

MOSES AND MASSACHUSETTS WATER RESOURCES AUTHORITY, CAS-2975 (4/20/93).
RULING ON MOTION TO DISMISS.

- 34.1 appropriate unit
- 34.91 accretion
- 45.1 contract bar
- 91.5 sufficiency of charge
- 92.47 motion to dismiss

Commissioners participating:

Maria C. Walsh, Chairperson
William J. Dalton, Commissioner

Appearances:

- Nathan S. Paven, Esq. - Representing Massachusetts Organization of State Engineers & Scientists
- David Grunebaum, Esq. - Representing Massachusetts Water Resources Authority

**RULING ON MASSACHUSETTS WATER RESOURCES AUTHORITY
APRIL 6, 1993 MOTION TO DISMISS**

On April 6, 1993, the Massachusetts Water Resources Authority (MWRA) filed a Motion to Dismiss Petition No. CAS-2975, filed by the Massachusetts Organization of State Engineers and Scientists (MOSES). On April 9, 1993, MOSES filed an Opposition to the MWRA's Motion to Dismiss. The Massachusetts Labor Relations Commission (Commission) has considered the contentions of the MWRA and has decided to DENY the Motion to Dismiss.

The MWRA posts several arguments in support of its Motion, which we will address seriatim.

The MWRA alleges that the Petition is "facially defective" because it fails to contain certain required information. Our review of the Petition satisfies us that it meets the requirements of the Commission's rules.

The MWRA next alleges that the Petition is "barred" by the Commission's contract bar rule, codified at 456 CMR 14.06, because the Petition was not filed during the "open period" of any contract between the MWRA and MOSES. The Petition was filed December 27, 1991. The MWRA contends that a collective bargaining agreement that was executed in January 1992, retroactively effective to July 1, 1991, should be considered to bar the petition just as if the contract had been in effect on the date that the Petition was filed. The MWRA does not contend that it was unaware of the pendency of the petition at the time of its final agreement to, and execution of, the 1992 collective bargaining agreement. The purpose of the

contract bar rule is to promote stability of labor management relations by ensuring that both labor and management are aware of which unit positions are included in the unit covered by their collective bargaining agreement. In the instant case only the most technical application of a contract bar rule could retroactively bar the CAS petition through the retroactive application of the effective date of the collective bargaining agreement. The policies of the Commission's contract bar doctrine would not be served by this legerdemain. When the Petition was filed, no contract was in effect. One month later a contract was finalized and executed and made retroactively effective. The pendency of the Petition gave the MWRA ample notice prior to its final agreement to the terms of the collective bargaining agreement that MOSES sought to accrete additional job classifications to the MOSES bargaining unit. The submissions of the MWRA offer no reason to revisit the issue of alleged initial untimeliness of the Petition. The purpose of the contract bar doctrine has been served in this case by the pendency of the Petition during the parties' negotiations for a successor agreement. Since the MWRA had notice of MOSES' unit claim prior to final agreement to the successor collective bargaining agreement the MWRA could complete negotiations cognizant of the potential expansion of the bargaining unit.

The MWRA also argues that the Petition should be dismissed because it seeks to accrete positions which were in existence prior to the beginning date of the parties collective bargaining agreement. Since the parties were unable to negotiate their unit placement dispute, it is appropriate for the Commission to investigate and resolve the unit placement issues raised by the MWRA's expansion subsequent to the date of the creation of this unit. Therefore, we decline to dismiss the petition on this ground.

Similarly, since the submission of the parties suggests that several petitioned-for job classifications have been created since MOSES filed another CAS petition in 1986, we find no justification for the MWRA's suggestion that MOSES should be estopped from once more attempting to secure a unit reflective of the community of interest between represented employees and certain unrepresented employees.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, CHAIRPERSON

WILLIAM J. DALTON, COMMISSIONER