VERMONT LABOR RELATIONS BOARD

LOCAL 1201, AFSCME	)	
	)	
and	)	DOCKET NO. 89-57
	)	
RUTLAND FREE LIBRARY ASSOCIATION	)	

MEMORANDUM AND ORDER

At issue is the procedure by which two professional employees will vote in the election to be conducted by the Labor Relations Board in this matter.

On August 14, 1989, Local 1201, AFSCME ("Union") filed a Petition for Election of Collective Bargaining Representative under the Vermont State Labor Relations Act ("SLRA"), seeking to represent all employees of the Rutland Free Library Association, excluding the Director. On August 29, 1989, the Rutland Free Library Association ("Employer") filed a response to the petition, raising various questions of jurisdiction, unit determination and representation.

After conducting an investigation, the Vermont Labor Relations Board determined that there was a question as to whether the National Labor Relations Board ("NLRB") would decline to assert jurisdiction in this matter or would cede jurisdiction to the Vermont Labor Relations Board. The Vermont Labor Relations Board, pursuant to Section 102.98(b) and Section 102.99(b) of the NLRB's Rules and Regulations, filed a Petition for Advisory Opinion with the NLRB on the issue of jurisdiction on January 4, 1990. On August 22, 1990, the NLRB issued an Advisory Opinion, indicating that the NLRB would not assert jurisdiction over the Employer.

Pursuant to the Advisory Opinion, the Vermont Labor Relations Board took jurisdiction under SLRA. On October 5, 1990, the Union and the Employer informed the Board that they had resolved the following

unit determination issues in dispute: 1) that Jean Boyce, the circulation supervisor, was excluded from the bargaining unit as a supervisory employee; 2) that Rhoda Horne, the bookkeeper, was not a confidential employee and thus was eligible to be included in the bargaining unit; and 3) that librarians Carol Chatfield and Jacob Sherman are professional employees as defined in 21 VSA §1502(11).

As a result of these stipulations by the parties, the only issue which remains to be decided by the Board is the procedure by which the two professional librarians will vote in the election to be conducted by the Board. 21 VSA §1543 provides that "the board shall not decide that... a unit is appropriate... if the unit includes both professional employees and employees who are not professional employees, unless a majority of professional employees vote for inclusion in the unit".

Pursuant to this section, it is clear that the two professional employees, the librarians, have the right to vote whether they wish to be included in the bargaining unit with other library employees. The specific issue we need decide is whether the two librarians will be allowed to cast a second vote for or against the Union on the question of representation for the overall unit.

In interpreting similar statutory language under the Municipal Employee Relations Act (21 VSA §1721 et seq. "MERA"), 21 VSA §1724(c)(1), the Board previously decided that a single professional employee should get one vote only; to wit, whether he wished to be included in the non-professional bargaining unit. Local 1343, AFSCME, AFL-CIO and Champlain Water District, 6 VLRB 142 (1983). In deciding that the professional employee should not be allowed to cast a second vote on whether he wished to be represented by the union or no union,

the Board reasoned that it did not want to create the potential for a disingenous vote to occur; that is, 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. Id, at 144. The Board determined that the professional employee had been "legislatively recognized as having a different community of interests" than the non-professional employees, 21 VSA §1724(c)(1), and thus should not be able to have such an effect on the outcome of the election. Id.

The Champlain Water District decision was contrary to decisions made by labor relations boards in other jurisdictions. In interpreting virtually identical statutory language, the National Labor Relations Board and the 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).

We believe that the Champlain Water District case was incorrectly decided, and we overrule it here. A decision to overrule a previous decision is a step we take rarely, but we believe compelling reasons exist to do so here. Once a professional employee or employees decide to be included in a bargaining unit with non-professional employees, they should have a voice in deciding whether the petitioning union will represent the group of employees. Otherwise, the statutory requirement, under both SLRA and MERA, that an opportunity be provided

for the majority of employees in a bargaining unit to decide they should be represented by a particular collective bargaining representative would be frustrated. 21 VSA §1583; 21 VSA §1724(e).

We disagree with the Champlain Water District decision that professional employees have been legislatively recognized as having a different community of interests than non-professional employees. While the statutory provision allowing professional employees to decide whether they wish to be in a bargaining unit with non-professional employees reflects a legislative recognition that the distinct interests of professional employees could be defeated if they were grouped together with non-professional employees, this does not mean the lack of community of interests has been legislatively pre-determined. It simply means that professional employees ultimately will decide whether their mutual interests with non-professional employees are sufficient, or insufficient, for them to be included in the same bargaining unit.

Also, the potential for a professional employee or employees to cast a disingenous vote in an election does not outweigh the right of professional employees, who have voted to be included in a unit with non-professional employees, to have as much of a voice as non-professional employees to decide whether they will be represented by a particular union or no union. We believe it is unwarranted to design a voting procedure based on the assumption that professional employees may cast disingenious votes.

Based on the foregoing reasons, it is hereby ORDERED:

> 1. The two professional librarians employed by the Rutland Free Library Association shall be given the opportunity to cast two ballots at the election to be conducted by the Labor Relations Board in this matter. One ballot shall provide:

Do you wish to be included in the same bargaining unit as all other employees of the Rutland Free Library Association, excluding the Library Director and the Circulation Supervisor?

Yes ☐

No ☐

The other ballot shall provide:

Do you wish to be represented for exclusive bargaining purposes by:

Local 1201, AFSCME ☐

No Union ☐

2. All non-professional employees of the Rutland Free Library Association, excluding the Library Director and Circulation Supervisor, shall be given the opportunity to cast one ballot at the election to be conducted by the Labor Relations Board in this matter. The ballot shall provide:

Do you wish to be represented for exclusive bargaining purposes by:

Local 1201, AFSCME ☐

No Union ☐

3. The ballots cast by the professional librarians shall be segregated from the other cast ballots during the course of the election. Once polls have closed, the Board agent conducting the election shall review the ballots cast by the professional librarians concerning whether they wish to be included in the bargaining unit with non-professional employees. If the majority of professional librarians vote to be included in the unit with non-professional employees, the ballots cast by the librarians on whether they wish to be represented by AFSCME, AFL-CIO or no union shall be co-mingled with the ballots cast by non-professional employees, and all such cast ballots shall be tabulated together. If the majority of professional librarians vote not to be included in the unit with non-professional employees, then the ballots cast by the professional librarians concerning whether they wish to be represented by AFSCME, AFL-CIO, or no union shall not be co-mingled with

the ballots cast by non-professional employees and shall not be reviewed and tabulated.

Dated this 1st day of November, 1990, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh, Chairman

Catherine L. Frank

Louis A. Toepfer