

In the Matter of HINGHAM MUNICIPAL LIGHTING PLANT
and

UTILITY WORKERS UNION OF AMERICA, AFL-CIO
and

CONCETTA CHAPMAN

Case No. MCR-03-5026

32. *Binding Effect of a Unit Determination*
93.5 *petition for decertification*

March 27, 2003

Helen A. Moreschi, Chairwoman
Peter G. Torkildsen, Commissioner

Philip Boyle, Esq. *Representing the Hingham
Municipal Lighting Plant*
Michael Feinberg, Esq. *Representing the Utility Workers
Union of America, AFL-CIO*
Concetta Chapman *Pro se*

DIRECTION OF ELECTION

On January 22, 2003, Concetta Chapman (Petitioner) filed a petition with the Labor Relations Commission (Commission) seeking to decertify the Utility Workers Union of America, AFL-CIO (Union) as the exclusive bargaining representative of clerical employees (Unit B) employed by the Hingham Municipal Lighting Plant (Employer).

During the course of the Commission's investigation of this petition, the Union claimed that Units A and B had merged since the Commission had issued its certification. However, the Commission's investigation determined that, on December 28, 1999, the Commission certified the Union as the exclusive bargaining representative of the following two bargaining units:

UNIT A: All full-time and regular part-time production and maintenance employees employed by the Hingham Municipal Lighting Plant, including the following classifications: working foreman, storekeeper, first class lineman, second class lineman, meter technician, meter reader and purchasing agent but excluding all clerical employees, all managerial, confidential and casual employees and all other employees.

UNIT B: All full-time and regular part-time clerical employees employed by the Hingham Municipal Lighting Plant, including the following classifications: customer service clerk, clerk typist (part-time), clerk typist and file clerk, but excluding all production and maintenance employees, all managerial, confidential and casual employees and all other employees.

Furthermore, the recognition clause of the parties' 2000-2003 collective bargaining agreement reflected that the current bargaining units are consistent with the Commission's certification.

On February 27, 2003, the Commission notified the Union that the Commission was prepared to direct a decertification election for Unit B unless the Union could demonstrate that there are material

facts in dispute that require further fact-finding proceedings. The Union's response to the Commission's show cause notice was due in the Commission's office within fifteen (15) days of receipt of that notice. However, the Union did not file a response to the Commission's show cause notice.

The Commission has adopted the National Labor Relations Board (NLRB) rule that the appropriate unit in cases involving employee petitions to decertify an existing bargaining unit must be coextensive with either the unit previously certified by the Commission or the one recognized by the parties. *Town of Templeton*, 26 MLC 199 (2000), citing *City of Lynn*, 2 MLC 1541, 1545 (1976); *Geriatric Authority of Holyoke*, 15 MLC 1139, 1140 (1988). Because the Union has failed to dispute any of the facts contained in the Commission's show cause notice, we find that Unit B, as described above, is both the certified bargaining unit and the unit recognized by the Employer and the Union pursuant to the recognition clause of their collective bargaining agreement.

We, therefore, conclude that a question of representation has arisen concerning certain employees of the Hingham Municipal Lighting Plant and that the following employees constitute an appropriate bargaining unit for collective bargaining within the meaning of Section 3 of the Law.

UNIT B: All full-time and regular part-time clerical employees employed by the Hingham Municipal Lighting Plant, including the following classifications: customer service clerk, clerk typist (part-time), clerk typist and file clerk, but excluding all production and maintenance employees, all managerial, confidential and casual employees and all other employees.

DIRECTION OF ELECTION

IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted to determine whether a majority of the employees in the above-described bargaining unit desires to be represented by no union or employee organization. The eligible voters shall include all those persons within the above-described unit whose names appear on the Employer's payroll for the payroll period for the week ending March 15, 2003 and who have not since quit or been discharged for cause. To ensure 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 Employer with the Executive Secretary of the Commission, 399 Washington Street, 4th Floor, Boston, Massachusetts 02108, no later than seven (7) days from the date this agreement is approved by the Commission. This list must be either electronic (e.g. Microsoft Access or Excel) or in the form of mailing labels.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit this 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.

CITE AS 29 MLC 176

Failure to comply with this direction may be grounds for setting aside the election, should proper and timely objections be filed.

SO ORDERED.

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