

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
TOWN OF HUDSON *
*
and *
*
HUDSON SUPERIOR OFFICERS *
ASSOCIATION, MCOP, LOCAL 433 *
*

Case No.: MUP-13-3223

Date Issued: June 26, 2014

Hearing Officer:

Joseph F. Griffin, Esq.

Appearances:

Kimberly A. Rozak, Esq.

Representing the Town of Hudson

Amy L. Davidson, Esq.

Representing the Hudson Superior
Officers Association, MCOP, Local 433

HEARING OFFICER'S RULING ON MOTION FOR SUMMARY JUDGMENT

The issue presented by the Union's Motion for Summary Judgment is whether the Town of Hudson (Town) failed and refused to bargain with the Hudson Superior Officers Association, MCOP, Local 433 (Union) in violation of Sections 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) concerning the terms and conditions of employment of the position of Captain. I find that summary judgment is appropriate here for the allegations in the Complaint of Prohibited Practice where there are no genuine issues of material fact, and the parties

are entitled to judgment as a matter of law. It is undisputed that on August 26, 2012, the Town refused to bargain with the Union over the wages, hours, and terms and conditions of employment of the Captain who is a member of the bargaining unit as certified by the CERB in Town of Hudson, 40 MLC 42, WMAM-12-2013 (August 7, 2013).

Statement of the Case

On December 10, 2012, in Case No. WMAM-12-2446, the Department of Labor Relations (DLR) certified the Union as the collective-bargaining representative in the following bargaining unit: "All Sworn Police Superior Officers employed by the Town of Hudson excluding the Chief of Police and all sworn police officers below the rank of sergeant." After the DLR notified the parties of the certification of the bargaining unit, the Town objected to the inclusion of the position of Captain into the bargaining unit. On December 11, 2012, the DLR notified the parties that the Town's objection would be treated as a request for reinvestigation of the certification pursuant to 456 CMR 14.15.

On March 22, 2013, the DLR held a hearing before CERB Chair Marjorie Wittner, Esquire, concerning the inclusion of the Captain in the bargaining unit. At the hearing, all the parties had the opportunity to be heard and to examine witness and present evidence. On August 7, 2013, the CERB issued its Decision Upon Reinvestigation of Certification and declined to remove the position of Captain from the bargaining unit of superiors officers.

After the CERB issued its decision the Town announced that it would not bargain with the Union concerning the terms and conditions of employment of the Captain in the bargaining unit.

On October 23, 2013, the Union filed a prohibited practice charge in the instant case MUP-13-3223, alleging that the Town violated Sections 10(a)(5), and derivatively, 10(a)(1) of Law by refusing to bargain with the Union concerning the terms and conditions of employment of the position of Captain. The DLR investigated the charge on December 19, 2013 incorporating the entire record of the hearing in WMAM-12-2446 into the investigation.

On December 20, 2013, the DLR issued a Complaint against the Town for refusing to bargain with the Union over the terms and conditions of employment of the Captain. On January 7, 2014, the Town filed an Answer to the Complaint and in the Answer, admitted the factual allegations but not the conclusions of law. Further, in its Answer the Town asserted that the position of Captain should be excluded from the bargaining unit because it is a managerial employee, a confidential employee, and does not share a community of interest with other employees in the bargaining unit. The Answer stated that the CERB's decision, which included the Captain in the police superiors officers bargaining unit constituted an error of law, and the legally appropriate bargaining unit should be limited to sergeants and lieutenants.

On January 17, 2014, the Union filed a Motion for Summary Judgment. On February 11, 2014, the Town filed an Opposition to the Charging Party's Motion for Summary Judgment. In its Opposition to the Charging Party's Motion for Summary Judgment, the Town asserted, inter alia, that the Complaint failed to address the Town's reason for refusing to bargain, namely, "that the decision by the CERB in this matter is erroneous and the Captain position should in fact be excluded from the bargaining unit as both a managerial and confidential position."

Stipulations of Fact

On February 19, 2014, the Town and the Union entered into the following stipulations;

1. The sole issue before the hearing officer in this matter is whether or not the position of Captain shall be included in the police superior officers' bargaining unit; and
2. The entire record of the certification proceeding in 40 MLC 42 (August 7, 2013) shall be incorporated into this matter, including the following documents: relevant DLR documents, pleadings of both parties, briefs of both parties, the stenographic transcript of the hearing before the CERB, exhibits introduced at the CERB hearing, the CERB decision, and all motions.

Findings of Fact

1. The Town is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization with the meaning of Section 1 of the law.
3. The Union is the exclusive bargaining representative for all sworn police superior officers employed by the Town excluding the Chief and all sworn police officers below the rank of sergeant.
4. On December 10, 2012, the DLR certified the Union as the exclusive representative for the bargaining unit referred to in paragraph 3.
5. On or about December 10, 2012, the Town challenged the inclusion of the Captain in the bargaining unit.
6. On December 11, 2012, the DLR notified the parties that the Town's objection would be treated as a request for reinvestigation of the certification pursuant to 456 CMR 14.15.
7. On March 27, 2013, the DLR held a hearing before CERB Chair Marjorie Wittner, Esquire, concerning the inclusion of the position of Captain in the bargaining unit.
8. On August 7, 2013, the CERB issued its Decision Upon Reinvestigation finding that position of Captain should be included in bargaining unit of superior officers represented by the Union.

9. On August 29, 2013, the Town refused to bargain with the Union over the terms and conditions of employment for the Captain.

Discussion

It is well established that when an employer seeks to test the certification of an employee organization by refusing to bargain, the representation proceeding and the prohibited practice are treated as one case. Town of Wenham, 23 MLC 82, 83, MUP-1472 (September 5, 1996); City of Lawrence, 13 MLC 1087, 1092, MUP-6230 (August 12, 1986). The CERB has a long standing policy that a party may not relitigate issues in an unfair labor practice case that have been litigated or could have been litigated in the prior representation proceeding. Town of Wenham, 23 MLC at 83; City of Worcester, 4 MLC 1373, 1374, MUP-2700 (October 4, 1977); City of Cambridge, 4 MLC 1044, 1046, MUP-2659 (June 13, 1977).

Here, the Town does not dispute that on or about August 29, 2013 it refused to bargain with the Union for a first contract with respect to terms and conditions of employment of the Captain. The Town contends that the position of Captain is managerial, confidential and that the position of Captain does not share a community of interest with the bargaining unit employees. Further, the Town contends that the CERB's inclusion of the position of Captain in the bargaining unit constituted an error of law and the legally appropriate bargaining unit should be limited to sergeants and lieutenants.

I can discern no reason to depart from that policy in the present case. Moreover, the Town has raised no new issues that would cause me to reconsider or reverse the CERB's decision to include the position of Captain in the bargaining unit. The issues raised by the Town have been or could have been raised before the CERB.

Accordingly, I grant the Union's motion for summary judgment because I have determined that there are no issues of material fact in dispute that warrant a hearing. See City of Cambridge, 4 MLC at 1050 (administrative economy dictates that a hearing not be held when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law).

The duty to bargain collectively imposed by Section 6 of the Law requires the employer and the exclusive bargaining representative to meet at reasonable times to negotiate in good faith about wages, hours, standards of productivity and performance, and any other terms and conditions of employment. This obligation is enforced through Section 10(a)(5), which provides that it shall be a prohibited practice for a public employer to refuse to bargain collectively in good faith with the exclusive bargaining representative as required by Section 6 of the Law. See New Bedford Housing Authority, 27 MLC 21, 24, MUP-1650 (September 7, 2000); Boston School Committee, 23 MLC 111, 112, MUP-9810; 1090 (November 13, 1996); City of Beverly, 20 MLC 1166, 1170, MUP-9320 (September 3, 1993). It is uncontested that, on or about August 29, 2013, the Town refused to bargain with the Union over the wages, hours, and other terms and conditions of employment of the position of Captain who is a member of the Union's bargaining unit as certified by the CERB in Town of Hudson, 40 MLC 42, WMAM-12-2446 (August 7, 2013). Thereafter, I conclude that the Town refused to bargain with the Union in good faith in violation of Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law.

Conclusion

For the reasons stated above, the Town has raised no defense that suffices as a matter of law to excuse its refusal to bargain with the Union. Accordingly, a hearing is not required, and the Union's Motion for Summary Judgment is allowed. I hold that the Town has refused to bargain in good faith with the Union over the wages, hours, and working conditions of the position of Captain in the certified bargaining unit certified. In violation of Section 10 (a)(5) and, derivatively, Section 10 (a)(1) of the Law.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town of Hudson shall:

1. Cease and desist from:
 - (a) Failing and refusing to bargain in good faith with the Hudson Superior Officers Association, MCOP 433 with respect to the position of Captain.
 - (b) In any like manner, interfere with, coerce or restrain its employees in the exercise of their protected rights under the law.
2. Take the following affirmative action that will effectuate the purposes of the Law.
 - (a) Upon request, bargain in good faith with the Hudson Superior Officers Association, MCOP, Local 433, with respect to the wages, hours, and other terms and conditions of employment of the position of Captain.
 - (b) Post in all conspicuous places where the members of the Hudson Superior Officers Association, MCOP Local 433, including the Captain congregate or where notices are usually posted, and displayed, **including electronically**, if the Town customarily communicates with these unit employees via intranet or e-mail for a period of thirty days, signed copies of the attached Notice to Employees.
 - (c) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of the receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

JOSEPH F. GRIFFIN, ESQUIRE
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.02(1)(j) to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Department of Labor Relations has determined that the Town of Hudson (Town) violated Sections 10(a)(5) and derivatively, 10(a)(1) of the Massachusetts General Laws, Chapter 150E (the Law) by refusing to bargain in good faith with Hudson Superior Officers Association, MCOP Local 433 over the wages, hours, and other terms and conditions of employment of the Police Captain in the certified bargaining unit.

WE WILL NOT refuse to bargain with Hudson Superior Officers Association, MCOP, Local 433, over the wages hours, and other terms and conditions of employment with respect to the position of Captain.

WE WILL NOT, in any like manner, interfere with, restrain, coerce any employee in the exercise of their rights under the Law.

WE WILL take the following affirmative action that will effectuate the purposes of the Law:

WE WILL bargain in good faith, upon request, with the Hudson Superior Officers Association, MCOP, Local 433, over the wages, hours, and other terms and conditions of employment of the position of Police Captain.

Town of Hudson, Massachusetts

BY: _____

DATE:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).