

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of

BOSTON SCHOOL COMMITTEE

and

BOSTON TEACHERS UNION,
LOCAL 66, MFT/AFT/AFL-CIO

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Case No. CAS-04-3600

Date Issued:

June 18, 2009

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Appearances:

Virginia Casey Goscinak, Esq.	-	Representing the Boston School Committee
Matthew E. Dwyer, Esq. Ryan P. Dunn, Esq.	-	Representing the Boston Teachers Union, Local 66, MFT/AFT/AFL-CIO

RULING ON MOTION TO DISMISS¹Statement of the Case

1 On November 12, 2004, the Boston Teachers Union, Local 66, MFT/AFT/AFL-
2 CIO (Union) filed a unit clarification petition with the Labor Relations Commission
3 (Commission) seeking to accrete the position of instructional technician into its existing
4 bargaining unit of paraprofessionals in the Boston schools. On April 19, 2005, the
5 Boston School Committee (School Committee) filed a motion to dismiss on the grounds
6 of contract bar. On May 9, 2005, the Union filed its opposition to the motion to dismiss,
7 and on May 19, 2005, the School Committee filed a reply memorandum.

Statement of Facts

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9 The Union is the exclusive bargaining representative for "all teacher
10 paraprofessionals (paras) employed by the [School] Committee, including clerical paras,
11 teacher paras, library paras, tool keepers, bilingual paras, security paras, community
12 liaison paras, and community field coordinators." On November 21, 2002, the Union

¹ Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters. References in this decision to the Board include the former Labor Relations Commission (Commission). Pursuant to Section 13.02(1) of the Commission's Rules in effect prior to November 15, 2007, the Commission designated this case as one in which it would issue a decision in the first instance.

1 filed a grievance at Step 2 of the parties' contractual grievance procedure² protesting
2 the School Committee's failure to recall unit member Matthew Ball (Ball) to the position
3 of instructional technician at the South Boston Educational Complex.³ The parties
4 attended an arbitration hearing before Arbitrator Philip Dunn (Arbitrator Dunn) on
5 January 2, 2004, January 9, 2004, February 4, 2004, and March 5, 2004.⁴ On April 14,
6 2004, the parties executed a successor collective bargaining agreement for the period
7 from September 1, 2003 through August 31, 2006 (2003-2006 Agreement). On August
8 6, 2004, Arbitrator Dunn issued an award dismissing the grievance on the grounds that
9 "the essence and core job content of the instructional technician position created at the
10 South Boston Educational Complex in the fall of 2002 was fundamentally different than
11 that of the library media para position, which had been eliminated in the spring."

12 Opinion

13 Section 14.06(1)(b) of the former Commission's regulations, 456 CMR
14 14.06(1)(b), entitled "Bars to Petitions" states that:

15 Except for good cause shown, no petition seeking clarification or
16 amendment of an existing bargaining unit shall be entertained during the
17 term of a valid existing collective bargaining agreement, unless such

² The Union and the School Committee were parties to a collective bargaining agreement that by its terms was in effect from September 1, 2000 through August 31, 2003 (2000-2003 Agreement).

³ Ball previously had worked as a library media para at South Boston High School.

⁴ The Union represents that during the arbitration hearing, it became aware of six to eight other instructional technicians employed by the School Committee.

1 petition is filed no more than 180 days and no fewer than 150 days prior to
2 the termination date of said agreement, provided that a petition to alter
3 composition or scope of an existing unit by adding or deleting job
4 classifications created or whose duties have been substantially changed
5 since the effective date of the collective bargaining agreement may be
6 entertained at other times.

7 The purpose of the contract bar rule is to establish and promote the stability of labor
8 relations and to avoid instability of labor agreements, in part by ensuring that both labor
9 and management know which positions are included in the bargaining unit covered by
10 their collective bargaining agreement. Springfield School Committee, 29 MLC 106, 111
11 (2002) (citing, Massachusetts Water Resources Authority, 19 MLC 1778, 1779 (1993)).
12 The Board's application of the contract bar rule is discretionary. Chief Justice of the
13 Administration and Management of the Trial Court, 29 MLC 10, 13 (2002) (citing Boston
14 Water & Sewer Commission, 6 MLC 1601, 1604 (1979)).

15 Here, the parties entered into the 2003-2006 Agreement on April 14, 2004. The
16 Union filed its unit clarification petition on November 12, 2004, which was not within the
17 150 to 180 day open period as required in 456 CMR 14.06(1)(b). Therefore, except for
18 good cause shown, the Board's contract bar rule requires dismissal of this petition
19 unless the facts establish that: 1) the disputed position is newly created; or 2) the job
20 duties of the disputed position have changed since the effective date of the collective
21 bargaining agreement. 456 CMR 14.06(1)(b). Neither criterion is met here. It is
22 undisputed that the instructional technician position existed prior to the date the parties
23 entered into the 2003-2006 Agreement. Further, neither party contends that the duties

1 of the position have changed since the effective date of the Agreement. Therefore, the
2 petition is untimely unless information establishes that good cause exists to process the
3 petition notwithstanding the existence of a valid contract.

4 The Board has the discretion to waive the contract bar rule depending on the
5 facts of each case with a view toward fairness for the parties and the stability of
6 agreements. Easton School Committee, 2 MLC 1111 (1975). However, exceptions to
7 the contract bar rule are rarely found. Town of Saugus, 28 MLC 80, 83 (2001); Boston
8 Water and Sewer Commission, 6 MLC 1601, 1603 (1979). Generally, exceptions must
9 be based on evidence of substantial disruption in bargaining relationships and threats to
10 labor stability. Town of Saugus, 28 MLC at 83; Quincy School Committee, 23 MLC 173
11 (1977).

12 Here, the Union asserts that enforcement of the contract bar rule would
13 undermine the grievance procedure as a means of resolving disputes between the
14 parties and would disrupt the parties' bargaining relationship. Specifically, the Union
15 contends that it would be forced to choose between the pursuit of a possibly valid
16 grievance and the filing of a unit clarification petition, because its legal positions in the
17 two matters would be seemingly contradictory. However, the contract bar rule does not
18 require the Union to make such a choice, nor does it forever preclude the Union from
19 filing a petition. Rather, the contract bar rule simply mandates the appropriate period to
20 file that petition. As a result, neither exception to the contract bar rule applies.
21 Moreover, the Union's decision to proceed to arbitration and to await the arbitrator's

1 award before filing a unit clarification petition does not constitute good cause to excuse
2 the contract bar. See Hanover School Committee, 32 MLC 101, 103-104 (2005) (union's
3 efforts to resolve a unit placement dispute with the employer instead of filing a petition
4 does not excuse the contract bar).

5 Conclusion

6 For the reasons described above, the Union's unit clarification petition is barred.
7 Consequently, the Board allows the School Committee's motion to dismiss.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


ELIZABETH NEUMEIER, BOARD MEMBER