

VERMONT LABOR RELATIONS BOARD

PETITION OF:)	
)	
AFSCME COUNCIL 93, LOCAL)	DOCKET NO. 20-15
1343, AFL-CIO (RE: CITY OF SOUTH))	
BURLINGTON EMPLOYEES))	

MEMORANDUM AND ORDER

The Labor Relations Board needs to decide, pursuant to Section 33.28 of the Board Rules of Practice, whether to grant the petition filed on March 11, 2020, by AFSCME Council 93, Local 1343, AFL-CIO (“AFSCME”). AFSCME requests that the Board amend the Board certification of the South Burlington City Hall and Public Works Employees Association as the representative of all eligible employees in South Burlington City Hall, the South Burlington Department of Public Works, and the South Burlington Water Pollution Control Department to recognize the affiliation of the Association with AFSCME.

The City of South Burlington notified the Board in writing on March 11, 2020, that the City has no objection to this affiliation and does not seek to challenge any of the Board’s criteria when reviewing a new affiliation. The City indicated that, if the Board finds the affiliation proper, the City will recognize this affiliation in the same manner and degree as the prior Association.

Timothy Noonan, Labor Relations Board Executive Director, investigated the petition through obtaining information from David Van Deusen, AFSCME Council 93 Staff Representative, and reviewing the Board’s own records and files. The following factual background is based on the information provided to the Board pursuant to the Board’s investigation.

Factual Background

On January 17, 1980, the Labor Relations Board certified the South Burlington City Hall Employees Association as the exclusive bargaining representative of all municipal employees working in South Burlington City Hall, with the exception of the City Manager, the Recreation Director and the City Clerk-City Treasurer. The Board issued an Order on November 2, 1989, amending the 1980 order of certification to exclude the executive secretary to the City Manager from the bargaining unit represented by the Association.

By orders of July 28, 2006, and July 18, 2007, the Board further amended the orders of certification to certify the South Burlington City Hall and Public Works Employees Association as the exclusive bargaining representative of all eligible employees of South Burlington City Hall and the South Burlington Public Works Department. On October 3, 2014, the Board issued another order amending existing certifications to certify the City Hall and Public Works Employees Association as the exclusive bargaining representative of all eligible employees in South Burlington City Hall, the South Burlington Department of Public Works and the South Burlington Water Pollution Control Department.

In early October 2019, employees represented by the South Burlington City Hall and Public Works Employees Association were invited to a general discussion concerning the Association possibly affiliating with AFSCME. On October 10, 2019, Association President Martha Lyons sent an email to all employees in the bargaining unit represented by the Association. The email provided:

Good afternoon.

Please mark your calendars for an Association meeting Tuesday, October 15, 2019 3 pm in the large conference room at City Hall. For those that need to, please make arrangements with your supervisor for coverage.

This meeting is for a discussion and a vote on whether or not we would like to join AFSCME and we also need to elect officers/stewards.

If you are unable to attend the meeting, please fill out and give your proxy to someone who will be attending the meeting.

Please let me know if you have any questions.

Thank you,

Martha

The employees had an opportunity to discuss the affiliation at the scheduled October 15, 2019, discussion and vote in the large conference room in South Burlington City Hall. The election was conducted by Association President Martha Lyons and Association Steward Todd Gregory. They distributed a ballot to employees. The ballot stated in its entirety:

OCTOBER 15, 2019

_____ YES, I vote to join AFSCME Local 1343

_____ NO, I vote not to join AFSCME Local 1343

The vote was conducted by secret ballot. Each employee filled out his or her ballot, brought it to a table in the room, and placed the ballot in a box on the table. Lyons and Gregory counted the ballots in the presence of the employees after all employees cast their ballots. The tally was: Yes – 43, No – 6. There was no request to recount the vote.

No employee organization other than AFCME has expressed interest in representing the involved employees through an affiliation. AFSMCE has agreed to honor the existing collective bargaining agreement between the Association and the City which is effective from July 1, 2018 to June 30, 2021.

Discussion

Section 33.28 of the Board Rules of Practice provides that “a request for amendment of certification may be filed with the Board in the event that an independent employee organization serving as existing bargaining representative of employees affiliates with another employee organization.” It states that the “Board may find appropriate an amendment of certification, recognizing the affiliation, if the following requirements are met: 1) there is a guarantee of continuity of representation, 2) sufficient democratic standards were met to determine whether support existed among employees for affiliation, and 3) the originally certified organization does not remain a presently functioning, viable entity after the affiliation”. This provision of the Rules is a codification of the Board decision, Petition of AFSCME Local 1369, Council 93 (Re: Stowe Police Department Employees), 16 VLRB 145 (1993), and is derived from standards employed under the National Labor Relations Act, 29 U.S.C. Sections 141 - 187 (“NLRA”).

We conclude that the standards under Section 33.28 of the Rules have been met. A guarantee of continuity of representation is indicated by the unaffiliated Association no longer existing as an entity. The only presently functioning, viable entity with a claim on representing employees is the Association as affiliated with AFSCME.

In the past, we have looked to the National Labor Relations Board for guidance in examining whether “sufficient democratic standards were met to determine whether support existed among employees for affiliation”. Petition of Barre Town Association of Emergency Medical Technicians, 19 VLRB 273 (1996). Petition of AFSCME Council 93, Local 1343, AFL-CIO, 28 VLRB 111, 114 (2006). The National Labor Relations Board has found these standards satisfied where employees have adequate notice of the impending affiliation vote, employees have sufficient opportunity to discuss the affiliation issue, and the affiliation vote is conducted

by secret ballot. Id. at 277. May Dept. Stores Co., 289 NLRB 661 (1988). Providence Medical Center, 243 NLRB 714 (1979). North Elec. Co., 165 NLRB 942 (1967). The U.S. Supreme Court, in NLRB v. Financial Institution Employees, 475 U.S. 192, 199 (1986), has described the NLRB practice as “ordinarily requir(ing) that the affiliation election be conducted with adequate ‘due process’ safeguards, including notice of the election to all members, an adequate opportunity for members to discuss the election, and reasonable precautions to maintain ballot secrecy.”

In examining affiliation elections, we do not require the same degree of formality as exists in the union representation elections which we conduct. In Aurelia Osborn Fox Memorial Hosp., 247 NLRB 356, 359 (1980), the NLRB stressed that an affiliation vote basically is an internal union matter, and the strictures which the Board places on the representation elections which it conducts are not applicable in affiliation elections. A secret ballot affiliation vote is the preferred method to ensure sufficient democratic standards are met to ascertain support among employees for affiliation, but there are instances where these standards can be satisfied without a secret ballot election if there is sufficient evidence demonstrating that employees wish to affiliate. Barre Town, 19 VLRB at 277-78.

Here, we conclude that sufficient democratic standards were met given the adequate advance notice of the election to all employees, opportunity for employees to discuss possible affiliation and the election, and reasonable precautions to maintain ballot secrecy. There is sufficient evidence demonstrating that employees wish to affiliate with AFSCME to support amendment of certification. This is particularly true when it is kept in mind that the strictures which the Board places on the representation elections which it conducts are not applicable in affiliation elections.

Thus, we are satisfied that the requirements set forth in Section 33.28 of the Board Rules of Practice to find appropriate an amendment of certification recognizing affiliation have been met. Accordingly, it is ordered that the existing certification of the South Burlington City Hall and Public Works Employees Association to represent eligible employees in South Burlington City Hall, the South Burlington Department of Public Works, and the South Burlington Water Pollution Control Department is amended to provide that the South Burlington City Hall and Public Works Employees Association, affiliated with AFSCME Council 93, Local 1343, AFL-CIO, is the exclusive bargaining representative of eligible employees in South Burlington City Hall, the South Burlington Department of Public Works, and the South Burlington Water Pollution Control Department.

Dated this 14th of May 2020, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD
/s/ Richard W. Park

Richard W. Park, Chairperson
/s/ Alan Willard

Alan Willard
/s/ Robert Greemore

Robert Greemore
/s/ David R. Boulanger

David R. Boulanger
/s/ Karen F. Saudek

Karen F. Saudek
/s/ Roger P. Donegan

Roger P. Donegan