

In the Matter of HAMPSHIRE EDUCATIONAL COLLABORATIVE

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AND UAW LOCAL 2322

Case No. MCR-09-5364

43.32 campaign practice
92.6 time limits
93.14 election challenges

August 7, 2009
Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

RULING ON AN OBJECTION TO AN ELECTION

Statement of the Case

On January 30, 2009, Robert Moczulewski (Petitioner) filed a representation petition with the Division of Labor Relations (Division) seeking decertification of an employee organization representing all full-time and regular part-time paraprofessional employees employed by the Hampshire Educational Collaborative (Employer). The incumbent exclusive collective bargaining representative, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and UAW, Local 2322 (Union) subsequently intervened in the case.

The Petitioner, Union, and Employer signed a consent election agreement and the Division conducted a mail ballot election from April 28, 2009 through May 19, 2009. The results of the election were as follows:

Table with 2 columns: Category and Count. Rows include Total ballots cast (23), Ballots cast for Union (10), Ballots cast against Union (13), Challenged ballots (0), Blank ballots (0), Void ballots (0), and Protested ballots (0).

1. Board Member Harris Freeman recused himself from this Ruling.

On May 26, 2009, the Union filed timely objections to the election and asked that the Division set aside the election and investigate the matter with a hearing to determine whether the election results should stand. The Petitioner and the Employer filed responses on June 8, 2009 and June 11, 2009 urging the Commonwealth Employment Relations Board (Board) to dismiss the objections. The Division allowed the Union to file a reply by 5:00 p.m. on June 18, 2009. The Union filed its reply at 5:15 p.m. on June 18, 2009. On July 7, 2009, the Employer filed a motion requesting that the Board disregard the Union's reply as untimely. The Board agrees that the Union's reply is untimely and therefore, in the absence of good cause shown, has not taken the reply into account in deciding this matter.²

Background

The Petitioner is a Physical Therapy (PT) Assistant employed by the Employer at various worksites and a member of the Union. The Employer employs bargaining unit members at four worksites: CBWE in Northampton High School, Pre-Voc in JFK Middle School in Northampton, the ALPs Program in North Amherst, and Hampshire Educational Collaborative Academy (HEC Academy) in Northampton. The Petitioner works at CBWE in Northampton High School. About once a month, the Petitioner meets with his supervisor Jane Allen (Allen) at Pre-Voc. Two to three Wednesdays per month, the Petitioner participates in PT supervisory meetings with Allen and Jill Newcomb-Campenelli (Newcomb-Campenelli) at HEC Academy. Depending on the sensitivity of the matters to be discussed, the PT supervisory meetings take place at HEC Academy or at a café across the street. The Petitioner's mailbox is at the HEC Academy.

During the week of January 19, 2009, the Petitioner attended a staff meeting for HEC Academy employees. In the prior year and a half, the Petitioner had not attended staff meetings at HEC Academy. One of the two head teachers present granted the Petitioner permission to speak at the meeting. At about 2:50 p.m. the Petitioner presented the petition for decertification that had been signed by other bargaining unit members and spoke briefly and negatively about the Union. Bargaining unit member Evan Boshi (Boshi) requested that bargaining unit member James Wakefield (Wakefield) be given an opportunity to respond to the Petitioner's statements. Wakefield spoke in favor of Union representation for a longer period of time, but noted during his remarks that he was under a gag order. One of the two head teachers stated that the subject of Union representation was not appropriate for a staff meeting and suggested that the discussion continue after work.

On or about January 28, 2009, the Union President, Ronald Patenaude (Patenaude), sent an e-mail to the Employer objecting to the Petitioner's conduct at the staff meeting and stating: "I would request that you notify [the Petitioner] that his actions will not be tolerated by the management of HEC, to cease and desist

any further attempts to engage in these activities at the worksites or during hours of work." Mike Ciesla (Ciesla), the Chief Financial Officer for the Employer responded via e-mail stating: "Until receiving this email I was not aware of [the Petitioner's] actions at HEC Academy the other day. I will meet with the supervisors and [the Petitioner] to review with them the HEC solicitation policy and to let them know that no one including [the Petitioner] should be conducting these activities during work time." The day after the staff meeting at HEC Academy, Ciesla informed the Petitioner that he was not to conduct anti-union activities during working hours.³

Work hours for bargaining unit members at HEC Academy are from 7:30 a.m. to 3:00 p.m.

The Petitioner filed the petition for decertification with the Division on January 30, 2009. Pursuant to a consent election agreement between the Petitioner, Incumbent, and Employer, the Division conducted a mail ballot election from April 28 through May 19, 2009.

Prior to the election, the Petitioner sent letters to certain bargaining unit members requesting that they vote in favor of decertifying the Union. The letter stated, in part: "If you have questions, I will be at HEC Academy at 3:15 on May 6th to share my experiences and answer your concerns." The Petitioner did not send his letter to bargaining unit members Wakefield and Bob Simons (Simons), both Union activists and HEC Academy employees. Nor did the Petitioner inform the Union that he planned to meet with HEC Academy employees at HEC Academy on May 6th.

On May 6th, the Petitioner had a regularly scheduled PT supervisory meeting at the HEC Academy. This particular meeting was held across the street at a café. After the meeting ended at 3:15 p.m., the Petitioner rushed across the street to the HEC Academy. Although he had intended to meet employees as they left work to go to their cars in the parking lot, the parking lot was mostly empty. Upon entering the building, he encountered one employee and asked if she was in the Union and if she had any questions about the election. The employee was a bargaining unit member and did not have any questions for the Petitioner. The Petitioner encouraged her to vote. The Petitioner then walked down the hall and "chatted" about an unidentified subject with Adam Wenger (Wenger) and Wakefield. Wakefield saw the Petitioner hanging around outside the office of Elana Aitken (Aitken), Clinical Psychologist/Coordinator for the ALPs programs.

Discussion

Division Rule 14.12 (3), 456 CMR 14.12 (3) provides that:

[W]ithin seven days after the tally of the ballots has been furnished, any party may file with the Division an original and four copies of objections to the conduct of the election or to conduct affecting the

² Pursuant to 456 CMR 12.11(4) "documents received after 5:00 P.M. shall be deemed to be filed on the following business day." Here, the Division allowed the Union to file a reply by 5:00 p.m. on June 18, 2009. The Union did not file its reply until 5:15 p.m. on June 18, 2009 and therefore the reply is untimely. Even if the Board considered the Union's reply as part of the record there is no evidence to es-

tablish probable cause to believe that the conduct alleged could interfere with either the conduct or the results of the election.

³ The Petitioner states that Ciesla might have also told him not to conduct anti-union activity at HEC worksites.

result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of person involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of objections and any other submissions which the Division may permit, the Division shall determine whether any of the objections merit further proceedings and may dismiss some or all of the objections if the Division does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election....

The Division may set aside an election if an employer has unduly restricted a union’s access to employees during the election campaign. *Commonwealth of Massachusetts*, 9 MLC 1842, 1848 (1983).

Here, the Union alleges that the Employer encouraged and assisted the Petitioner’s decertification effort by providing him special access to bargaining unit members during the pre-election period. The Union maintains that bargaining unit members believe that they do not have the right to discuss Union matters at any time of day at the worksite. Consequently, the Union argues that the Employer created a coercive atmosphere by tolerating anti-union propaganda and effectively banning any other Union discussion. The Union insists that the Petitioner’s special access to bargaining unit members led unit members to believe that the Petitioner had the support of the Employer, and therefore, the Employer’s actions tainted the election.

We find that the Union’s allegations are insufficient to establish probable cause to believe that the Employer interfered with either the conduct or the results of the mail ballot election held from April 28 through May 19, 2009. First, there is no evidence that the Employer was aware of the Petitioner’s remarks at the HEC Acad-

emy teachers’ meeting in January of 2009. Rather, the evidence demonstrates that after the Union notified the Employer of the incident, the Employer immediately informed the Petitioner that his conduct violated the HEC solicitation policy.⁴ Moreover, the events of January of 2009 predate the filing of the petition for decertification in this case and, therefore, did not interfere literally with the conduct or results of the mail ballot election held from April 28 through May 19, 2009.

Second, there is no evidence that the Employer was aware of or sanctioned the Petitioner’s planned campaign activity at the HEC Academy on May 6th. Additionally, the evidence demonstrates that the Petitioner did not actually hold an information session on May 6th at HEC Academy, but asked one bargaining unit member whether she had any questions about the election and encouraged her to vote. Therefore, the evidence presented does not establish that the Employer provided the Petitioner with special access to employees such that a reasonable employee might have concluded that the Employer favored the Petitioner rather than the Union. Consequently, there is not probable cause to believe that the conduct alleged could interfere with either the conduct or the results of the mail ballot election held from April 28 through May 19, 2009. Accordingly, these allegations are insufficient to warrant further proceedings.

Conclusion

There is no evidence warranting invalidation of the results of the election and the objection should be dismissed. Accordingly, a certification of the results of the election will issue reflecting that the majority of voters have not selected the Union as their representative for the purposes of collective bargaining.

SO ORDERED.

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4. Notably, the Union did not file blocking charges concerning the matter.

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