

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

In the Matter of

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION, I.U.P.A., AFL-CIO

and

COMMONWEALTH OF MASSACHUSETTS/
SECRETARY OF ADMINISTRATION AND
FINANCE

and

ALLIANCE, AFSCME/SEIU, LOCAL 509

* Case No.: SCR-09-2281

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* Date issued:

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* April 23, 2009

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Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Appearances:

Peter Perroni, Esq.	-	Representing the NEPBA, I.U.P.A., AFL-CIO
Michelle Heffernan, Esq.-		Representing the Commonwealth of Massachusetts, Secretary of Administration and Finance
Katherine Shea, Esq.	-	Representing the Alliance, AFSCME/SEIU, Local 509

RULING ON A MOTION TO DISMISS

Statement of the Case¹

On February 12, 2009, the NEPBA, I.U.P.A., AFL-CIO (Petitioner) filed the above-referenced representation petition with the Division of Labor Relations (Division) seeking to sever the following three bargaining unit positions from Statewide Bargaining Unit 8 and represent them in a separate bargaining unit: Correctional Program Officers (CPOs); Youth Services Program Officers (YSPOs); and Transitional Parole Program Officers (TPPOs). The Commonwealth of Massachusetts, Secretary of Administration and Finance (Employer) and the incumbent exclusive collective bargaining representative Alliance, AFSCME/SEIU Local 509 (Local 509) oppose the petition, and argue that the Division should dismiss it pursuant to Division Rule 14.07(1), 456 CMR 14.07(1). On February 24, 2009, the Employer filed a Motion to Dismiss and Request for an Expedited Investigation.

On February 26, 2009, the Division directed the Petitioner to show cause why the Commonwealth Employment Relations Board (Board) should not allow the Employer's Motion to Dismiss. The Petitioner filed initial and supplemental responses to the Division's show cause notice on March 5, 2009, March 23,

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.

2009, and March 24, 2009.² For the reasons explained below, we grant the Employer's Motion.

Opinion

The former Labor Relations Commission (former Commission) created the statewide bargaining units in 1975 after conducting a rule-making hearing. See generally, Labor Relations Commission, Notice of Determination of State Employee Bargaining Units, 1 MLC 1318 (1975). The Board has the authority, either through rule-making or through an adjudicatory decision, to add to or alter the existing structure of the statewide bargaining units, should sufficient justification be found to do so. Commonwealth of Massachusetts, Secretary of Administration and Finance, (SCR-2202, April 24, 1992, unpublished ruling.) The requisite justification is described in Division Rule 14.07(1), which provides in pertinent part:

With respect to employees of the Commonwealth, excepting only employees of community and state colleges and universities, no petition filed under the provisions of M.G.L. c. 150E, s. 4, shall be entertained, except in extraordinary circumstances, where the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this section....³

The Petitioner argues that extraordinary circumstances exist in this case because the Employer and Local 509 have ignored the bargaining unit structure

² The Petitioner's March 23, 2009 and March 24, 2009 supplemental responses were untimely filed and consequently, we have not considered them.

³ Division Rule 14.07 lists and briefly describes the ten statewide units.

mandated by Division Rule 14.07 and have treated the positions at issue as a separate bargaining unit. The Petitioner submitted information showing that in 2005, Local 509 negotiated a servicing agreement (Servicing Agreement) with Local 5000 NAGE (Local 5000) that designated Local 5000 as its agent for collective bargaining for the petitioned-for titles.⁴ The Servicing Agreement states that it is the mutual priority of Local 5000 and Local 509 to achieve recognition or certification of the three positions at issue here in a separate bargaining unit. Until Local 5000 is recognized or certified, Local 509 retains its position as the certified representative. Local 5000 must report quarterly to Local 509 on activities and duties that it performs on behalf of Local 509. The Servicing Agreement expired by its terms on December 31, 2008. The Employer was not a party to the Servicing Agreement.

The Petitioner further contends that the three positions are functionally distinct from other employees in Unit 8 because they have specialized responsibilities for the care, custody, and control of inmates incarcerated or sought by the Department of Corrections or Department of Youth Services. The Petitioner offers other distinctions between the petitioned-for employees and other Unit 8 employees such as: agency employment, training, uniform requirements, special police officer status, paramilitary work rules, work shifts,

⁴ The Petitioner states that the IBCO, Local R1-175, a specific subunit of Local 5000, serviced the petitioned-for employees.

and physical job requirements.⁵ Finally, the Petitioner argues that the petitioned-for employees are professional employees who possess a statutory right to be placed in a bargaining unit without non-professional employees and to choose their representative.

As a threshold matter, we note that our determination turns on compliance with Division Rule 14.07(1) rather than on satisfaction of the Board's traditional severance standards.⁶ Accordingly, the presence or absence of functional distinctions and negotiating conflicts is largely irrelevant⁷ because our review focuses on whether or not extraordinary circumstances exist to warrant severing these positions from Unit 8. Ultimately, we find that the Petitioner's arguments are not persuasive.

⁵ The Employer and the Alliance dispute much of the information that the Petitioner has submitted. However, even if we assume that the disputed information is correct, we do not find extraordinary circumstances justifying the creation of a new statewide bargaining unit.

⁶ A petitioner in a severance case must demonstrate that the petitioned-for employees constitute a functionally distinct appropriate unit with special interests sufficiently distinguishable from those of other unit employees, and that special negotiating concerns resulting from those differences have caused or are likely to cause conflicts and divisions within the bargaining unit. City of Boston, 20 MLC 1431 (1994). Because we do not view this case through the lens of the severance standard, we have not reviewed the Petitioner's contention that the collective bargaining agreement that the Employer and Local 509 have recently negotiated fails to address concerns of the petitioned-for employees.

⁷ Even if we considered the functional differences that the Petitioner raises, they do not apply uniformly to all three positions. For example, the distinctions related to service academy attendance and related training, uniforms, State Police Officer status, and work shifts pertain only to CPOs. Similarly, only YSPOs are required to pass the physical requirements of the State Police Training Academy.

First, the Servicing Agreement does not create or constitute extraordinary circumstances. Rather, the Servicing Agreement engages Local 5000 as the agent for Local 509 for the purpose of performing collective bargaining duties. The Servicing Agreement does not change the identity of the certified representative or create a separate bargaining unit.⁸ Rather, the Agreement reflects the exclusive representative's efforts to optimize its representation of these employees by providing specialized services to meet their needs. We find nothing extraordinary about Local 509's internal organization or the Employer's willingness to accommodate it by bargaining with Local 5000 or Local R1-175, IBCO. To do so would effectively penalize employers and unions for structuring collective bargaining in a manner that best suits their operations and employees.

Second, we find no merit in the Petitioner's argument that the petitioned-for employees have the right to be placed in a separate bargaining unit without non-professional employees. Division Rule 14.07 established Unit 8 as a professional employee unit. The Petitioner has provided no information demonstrating that there are non-professional employees in Unit 8, and that the petitioned-for employees are the only professional employees in Unit 8.

⁸ Although the Petitioner contends that Local 5000/IBCO, Local R1-175 represented the petitioned-for employees in an autonomous bargaining unit, no evidence establishes that the Employer and Local 509 created a separate bargaining unit. Conversely, the Servicing Agreement shows that Local 5000 acted on behalf of Local 509 for certain titles within Unit 8. Local 509 and Local 5000 may have shared a common goal of attaining recognition or certification for Local 5000 in a separate unit, but there is no evidence that the unions achieved that goal.

Finally, we are not persuaded that the employees' right to choose a representative overrides all other considerations. The former Commission prioritized the right of employees to select representatives of their own choosing when it created the ten statewide bargaining units in 1975, but ultimately balanced that right with other considerations. Labor Relations Commission, Notice of Determination of State Employee Bargaining Units, 1 MLC 1318. Moreover, an employee's right to choose a bargaining representative does not include the right to choose a bargaining unit, and the existing statewide bargaining unit structure does not preclude Unit 8 employees from filing a representation petition and electing a new bargaining representative.

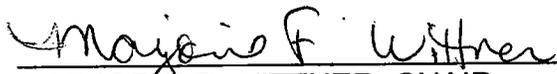
Conclusion

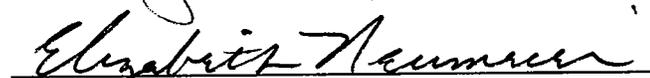
This petition is no more than a traditional severance petition that cannot and does not rise to the level of extraordinary circumstances required to make changes in statewide bargaining units. Accordingly, we find no basis for proceeding further with the petition because the Petitioner has failed to demonstrate extraordinary circumstances in this case, and we dismiss the petition.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


ELIZABETH NEUMEIER, BOARD MEMBER