

In the Matter of CITY OF BOSTON

and

BOSTON PARK RANGERS ASSOCIATION

and

SALARIED EMPLOYEES OF NORTH AMERICA, LOCAL 9158, UNITED STEELWORKERS OF AMERICA

Case No. MCR-08-5332

45.1 contract bar

July 11, 2008

Michael A. Byrnes, Chairman

Paul T. O'Neill, Board Member

T. Martin Roach, Jr., Esq. Representing the City of Boston

Mark A. Hickernell, Esq. Representing the Boston Park Rangers Association

Warren H. Pyle, Esq. Representing the Salaried Employees of North America, Local 9158, United Steelworkers of America

### RULING ON CONTRACT BAR<sup>1</sup>

#### Statement of the Case

On March 10, 2008, the Boston Park Rangers Association (Association) filed a petition with the Division of Labor Relations (Division) seeking to represent all full-time, part-time, and seasonal park rangers, including the chief park ranger, employed by the City of Boston (City). On March 24, 2008, the Salaried Employees of North America, Local 9158, United Steelworkers of America (Union) moved to intervene for the purpose of protecting its existing City-wide bargaining unit of middle managers. On May 2, 2008, the Division allowed the Union's unopposed request to intervene.

By letter dated May 12, 2008, the Division directed the parties to show cause why the portion of the petition seeking to sever the chief park ranger from the Union's bargaining unit should or should not be dismissed on the grounds that it is untimely filed. See, 456 CMR 14.06(1)(a). The Division received all parties' memoranda on or before May 28, 2008.

#### Findings of Fact

The Union's bargaining unit, as certified by the Board on June 2, 1986 in Case No. MCR-3598, *City of Boston*, includes:

All administrative and supervisory employees in the following departments: administrative services, assessing, auditing, retirement

board, traffic and parking, inspectional services, veteran's services, city clerk's office, treasurer and collecting, election, fire, law, parks and recreation, police, real property, public works, health and hospitals, excluding managerial, professional, and confidential employees, and all other City employees

The position of chief park ranger has been included in Union's bargaining unit since at least 1987.

It is undisputed that the City and the Union signed a collective bargaining agreement on December 5, 2007 that covers the bargaining unit described above, including the chief park ranger, for "the period commencing July 1, 2006 and ending on June 30, 2008, and the period commencing July 1, 2008 and ending on September 30, 2010" (Agreement). The Agreement contains the wages, hours and other terms and conditions of employment, like sick leave, personal days, and insurance, for the members of the Union's bargaining unit.

#### Opinion

Division Rule 14.06(1)(a), 456 CMR 14.06(1)(a), 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 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 purpose of the contract bar rule is to establish and promote the stability of labor relations and to avoid instability of labor agreements. *Town of Athol*, 31 MLC 53 (2004), and cases cited. The Board's application of the contract bar rule is discretionary. *Chief Justice of the Administration and Management of the Trial Court*, 29 MLC 10, 13 (2002), citing, *Boston Water and Sewer Commission*, 6 MLC 1601, 1604 (1979). However, exceptions to the contract bar rule are rarely found and generally require evidence of substantial disruption in bargaining relationships and threats to labor stability. *Town of Saugus*, 28 MLC 80, 83 (2001), citing, *Boston Water and Sewer Commission*, 6 MLC at 1603.

For a collective bargaining agreement to bar the processing of a petition, the evidence must establish the existence of a complete and final agreement signed by all parties prior to the filing date of a rival petition. *Town of Burlington*, 14 MLC 1632 (1988). To be complete, an agreement must contain substantial terms and conditions of employment and may not be conditioned upon further negotiations. *Town of Westminster*, 23 MLC 153, 155 (1996), citing, *Town of Burlington*, 14 MLC at 1635, n.10. If an agreement is contingent upon ratification, it must be ratified before the rival petition is filed for the Board to determine that the agreement is final. *Town of Westminster*, 23 MLC at 155, citing, *Commonwealth of Massachusetts*, 7 MLC 1825, 1829-1830. (1981).

1. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the Labor Relations Commission."

References in this ruling to the Commonwealth Employment Relations Board (Board) include the former Labor Relations Commission (Commission).

The City and the Union argue that the Association's petition is untimely filed to the extent it seeks to sever the chief park ranger from the Union's bargaining unit, and that no good cause exists to waive the application of the Division's contract bar rule. The Association concedes that the Agreement bars its efforts to include the chief park ranger in the petitioned-for unit. The Association also agrees that the Board has not found good cause to waive the application of the contract bar rule under similar circumstances.

Here, the Association filed its petition seeking, in part, to sever the chief park ranger from the Union's bargaining unit on March 10, 2008 during the term of the Agreement. Further, it is undisputed that the Association did not file the petition during the open period of the Agreement provided for in Division Rule 456 CMR 14.06(1)(a). Finally, the Association has not proffered any facts or arguments to show that good cause exists to waive the application of the Division's contract bar rule.

#### Conclusion

Applying Division Rule 14.06(1)(a), 456 CMR 14.06(1)(a), to these undisputed facts, the portion of the Association's petition seeking to sever the position of chief park ranger from the Union's bargaining unit is dismissed on the grounds that it is untimely filed.

SO ORDERED.

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