
In the Matter of TOWN OF RANDOLPH
 and
 NEW ENGLAND POLICE BENEVOLENT ASSOCIATION,
 INC., I.U.P.A., AFL-CIO
 and
 INTERNATIONAL BROTHERHOOD OF POLICE
 OFFICERS

Case No. MCR-06-5217

42.4 schism
42.6 disaffiliation
45.1 contract bar
91.1 dismissal

January 31, 2007

John F. Jesensky, Chairman
Paul T. O'Neill, Commissioner

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RULING ON CONTRACT BAR

Statement of the Case

On June 27, 2006, the New England Police Benevolent Association, Inc., I.U.P.A., AFL-CIO (NEPBA) filed a petition with the Labor Relations Commission (Commission) seeking to represent the full-time police officers employed by the Town of Randolph (Town) and currently represented by the International Brotherhood of Police Officers (IBPO). On July 24, 2006, the IBPO filed a motion to intervene in this case, which the Commission allowed.

The NEPBA's petition states that the employees at issue are covered by a collective bargaining agreement (Agreement) that expires on June 30, 2007, but, by footnote, "alleges a good cause exception to the contract bar." Then on July 24, 2006, the Commission directed the NEPBA to show cause why the Commission should not dismiss the NEPBA's petition pursuant to the Commission's contract bar rule, 456 CMR 14.06. The NEPBA filed a response to the Commission's show cause letter on August 23, 2006 and requested a hearing on the matter. By letter dated September 6, 2006, the Town notified the Commission that it wished to remain neutral on the application of the contract bar. On September 14, 2006, the IBPO filed a reply to the NEPBA's response, urging the Commission to apply the contract bar rule and to dismiss the NEPBA's petition. On October 16, 2006, the full

Commission granted NEPBA's motion for hearing on the waiver of the contract bar rule and noticed a pre-hearing conference before the full Commission for October 23, 2006 at 9:30AM. On October 23, 2006 at the beginning of the scheduled hearing, NEPBA represented that there were no substantive facts in dispute and that the case should be decided solely on the pleadings already submitted in the case. NEPBA and IBPO then signed a stipulation waiving the formal hearing and agreeing to rely solely on the written submissions that they previously had filed in response to the Commission's show cause letter as predicates for the Commission's decision on the issues raised in the show cause letter.

Opinion

Commission Rule 14.06(1)(a), 456 CMR 14.06(1)(a), provides in pertinent part:

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 fifty (150) days prior to the termination date of said agreement. ...

The purpose of the contract bar rule is the continuation of stable labor relations during the term of a valid collective bargaining agreement without the uncertainty and disruption caused by organization rivalries. *Chief Justice for Administration and Management of the Trial Court*, 29 MLC 10, 13 (2002). Although exceptions to the rule are rarely found, removal of a contract as a bar to an election may be warranted in cases where the bargaining relationship has been substantially disrupted, and there is a threat to bargaining stability. *Town of Athol*, 31 MLC 53 (2004). In those cases, an election is warranted to reestablish bargaining stability. *See City of Worcester*, 1 MLC 1069, 1072 (1974); *Hershey Chocolate*, 121 NLRB 901, 906 (1958). The Commission has concluded that waiving the contract bar is appropriate where a schism exists. A schism is defined as a fundamental intra-union conflict existing on the international level that is accompanied by a related disaffiliation at the local level, producing a lack of continuity in the identity of the bargaining representative. *City of Worcester*, 1 MLC at 1071.

In this case, the NEPBA asserts that the July 25, 2005 disaffiliation of SEIU - the IBPO's parent organization - from the AFL-CIO and subsequent affiliation with a coalition of unions known as "Change to Win" (CTW) caused a change in the bargaining representative that warrants application of the good cause exception to the contract as a bar to its petition. The NEPBA presented evidence that the petitioned-for employees did not receive an opportunity to vote on the disaffiliation and that they had expressed interest in leaving the IBPO before and after the CTW affiliation. However, the very limited evidence presented is insufficient to establish good cause in this case. Even if the Commission were to assume that SEIU's withdrawal from the AFL-CIO and subsequent affiliation with CTW without a membership vote establishes a lack of due process, the NEPBA did not present any evidence establishing that SEIU's affiliation with CTW substantially altered or removed the locus of negotiating authority from the IBPO or that the change in affiliation effected substantial changes in the

substantive bargaining rights, benefits, organizational structure or mission of the employee organization. *See generally, Belmont School Committee*, 9 MLC 1343 (1982) (new union affiliation did not change employer's obligation or ability to bargain with the local union).

Further, the unit members' long-standing dissatisfaction with the IBPO does not support a finding of the necessity of an immediate election. The Commission does not waive the contract bar rule merely because members of the bargaining unit are dissatisfied with their bargaining representative. *Quincy School Committee*, 23 MLC 173, 174 (1997); *City of Worcester*, 1 MLC at 1075. In addition, the scant evidence presented in this case by NEPBA is likewise insufficient to support a finding that due process was required for the disaffiliation and affiliation, let alone not actually provided to the membership. To prevail in this case, the NEPBA had the burden of making a *prima facie* showing that the disaffiliation from the AFL-CIO and the affiliation with CTW resulted in a change in continuity of the bargaining representative. Mere disaffiliation from the AFL-CIO, and affiliation with another employee organization did not, alone, adequately establish such a change. The NEPBA provided no evidence at all on the procedures employed for the Change To Win affiliation nor alleged whether that affiliation represented a change in the continuity of the bargaining representative. Absent additional evidence establishing substantial changes in the substantive bargaining authority or rights, benefits, organizational structure or mission of the new CTW affiliated employee organization, the NEPBA's petition fails to establish the good cause necessary to warrant an exception to the contract bar rule here.

Conclusion

For the reasons stated above, the NEPBA has not shown good cause for an exception to the contract bar rule. The Agreement bars further processing of the NEPBA's representation petition, and the NEPBA's petition is dismissed.

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