VERMONT LABOR RELATIONS BOARD

INTERNATIONAL UNION OF PUBLIC EMPLOYEES	)	
and	)	
AFSCME LOCAL 1369, COUNCIL 93, AFL-CIO	)	DOCKET NO. 17-18
and	)	
TOWN OF RANDOLPH	)	

MEMORANDUM AND ORDER

The International Union of Public Employees ("IUPE") submitted an Amended Petition for Election of Collective Bargaining Representative on July 19, 2017. Therein, IUPE revises the bargaining unit of employees it seeks to represent from the petition it filed on April 26, 2017. In the April 26, 2017, petition, IUPE sought to represent Town of Randolph employees in the water/sewer, highway, cemetery, recreation and maintenance departments. These employees currently are in a bargaining unit, along with police department employees, represented by AFSCME Local 1369j, Council 93, AFL-CIO ("AFSCME"). In the July 19, 2017, amended petition, IUPE seeks to represent employees in an expanded bargaining unit including police department employees, and which is identical to the existing bargaining unit represented by AFSCME.

AFSCME opposes the amended petition because: 1) the Labor Relations Board *Rules of Practice* do not provide a basis for an amended petition, and IUPE is required to withdraw its petition in this matter and submit a new petition for the unit envisioned by the proposed amendment; and 2) the new petition needs to be supported by newly executed cards supporting IUPE as the petitioner for the expanded unit.

AFSCME is mistaken that Board *Rules of Practice* do not provide a basis for an amended petition. We are considering the amended petition pursuant to Section 32.7 of Board *Rules of Practice*. This provides that the "Board, upon application by the moving party, and by notice to all interested parties, may permit withdrawal of the petition . . . and may permit amendment thereof as it deems proper". We deem amendment proper here under circumstances where the amended petition seeks to add one group of employees to the significantly larger grouping of employees sought in the original petition, and the amended petition seeks representation of employees in a bargaining unit that is identical to the existing bargaining unit represented by AFSCME.

Timeliness considerations also promote granting the amendment as opposed to requiring the more time-consuming process of a new petition where the collective bargaining agreement involved in this matter expired on June 30, 2017. It is imperative that we proceed quickly in the interests of timely resolution of collective bargaining negotiations should employees vote to be represented by an employee organization.

AFSCME's further contention that IUPE should be required to provide newly executed cards supporting IUPE as the petitioner for the expanded unit is based on Section 33.3(F) of Board *Rules of Practice*. It provides: "(T)he petition, or supporting signature cards, requesting representation by a collective bargaining representative, shall be signed by not less than 30 percent of the persons in the proposed bargaining unit." AFSCME contends that since those persons who signed supporting signature cards for the original petition did so for a unit in which no police personnel were to be included, and not in support of the "proposed bargaining unit" envisioned by IUPE's proposed amended petition, there is not a valid showing of support.

AFSCME's emphasis on the words "proposed bargaining unit" in Section 33.3(F) of Board *Rules* is misplaced. These words simply indicate that a petitioner must present a showing that at least 30 percent of the total number of employees in the proposed unit have signed cards or a petition signifying that they wish to be represented by the petitioning employee organization, and do not reflect employees' sentiment on the composition of the bargaining unit.

AFSCME's construction of Board *Rules* misconstrues the purpose of a showing of interest. Section 11020 of the National Labor Relations Board *Casehandling Manual* states: "The purpose of the demonstration of an adequate showing of interest on the part of labor organizations . . .that initiate . . . a representation case is to determine whether the conduct of an election serves a useful purpose under the statute, i.e., whether there is sufficient employee interest to warrant the expenditure of the (Board's) time, effort and resources in conducting an election." This stated purpose accurately reflects our own views. Sufficient employee interest refers to demonstrated expression of support by employees for a particular employee organization, not their determination on the exact composition of a bargaining unit. Employees showed their sufficient interest in IUPE as a representative when the petition was initially filed, and it is unnecessary for IUPE to have to produce newly executed cards to continue the processing of this matter. Further, both the substantial overlap between the original and amended proposed unit, and the fact that the amended unit is identical to the existing bargaining unit, contribute to our determination that the employees' original interest is still valid.

If we were to accept AFSCME's construction of Board *Rules* in this case, the risk exists of establishing a precedent that could result in unions having to produce newly executed cards in many situations when modest changes are made to proposed bargaining units during the processing of election petitions by agreement of the parties or decision of the Board. There are

numerous cases over the years where revisions have been made to petitioners' proposed bargaining units before an election is held to determine whether the employees desire to be represented by an employee organization. Two obvious examples are the abundant instances where individuals initially included by petitioners in proposed bargaining units are ultimately excluded from the unit as supervisory employees or confidential employees by the parties' agreement or Board decision. A logical extension of AFSCME's position would be to require a petitioning employee organization to submit newly executed cards in support of the petition since persons who signed supporting signature cards for the original petition did so for a proposed unit which differs from that ultimately established. We cannot interpret Board *Rules* to potentially put into motion such an inefficient and inappropriate result.

There is a remaining question whether IUPE is required to submit an additional showing of interest given that it is now seeking to represent an enlarged bargaining unit. Under National Labor Relations Board rules and procedure, if a petitioner seeks a bargaining unit larger than originally requested, it is required that a 30 percent showing of support of the petitioner in the larger unit is demonstrated. Carbide and Carbon Chemicals Corporation, 88 NLRB 437, 439, n.3 (1950). NLRB *Casehandling Manual* ¶ 11031.1. Our practice and procedure is the same as the NLRB in this respect. In this case, the showing of interest submitted by IUPE in the initial petition which it filed is not less than 30 percent of the employees in the enlarged unit reflected in its amended petition. Thus, it is not necessary for IUPE to submit an additional showing of interest.

The posture of this case now is that we are ready to proceed to an election. The bargaining unit proposed by the IUPE in its amended petition is identical to the existing bargaining unit represented by AFSCME. AFSCME has taken the position in this proceeding

that this is the appropriate unit in which to conduct an election. The Employer has not indicated an objection to conducting an election in the existing unit. There has been a showing of interest demonstrated by sufficient employees of support for IUPE for all employees in the bargaining unit to exercise their democratic rights without further delay whether they desire to be represented by AFSCME, IUPE, or neither.

Based on the foregoing reasons, it is ordered:

1. The Amendment to the Election Petition of Collective Bargaining Representative submitted by the International Union of Public Employees is deemed proper; and
2. The International Union of Public Employees having submitted a sufficient showing of interest in this matter to support the Amended Petition for Election of Collective Bargaining Representative and there being no remaining unit determination issues in dispute in this matter, the Vermont Labor Relations Board shall conduct an election in which employees in the existing bargaining unit represented by AFSCME Local 1369, Council 93, AFL-CIO shall vote on whether they desire to be represented for exclusive bargaining purposes by AFSCME Local 1369, Council 93, AFL-CIO; International Union of Public Employees; or neither.

Dated this 21st day of July, 2017, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

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Richard W. Park, Acting Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Alan Willard

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Alan Willard