

CITY OF SOMERVILLE AND SOMERVILLE POLICE EMPLOYEES ASSN., MCR-2077, 2106  
(3/18/75); SUPPLEMENTAL DECISION, (3/26/75).

(40 Selection of Employee Representative)

45.1 contract bar

45.43 automatic renewal clause

Commissioners participating: Alexander Macmillan, Chairman; Madeline H. Miceli; Henry C. Alarie.

Appearances:

Robert B. McCormack, Esq. - Counsel for the Commission  
Robert L. Wise, Esq. - Counsel for the Somerville Police  
Employees Association  
Philip Collins, Esq. - Counsel for the International  
Brotherhood of Police Officers

DECISION

Statement of the Case

On November 20, 1974, the Somerville Police Employees Association (SPEA) filed a petition with the State Labor Relations Commission under Section 4 of Chapter 150E of the General Laws for its certification as representative for the purposes of collective bargaining of certain employees of the Police force of the City of Somerville, herein called the Public Employer. The petition indicated that the International Brotherhood of Police Officers, Local 309, (IBPO) claimed to represent some of the employees in the unit. The petition and accompanying notices of hearing were duly served. Pursuant to notice a formal hearing was held at the offices of the Labor Relations Commission in Boston on December 18, 1974, before Robert B. McCormack, Esq., Hearing Officer. At the formal hearing, the IBPO introduced evidence tending to show that a collective bargaining contract in force between it and the Public Employer should act as a bar to the filing of the petition for representation under General Laws, Chapter 150E, Section 4 and under Section 5 of the Commission's Rules and Regulations.

Subsequently, on January 3, 1975, SPEA filed a second petition which was substantially identical with the first. This was docketed as MCR-2106. At its executive session of January 1, 1975, the Commission voted to consolidate MCR-2077 and MCR-2106 for the purposes of hearing. On January 31, 1975, a second formal hearing was held on both cases with Commissioner Henry C. Alarie presiding. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties. After having and/or read all of the evidence adduced at the hearing, we hereby make the following findings, rulings and render the following opinion.

Findings of Fact

On January 30, 1969, the Commission certified SPEA as the collective bargaining representative of certain employees of the Somerville Police Department (Petitioner's Exhibit 1). After being so certified, SPEA and the Public Employer executed a collective bargaining agreement covering the period between June 1, 1970 through May 31, 1972 (Petitioner's Exhibit A).



## City of Somerville, MCR-2077, 2106

The Public Employer subsequently recognized IBPO, Local 309, as the exclusive bargaining representative of the police officers in question and IBPO and said Employer executed a collective bargaining agreement which contained the following duration clause:

## "ARTICLE XXV"

## "Duration of Agreement"

"This Agreement shall be in full force and effect from June 1, 1972 to, and including June 30, 1974 and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.

"Where no such cancelation or termination notice is served and the parties desire to continue said Agreement, but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to June 30, 1974 or June 30th of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement. All portions of this Agreement shall remain in effect until said changes have been agreed upon." (IBPO Exhibit 1).

On February 7, 1974 counsel for the IBPO posted the following letter to the Mayor of the City of Somerville with carbon copies to the City Solicitor and the attorney handling labor relations for the City.

"Dear Mr. Mayor:"

"On behalf of Local 309, International Brotherhood of Police Officers, this letter will constitute notice of the union's desire to negotiate changes and revisions in the existing agreement between the city and the union. This notice is being served upon you in accordance with the provisions of Article XXV of the current agreement.

"Would you kindly have your representative contact this office so that negotiations on changes and revisions may be begun in the near future."

"Very truly yours,

"(s) Robert J. Canavan  
General Counsel"

(IBPO Exhibit 2)

On February 11, 1974, the Public Employer's labor relations attorney posted a letter to counsel to the IBPO acknowledging receipt of the above-quoted letter and agreeing to set up a mutually convenient date for beginning negotiations (Petitioner's Exhibit B). Thereafter, IBPO and the Public Employer did bargain collectively but without agreement. On June 26, 1974,



## City of Somerville, MCR-2077, 2106

the IBPO filed a petition for mediation with the Massachusetts Board of Conciliation and Arbitration. Later, on September 17, 1974, the IBPO filed a petition for factfinding with that agency. (Intervenor's Exhibit 3). At the time of the formal hearings no collective bargaining agreement had been executed.

The second formal hearing on January 31, 1975 was convened for the purpose of allowing SPEA an opportunity to show "good cause" why an election should be directed by the Commission during the time that a valid collective bargaining agreement was in effect. For reasons hereafter set forth, we find it unnecessary to determine whether such "good cause" exists.

### Opinion

In examining the duration clause of the collective bargaining contract between IBPO and the Employer, it is evident that said contract commenced June 1, 1972 and was to run at least until June 30, 1974. Both petitions filed in this matter were filed later than June 30, 1974. Therefore, the issue before us is whether the automatic renewal language in the duration clause insulates the IBPO from a petition by a rival employee organization after that date.<sup>1</sup>

In 1970 the Commission realized that it would be in the best interest of all parties to know just exactly when to file a representation petition. In the case of Town of Billerica School Committee and Billerica Federation of Teachers, Local 1677, AFT, AFL-CIO, MCR-595, decided June 5, 1970, we adopted certain ground rules relative to the timeliness of such petitions. Although that decision has been superseded by Section 5 of our Rules and Regulations,<sup>2</sup> the rationale expressed therein remains our policy today. In that case we held, inter alia, that any notice of a desire to negotiate changes in a contract received by the other party thereto immediately preceding the automatic renewal date provided for in the contract will prevent its "renewal" for contract bar purposes, despite provision or agreement for its continuation during negotiations, and regardless of the form of notice. See Billerica, supra at page 9.

Mr. Canavan's letter of February 7, 1974 to the Mayor of the City of Somerville (heretofore quoted) clearly expressed the Union's desire to negotiate changes and revisions in the existing contract and therefore waived the right to interpose a contract bar claim. Thus, we conclude that both petitions were timely filed.

---

<sup>1</sup> General Laws, Chapter 150E, Section 7 provides that any collective bargaining agreement reached between the employer and the exclusive representative shall not exceed a term of three years.

<sup>2</sup> Section 5. 1.  
Except for good cause shown, no petition filed under the provisions of Section 4 of the Law during the term of an existing valid collective bargaining agreement shall be entertained unless such petition is filed no more than 180 days and no less than 150 days prior to the termination date of said agreement.

## City of Somerville, MCR-2077, 2106

In our decision in Billerica, we distinguished "modification clauses", and "automatic renewal clauses". In its brief, the IBPO appears to apply both appellations to Article XXV of the contract. We cannot agree. The contract contains a separate article which must be considered as a "modification clause".<sup>3</sup> Said separate article clearly contemplates that certain portions of the contract might prove unworkable or undesirable, and might necessitate modification or change. It specifies no time limits, thus allowing the parties to agree to modifications at any time during the life of the contract.

However, Canavan's letter of February 7, 1974 refers in no way to "modification", "amendment", "alteration" or "variation" of the contract. Instead, it refers to "changes and revisions...in accordance with Article XXV", a clause which the parties themselves describe as a "Duration of Agreement" clause, and which clearly provides for reopening of negotiations for a successor agreement. Thus to call Article XXV a "modification clause" would be a misnomer. It is in fact a provision for the parties to negotiate a new contract to take effect subsequent to June 30, 1974.

The IBPO would have us hold that since Mr. Canavan's letter of February 7, 1974 was sent approximately 152 days prior to June 30, 1974, it cannot be considered as notice sent "immediately preceding the automatic renewal date provided for in the contract". (Emphasis supplied) We cannot agree.

When Mr. Canavan mailed his letter, the scope of changes and revisions of the contract were unlimited by Article XXV. Indeed, the proposed changes and amendments to the contract were 21 in number, and included such items as duration of agreement, changes in differential for officers, night differential, longevity, medical insurance coverage, clothing allowances, minimum manning, overtime, quarterly cost of living increases, educational incentive allowance, vacation scheduling, seniority, change of start of workweek, requirements of medical certificates for absences, and various monetary proposals. (Petitioner's Exhibit 3). Agreement upon proposals would require substantial revision of the contract. We are constrained to note that as of the date of the 2nd formal hearing (almost one year since the date of Mr. Canavan's letter of February 7, 1974) those negotiations had not been completed. Article 11, Section 5 of the Commission's Rules and Regulations anticipates that time will be required for negotiating a collective bargaining contract, and provides (where said section is applicable) for an "insulated period" of 150 days. Thus, we conclude that Mr. Canavan's letter was sent as "immediately" as was practical, prior to the automatic renewal date, to allow reasonable time for the parties to reach agreement.

As the National Labor Relations Board said in Ludlow Typograph Co., 108 NLRB 1463 [1954], (previously cited with approval by us in City of Gardner (DPW) MCR-1370, MCR-1395 [1974]):

---

<sup>3</sup>Article V; Stability of Agreement; Section 1: No amendment, alteration or variation of the terms of this agreement shall bind the parties hereto unless made and executed in writing by said parties. (IBPO Exhibit 1).

## City of Somerville, MCR-2077, 2106

"It must never be forgotten that the Act is designed primarily to protect the right of employees to self-organization, and that a refusal to conduct an election when a substantial number of employees have indicated a desire to change bargaining representatives is a restraint of that right".<sup>4</sup>

We have ourselves observed that, by execution of a successor agreement prior to the expiration of a contract in force, an employee organization may effectively prevent employees from ever having the opportunity to review their choice of employee representative. Such a result does not effectuate the purposes of the law. We conclude that the rights of the employees to exercise free choice periodically in the selection of a bargaining agent is of paramount importance. See, for example, City of Pittsfield School Committee, MCR-1227 [1974].

Based upon the foregoing, we make the following conclusions:

1. We conclude that a question has arisen concerning the representation of certain employees of the City of Somerville within the meaning of Section 4 of Chapter 150E of the General Laws.
2. That the unit appropriate for the purposes of collective bargaining shall consist of all full-time, certified employees in the Police Department of the City of Somerville including patrolmen, sergeants, lieutenants and captains; but excluding the Chief of Police, Deputy Chiefs, console-operator-clerk, stenographer, and senior accounting clerk.
3. That an election shall be held for the purposes of determining whether or not a majority of the employees in said unit have designated or selected International Brotherhood of Police Officers, Local 309, or Somerville Police Employees Association, or no employee organization as their representative for the purposes of collective bargaining.
4. That the list of eligible voters shall consist of all those persons included within the above-described unit whose names appear upon the payroll of the Public Employer for the week ending March 15, 1975 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 149 of the General Laws as aforesaid,

IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid bargaining units at such time and place and under such conditions as shall be contained in the Notice of Election issued by the Commission and served on all parties and posted on the premises of the Municipal Employer together with copies of the specimen ballot.

---

<sup>4</sup>While the Board and Commission in Ludlow and Gardner were dealing with the question of "Certification Bar" rather "Contract Bar" as here, the principle is nevertheless the same.





## City of Somerville, MCR-2077, 2106

In order to assure that all eligible voters will have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to this election should have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that two (2) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts, 02202, no later than fourteen (14) days from the date of the Decision.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

SEPARATE CONCURRING OPINION OF  
CHAIRMAN ALEXANDER MACMILLAN

I concur in the majority's decision to conduct an election here. I do not, however, find it necessary to wrestle with any contract bar arguments. Even if the contract in question was "automatically renewed" for an additional year, (a dubious proposition I agree,) the petition filed by the Somerville Police Employees Association on January 3, 1975 was timely under Article II Section 5 of our Rules and Regulations.

SUPPLEMENTAL DECISION

On March 25, 1975 the International Brotherhood of Police Officers filed with the Commission a Motion To Withdraw Name From Official Ballot. Upon consideration by the Commission, the Motion is hereby allowed.

Accordingly, our decision issued March 18, 1975 is hereby amended (on page 1316, paragraph 3) so as to read as follows:

- "3. That an election shall be held for the purpose of determining whether or not a majority of the employees in said unit have designated or selected the Somerville Police Employees Association or no employee organization as their representative for the purposes of collective bargaining."

Our March 18, 1975 Decision is affirmed in all other respects.

