

VERMONT LABOR RELATIONS BOARD

PETITION FOR DECERTIFICATION)	
OF COLLECTIVE BARGAINING)	
REPRESENTATIVE (RE: TOWN AND)	DOCKET NO. 11-65
VILLAGE OF LUDLOW EMPLOYEES))	

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to dismiss the petition for decertification of collective bargaining representative filed in this matter as untimely filed. On December 19, 2011, Town and Village of Ludlow employee Pamela Todt filed a petition to decertify IBEW Local 300 ("Union") as the exclusive bargaining representative of thirteen employees of the Town and Village of Ludlow ("Employer").

There is a question whether this petition should be dismissed as untimely filed because there is a collective bargaining agreement in effect between the Union and the Employer with an effective term of July 1, 2011 to June 30, 2014. The collective bargaining agreement indicates that it was executed by the parties on November 14, 2011. Pursuant to Labor Relations Board *Rules of Practice*, a petition filed under the Municipal Employee Relations Act normally will be considered timely only if filed during the period 90 to 60 days prior to a contract's expiration date, or after the expiration thereof if a successor agreement has not become effective.¹

Todt requests a waiver of the normal time period for filing a decertification petition based on delay in completing the petition due to the following reasons: a) the employees were unaware of the above-cited provision of the Board *Rules of Practice* at the end of July 2011 when they began inquiring about decertifying the Union; b) one of

¹ Section 33.2, Board *Rules of Practice*. *Petition for Election of Collective Bargaining Representative (Re: Burlington Airport Employees)*, 28 VLRB 87, 95-96 (2005). *Village of Essex Junction Employees Association and Local 1343, AFL-CIO and Village of Essex Junction*, 14 VLRB 157, 158-59 (1991).

the employees sought information from the National Labor Relations Board, and was directed to the Vermont Secretary of State's office; c) the Secretary of State's office did not provide information to the employee for more than a week after the information was sought, and then directed the employee to the Vermont State Labor Relations Act, rather than the Municipal Employee Relations Act; d) prior to the Secretary of State's office providing information to the employee, Tropical Storm Irene caused extensive damage to Ludlow on August 30, and many Town and Village employees worked overtime hours for the next two or three months, making it difficult to acquire the necessary signatures to support decertification of the union; e) the employee leading the decertification effort was not aware a particular decertification petition form needed to be completed; and f) the employer leading the decertification effort was removed from the bargaining unit represented by the Union, requiring another employee to step in to lead the effort.

The Union contends that the petition should be dismissed as untimely filed under the Board *Rules of Practice* due to the collective bargaining agreement in effect between the Town and Union which was effective before the petition was filed and remains in effect until June 30, 2014. The Employer supports Todt's request to waive the normal time period because a majority of employees no longer desire to be represented by the Union, employees were steered down the wrong path by the Secretary of State's office and suffered additional setbacks due to an unforeseeable natural disaster.

Generally, the filing of election petitions is not subject to specific time frames. There are two notable exceptions to this general rule. First, no election may be conducted in a bargaining unit, or subdivision of the bargaining unit, within which an election has

been held in the preceding 12 months.² Second, an existing collective bargaining contract bars a petition for decertification of the existing collective bargaining representative for most of the term of the contract.

The Labor Relations Board in previous cases has ruled on the timeliness of petitions either to replace an existing exclusive bargaining representative with another union or to decertify the existing representative where the petitioner is not seeking the election of another employee organization as bargaining representative. As discussed above, the Board *Rules of Practice* provide that a petition normally will be considered timely only if filed during the period 90 to 60 days prior to a contract's expiration date, or after the expiration thereof if a successor agreement has not become effective. The Board discussed at length the purpose of the contract bar doctrine in a previous municipal case:

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 of ninety (90) to sixty (60) days prior to a contract expiration date provides employees with an opportunity for a free choice of bargaining representatives 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 (Police Officers Association) 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 by either (municipal employees and municipal employers) with the legitimate rights of the other". 21 V.S.A. § 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 V.S.A. § 1725(a). See also 21 V.S.A. § 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

² 21 V.S.A. § 1724(h).

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. . . . 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.³

Contracts of definite duration for terms up to three years normally will bar a petition for their entire period except for the period 90 to 60 days prior to the contract expiration date.⁴ The “90 to 60 day” period will not necessarily be one that the Board will apply in all situations. It is a policy that the Board may apply or waive as the facts of a given case may demand in the interest of stability and fairness in collective bargaining agreements.⁵ The burden is on the petitioner to present sufficient justification for waiving the normal time period.⁶

The Board has concluded that an election petition was timely filed by an employee organization to replace the incumbent bargaining representative in situations where the petition was filed after the expiration date of the contract and a successor agreement was not effective. The Board interpreted Board *Rules of Practice* to provide an opportunity for a petition to be filed after the contractually provided date of expiration of a contract even when the contract remains in effect, as long as a successor agreement has not become effective.⁷

³ *St. Albans Police Officers Association and Local 1343, AFSCME, AFL-CIO and City of St Albans*, 8 VLRB 46, 52-54 (1985).

⁴ *Enosburg Falls Water and Light Department*, 11 VLRB 77 (1988).

⁵ *St. Albans*, 8 VLRB at 54-55.

⁶ *Petition for Decertification of Collective Bargaining Representative (Re: City of Montpelier Public Works Employees)*, 23 VLRB 162, 163 (2000).

⁷ *Village of Essex Junction*, *supra*. *Burlington Airport*, *supra*.

In applying these standards here, we conclude that the decertification petition should be dismissed because the petitioner has not presented sufficient justification for waiving the normal time period. The employees had a lengthy period of time to file a petition to decertify employees after expiration of the collective bargaining agreement on June 30, 2011, since the Union and Employer did not enter into a successor agreement until more than four months after the agreement's expiration date.

The delay of "more than a week" caused by waiting for the Secretary of State's office to provide a response to an employee seeking information on decertifying a union is not of significant consequence given the greater than four month period the employees had to timely file a decertification petition. It also is not of significant consequence that the Secretary of State referred the employee to the State Labor Relations Act, rather than the Municipal Employee Relations Act. A cursory review of the State Labor Relations Act indicates that it is administered by the Labor Relations Board. This provided the employee with fair notice to search the Board website and/or directly contact the Board. The employee quickly would have received accurate information on how to file a petition to seek to decertify the Union. The Board fields many communications from municipal employees seeking information on how to be represented by a union or how to decertify a union.

A more significant factor in considering the delay in filing the decertification petition is the effect the tropical storm Irene had on the Town and Village of Ludlow. We recognize the extensive damage Ludlow realized from the storm and the long hours worked by Town and Village employees following the storm. Nonetheless, employees had almost two months after the expiration of the collective bargaining agreement and

before the storm to seek support of at least 30 percent of a small group of thirteen employees to file a decertification petition. They also had more than two months after the storm to file a petition before a successor agreement became effective. We note that the Union and Town were able to negotiate a successor agreement in this time period despite the devastating storm. In sum, the employees had sufficient opportunity to exercise their free choice of a bargaining representative by filing a petition to decertify the Union before a successor collective bargaining representative became effective.

The petitioner has not explained why employees allowed the Union to proceed with negotiating a collective bargaining agreement if they were dissatisfied with the representation provided by the Union. The employees had ample time to communicate their dissatisfaction with the Union and, if they were unconvinced by the Union's response and actions, to move to decertify the Union prior to a successor agreement being negotiated. Instead, the employees allowed the successor agreement to be executed before untimely filing its decertification petition.

The petitioner also has failed to address the effect decertification of the Union well before completion of the term of the collective bargaining agreement would have on the substantive and procedural provisions set forth in the agreement. Likewise, the Employer supports the petitioner's request to waive the normal time period for filing a decertification petition but fails to address the effect decertification of the Union would have on the agreement's provisions.

The agreement sets forth extensive provisions on wages, hours and other conditions of employment applicable to covered employees during its three year term. It provides protection for employees to only be disciplined for just cause. It establishes a

grievance procedure for alleged violation of the agreement culminating in final and binding arbitration. Neither the petitioner nor the Employer discusses the ramifications on the effectiveness of the agreement's provisions for the remainder of its three-year term if one of the parties to the agreement is decertified well before its expiration and no longer represents the employees. The lack of consideration of the ramifications of decertification promotes disruptive and disorderly labor relations.

We conclude as a result that the petitioner has not met the burden of providing sufficient justification for waiving the normal time period of filing a petition before a successor agreement became effective. The dismissal of the petition filed here more than a month after the successor agreement became effective provides a settled work environment and serves the interests of stability and fairness in labor relations. The parties negotiating the collective bargaining agreement should be entitled to peaceful implementation of it during its term. The permitting of a representation petition filed so soon after an agreement was executed by the parties, and well before its expiration date, would violate the purpose of the Municipal Act to "provide orderly and peaceful procedures" governing relations between employers and employees.⁸ It would be unfair to the parties who negotiated the agreement in good faith and should be able to implement it without the disruptive influence of a pending representation petition.⁹

The employees will have the opportunity, pursuant to Board *Rules of Practice*, to file a petition to seek to decertify the Union 90 to 60 days prior to the June 30, 2014, expiration date of the collective bargaining agreement, or after the expiration thereof if a successor agreement has not become effective.

⁸ 21 V.S.A. § 1721; *St. Albans*, 8 VLRB at 53.

⁹ *St. Albans*, 8 VLRB at 54.

Based on the foregoing reasons, it is ordered that the petition filed in this matter on December 19, 2011, to decertify IBEW Local 300 as collective bargaining representative of Town and Village of Ludlow employees is dismissed.

Dated this ____ day of February, 2012, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Gary F. Karnedy

Gary F. Karnedy