

VERMONT LABOR RELATIONS BOARD

DECERTIFICATION PETITION RE:)	
)	
GREEN MOUNTAIN TRANSIT)	DOCKET NO. 04-1
AGENCY)	
TEAMSTERS LOCAL 597)	
)	
v.)	
)	DOCKET NOS. 04-3
)	and 04-5
GREEN MOUNTAIN TRANSIT)	
AGENCY)	

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should grant the motion filed by Teamsters Local 597 (“Union”) on June 8, 2004, to stay the Board order of May 21, 2004, in Docket Nos. 04-3 and 04-5, during the pendency of the Union’s appeal of the order to the Vermont Supreme Court. The Board order provided in pertinent part that the Board “shall proceed towards conducting an election in Board Docket No. 04-1 in which employees (of Green Mountain Transit Agency) represented by the Union determine whether they wish to be represented by the Union”. 27 VLRB 128, 152.

The Union filed a memorandum in support of its motion. The Green Mountain Transit Agency (“Employer”), and the petitioning employees in Docket No. 04-1, both filed memoranda in opposition to the motion on June 14, 2004. These memoranda have been fully considered by the Board and have informed the Board’s decision on the motion.

We consider the Union's request for a stay pursuant to 21 V.S.A. Section 1729(d), which provides that a Board order "shall not automatically be stayed pending appeal", and that the Board "may stay the order or any part of it". In determining whether to grant a stay, we apply the following three-part test: 1) whether the party seeking the stay will suffer irreparable harm if the stay is not granted, 2) whether issuance of the stay will substantially harm the other party, and 3) by what result will the interests of the public best be served. Grievance of McCort, 16 VLRB 248, 249-51 (1993); *Affirmed*, Sup.Ct. Doc. No. 93-370, April 5, 1994 (unpublished decision). Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO and Vermont State Colleges, 11 VLRB 1 (1988); *Affirmed*, Sup.Ct. Doc. No. 87-224, April 5, 1988 (unpublished decision).

The Union contends that failure to grant a stay will result in irreparable harm to the Union if the Board conducts a decertification election and the Supreme Court subsequently holds, as the Union contended in the unfair labor practice cases in Docket Nos. 04-1 and 04-3, that the Employer should have been required to execute a collective bargaining agreement with the Union. The Union reasons that, even if execution of the collective bargaining agreement would not have blocked the decertification petition, the Union's status with an executed bargaining agreement during the campaign period leading up to the decertification election would be drastically different than its status without such an agreement.

Given what already has occurred in this case, we are not persuaded by this contention of the Union. Employees represented by the Union voted last December not to ratify the tentative agreement that the Union is requesting the

Employer to execute. Employees thus have demonstrated an unwillingness to accept the agreement negotiated by the Union, and the Union has not demonstrated how its status with employees would be enhanced if the Supreme Court orders the execution of the agreement.

The Union also contends that, if the Supreme Court determines that the Employer should have been required to execute the contract after the Board has conducted a decertification election which the Union has lost, the Supreme Court's ability to remedy the violation is damaged. The Union maintains that restoration of the *status quo ante* is necessary to preserve the Court's jurisdiction.

The Union has articulated no specific basis to support this conclusion, and such a conclusion is contrary to typical remedial actions in unfair labor practice cases. As stated in our unfair labor practice decision in Docket Nos. 04-3 and 04-5, remedial actions generally are "make whole" orders which restore the economic status quo, and recreate the conditions and relationships, that would have existed but for the employer's wrongful act. 27 VLRB at 146. If the Union's appeal should be upheld by the Supreme Court, and the Court orders the execution of a contract between the Employer and Union, the Court will be able to fashion a "make whole" remedy for the Employer's wrongful acts without the necessity of staying the Board's order to proceed towards conducting a decertification election. Contrary to the Union's contention, the Court's ability to remedy the Employer's violation is not damaged by denying the Union's stay request.

The final ground asserted by the Union in support of its claim of irreparable injury is that the Board has not ensured that the decertification election will be conducted in an atmosphere free of intimidation. The Union cites the Board's failure to require the posting of an unfair labor practice notice for 60 days before the election, as well as the practice of the National Labor Relations Board to not conduct a decertification election until the employer has complied with all provisions of a Board unfair labor practice order.

We agree with the Union that a decertification election should not be conducted until the Employer has complied with all provisions of the Board order in Docket No. 04-5. In the absence of the pending motion, the Board intended to require the Employer to certify compliance with all provisions of the Board order. The Union's raising of this issue in the pending motion provides the Board with the opportunity to incorporate such a requirement into the Board order on the motion.

We do not believe it is necessary to have a formal 60-day period for posting of an unfair labor practice notice before the decertification petition. The remedies ordered by the Board in the May 21 unfair labor practice decision suffice to allow employees to freely choose whether they wish to be represented by the Union absent the deleterious effects of improper action by the Employer. 27 VLRB at 150-51. In any event, the time between the May 21 decision of the Board and the conducting of the decertification election in Docket No. 04-1 will be close to 60 days.

In sum, we are not persuaded that the Union will suffer irreparable harm if the stay is not granted. On the other hand, we conclude that issuance of a stay will substantially harm the employees petitioning to decertify the Union as their bargaining representative.

If we were to grant a stay of our order that we shall proceed towards conducting a decertification election, it may be more than a year before the election will be held since it may be that length of time before the Supreme Court rules on the Union's appeal. This lengthy delay constitutes substantial harm to the democratic rights of employees to decide whether they wish to be represented by the Union.

The pending decertification petition in Docket No. 04-1 was filed more than five months ago, after a previous decertification petition filed last July by employees was withdrawn to allow the Employer and Union time to negotiate for 90 days without a pending decertification petition. Thus, it has been approximately 11 months since employees first filed a decertification petition. The employees have waited a sufficient period of time to exercise their democratic rights, and they would be substantially harmed to have to wait an additional lengthy period until after the Supreme Court rules on the Union's appeal before deciding whether they wish to continue to be represented by the Union.

Issuance of a stay also will result in harm to the Employer. The Employer will be required to negotiate with the Union while the Union's appeal is pending in an atmosphere of uncertainty as to whether a majority of its employees now

represented by the Union support continued representation. This is not conducive to effective operation of the Employer's business.

Finally, we conclude that the public interest, including the promoting of harmonious labor relations, will best be served by denying the motion to stay. If we granted a stay, employees would be prevented from questioning the incumbent union's majority status by means of a representation petition at reasonable intervals. We do not believe the Vermont General Assembly intended such a result when it granted employees the right to file a petition to "assert that the individual or employee organization currently certified as bargaining agent is no longer supported by at least 51 percent of employees in the bargaining unit". 21 V.S.A. Section 1724(a)(1). Town of Castleton and AFSCME, AFL-CIO, 13 VLRB 127, 136 (1990).

There is a significant question whether the Union is supported by a majority of the employees in the bargaining unit after the Union has had a reasonable time to negotiate a contract on their behalf and employees have declined to approve a contract. 27 VLRB at 149-50. It is in the public interest that the representation question be resolved without further delay.

If we ordered a stay, the Employer will be obligated to bargain with a union that may no longer be supported by a majority of covered employees. Employees will be blocked from exercising their democratic rights on whether they wish to be represented by a union, and may have wages, benefits and other conditions of employment frozen for a substantial period of time. The interests of the public are not well served by this gridlock.

ORDER

Based on the foregoing reasons, it is ordered:

1. The motion of Teamster Local 597 to stay the order issued by the Labor Relations Board on May 21, 2004, in Board Docket Nos. 04-3 and 04-5 that the Board shall proceed towards conducting a decertification election in Board Docket No. 04-1, in which employees of Green Mountain Transit Agency represented by Teamsters Local 597 determine whether they wish to be represented by Teamsters Local 597, is denied; and

2. The Green Mountain Transit Agency shall certify to the Labor Relations Board by June 28, 2004, the specific steps that it has taken to comply with the provisions of the Board Order issued on May 21, 2004, in Board Docket No. 04-5.

Dated this 18th day of June, 2004, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Acting Chairperson

Carroll P. Comstock

Richard W. Park