VERMONT LABOR RELATIONS BOARD

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| CHAMPLAIN VALLEY UNION SCHOOL STAFF ASSOCIATION VEA/NEA LOCAL 325 | ) | |
| and | ) | DOCKET NO. 80-50 |
| CHAMPLAIN VALLEY UNION HIGH SCHOOL DISTRICT #15 | ) | |

ORDER OF NON-CERTIFICATION

On June 18, 1980, the Champlain Valley Union High School Staff Association VEA/NEA Local 325 (hereinafter "Association"), through Norman Bartlett of the Vermont Education Association, petitioned this Board to hold a representation election. The Association requested that the appropriate bargaining unit consist of instructional and non-instructional aides, secretaries, and cafeteria workers. On July 25, 1980, the Champlain Valley High School Board of Directors (hereinafter "Employer")took the position that the appropriate unit should include bus drivers and custodians as well as the positions delineated by the Association. On September 25, 1980, this Board held a unit determination hearing. On December 18, 1980, the Board found that the appropriate bargaining unit consisted of instructional and non-instructional aides, secretarial/clerical employees, cafeteria workers, bus drivers, and custodians, and ordered that a representation election be held.

On February 6, 1981, a representation election was conducted by Board Member William G. Kemsley, Sr., at the Champlain Valley Union High School. Two choices appeared on the ballot: 1) Champlain Valley Union High School Staff Association, VEA/NEA Local 325; and 2) No Union. Norman Bartlett acted as observer for the Association and Ruth Morrow

was observer for the Employer. The results of this election were as follows:

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| Total ballots cast | 36 |
| Champlain Valley Union High School Staff Association VEA/NEA Local 325 | 17 |
| No Union | 17 |
| Spoiled Ballot, indeterminable choice | 1 |
| Challenged Ballot | 1 |

Mr. Kemsley set aside and did not consider the single spoiled ballot in the total of valid votes cast. This action was consistent with our ruling in International Union of Operating Engineers Local 981 AFL-CIO and City of Montpelier, 3 VLRB 230, 236 (1980). Ballots marked so that the choice is indeterminable do not prejudice either party, express no choice, and do not contribute to the results of the election in any way. Thus, the spoiled ballot is not to be considered a vote.

The challenged ballot will not be considered in the total of valid votes cast. The employee who cast the ballot, Kimberly Lantsman, is presently a bus driver at the high school. However, at the time the Board requested a list of the eligible voters for the election, Ms. Lantsman was not working for the school nor being paid. She had worked for the school from September, 1980 until December 11, 1980. At that time, she asked for time off to travel as part of her graduate studies at the University of Vermont. She returned to work on January 16, 1981. When the Employer submitted the list of employees eligible to vote in the election, Ms. Lantsman was not on the list. The VEA did not object to the list. Where there is no prior request for this Board to determine the eligible voters, and the Employer furnishes a list of eligible voters for an election ordered by the Board which is not contested by the Association within a reasonable time, we will consider that list

to be final. The employer having proposed the list, and the union not having objected, we will deem the list of voters to be stipulated to by the parties with no additions or deletions thereafter permitted, unless agreed to by both parties.

Thus, we find that 34 valid votes were cast in this election. 17 for the union, 17 for no union. Clearly, the Association cannot be certified as the collective bargaining representative for the unit. 21 V.S.A. §1724(e) provides, in part:

> "No representative will be certified with less than a 51 percent affirmative vote of all votes cast."

The Association received only 50 percent of the valid votes cast, thus they cannot be certified.

However, the Association contends that the election held on February 6, 1981, should be set aside, and this Board should conduct a new election as soon as possible. The Association believes that the language of 21 V.S.A. §1724(f) mandates such a result in this case. 21 V.S.A. §1724(f) reads:

> "If in such election none of the choices receive at least 51 percent affirmative vote of all votes cast, a runoff election shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the original election."

This language is similar to that contained in Section 9(c)(3) of the National Labor Relations Act which provides:

> "In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election."

The language being similar, we are persuaded by the way the National Labor Relations Board has interpreted such language. The NLRB has held

that this language applies exclusively to situations where three or more choices appear on the ballot.

Charles Morris, in The Developing Labor Law, (BNA, 1971), states:

> "A prerequisite to the holding of a runoff election is that none of the three or more choices that appeared on the ballot in the original election received a majority of the valid votes cast...There can be no runoff of an election in which there are only two choices" (p. 197, c.f. NLRB Field Manual 11350.1)

When only two choices have appeared on the ballot, and the result is a tie, then the Board will merely certify the results of the election, showing that the union is not the choice of the majority of the employees.

We find that the language in 3 V.S.A. §1724(f) applied exclusively to situations where three or more choices appear on the ballot. We thus find that a runoff election cannot be held under 3 V.S.A. §1724(f) in this case, where only two choices appeared on the ballot.

We are thus bound by the statutory language (3 V.S.A. §1724). The employees have determined that the Association is not the choice of the majority of the unit, and, thus, we cannot certify the Association as the bargaining representative for the unit.

As a result of this election, it is ORDERED that there be NO CERTIFICATION of the Champlain Valley Union High School Staff Association VEA/NEA Local 325 as the exclusive bargaining representative for instructional and non-instructional aides, secretaries/clerical employees, cafeteria workers, bus drivers, and custodians at the Champlain Valley Union High School.

This order is effective as of February 6, 1981, the date of this election.

Dated this 20th day of February, 1981, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

/s/ William G. Kemsley

William G. Kemsley, Sr.