COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE (UNIT 6) AND MOSES SIX AND NAGE, SCR-2177 (4/12/84).

11. Employee Organizations
46.13 validity of authorization cards
46.15 status of employee organization
46.16 showing of interest

Commissioners participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

Nathan S. Paven, Esq.
James Norton, Esq. - Counsel for Massachusetts Organization of State Employee Supervisors Six

Gordon Ramsey, Esq.
Maria C. Rota, Esq. - Counsel for The National Association of Government Employees

Joseph M. Daly - Counsel for the Commonwealth

DECISION AND DIRECTION OF ELECTION

Statement of the Case

On January 30, 1984, the Massachusetts Organization of State Employee Supervisors Six (MOSES Six or petitioner) filed a petition with the Labor Relations Commission (Commission) seeking to represent State employee bargaining unit 6.[1] The incumbent labor organization, the National Association of Government Employees (NAGE), was permitted to intervene.

After notice to the parties, formal hearings were held on March 28 and March 29, 1984 before Amy L. Davidson, a duly designated hearing officer. At the outset of the hearing, all parties agreed to the scope and appropriateness of the currently certified bargaining unit. In addition, NAGE orgally presented several motions to the Commission for rulings. NAGE moved to dismiss the petition based upon an alleged insufficiency in the showing of interest submitted by the petitioner.[2] In addition,

[1] Unit 6 consists of the Commonwealth's professional administrative employees including legal, fiscal research, statistical and staff service employees. 402 MCR 14.07.

[2] In connection with this motion, NAGE asserted that the Commonwealth had ceased negotiating with it because MOSES Six had filed a representation petition. See Commonwealth of Massachusetts, 7 MLC 1228 (1980). That matter has already been before the Commission in a charge filed by NAGE against the Commonwealth on February 9, 1984. (Case No. SUP-2817). Following an investigation, the Commission dismissed the charge on March 26, 1984. The proper method to seek review of this determination is through a request for reconsideration. NAGE filed such a request with the Commission in SUP-2817 on April 3, 1984.

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NAGE moved to dismiss under Commission Rule 402 CMR 14.05 and 402 CMR 1706 on the grounds that the petitioner has not submitted a sufficient showing of interest within the "open period" as defined by 402 CMR 14.06.[3] NAGE also moved to dismiss on the grounds that the procedure allegedly used by the Commission for checking the showing of interest encourages fraud. In support of this motion, NAGE asserts that if the petitioner is permitted to submit authorization cards after the close of the "open period," such cards could have been obtained in February or March, 1984, but fraudulently given earlier dates. NAGE further moved for a ruling that MOSES Six not be permitted to rely on lists of Unit 6 employees dated July 1982 and December 1983, allegedly supplied by the Commonwealth, to determine the actual number of employees in the unit as of the date of the filing of the Petition. NAGE alleges that such lists were inaccurate. In addition, NAGE moved to strike any authorization card bearing a date prior to December 22, 1983, which was the date on which MOSES Six was organized.

All of the above motions constitute attempts by NAGE to litigate the sufficiency of the showing of interest submitted by the petitioner. Many of NAGE's arguments are based on assumptions regarding the information that the Commission considered in

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[3]Commission Rule 402 CMR 14.05 provides:

Showing of interest

No petition filed under Section .03 or Section .04 of this chapter shall be entertained, in the absence of uncommon or extenuating circumstances, unless the Commission determines that the petitioner has been designated by at least thirty (30) percent of the employees involved to act in their interest. Similarly, an intervening employee organization must demonstrate that it has been designated by at least ten (10) percent of such employees to act in their interest, unless the intervening employee organization is the fuly recognized or certified bargaining representative for any of such employees. However, no intervening employee organization, including such a duly recognized or certified bargaining representative, shall be permitted to appear on the ballot or be deemed a necessary party to a consent election agreement except upon a showing of interest of at least ten (10) percent of the employees in the unit found to be appropriate. Authorization cards or other written evidence must be submitted by the petitioner with the petition to enable the Commission to make this determination. The Commission may require the employer to submit a payroll or personnel list to assist in determining whether a sufficient showing of interest has been made. If a payroll or personnel list is requested by the Commission but is not made available, the showing of interest as submitted will, if otherwise valid, be accepted as bona fide.

If the Commission finds that a sufficient showing of interest has not been made, the petitioner shall be given notice by the Commission of such finding and shall be allowed seven days after receipt of written notice of such finding to submit a further showing of interest. Such allowance shall not extend the time for filing of petitions under Section .06(1) of this chapter.

402 CMR 14.06 provides in pertinent part:

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

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making its administrative determination of whether a sufficient showing of interest existed. The requirement that a petition be accompanied by a 30 percent show of interest is designed to ensure that the Commission need not waste its resources conducting elections among groups of employees who have little or no interest in representation by the petitioner. The regulation exists for the Commission's benefit and promotes the economy and efficiency of Commission resources. The extent to which the Commission's show of interest requirement may help or hinder the aims of other parties, such as the incumbent union or the employer in the instant case, is incidental to the purpose for which the regulation exists and does not create any litigable rights or interests on behalf of the parties. The regulation exists to promote certain economies of the Commission's resources. As a consequence, it is the Commission which has the sole interest in determining that the show of interest is sufficient to warrant expenditure of the Commission's time and effort to conduct an election.

We recognize that it is to the potential advantage of other parties to seek the dismissal of a rival petition at the earliest possible procedural stage. But the desire of a rival party to avoid an election does not rise to the level of a legally cognizable right which would warrant litigation of the Commission's determination of the show of interest. Accordingly, consistent with this principle, the Commission long has held that the sufficiency of the showing of interest is an administrative determination which is made by the Commission upon its own investigation and is not subject to litigation by the parties. E.g., Duxbury School Committee, 1 MLC 1020, 1021 (1974); Local 829, Teamsters, 4 MLC 1673 (1978); Commonwealth of Massachusetts, 6 MLC 2123, 2125 (1980), Application for Temporary Restraining Order denied, sub nom Bonavita v. Labor Relations Commission (September 15, 1980, Lonscott, J.). For these reasons, we have denied the above motions.

NAGE also moved to dismiss the petition based upon alleged wholesale confusion on the part of Unit 6 employees concerning the identity of the petitioner. NAGE's argument on the record and in its post hearing brief clearly demonstrates that this is but another attempt to litigate the sufficiency of the showing of interest,[4] which we have determined to be an issue for administrative determination, not litigable by the parties. Moreover, employee confusion is not a matter at issue during the pre-election processing of a representation petition. Conduct which affects the results of a Commission election may be raised through objections filed pursuant to Commission Rule 402 CMR 14.12(3) after the election. Accordingly, for the reasons discussed above, we have denied the motion to dismiss.

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agreement shall be entertained unless such petition is filed no more than one hundred and eighty (180) days and no fewer than one hundred and fifty (150) days prior to the termination date of said agreement. No collective bargaining agreement shall operate as a bar for a period of more than three (3) years.

[4]On page 14 of its brief to the Commission, NAGE asserts "[t]he Commission should have admitted the evidence (of voter confusion) to determine whether there was a sufficient basis to warrant further investigation of the showing or representative interest."

NAGE made another motion to dismiss based upon an allegation that authorization cards were solicited during working hours. To the extent that the motion relates to the sufficiency of the showing of interest, the matter is not litigable and we have denied the motion.[5] NAGE also moved to dismiss the petition based upon its allegation that MOSES Six is not an employee organization. NAGE presented evidence in support of this motion. Upon the findings and conclusions discussed below we have decided to deny the motion.

FINDINGS OF FACT

Sometime in December of 1983, a group of about 10 or 15 Unit 6 employees held meetings for the purpose of forming an employee organization to represent Unit Six employees. A "Formation Committee" was set up and Anthony Gentile, Jr. was designated Chairperson of the Formation Committee, Vincent F. Fasano became Vice-Chairperson. They named their organization the "Massachusetts Organization of State Employees and Supervisors, Six." Subsequently, the Formation Committee of MOSES Six obtained authorization cards from employees in unit six. The cards indicate that MOSES Six is authorized to act in the interest of employees who signed them. On December 27, 1983, MOSES Six filed its Employee Organization Report (Form 1) with the Commission, as required by G.L. C.150E, Sections 13 and 14. That report, signed by Gentile and Fasano, described the purpose of the organization as follows:

> "The primary purpose of this organization is to carry out functions directly related to the labor interests of Unit 6 employees. These shall include: collective bargaining in matters of wages, hours of work, and betterment of working conditions; adjusting grievances and/or differences between employer and employee; and encouraging employee input and participation in resolving all decisions and policies."

As yet, MOSES Six has no constitution, no by-laws, no dues have been collected and there are no formal "card-carrying members."[6] The Formation Committee of MOSES Six intends to draft a constitution and conduct an election of officers if MOSES Six succeeds in its campaign to be certified as the exclusive collective bargaining representative of Unit Six.

OPINION

The only issue is whether MOSES Six is an employee organization. Specifically, NAGE argues that MOSES Six is not an employee organization because it has no members, "no staff, no employees, no organizers, nor independent funds." In addition, NAGE

[5] We did allow NAGE the opportunity to present such evidence to the extent that it could show employer domination or unlawful assistance which would relate to the issue of whether MOSES is an employee organization under Section 1 of the Law.

[6] NAGE elicited evidence at the hearing to the effect that MOSES Nine, the employee organization which represents State employees in Unit 9, had offered financial and other support to MOSES Six.

asserts that MOSES Six cannot independently represent the employees of Unit 6 because they are so closely aligned with MOSES, the exclusive representative of State bargaining unit 9.

Section 1 of G.L. c.150E defines an employee organization as "any lawful association, organization, federation, council or labor union, the membership of which includes public employees and assists its members to improve their wages, hours, and conditions of employment." The Commission has recognized that the above definition is purposely broad and does not require any specific type of organizational structure. City of Lawrence, 4 MLC 1851, 1852 (1978); IBPO, 1 MLC 1225 (1974). Organizations that petition the Commission for a representation election have been found to meet the statutory definition, despite the fact that at the time they file the petition they have had no by-laws, constitution, officers, dues, nor any prior history of bargaining. Mass. Bay Transportation Authority, 6 MLC 2086 (1980);[7] Lawrence, supra. Therefore, we draw no adverse inference from the absence of such formalities in the instant case. Indeed, the evidence demonstrates the existence of a Formation Committee, and the organization's intent, if certified, to assist the employees it represents in improving their wages, hours and conditions of employment. We conclude, therefore, that MOSES Six is an employee organization under Chapter 150E.

NAGE further asserts that MOSES Six is not an independent organization because it is "dominated and controlled by" MOSES Nine. As noted in Mass. Bay Transportation Authority, supra, our function is limited to providing the machinery whereby the desires of employees may be ascertained. It is not our role to evaluate the relative ability of a particular organization to effectively represent the interests of employees.[8] The election which we conduct provides the forum in which employees can exercise their right to evaluate and select the bargaining representative of their choice.

Finally, NAGE's assertion that MOSES Six is "dominated and controlled by" MOSES Nine is not material to our determination of MOSES Six as a labor organization. Our concern, as expressed in IBPO, supra, is the control or domination of unions by employers of employees whom the Union seeks to represent. Commonwealth of Massachusetts, 6 MLC at 2123, 2125 (1980). It may be that MOSES Nine has chosen to offer financial or other support to MOSES Six in its organizational efforts. This is not relevant to our determination of the status of MOSES Six as an employee organization. We also note that it is not at all uncommon for a well-established labor organization to offer financial or other support to new local unions in their organizational drives.

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[7] Although Mass. Bay Transportation Authority was decided under G.L. c.150A rather than G.L. c.150E, the definition of labor organization under Section 2(5) of G.L. c.150A parallels that of Section 1 of Chapter 150E. See Boston Water and Sewer Commission, 7 MLC 1439, 1441 (1980).

[8] Where it is alleged that the organization is the product of employer domination, however, we will examine whether the organization is so tainted by employer involvement as to be incapable of representing employees employed by the employer. No evidence which would establish such domination was presented in this proceeding.

Such support does not detract from the status of the new organization as a valid employee organization within the meaning of Section 1 of the Law.

Since we have concluded that MOSES Six is a lawful "employee organization" under Section 1 of the Law, NAGE's motion to dismiss the MOSES Six petition for representation is denied.

Wherefore, on the basis of the foregoing, we conclude that:

1. A question has arisen concerning representation of certain employees of the Commonwealth of Massachusetts.

2. The unit appropriate for the purposes of collective bargaining consists of all employees in Unit 6, including the job titles listed in Appendix A to this decision.

3. An election shall be held for the purpose of determining whether or not a majority of employees in said unit wish to be represented by MOSES Six; by the National Association of Government Employees; or by no employee organization.

4. The eligible voters shall include all those persons within the above-described unit whose names appear upon the payroll of the Employer for the week ending March 31, 1984.

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 unit 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 Public Employer together with copies of the specimen ballot.

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 five (5) copies of an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Public Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, no later than fourteen days from the date of this 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.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner

[Appendix Omitted]