

In the Matter of TOWN OF ACTON

and

DALE MacGILLIVARY

and

AFSCME, COUNCIL 93, AFL-CIO

Case No. MCR-08-5346

42. *Decertification*

December 4, 2009

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Paul Hodnett, Esq. *Representing the Town of Acton*
Joseph DeLorey, Esq. *Representing AFSCME, Council
93, AFL-CIO*
Dale MacGillivary *Pro Se*

RULING ON MOTION TO DISMISS

Statement of the Case

On September 25, 2008, Dale MacGillivary (Mr. MacGillivary or Petitioner) filed a representation petition with the Division of Labor Relations with respect to a five-person bargaining unit of employees employed by the Town of Acton (Town) in its Municipal Properties Department (MPD). The petition lists AFSCME, Council 93, AFL-CIO as the incumbent employee organization. On October 17, 2008, AFSCME filed a motion to intervene¹ and a position statement seeking to clarify the nature of the petition.² On October 29, 2008, the Petitioner filed a position statement signed by the five MPD employees stating in part that, “the employees of the Town of Acton, Municipal Properties Department request a vote to decertify from AFSCME, Council 93, Local 1703.”

AFSCME filed a motion to dismiss the petition on December 8, 2008 on the grounds that the petition seeks a decertification vote in an inappropriate unit. The Petitioner filed an opposition to the motion on December 16, 2008.

For the reasons set forth below, the Board grants the motion to dismiss.

Facts

The facts are not in dispute. In 1971, the former Labor Relations Commission³ certified a unit consisting of “all highway employees employed in the Town of Acton (heavy equipment operator, highway and maintenance men).” Case No. MCR-868 (May 20, 1971).

In or around 1984, the MPD employees were added to the unit⁴ and they have been in the unit since then as reflected in the recognition clause contained in the parties’ 2005-2008 collective bargaining agreement, which states:

The Town recognizes the Union as the sole and exclusive bargaining agent for the full and part-time employees of the Highway and Municipal Properties Department covered by this Agreement, and the full-time and part-time maintenance employees, grounds keepers, and custodians in the Municipal Properties Department and in the Library as hereinafter described for the purpose of collective bargaining . . . excepting the Superintendents of the Highway Department and Municipal Properties Department, Assistant Highway Superintendent, temporary and seasonal employees and employees who have been with the department for less than six (6) months.

The Union’s position statement included a copy of a two-page document titled “Petition for Decertification” that states, “Acton Municipal Properties Employees (excluding the Highway Dept Employees) wish to decertify from the Union and not be represented by [AFSCME].” The petition was signed by five MPD employees and three Highway Department employees.

The Petitioner’s response to AFSCME’s motion to dismiss states that the five MPD employees “clearly are not interested and have no intentions of forming or joining another bargaining unit.”

Opinion

As a preliminary matter, we note that, although the face of the petition is ambiguous, it is clear from the parties’ other submissions that Mr. MacGillivary filed this petition as an individual who seeks to decertify AFSCME as the exclusive bargaining representative of the MPD employees. It is also clear from the Petitioner’s submissions that the MPD employees do not seek to form or join a separate bargaining unit. We therefore treat this petition as a decertification petition and not as a severance petition, which must be filed by an employee organization that seeks to represent a particular group of employees in an existing bargaining unit in a separate bargaining unit. *Town of Athol*, Case No. MCR-04-5083, slip. op. at. 6 (May 25, 2004) [31 MLC 53].

1. The Commonwealth Employment Relations Board grants the Motion to Intervene.

2. AFSCME sought clarification as to whether the petition was seeking to decertify it as the exclusive representative of its entire bargaining unit, comprised of both highway department and MPD employees; only a portion of this unit; or whether the petition was a severance petition filed by an employee organization seeking to represent the MPD employees in a separate unit.

3. 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.” The Commonwealth Employment Relations Board (Board) is the Division agency charged with deciding adjudicatory matters. References to the Division and the Board include the former Labor Relations Commission.

4. The record does not reflect how this was accomplished, but the Board takes administrative notice of the fact that, until now, it has not received or processed any unit clarification or representation petitions regarding this unit since 1971.

CITE AS 36 MLC 100

Here, the existing bargaining unit consists of both Highway Department and MPD employees, but the Petitioner seeks decertification only with respect to five MPD employees. It is well-established that, with a single limited exception not applicable here,⁵ the appropriate unit in cases involving employee petitions to decertify an existing bargaining unit must be coextensive with either the unit previously certified by the Board or the one recognized by the parties. *Geriatric Authority of Holyoke*, 15 MLC 1139, 1140 (1988); *City of Lynn*, 2 MLC 1541, 1545 (1976). We therefore grant the motion to dismiss this petition because the Petitioner seeks to decertify only a portion of the existing bargaining unit. Although the Petitioner opposes the motion to dismiss on the grounds that the MPD employees are a functionally distinct unit that AFCME has treated differently from Highway Department employees with respect to issues such as wages and overtime, those concerns are relevant only in the context of severance petitions. *City of Boston*, 25 MLC 105, 119 (1999).

Conclusion

For the reasons described above, the Board allows AFSCME's motion to dismiss.

SO ORDERED.

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5. In *City of Boston*, 36 MLC 29 (2009), the Board cited with approval the NLRB's policy of allowing decertification petitions of partial units, where the petitioning employees consist of professional employees who had not previously been given the opportunity to vote whether they wished to be included in a bargaining unit of non-professional employees. *Id.* at 39 (citing *Utah Power and Light*, 258 NLRB 1059, 1061 (1981)). Because there is no evidence, and the Petitioner does not claim, that the MPD employees are professional employees within the meaning of Section 1 of the Law, that exception does not apply here.