In the Matter of CITY OF SPRINGFIELD

and

SPRINGFIELD CLERICAL EMPLOYEES ASSOCIATION

and

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93, LOCAL 1596, AFL-CIO

Case No. MCR-08-5327

28	***relationship between c.150E and other statutes not enforced by the Commission***
45.1	***contract bar***

July 18, 2008
Michael A. Byrnes, Chairman
Paul T. O'Neill, Board Member

Maurice M. Cahillane, Esq.	*Representing the City of Springfield*
Devin M. Moriarty, Esq.	*Representing the Springfield Clerical Employees Association*
Joseph L. DeLorey, Esq.	*Representing the American Federation of State, County and Municipal Employees, Council 93, Local 1596, AFL-CIO*

RULING ON MOTION TO DISMISS DECISION AND DIRECTION OF ELECTION[1]

Statement of the Case

On January 31, 2008, the Springfield Clerical Employees Association (Association) filed a petition with the Division of Labor Relations (Division) seeking to represent certain employees of the City of Springfield (City) who are currently represented by the American Federation of State, County and Municipal Employees, Council 93, Local 1596, AFL-CIO (Union). On February 15, 2008, the Union filed an unopposed motion to intervene, which the Board allowed on March 24, 2008.

The City argues that the petition is untimely filed, because there are three successive collective bargaining agreements between the City and the Union that do not expire until June 30, 2012. The Association maintains that the petition is timely filed. The Union states that there is no contract bar to the instant petition. To resolve this issue, the Board treated the City's argument as a motion to dismiss. The City filed a Motion to Dismiss (Motion), and Ann T. Moriarty, Esq., a duly-designated hearing officer (Hearing Officer), conducted an investigative hearing on the Motion on May 1, 2008. On or before May 22, 2008, all three parties filed a memorandum in support of their respective positions.

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 and decision to the Commonwealth Employment Relations Board (Board) include the former Labor Relations Commission (Commission).

Findings of Fact[2]

The City, the Association, and the Union stipulated to the following facts:

1. The City is a public employer within the meaning of Section 1 of G.L. c.150E (the Law).

2. The Union is an employee organization within the meaning of Section 1 of the Law.

3. The Association is an employee organization within the meaning of Section 1 of the Law.

4. On January 31, 2008, the Association filed a petition with the Division seeking to represent the bargaining unit, described below, that is presently represented by the Union. The bargaining unit is described as follows:

> All full-time and regular part-time white collar nonprofessional clerical and administrative employees in all city departments, excluding registered nurses, licensed practical nurses, building department inspectors, civil engineers, all casual employees, supervisors, managerial and confidential employees.

5. The City is presently under the control of the Springfield Finance Control Board (FCB) whose origin, creation, authority, duties and powers are as stated in the Acts of 2004, Chapter 169.

6. The City and the Union are parties to a collective bargaining agreement. The Union and the City, through the FCB, negotiated and reached agreement on and signed a Memorandum of Agreement (MOA) on December 22, 2005. The Union voluntarily agreed to all of the MOA provisions as the representative of the bargaining unit.

7. The MOA contains the following provisions:

> Duration (Unit A and Unit B):
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> First successor agreement: July 1, 2005 through June 30, 2008
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> Second successor agreement: July 1, 2008 through June 30, 2011
>
> Third successor agreement: July 1, 2011 through June 30, 2012

8. The unit appropriate for the purposes of collective bargaining is as follows:

> All full-time and regular part-time nonprofessional clerical and administrative employees, all building custodians, and all dispatchers employed by the City of Springfield in all city departments, but excluding all employees in the library department, and further excluding registered nurses, licensed practical nurses, building department inspectors, civil engineers, all casual employees, supervisors, managerial and confidential employees, and all other employees of the City of Springfield.

The following facts are based on testimonial and documentary evidence.

The MOA changed the terms of the collective bargaining agreement between the City and the Union that covered the period July 1, 2000 through June 30, 2003 (2000-2003 Agreement). In addition to the duration provision, described in paragraph 7, above, the MOA either changed certain provisions in the 2000-2003 Agreement or added new terms and conditions of employment in the following areas: wages, insurance, signing bonus, reductions in force, union business leave, and incentive leave. The MOA also contains the following provision:

> Legislation[3]
>
> The Financial Control Board agrees to propose and sponsor legislation regarding the term of the collective bargaining agreement(s) (i.e., allowing for contract term longer than three years in duration). The Union agrees it will endorse and support such legislation.[4]

On or about January 18, 2006, the members of the Union's bargaining unit, described in paragraph 8, above, ratified the MOA.[5]

Opinion

Contract Bar

Section 4 of the Law, in relevant part, provides:

> Except for good cause no election shall be directed by the commission in an appropriate unit within which a valid election has been held in the preceding twelve months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Section 7(a) of the Law, in relevant part, provides that "[a]ny collective bargaining agreement reached between the employer and

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2. The Board's jurisdiction is uncontested.

3. The sole issue before the Board is whether there exists a bar to the processing of this representation petition. As stated in the opinion section, below, for the purposes of applying the contract bar rule, our ruling would be the same whether the MOA is viewed as a contract for seven years or as three separate, successive contracts, none of which exceed the term of three years. Consequently, any factual findings about the negotiations between the City and the Union that led to this provision are immaterial to our ruling on the Motion and, therefore, not included in this ruling.

4. The Board takes administrative notice of House No. 5082, An Act Further Enhancing Financial Stability in the City of Springfield, filed by the Governor of the Commonwealth of Massachusetts on June 21, 2006, during the 184th legislative session, which has concluded. House No. 5082, in relevant part, provided:

> Section 6. Notwithstanding section 7(a) of chapter 150E of the General Laws, or any other general or special law, charter or ordinance to the contrary, any collective bargaining agreement entered into by the city of Springfield and any of its collective bargaining units, including school department agreements, may exceed a term of 3 years, but shall not exceed a term of 7 years, provided the designated bargaining agent for the city shall reopen negotiations with respect to wages in the third and sixth years of such agreements. This provision will be effective only for agreements entered into by or with the approval of the finance control board of the city of Springfield established by section 4 of chapter 169 of the acts of 2004 or any receiver appointed under section 5 of said chapter 169. This provision will be effective for agreements for fiscal years beginning July 1, 2005 and any agreements entered into with any collective bargaining units of the city on or after that date are hereby validated and confirmed.
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> Section 9. Section 6 shall be effective as of July 1, 2005.

On June 22, 2006, the bill was referred to the committee on House Ways and Means. The legislature took no further action on the bill.

5. During the hearing, the Association argued, in part, that a complete and final agreement signed by the City and the Union prior to the filing of the instant petition did not exist. The Association did not pursue this argument in its brief.

the exclusive representative shall not exceed a term of three years."

Pursuant to these statutory directives and its statutory authority, the Board promulgated rules regulating the filing of representation petitions. Division Rule 14.06(1)(a), 456 CMR 14.06(1)(a) (contract bar rule), is applicable to the instant case and 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 first sentence of the contract bar rule complies with Section 4 of the Law by providing for an appropriate time period for filing a representation petition when a valid collective bargaining agreement is in effect. The rule's purpose 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. Although the Board's application of this part of the 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), exceptions 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. Furthermore, the Board has decided that a successor contract, which is negotiated and ratified prior to the open period for filing petitions under the existing valid collective bargaining agreement, will not operate as a bar to a petition that is timely filed under the existing contract. *Saugus School Committee*, 2 MLC 1412, 1414 (1976).

The second sentence of the contract bar rule mirrors the statutory mandate in Section 7(a) of the Law by providing that "[n]o collective bargaining agreement shall operate as a bar for a period of more than three years." The contract bar rule's three-year limit on collective bargaining agreements serves both to protect a public employer and the incumbent employee organization from too-frequent challenges and to preserve the opportunity for employees to re-examine their choice of bargaining representative at least every three years. *Town of Burlington*, 3 MLC 1440, 1441 (1977). If a valid contract exceeds a fixed term of three years, for the purposes of determining whether the contract bars the processing of a petition filed by employees or by a rival employee organization, that contract is treated as a contract for a fixed term of three years. *Accord*, *Massasoit Greyhound Association*, 18 MLC 1372, 1373 (1992) (contract for a term in excess of three years does not bar a petition beyond its third anniversary date under Division Rule 4.02, 456 CMR 4.02); *General Cable Corporation*, 139 NLRB 1123, 1125 (1962) (contracts having fixed terms longer than three years will be treated for bar purposes as three-year agreements). Consequently, under the contract bar rule, the thirty-day open period for the filing of a petition during the term of an existing contract that exceeds a fixed term of three years is no more than 180 days and no fewer than 150 days prior to the third anniversary date of the contract.

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).

Here, it is undisputed that the City and the Union signed the MOA on December 22, 2005. Furthermore, the MOA incorporated the provisions of the 2000-2003 Agreement with the agreed-upon and ratified changes to the wage, insurance, leave, and duration provisions, among others. Therefore, there was a complete and final agreement in effect before the Association filed this petition on January 31, 2008. The facts also establish that the Association filed the instant petition no more than 180 days and no fewer than 150 days prior to June 30, 2008.

Applying the contract bar rule for both the filing of petitions during the term of an existing valid collective bargaining agreement and the legislatively-mandated three year bar leads us to conclude that the MOA between the City and the Union does not bar the processing of this petition. Here, it is of no legal consequence to the application of the contract bar rule whether the MOA is a contract of seven years duration or an agreement that contains three successive, successor contracts, none of which exceeds a fixed term of three years, with the first fixed term expiring on June 30, 2008. The City argues, however, that the Board should find that the legislative purpose of Chapter 169 of the Acts of 2004, An Act Relative to the Financial Stability in the City of Springfield (Chapter 169), supersedes Section 7(a) of the Law.[6] We disagree.

The Board recognizes the important purposes of Chapter 169. However, Chapter 169 does not expressly revoke or modify any provision of the Law, including Section 7(a). Absent express leg-

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6. The City directs the Board's attention to the following language found in Section 1 of Chapter 169:

> Section 1. The general court finds that:
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> The fiscal crisis poses an imminent danger to the safety of citizens of the city and their property.
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> In order to assure a comprehensive long-term solution to the city's financial problems, it is necessary to enact extraordinary remedies, including a finance control board and, if necessary, a receiver, with the powers necessary to achieve the intent of this act.
>
> The governor has recommended to the general court pursuant to section 8 of Article LXXXIX of the Amendments to the Constitution that legislation be enacted to resolve the financial emergency in the city and to restore financial stability to the city.

islative action revoking or modifying the Law, the Board will not exempt the MOA from the legislatively-mandated contract bar rule limiting the fixed term of a contract to three years for the purposes of determining whether a petition is timely-filed by a non-party to the contract.[7]

This is not a balancing test of competing interests. Rather, by processing the petition, the Board is fairly and impartially interpreting and applying the unambiguous language of Section 7(a) of the Law and the Division Rule incorporating that legislative mandate for the purposes of protecting the rights of the employees under Section 2 of the Law.[8] To deny the employees the opportunity to re-examine their choice of a bargaining representative, including whether they desire to be represented by any employee organization, for about four more years is contrary to the legislatively-mandated contract bar rule and would not effectuate the purposes and the policies of the Law.

Stipulated Appropriate Bargaining Unit

When issues raised by a representation petition are resolved by the parties' stipulations, the Board will adopt those stipulations if they do not conflict with the Law or established Board policy. *North Attleborough Electric Department*, 32 MLC 66, 71 (2005), further citations omitted. Here, the parties stipulated that the existing bargaining unit consisting of all full-time and regular part-time nonprofessional clerical and administrative employees, all building custodians, and all dispatchers employed by the City of Springfield in all city departments, but excluding all employees in the library department, and further excluding registered nurses, licensed practical nurses, building department inspectors, civil engineers, all casual employees, supervisors, managerial and confidential employees, and all other employees of the City of Springfield, constitutes an appropriate bargaining unit. Because the parties' stipulation does not appear to conflict with the Law or established Board precedent or policy, we adopt it.

Conclusion and Direction of Election

For the reasons stated above, the Board DENIES the Motion to Dismiss and concludes that a question of representation has arisen concerning certain employees of the City of Springfield and that the following constitutes an appropriate unit for collective bargaining within the meaning of Section 3 of the Law:

> All full-time and regular part-time nonprofessional clerical and administrative employees, all building custodians, and all dispatchers employed by the City of Springfield in all city departments, but excluding all employees in the library department, and further excluding registered nurses, licensed practical nurses, building department inspectors, civil engineers, all casual employees, supervisors, managerial and confidential employees, and all other employees of the City of Springfield.

IT IS HEREBY DIRECTED that an election by secret ballot shall be held for the purpose of determining whether a majority of the employees in the above-described bargaining unit desire to be represented by the Springfield Clerical Employees Association or by the American Federation of State, County and Municipal Employees, Council 93, Local 1596, AFL-CIO or by no employee organization.

The eligible voters shall include all those persons within the above-described unit whose names appear on the City of Springfield's payroll for the payroll period ending the Saturday preceding the date of this decision and who have not since quit or been discharged for cause. This list must be either electronic (e.g. Microsoft Access or Excel) or in the form of mailing labels.

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 three copies of an alphabetized election eligibility list containing the names and addresses of all eligible voters must be filed by the City of Springfield with the Executive Secretary of the Division, Charles F. Hurley Building, 19 Staniford Street, 1st Floor, Boston, MA 02114 not later than fourteen days from the date of this decision.

The Executive Secretary shall make the list available to all parties to the election. Failure to submit the 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. 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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7. In its brief, the City asserts that the Board's affirmation of the Hearing Officer's evidentiary ruling to exclude from the investigatory record twenty-two other contracts between the City and other employee organizations is clearly reversible error, because the proffered evidence is indisputably relevant to the City's argument that, under Chapter 169, the FCB had a need and an obligation to enter into multiple successor agreements. The City filed an interlocutory appeal of the Hearing Officer's ruling under Division Rule 13.03, 456 CMR 13.03. Applying the abuse of discretion standard applicable to interlocutory appeals, we affirmed the Hearing Officer's ruling. *See, City of Cambridge*, 30 MLC 31 (2003) (Board applies an abuse of discretion standard when ruling on interlocutory appeals). Moreover, even if the twenty-two contracts, all containing the same or substantially similar duration provision as the MOA, were admitted into evidence, the outcome in this ruling would not be different.

8. Section 2 of the Law, in part, provides:

> Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through a representative of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion.

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