

VERMONT LABOR RELATIONS BOARD

BURLINGTON FIRE OFFICERS'
ASSOCIATION

and

CITY OF BURLINGTON

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DOCKET NO. 85-49

MEMORANDUM AND ORDER

On December 18, 1985, and by a clarifying letter of December 20, 1985, the Burlington Fire Officers' Association ("Association") filed a petition to represent the Captains and Lieutenants employed by the Burlington Fire Department.

On January 6, 1986, the City of Burlington ("Employer") filed an Answer to the Petition and Motion to Dismiss. The Employer moved to dismiss the petition on the ground that the Lieutenants and Captains are supervisors as defined by 21 VSA §1502(13), and thus are not "employees" under the Municipal Employee Relations Act ("MERA") entitled to the collective bargaining rights provided in MERA. The question of the supervisory status of the Lieutenants and Captains has been presented to the Board twice and on both occasions, after a review of the facts, the Board ruled Captains and Lieutenants were supervisors and thus were not "municipal employees" entitled to the protection of MERA. See Petition of Burlington Fire Prevention Association, Inc. and City of Burlington (Board Findings and Order, January 6, 1970); National Association of Government Employees, National Association of Firefighters and City of Burlington, 1 VLRB 464 (1978). The Employer contends these Board decisions should be controlling, and the petition should be dismissed without need of a hearing, since the petition alleges

no new information with respect to the supervisory status of the officers which could reasonably lead this Board to conclude the officers are eligible to be certified as an appropriate unit for collective bargaining.

In determining whether to grant the Employer's Motion to Dismiss, we look to the provisions of MERA concerning unit determination and representation elections. 21 VSA §1724(b) provides that when a petition to represent a unit of employees is filed by a union, the Board "shall investigate the petition, and 1) if it finds reasonable cause to believe that a question of unit determination or representation exists, an appropriate hearing shall be scheduled before the board... or 2) dismiss the petition, based upon the absence of substantive evidence".

We have reviewed the facts found by the Board in the above-cited 1978 decision, 1 VLRB at 464-469, and believe those facts clearly demonstrate the Captains and Lieutenants were supervisory employees at the time of the Board decision. Given the belief by the present Board of the soundness of the 1978 decision, we interpret §1724(b) in this instance to require the Association to submit "substantive evidence" facts have changed in the situation at the Burlington Fire Department since the Board decision of 1978 for us to find "reasonable cause to believe that a question of unit determination or representation exists" warranting a Board hearing on whether the Captains and Lieutenants are supervisors. Teamsters Local 597 and Champlain Valley Union High School Board, 7 VLRB 1,3 (1984).

The Association has not submitted such "substantive evidence." No new facts were submitted with the petition filed by the Association to

indicate facts have changed and the Board presumes the factual circumstances have remained the same. Accordingly, we conclude "reasonable cause" does not exist to hold a hearing.


Now therefore, based on the foregoing reasons, it is hereby
ORDERED:

The Petition filed by the Burlington Fire Officers' Association to represent Captains and Lieutenants employed by the Burlington Fire Department is DISMISSED pursuant to 21 VSA §1724 based upon the absence of substantive evidence that a question of unit determination or representation exists.

Dated the 2nd day of February, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


James S. Gilson