



VERMONT LABOR RELATIONS BOARD

VERMONT EARLY EDUCATORS
UNITED, AFT

DOCKET NO. 14-61

v

STATE OF VERMONT

OBJECTIONS TO ELECTION

Vermont Early Educators United, American Federation of Teachers (AFT) pursuant to Part 7, Rules Applicable under Early Care and Education Providers Labor Relations Act Section 73.22 files this Objection to the Election held on November 3, 2014 by mail ballot and the votes counted on December 9, 2014 in the Labor Relations Board hearing room at 13 Baldwin Street, Montpelier, Vermont. (Order, October 28, 2014)

The official tally of the votes was: for the union 398; against the union 418, spoiled ballots 3. Remarkably, the tally did not include ballots that were not counted because they were late. By agreement of the parties a ballot is not late unless it is received after December 9th regardless of postmark. (Stipulation with Tim Noonan, Executive Director, December 8, 2014).

The number of people eligible to vote in the bargaining unit was determined to be 1323 employees. We have recently learned that the department acknowledges receipt of three late ballots.

It is inconceivable that in a voting population of this size there were so few late filings. Late filing envelopes do not appear to have been maintained since they were not evident or counted in the vote count.

Heather Riemer is employed by the Vermont AFT affiliate. On the date that she filed the petition for a representation election in the offices of the Labor Board she found no one in attendance. There was mail stacked on top of a copier. There was a sign instructing people who had filings to

place them on the copier. There was no person in attendance maintaining security of the described documents and facility.

The Board provided a list that contained names of those persons who voted in the election. The AFT as part of its organizational campaign contacted members of the bargaining unit to urge them to vote in the elections. The AFT maintained a confidential list of voters in the regular course of business. The AFT compared its list of voters with the official list. The comparison established that 219 who voted were not on the official list. Envelopes containing these votes were not evident during the counting process and there was no category for votes not counted because they were received late.

The number of ballots not counted could have affected the outcome of the election.

33 V. S. A. 3615 provides that the Board may make rules "as may be necessary to carry out the provisions of this chapter."

Section 73.17 of the Board's Rules of Practice provides the right of parties to have observers at the counting of ballots. Section 73.19 allows challenges to ballots on matters other than eligibility.

The AFT observers during the counting were denied their right to challenge determinations that ballots not be counted because they were allegedly late. If in fact these ballots no longer exist they would have been material evidence that there was a defect in the process either as a result of lack of security or a failure to properly record and maintain records of allegedly late ballots. The large number of missing ballots speaks to a systemic failure such as would call for a new election with improved safeguards. See *Lemco Cont*, 283 N. L. R. B. 459, 460 (N. L. R. B. 1987) (holding that where the mechanics of an election deprive employees of their vote the election will be set aside, which did not happen in that case).

The Statute does not set forth specific grounds for setting aside an election conducted under the statute. Section 73.22 describes the content of an objection: "factual allegations to support the

objection to the conduct of the election, including the names or identities of the persons or organizations charged and the early care and education providers affected..." The above objection meets this standard.

3 V. S. A. section 942 is a provision of the general statute governing the Board. It sets out grounds for setting aside an election. It is doubtful that this statute, in the face of a specific enactment, applies to this case. But in the event that the Board might rule otherwise, it is contended here that the provision of this section also provides a rationale for sustaining the objections stated here.

This section states that a proved claim that employees have been "coerced or restrained" in the exercise of their right to vote shall be a basis for setting aside an election. The terms "coerced or restrained" are not referenced to the sections of the Act dealing with unfair labor practices. So, they must be understood in the vernacular.

The failure to maintain documents and the failure to permit observers to challenge decisions related to uncounted ballots that were late is the essence of restraint. Denying eligible voters the right to have their votes counted or at least to have their right to vote the subject of a challenge hearing as provided in the rules restrains them in the exercise of the franchise.

The AFT requests that the board conduct an investigation of the within Objections, set aside the results of the election, and order a new election.

Respectfully submitted,

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