for filing an election petition with the Board.

8. On September 5, 1984, the City and AFSCME had a negotiations meeting on the terms of a successor contract to the 1982-83 Contract. At the meeting, AFSCME agreed to submit the City's latest bargaining proposals to a vote of the membership.

9. On September 7, 1984, Police Sergeant Theodore Breure told City Manager William Chioffi the police officers were seeking to break away from the larger bargaining unit represented by AFSCME and form an association to represent them. Breure told Chioffi the police officers were going to submit a petition to the City Council requesting the City voluntarily recognize the association as their bargaining representative.

10. The City Council has regular meetings on the second Monday of every month. In September 1984, that date was September 10. At the September 10 meeting, police officers submitted a petition to the City Council, requesting the Council voluntarily recognize the "St. Albans Police Officers' Association" as the collective bargaining representative of a bargaining unit of uniformed police officers. At the meeting, City Mayor F. E. Handy told the police officers who submitted the petition that he could understand the police officers believed they had separate needs and interests than other City employees. Handy told the officers the City Council would take the petition under consideration and consult the City Attorney for legal advice, and would get back to them.

11. The next scheduled meeting of the City Council was October 8, 1984.

12. On September 12, 1984, AFSCME had a meeting on whether to accept the City's latest proposals on the terms of the successor contract to the 1982-83 contract. The members of AFSCME voted to accept the City's latest proposals and ratified the contract. A majority of police officers were not present at this meeting. The effective dates of the ratified contract were January 1, 1984, thru June 30, 1985.

13. Prior to the meeting on the contract, AFSCME representatives posted a notice of the meeting in areas visible to all members of the bargaining unit.

14. Within a week of the September 10 City Council meeting, Attorney E. Michael McGinn, acting as a representative of the POA, spoke with City Attorney Robert Ferra. Subsequently, on or about the day of this discussion, McGinn told representatives of the POA he believed the City did not want to get into the middle of an internal union argument and that the City probably would not voluntarily recognize the POA.

15. On September 19, 1984, the police officers held the first organizational meeting of the POA and elected officers of the POA.

16. On October 3, 1984, Mayor Handy informed the POA by letter the City was not going to voluntarily recognize the POA. The letter provided in pertinent part:

Receipt of your letter dated 10 September 1984 concerning the establishment of a non-profit organization to represent the uniformed officers of the City of St. Albans Police Department is acknowledged.

The City of St. Albans recognizes the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, as "the sole and exclusive bargaining agent for the non-exempt city employees in the Public Works, Police and Fire Departments" in accordance to the agreement between the City of St. Albans and AFSCME, AFL-CIO, Local #1343, recently negotiated, therefore it cannot voluntarily recognize a new bargaining unit for its uniformed members of its Police Department.

17. Representatives of the City and AFSCME signed the January 1, 1984 - June 30, 1985, Contract on October 4, 1984.
18. On October 17, 1984, the POA filed an election petition with the Labor Relations Board, seeking to represent the City police officers.

OPINION

At issue is whether the Petition for Election of Collective Bargaining Representative filed with the Board by the POA to represent police officers employed by the City of St. Albans is timely filed. The petition was filed on October 17, 1984, 13 days after the City and AFSCME had signed a contract covering the police officers along with Public Works Department employees, Fire Department employees and other employees of the Police Department. The Contract's effective dates are January 1, 1984, through June 30, 1985.

Positions of the Parties

The POA believes its petition is timely because it has acted in good faith to follow the procedures set up in the Municipal Employee Relations Act to represent employees (i.e., voluntary recognition, then petition to Labor Relations Board), and the Act establishes no time limits for filing a petition. The POA would like recognition as soon as possible to prepare for contract negotiations and to set up procedures for grievances. The POA recognizes the January 1, 1984 - June 30, 1985, Contract as being effective and will not attempt to renegotiate its terms. If recognized, the POA would like to talk to the City on non-money issues.

The City believes the petition is untimely filed since it was filed immediately after the City negotiated a contract in good faith with AFSCME. The City believes the timing of the petition puts the City in the middle of what is essentially an internal union problem, and believes the POA should have filed its petition for recognition earlier. Since the City negotiated the contract with AFSCME in good faith, it believes it should get the benefit of its bargain during the term of the contract.

AFSCME has no objection to the timing of the petition, and maintains there should be no time limits on the filing of a petition for the decertification of the existing bargaining representative and election of a new representative even if there is an existing contract in effect. However, AFSCME does believe an employer is prohibited from voluntarily recognizing the petitioning union in such a situation since there is an incumbent union. Accordingly, AFSCME believes the POA followed the wrong procedure in seeking voluntary recognition from the City before filing a petition with the Board.

Discussion

It is the policy of the Board that an existing collective bargaining contract bars a petition for decertification of the existing collective bargaining representative and election of a new representative for most of the term of the contract. A petition will normally be considered timely only if filed during the period 90 to 60 days prior to a contract's expiration date. Vermont State Housing Authority, 4 VLRB 257 (1981).

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 90 to 60 days prior to a contract's expiration date provides employees with an opportunity for a free choice of bargaining representative 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.

The POA questions the contract bar doctrine because the Municipal Employee Relations Act (MERA) establishes no time limit for filing a representation petition. It is true MERA does not contain a specific time limitation on the filing of a petition. However, the establishment of such time limits is consistent with the overall intent of MERA.

It is the "purpose and policy" of MERA to "provide orderly and peaceful procedures for preventing the interference of either (municipal employees and municipal employers) with the legitimate rights of the other". 21 VSA §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 VSA §1725(a). See also 21 VSA §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 procedures" governing relations between employers and employees would be violated. Obviously, the indiscriminate permitting of representation petitions during a contract's term would promote disorderly and disruptive labor relations.

We note the National Labor Relations Act also contains no statutorily-mandated time limit for the filing of petitions. Yet, the National Labor Relations Board has established a contract bar doctrine which ordinarily prevents the filing of petitions during the term of a contract except during the period 90 to 60 days prior to the contract's expiration date, and Federal appeals courts have given the Board's contract-bar policy judicial approval. The courts have recognized the policy as one "which the Board in its discretion may apply or waive as the facts of a given case may demand in the interest of stability and fairness in collective bargaining agreements". Local 1545, United Brotherhood of Carpenters, Etc. v. Vincent, 286 F2d 127, 131 (2nd Cir., 1960). NLRB v. Grace Co., 184 F2d 126, 129 (8th Cir., 1950). See also NLRB v. Circle A & W Product Co., 647 F2d 924 (9th Cir., 1981). NLRB v. Martin Building Material, 431 F2d 1246 (5th Cir., 1970).

The petition filed here is clearly untimely under the contract-bar policy we have established because it was filed 13 days after the City and AFSCME executed a contract and well in advance of the "open" period for filing a petition. To consider the petition timely would be unfair to AFSCME and the City who negotiated a contract in good faith and should be able to implement it without the disruptive influence of a pending representation petition.

The contract expires June 30, 1985. A petition such as filed here, requesting a separate bargaining unit and election of a new collective bargaining representative, will be considered timely if filed during the period 90 to 60 days prior to June 30, 1985. Thus, a petition will be considered timely if filed during the period April 1

to May 1, 1985. This "open" period will provide the police officers with an opportunity for a free choice of bargaining representative within a reasonable time without disrupting the implementation of the current contract.

Before concluding, we would like to comment on an action of the POA in this matter which contributed to the untimeliness of its petition; namely requesting the City Council voluntarily recognize the POA as exclusive bargaining representative of the police officers. The POA justifies this action on the grounds it was complying with the procedures set up in MERA. However, MERA prohibits a municipal employer from voluntarily recognizing a petitioning union in a situation where there is an incumbent union. 21 VSA §1723 provides "voluntary recognition may be granted at the request of an employee organization if... no rival employee organization seeks to represent the same individual employee or the same jobs or positions for which recognition is being sought". As the incumbent union, AFSCME is a rival employee organization to POA seeking to represent the police officers. Thus, the POA made a futile request for voluntary recognition.

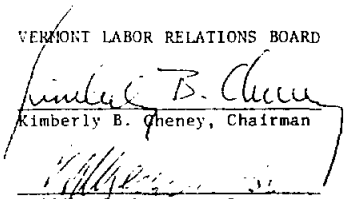
Also, we note the "90 to 60 day" period will not necessarily be applicable in all situations. We recognize that in the public sector there may be situations where contracts have to be negotiated well in advance of the 90 to 60 day period prior to the contract expiration date because of required approval by the legislative body of a negotiated contract prior to or during the 90 to 60 day period. Two such situations which come to mind are State-State employee negotiations and State Colleges-State Colleges employees negotiations. In these situations, the 90 to 60 day period would be inapplicable and a different time-frame would have to be established.

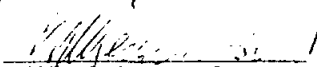
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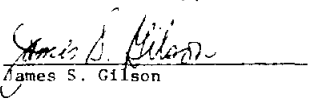
Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED the Petition for Election of Collective Bargaining Representative filed by the St. Albans Police Officers Association on October 17, 1984, is DISMISSED as untimely filed.

Dated this 12 day of February, 1985, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson