

In the Matter of BOURNE RECREATION AUTHORITY
and
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 59

Case No. MCR-01-4896

13. *Municipal Employer*
33. *Consent Agreements and Stipulations*
35.4 *other non-professionals*
43. *Election*
93.3 *petition for certification*

September 14, 2001

Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Michael C. Gilman, Esq. *Representing the Bourne Recreation Authority*

Richard Fernandes *Representing the Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 59*

DECISION¹

Statement of the Case

On June 8, 2001, the Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 59 (Union) filed a petition with the Labor Relations Commission (Commission) under Section 4 of M.G.L. c. 150E (the Law) seeking to represent certain employees of the Bourne Recreation Authority (Authority). On August 14, 2001, Hearing Officer Ann T. Moriarty, Esq. conducted a hearing at which both parties had an opportunity to present testimonial and documentary evidence. The Authority and the Union elected to orally argue their respective positions in lieu of filing briefs.

Findings of Fact

The parties stipulated to the following facts:

1. The enabling legislation for the Bourne Recreation Authority was enacted August 21, 1970. See, Chapter 820 of the Acts of 1970. There is a 1971 amendment giving the Bourne Recreation Authority the authority to lease federal land for purposes of constructing recreational facilities. There is a 1973 amendment (Chapter 311 of the Acts of 1973) authorizing the Town of Bourne to borrow up to \$1 million for purposes of acquiring land and constructing an ice skating rink and other recreational facilities.

Although the Town of Bourne guaranteed the bonds that were issued for purchasing land and constructing facilities pursuant to

the 1973 Act, those bonds were fully satisfied and paid off on or about 1993. Since 1993-1994, the Bourne Recreation Authority has acted as a totally independent entity. The Authority is made up of five board members, one of whom is appointed by the Governor and four who are elected by voters in the Town of Bourne.

2. The Authority operates its facilities on land which is 95% leased from the federal government, bordering the Cape Cod Canal, with some 5% of its land owned by the Bourne Recreation Authority. The Authority is totally self sufficient based upon fees charged to users and there are no monies running between the Authority and the Town of Bourne except to the extent that the Authority needs to pay the Town for services, e.g. cleaning of an Authority parking lot.

3. The Authority hires its employees independent of the Town of Bourne and has its own payroll. It has its own Treasurer and is audited independent of the Town.

4. There are no bargaining units organized within the Bourne Recreation Authority.

5. There are no collective bargaining agreements covering employees and no recognition provisions within the Authority.

6. The Bourne Recreation Authority:

- i. hires its employees;
- ii. has the independent authority to unilaterally discipline, discharge and transfer its employees;
- iii. sets wage rates for its employees;
- iv. determines job assignments;
- v. pays the employees via separate check and payroll system; and,
- vi. is liable for reporting and remitting deductions for Social Security, unemployment and other federal and state tax deductions

7. The Town of Bourne has no control over the administration, finances, or policies of the Bourne Recreation Authority.

8. Ninety-five percent (95%) of the land upon which the Bourne Recreation Authority operates its facilities is land leased from the federal government. Approximately five percent (5%) of the land, some four to five acres, controlled by the Authority is actually owned by the Authority. Of these approximate five acres, some four acres were deeded to the Bourne Recreation Authority by the Town of Bourne and one acre was deeded to the Authority by a private individual. Should the Authority wish to construct any facilities, it would be subject to Town of Bourne zoning, site plan review, building permits and inspections in the same manner as any other entity. Other local ordinances would generally apply to the Authority.

9. There are no Attorney General rulings or rulings by state or federal courts or agencies which address the Bourne Recreation Authority's status as a political subdivision and/or entity independent from the Town of Bourne.

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance. 456 CMR 13.02(2).

10. The Authority submits its own quarterly wage reports to both the Internal Revenue Service and Commonwealth of Massachusetts. It is exempt from sales tax payments. With respect to motor vehicles owned and operated by the Authority, no excise tax is paid to the Town of Bourne. Tax withholdings are made from employee's wages. The Authority provides its own motor vehicle insurance and other liability coverage independent of the Town of Bourne. The Authority has private insurance for worker's compensation. Except for the certification of sales tax exemption, we are aware of no "rulings" on the Authority's federal income tax status.

11. Employees of the Bourne Recreation Authority are eligible to participate in the public employee contributory retirement system under M.G.L. c. 32. The Authority is a separate, independent member of the Barnstable County Retirement System for purposes of providing its employees, who meet the Retirement System's eligibility requirements, with retirement benefits under M. G.L. c. 32.

12. The Bourne Recreation Authority also separately belongs to the Cape Cod Municipal Health Group, a group insurance plan under M.G.L. c. 32B. Authority employees who meet the group insurance plan's eligibility requirements and the Bourne Recreation Authority's eligibility requirements may participate in this insurance plan.

13. Bourne Recreation Authority employees are subject to the provisions of M.G.L. c. 268A, the conflict of interest law, and M.G.L. c. 55, the campaign finance law.

14. The Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 59 is an employee organization within the meaning of Section 1 of M.G.L. c. 150E.

15. The Bourne Recreation Authority employs six (6) skating instructors who work as few as twelve (12) hours per year to a maximum of twenty-four (24) hours per year. They occasionally substitute for each other's scheduled skating class. The parties agree and stipulate that these skating instructors are casual employees who are properly excluded from the bargaining unit of all full-time, regular part-time, and seasonal employees described in paragraph 16, below.

16. The Union and the Authority agree that the bargaining unit described as:

All full-time and regular part-time non-professional employees of the Bourne Recreation Authority including seasonal employees, but excluding the General Manager, Treasurer, Administrative Coordinator, Park Facility Supervisor, Rink Facility Supervisor, and Maintenance Supervisor, and further excluding all managerial, confidential, and casual employees, including the skating instructors, and all other employees constitutes an appropriate bargaining unit within the meaning of M.G.L. c. 150E.

17. The Union and the Authority agree that, if the Labor Relations Commission decides to direct an election in the bargaining unit described in paragraph 16, above, the election will be conducted for employees in this bargaining unit on the payroll of the Authority for the pay period ending Saturday, August 11, 2001. To ensure that all employees have an opportunity to exercise their right to choose an exclusive representative for the purposes of collective bargaining, the Union and the Authority further agree that any secret ballot election directed by the Labor Relations Commission will be conducted by mail ballot.

The following facts are based on the documentary evidence introduced at hearing.

Chapter 820 of the Acts of 1970, An Act creating the Bourne Recreation Authority and providing for the construction, maintenance and operation of an indoor hockey and skating rink and other indoor and outdoor recreational facilities in the Town of Bourne by said authority, as amended, provides, in part:

Section 1. The Authority created by section two of this act is hereby authorized to acquire by purchase, lease or otherwise, land with or without buildings thereon within the boundaries of the town of Bourne and to manage and control land presently or to be leased by the town of Bourne from the federal government, know as the Bourne Scenic Park, including all buildings and facilities thereon, and to construct, maintain and operate an arena for the purpose of providing an indoor hockey and skating rink and other indoor and outdoor recreational facilities for use primarily by individuals, and school and amateur teams, in the town of Bourne; provided, however, that all such other times as there is no substantial demand for the use of such arena or any part thereof as such a rink; the Authority may permit the use of such arena or part thereof for other purposes as provided in this act.

Section 2. There is hereby created a public body politic and corporate to be known as the Bourne Recreation Authority, hereinafter called the Authority, which is hereby constituted a public instrumentality; and the exercise by the Authority of the powers conferred by this act shall be deemed and held to be the performance of essential governmental functions and the Authority shall not be held liable for any injury, loss or damage suffered by any person or property by reason of any ordinary or gross negligence of the Authority or any of its officers, employees or agents.

The Authority shall consist of the chairman of the board of park commissioners of the town of Bourne, ex officio, and four other members one of whom shall be appointed by the governor and three members shall be elected by the town of Bourne; provided, that of the members originally elected at an annual town meeting, the one receiving the highest number of votes shall serve for five years, the one receiving the next highest number of votes, for four years, the one receiving the next highest number of votes for three years and the member appointed by the governor shall serve for three years. Membership in the Bourne Recreation Authority shall be restricted to residents of the town of Bourne....

Section 3. The Authority is hereby authorized and empowered:

- (a) To adopt by-laws for the regulation of its affairs and the conduct of its business;
- (b) To adopt an official seal and alter the same at pleasure;
- (c) To sue and be sued, and to plead and be impleaded, in its own name;
- (d) To acquire, lease, hold and dispose of real and personal property, and to construct on property so acquired, leased or held, an arena and/or other recreational facilities, in the exercise of its powers and the performance of its duties under this act;
- (e). ...
- (f). ...
- (g). To establish rules and regulations, and fix policies, for the use of such arena and/or recreational facilities, as an indoor hockey and skating rink, basketball court, swimming pool, tennis court and facilities for other sporting activities and for the other purposes provided for in this act;

(h). To fix from time to time and charge and collect fees for admission to, or the use or occupancy of, such arena or any part thereof, and for the grant of concessions therein and for things furnished, or services rendered, by the Authority; and

(i). To make all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, to employ a general manager and such other employees and agents as may be necessary in its judgment, and to fix their compensation, and to do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

...

Section 5. The Authority and all its real and personal property shall be exempt from taxation and from betterments and special assessments; and the Authority shall not be required to pay any tax, excise or assessment to or for the commonwealth or any of its political subdivisions; nor shall the Authority be required to pay any fee or charge for any permit or license issued to it by the commonwealth, by any department, a board or officer thereof, or by any political subdivision of the commonwealth, or by any department, board or officer of such political subdivision.

Section 6. On or before the fifteenth day of January in each year, the Authority shall make an annual report of its activities for the preceding calendar year to the governor, to the general court, to the board of selectmen of the town of Bourne and to the division engineer of the United States Army Corps of Engineers, New England division, as specified in any lease of government property to the Authority. Said selectmen shall cause the report to be printed in the Annual Town Report of the town of Bourne. Each such report shall set forth a complete operating and financial statement covering its operations during such year. The Authority shall cause an audit of its books to be made at least once in each year by the state auditor; and the cost thereof shall be treated as part of the cost of operating such arena and other recreational facilities. Such audits shall be deemed to be public records within the meaning of chapter sixty-six of the General laws.

...

Discussion

Jurisdiction

Section 1 of the Law, as amended by Chapter 484 of the Acts of 1981, defines “employer” or “public employer”, in part, as follows:

“Employer” or “public employer”, the commonwealth acting through the commissioner of administration, or any county, city, town, district, or other political subdivision acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees, but excluding authorities created pursuant to chapter one hundred and sixty-one A and those authorities included under the provisions of chapter seven hundred and sixty of the acts of nineteen hundred and sixty-two.

A statute must be interpreted “according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.” *Commonwealth v. Connor C. A. Juvenile*, 432 Mass. 635, 640 (2000), citing *Cham-*

pagne v. Champagne, 429 Mass. 324, 326 (1999), quoting *O’Brien v. Director of the Div. Of Employment Sec.*, 393 Mass. 482, 487-488 (1994). Based on its origin and degree of public control, the Commission has construed the definition of public employer in Section 1 of the Law, as amended by Chapter 484 of the Acts of 1984, to include a corporation established by special act of the Legislature to manage a school, *Franklin Institute of Boston*, 12 MLC 1063, 1067-1068 (1985), and an authority created by the state to oversee and maintain a municipal nursing home, *Geriatric Authority of Holyoke*, 12 MLC 1571 (1986), cited with approval in *Boston Housing Authority v. Labor Relations Commission*, 398 Mass. 715, 718 (1986) (“The recent amendment [St. 1981, c.484 amending s.1 of G.L. c.150E] was intended to include authorities.”) General powers appropriate to a political subdivision include the power to make by-laws and rules and regulations, to grant easements, to take real property by eminent domain, and to buy, sell, lease, pledge, and otherwise deal with property. *Massachusetts Bay Transportation Authority v. Boston Safe Deposit & Trust Co.*, 348 Mass. 538, 543 (1965).

Here, the facts establish that the Legislature created the Authority as a public body politic and corporate, a public instrumentality, granted certain powers to perform essential governmental functions. The Authority consists of the chairman of the board of park commissioners of the Town of Bourne, ex officio, and four other members, one appointed by the governor and three members elected by the Town of Bourne. The Authority is authorized to: 1) adopt by-laws for the regulation of its affairs and the conduct of its business; 2) adopt an official seal; 3) sue and be sued, and to plead and be impleaded, in its own name; 4) acquire, lease, hold and dispose of real and personal property, and to construct on the property; 5) establish rules and regulations, and fix policies; 6) fix, charge, and collect fees; and 7) make all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, to employ a general manager and such other employees and agents, and to fix their compensation. The Authority and its property are exempt from any taxation by the state or its political subdivisions, and from any fees for permits or licenses issued by the state or any of its political subdivisions. Further, the Authority must file an annual report with the governor, the general court and other entities.

The Town of Bourne has no control over the administration, finances, or policies of the Authority. The Authority has its own Treasurer and is audited annually by the state auditor independent of the Town. Acting independently from the Town of Bourne, the Authority hires its employees; has the independent authority to unilaterally discipline, discharge and transfer its employees; sets wage rates for its employees; determines job assignments; pays its employees using a separate check and payroll system; and, is liable for reporting and remitting deductions for Social Security, unemployment and other federal and state tax deductions. Further, Authority employees are eligible to participate in the public employee contributory retirement system under M.G.L. c. 32,² and the Authority is a separate, independent member of the Barnstable

2. [See next page.]

County Retirement System for purposes of providing its employees, who meet the Retirement System's eligibility requirements, with retirement benefits under M.G.L. c. 32. The Authority also separately belongs to the Cape Cod Municipal Health Group, a group insurance plan under M.G.L. c. 32B.³ Authority employees who meet the group insurance plan's eligibility requirements and the Authority's eligibility requirements may participate in this insurance plan. Finally, Authority employees are subject to the provisions of M.G.L. c. 268A, the conflict of interest law, and M.G.L. c. 55, the campaign finance law.

Moreover, the Authority does not fall within the specific statutory exclusions of public employer in Section 1 of the Law. It is neither an authority created pursuant to M.G.L. c. 161A (Massachusetts Bay Transportation Authority),⁴ nor an authority included under the provisions of Chapter 760 of the Acts of 1962 (Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Woods Hole, Martha's Vineyard and Nantucket Steamship Authority).⁵ Although the Authority existed at the time the Law was amended in 1981, adding to the definition of public employer the words "other political subdivisions" and adding the specific exclusions noted above, the Legislature chose not to exclude the Authority from the definition of public employer. Absent clear legislative intent to purposely exclude the Authority from the definition of public employer, we decline to do so in this ruling.

Based on its origin, degree of public control, and other indicia discussed above, we conclude that the Authority is a political subdivision within the meaning of Section 1 of the Law, and therefore, is an employer or public employer as defined in Section 1 of the Law.

Appropriate Bargaining Unit

The Union and the Authority stipulated that the bargaining unit described as:

All full-time and regular part-time non-professional employees of the Bourne Recreation Authority including seasonal employees, but excluding the General Manager, Treasurer, Administrative Coordinator, Park Facility Supervisor, Rink Facility Supervisor, and Maintenance Supervisor, and further excluding all managerial, confidential, and casual employees, including the skating instructors, and all other employees constitutes an appropriate bargaining unit within the meaning of M.G.L. c. 150E.

If the issues raised by a petition are resolved by a stipulation of the parties, the Commission will adopt the stipulation if it does not conflict with the Law or with Commission policy or precedent. *Town of Manchester-By-The-Sea*, 24 MLC 76, 82 (1998) (citations omitted.)

The Commission has broad discretion in determining appropriate bargaining units. In reviewing the parties stipulation, we need only determine that a bargaining unit of all full-time and regular part-time non-professional employees of the Authority, with certain named exclusions, constitutes an appropriate bargaining unit for the purposes of collective bargaining. *Town of Hopedale*, 20 MLC 1059, 1067 (1993). The Commission will not reject it because it is not the most appropriate unit, or because there is an alternative unit that is more appropriate. *City of Somerville*, 24 MLC 69, 71 (1998); *City of Boston*, 18 MLC 1036, 1043 (1991), *citing*, *Lynn Hospital*, 1 MLC 1046, 1050 (1974). Because the parties' stipulation concerning an appropriate bargaining unit does not appear to conflict with the Law or with established policy or precedent, we adopt the stipulation.

Conclusion and Direction of Election

Based on the record and for the reasons stated above, we conclude that the Authority is an employer or public employer within the meaning of Section 1 of the Law. Further, we conclude that a question of representation has arisen concerning certain employees of the Authority and that the following constitutes an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

All full-time and regular part-time non-professional employees of the Bourne Recreation Authority including seasonal employees, but excluding the General Manager, Treasurer, Administrative Coordinator, Park Facility Supervisor, Rink Facility Supervisor, and Maintenance Supervisor, and further excluding all managerial, confidential, and casual employees, including the skating instructors, and all other employees

IT IS HEREBY DIRECTED that an election by secret mail ballot shall be held for the purpose of determining whether a majority of the employees in the above-described bargaining unit desire to be represented by the Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 59 or by no employee organization.

2. M.G.L. c. 32 Retirement Systems and Pensions, the contributory retirement system for public employees, contains the following definitions in Section 1:

"Employer", any person, board, or commission with the power to appoint or employ personnel as employees of the commonwealth or any political subdivision subject to this chapter.

"Governmental unit", the commonwealth or any political subdivision thereof, except that a teacher who is a member of, or eligible for membership in, the teachers' retirement system shall, for the purpose of membership and the requirements in connection therewith, be deemed to be employed by the same governmental unit.

"Political subdivision", the metropolitan district commission or any county, hospital district, city, town, district or housing authority, established under the provisions of section five of chapter one hundred and twenty-one B, . . . , or any other public unit in the Commonwealth.

3. M.G.L. c. 32B Contributory Group General or Blanket Insurance for Persons in the Service of Counties, Cities, Towns and Districts, and their dependents, includes the following definitions in Section 2:

(e) "Employer", the governmental unit.

(f) "Governmental unit", any political subdivision of the commonwealth

(g) "Political subdivision", any county, except Worcester county, city, town or district.

4. Pursuant to Section 19A of M.G.L. c. 161A, the provisions of Section 5 of M.G.L. c. 150A, apply to the Massachusetts Bay Transportation Authority and its employees with certain exceptions.

5. Pursuant to Chapter 760 of the Acts of 1962, certain specified provisions of M.G.L. c. 150A apply to the Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Woods Hole, Martha's Vineyard and Nantucket Steamship Authority

The eligible voters shall include all those persons within the above-described unit whose names appear on the Authority's payroll for the payroll period ending Saturday, August 11, 2001, and who have not since quit or been discharged for cause.

To insure that all eligible voters shall have the opportunity to be informed of the issues and the statutory right to vote, all parties to this election shall 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 eligible voters must be filed by the Authority with the Executive Secretary of the Commission, 399 Washington Street, 4th floor, Boston, MA 02108 not later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit the list in a timely manner may result in substantial prejudice to the rights of the employees and the parties; therefore, no extension of time for filing the list 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.

SO ORDERED.

* * * * *

In the Matter of TRUSTEES OF THE UNIVERSITY OF
MASSACHUSETTS/MEDICAL CENTER

and

MASSACHUSETTS NURSES ASSOCIATION

Case No. SUP-4331

65.9 *other interference with union*
67.3 *furnishing information*
82.12 *other affirmative action*
91.13 *mootness*

September 14, 2001

Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

Paul Lyons, Esq.
Richard Ong, Esq.

*Representing the Trustees of the
University of Massachusetts/
Medical Center*

Jack J. Canzoneri, Esq.

*Representing the Massachusetts
Nurses Association*

DECISION¹

Statement of the Case

On October 8, 1996, the Massachusetts Nurses Association (MNA) filed a prohibited practice charge with the Labor Relations Commission (Commission) alleging that the Trustees of the University of Massachusetts (Employer) had engaged in prohibited practices within the meaning of M.G.L. c. 150E (the Law). Following an investigation, the Commission issued a Complaint of Prohibited Practice on April 14, 1997, alleging that the Employer had violated Sections 10(a)(5) and (1) of the Law by failing to provide the Union with relevant and reasonably necessary information.

On September 26, 1997, Stephanie B. Carey, Esq., a duly designated hearing officer of the Commission, conducted a hearing at which all parties had an opportunity to be heard, to examine witnesses, and to introduce evidence.² Both parties filed post-hearing briefs on November 19, 1997. On December 3, 1997, the hearing officer issued her Recommended Findings of Fact. The MNA filed timely challenges to these findings pursuant to 456 CMR 13.02(2). We have considered the MNA's challenges to the findings, the arguments of the parties, and the record in this matter. Based on that review, we make the following findings of fact and conclusions of Law.

1. Pursuant to 456 CMR 13.02 (1), the Commission designated this case as one in which the Commission shall issue a decision in the first instance.

2. The MNA sought to introduce into the record the documents submitted by the parties during the investigation of this charge, including the MNA's written submission, the Employer's response to that submission, and the MNA's rebuttal of the Employer's response. The hearing officer declined to admit those documents into the record. The MNA appeals from her ruling and argues that the documents should be admitted and considered by the Commission on the ground that the

Employer was not obligated to provide the requested information because the MNA allegedly failed to adequately explain the relevance of its request. The MNA contends that, in addition to explaining the relevance at the time of the request, the MNA fully explained the relevance of its request in the written submissions to the Commission. However, we decline to admit the investigatory materials into the record because the parties have now had a full and fair opportunity to litigate whether the requested information was relevant to the Union as the bargaining representative at the time the Union made its request, and the statements of the parties during the investigation stage shed no light on that issue.