

In the Matter of CITY OF METHUEN

and

NEW ENGLAND POLICE BENEVOLENT ASSOCIATION,
I.U.P.A., AFL-CIO

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 49

Case No. MCR-09-5358

43.323 misconduct in voting area
93.14 election challenges

May 26, 2009

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Peter J. McQuillan, Esq. Representing the City of Methuen
Bernard L. Tyler, Jr. Representing International
Brotherhood of Teamsters, Local
49
Diane S. Byrnes, Esq. Representing the NEPBA,
I.U.P.A., AFL-CIO

RULING ON AN OBJECTION TO AN ELECTION

Statement of the Case

On January 26, 2009, the New England Police Benevolent Association, I.U.P.A., AFL-CIO (Petitioner or NEPBA) filed a representation petition with the Division of Labor Relations (Division) seeking to represent a bargaining unit of dispatchers and parking control officers employed by the City of Methuen (City). The incumbent exclusive collective bargaining representative, the International Brotherhood of Teamsters, Local 49 (Incumbent or Teamsters) subsequently intervened in the case.

The City, the Petitioner, and the Incumbent signed a consent election agreement, and the Division conducted an election on April 30, 2009. The results of the election were as follows:

NEPBA:	6
Teamsters:	2
No Union:	0
Challenged Ballots:	0
Blank Ballots:	0
Void Ballots:	0
Protested Ballots:	0

On April 30, 2009, the Incumbent filed an objection to the election and asked the Division to set aside the election and investigate the matter. The City and the Petitioner filed responses on or about May 8, 2009 and May 14, 2009, urging the Commonwealth Employment Relations Board (CERB) to dismiss the objection.

Discussion

Division Rule 14.12 (3), 456 CMR 14.12 (3) provides that:

... Within seven days after the tally of the ballots has been furnished, any party may file with the Division an original and four copies of objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of person involved, and the date, place, time and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of objections and any other submissions which the Division may permit, the Division shall determine whether any of the objections merit further proceedings and may dismiss some or all of the objections if the Division does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election....

The Incumbent, through its President and Business Agent Bernard Tyler, Jr. (Tyler), alleged that during the election, Dispatcher Robert Finn (Finn), whom Tyler believes initiated the NEPBA's representation petition, stood in the hallway leading to the voting area and stopped and spoke to each eligible voter before they voted. Tyler believed that Finn was campaigning for the Petitioner during these conversations, but presented no evidence supporting his belief.

The Board does not treat all comments between a party to an election and voters as per se grounds for overturning an election. Where there is no substantial evidence of sustained conversation and campaigning with prospective voters in the polling area, objections of this type must be dismissed. *Commonwealth of Massachusetts*, 16 MLC 1292, 1307 (1989).

Here, Tyler states that:

Due to the fact that Dispatcher Robert Finn started this petition with the New England Police Benevolent Association for the election, I feel that he was campaigning for the Police Association and therefore I object to his conduct during the voting procedure. I feel that his conduct interfered with the election results.

These subjective impressions, without more, are insufficient to establish probable cause to believe that electioneering or any type of sustained conversations occurred that improperly affected the results of the election or to merit further proceedings pursuant to Division Rule 14.12 (3), 456 CMR 14.12 (3).

Conclusion

There is no evidence warranting invalidation of the results of the election, and the objection is dismissed. Accordingly, a certification of the results of the election shall issue reflecting that the NEPBA, I.U.P.A., AFL-CIO is the certified collective bargaining representative of the employees at issue in this case.

SO ORDERED.

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