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In the Matter of TOWN OF AGAWAM  
and  
AGAWAM POLICE PATROLMANS ASSOCIATION  
and  
TEAMSTERS LOCAL UNION NO. 404

Case No. MCR-04-5103

45.1 *contract bar*  
45.43 *automatic renewal clause*  
92.47 *motion to dismiss*

September 30, 2004

*Allan W. Drachman, Chairman*  
*Helen A. Moreschi, Commissioner*  
*Hugh L. Reilly, Commissioner*

*Thomas S. Locke, Esq.*      *Representing the Town of  
Agawam*

*John D. Connor, Esq.*      *Representing the Agawam Police  
Patrolmans Association*

*Frank A. Rossi*              *Representing Teamsters Local  
Union No. 404*

### RULING ON MOTION TO DISMISS

#### STATEMENT OF THE CASE

On July 15, 2004, the Agawam Police Patrolmans Association (Association) filed a representative petition with the Labor Relations Commission (Commission) seeking to represent a bargaining unit of all police patrol officers below the rank of sergeant employed by the Town of Agawam (Town). The Teamsters Local Union No. 404 (Union) is the current exclusive representative for employees in the petitioned-for bargaining unit. On August 6, 2004, the Union filed an unopposed motion to intervene, which the Commission has allowed.

During the Commission's investigation of the petition, the Town argued that the petition is untimely filed under the Commission's contract bar rule. *See*, 456 CMR 14.06(1)(a). The Association contends that the petition is timely filed. To resolve this issue, the Commission has treated the Town's argument as a motion to dis-

miss the petition, in which the Union joins as a party. The parties entered into a Statement of Undisputed Facts relevant to the motion to dismiss. Further, the Town and the Association filed a memorandum in support of their respective positions on September 1, 2004, and the Association filed a response to the Town's memorandum on September 3, 2004.

#### STATEMENT OF UNDISPUTED FACTS

1. The Town of Agawam (Town) is a public employer within the meaning of Section 1 of M.G.L. c. 150E (the Law).
2. The Agawam Police Patrolmans Association (Association) is an employee organization within the meaning of Section 1 of the Law.
3. The Teamsters Local Union No. 404 (Union) is an employee organization within the meaning of Section 1 of the Law.
4. On July 15, 2004, the Association filed a petition with the Labor Relations Commission (Commission) seeking to represent a bargaining unit of all police patrol officers below the rank of sergeant employed by the Town for whom the Union is the current exclusive representative.
5. The Town and the Union are parties to a collective bargaining agreement that includes the following language just above the parties' signatures:

Dated this 24<sup>th</sup> day of March, 2003.

6. The complete text of the collective bargaining agreement that is referred to in paragraph 5, above, is incorporated into this statement of undisputed facts.
7. Article 33, *Duration*, of the collective bargaining agreement referred to in paragraphs 5 and 6, above, is as follows:

32.1 The Employer and the Union agree that this agreement shall be in full force and effect until midnight of June 30, 2004, thereafter shall automatically renew itself for successive terms of one year unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least one hundred and twenty (120) days prior to the date of expiration. Upon receipt of said written notice and/or not later than thirty (30) days following receipt of the aforesaid notice, the parties shall enter into negotiations for the formation of a new agreement, which agreement shall be for the period commencing with the next succeeding July 1<sup>st</sup>, and if no new agreement has been signed prior to said date, this agreement will remain in full force and effect until such signing.

32.2 Where no such cancellation or termination notice is served and the parties desire to continue this agreement, but also desire to negotiate changes or revisions in said agreement, either party may serve upon the other a notice at least one hundred and twenty (120) days prior to the date of expiration advising the other that such party desires to revise or change the terms of conditions of this Agreement. The party seeking such changes or revisions shall specify the portion or portions of the agreement which are to be made the subject of negotiations in the aforesaid notice. Upon the receipt of said written notice and/or not later than thirty (30) days following receipt of the aforesaid notice [the parties] shall enter into negotiations concerning the desired changes or revisions, which changes or revisions will take effect on the next succeeding July 1<sup>st</sup>, if no new changes or revisions have been agreed upon prior to said date, this agreement will

remain in full force and effect until such new changes or revisions have been agreed to, and incorporated into this agreement.

32.3 The Employer and the Union agree to commence bargaining for a successor contract on or after October 2003. It is agreed that in the event that the parties fail to reach an agreement on the new agreement by March 15, 2004, the Employer will be able to include in its budget for FY 2005 sufficient funds to cover its current offer on the aforementioned date. Nothing herein shall preclude the parties from continuing to bargain after the above-mentioned date.

It is not the intention of the Employer to use this language in order to put a "chill on bargaining" and declare an impasse on March 16, 2004, one day after the language provision allowing the Employer to put in enough money to fund its current offer on the 15<sup>th</sup> of March.

Only an independent mediator can officially declare an impasse on monetary issues. The Mayor simply wants to be able to put the "bulk" of the offer in the budget without the Union charging him with an unfair labor practice. Therefore, the Union has the Employer's assurance that this provision will not prevent the parties from continuing to bargain in good faith after March 15, 2004, without the fear that this language gives the Employer an excuse to force a settlement on the Union.

8. No party to the collective bargaining agreement referred to in paragraphs 5, 6, and 7, above, served written notice of desire to cancel or terminate the collective bargaining agreement upon the other party at least one hundred and twenty (120) days prior to the date of expiration.

9. At some point prior to February 17, 2004, the Union contacted the Town to schedule a meeting to begin preliminary negotiations for a successor collective bargaining agreement.

10. The Town and the Union met on February 17, 2004. During the February 17, 2004 meeting, the Town and the Union negotiated over and reached an agreement on the ground rules for their negotiations for a successor collective bargaining agreement. The Town and the Union memorialized their agreement in a writing with the heading *Negotiation Ground Rules*. The Town and the Union signed the ground rules agreement on February 17, 2004. A copy of the February 17, 2004 *Negotiation Ground Rules* [not published] is attached, and its complete text is incorporated into this Statement of Undisputed Facts.

11. During the February 17, 2004 meeting between the Town and the Union, the Union submitted their preliminary proposals for a successor collective bargaining agreement. A copy of the Union's February 17, 2004 proposals [not published] is attached, and its complete text is incorporated into this Statement of Undisputed Facts.

12. On March 5, 2004, the Union sent the Town written notice of their desire to enter into negotiations concerning wages, hours, and other conditions of employment. A copy of the Union's March 5, 2004 letter [not published] is attached, and its complete text is incorporated into this Statement of Undisputed Facts.

13. On March 9, 2004, the Town, through Police Chief Robert D. Campbell, acknowledged receipt of the Union's March 5, 2004 letter. A copy of the Town's March 9, 2004 letter [not published] is attached, and its complete text is incorporated into this Statement of Undisputed Facts.

14. The February 17, 2004 meeting described in paragraphs 9, 10, and 11, above, was the only meeting between the Town and the Union regarding negotiations for a successor collective bargaining agreement.

#### DISCUSSION

The issue presented here is whether the collective bargaining agreement (the Agreement) between the Town and the Union had automatically renewed under Article 33.1 for contract bar purposes, thereby precluding the processing of the Association's petition filed on July 15, 2004, after the fixed termination date of the Agreement.<sup>1</sup>

Section 14.06(1)(a) of the Commission's regulations, 456 CMR 14.06(1)(a), in part provides:

Except for good cause shown, no petition filed under the provisions of M.G.L. c.150E, §4 shall be entertained during the term of an existing valid collective bargaining agreement, 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 years.

The Town argues that the Agreement automatically renewed itself for a successive term of at least one year, until June 30, 2005, because no party to the agreement filed written notice of desire to cancel or terminate the Agreement under the procedure contained in Article 33.1. The Association had the opportunity to file its petition with the Commission no more than one hundred and eighty days and no fewer than one hundred and fifty days prior to June 30, 2004, the fixed termination date of the Agreement, but failed to do so. Therefore, by operation of the automatic renewal provision of the Agreement, there was a valid collective bargaining agreement in effect on July 15, 2004, the date the Association filed this petition. The Association argues that the automatic renewal language does not require dismissal of its petition as untimely filed because the Union notified the Town of its desire to negotiate changes or modifications in the Agreement pursuant to Article 33.2, and the Town and the Union started negotiations for a successor contract on February 17, 2004.

In *City of Somerville*, 1 MLC 1312 (1975), the Commission decided that an incumbent employee organization's expressed desire to negotiate changes and revisions in the existing contract that was received by the public employer immediately preceding the automatic renewal date provided for in the contract prevented that contract's renewal for contract bar purposes, despite any provision or agreement for its continuation during negotiations, and regardless of the form of notice. *City of Somerville*, 1 MLC at 1314-1316, *cit-*

1. The decision is limited to this narrow issue presented in the representation case context.

## MLRC Administrative Law Decisions—2004

ing, *Town of Billerica School Committee*, MCR-595, slip op. (Jun 5, 1970). In reaching this decision, the Commission affirmed the importance of establishing clear rules for all the parties, including employers, employee organizations, and employees, to know when to file representation petitions with the Commission.

We perceive no compelling reason to depart from the Commission's rationale expressed in the *Somerville* decision. Therefore we hold that the Union's expressed desire to negotiate changes and revisions in the Agreement that was communicated to the Town at some point prior to February 17, 2004 and confirmed in writing on March 5, 2004, coupled with the ground rules agreement and the Union's submission of its preliminary proposals for a successor contract during the February 17, 2004 meeting, preclude the automatic renewal of the Agreement for contract bar purposes in a representation case filed with the Commission. Accordingly, the Association's petition filed on July 15, 2004, after the fixed termination date of the contract and in the absence of a new written collective bargaining agreement, is timely filed.

The Commission's holding in *Quincy School Committee*, 23 MLC 173 (1997) does not require a different result. In *Quincy School Committee*, the Commission dismissed a petition filed 109 days prior to the fixed expiration date of the contract and more than two years prior to the expiration of the agreement as extended by its terms. *Id.* Unquestionably, the Commission's dismissal could have relied solely on the fact that the petition was not filed no more than 180 days and no fewer than 150 days prior to the fixed termination date in the contract. *See*, 456 CMR 14.06(1)(a). To the extent the Commission's ruling in *Quincy School Committee* may be read to acknowledge the continuing validity of the agreement beyond the fixed termination date for contract bar purposes, that holding is consistent with the Commission's *Somerville* decision and our holding here. Specifically, unlike the facts in *Somerville* and the facts here, neither party to the contract had sought to modify or terminate the collective bargaining agreement under the duration clause before the automatic renewal date in the contract, nor had the parties started negotiations for any successor collective bargaining agreement. *Quincy School Committee*, 23 MLC at 173-174.

### CONCLUSION

For the reasons stated above, the Town's motion to dismiss is denied.

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