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In the Matter of SPRINGFIELD HOUSING AUTHORITY

and

PETITIONER LISA SANFORD

and

AFSCME, COUNCIL 93, AFL-CIO

Case No. MCR-10-5391

42. *Decertification*  
45.3 *prior certification*  
48. *Petition for Certification By Written Majority Authorization*  
93.5 *petition for decertification*

*November 10, 2010*

*Marjorie F. Wittner, Chair*

*Elizabeth Neumeier, Board Member*

*Harris Freeman, Board Member*

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**RULING ON MOTION TO DISMISS DECERTIFICATION  
PETITION**

Introduction

The Commonwealth Employment Relations Board (Board) denies AFSCME Council 93's (AFSCME) Motion to Dismiss the Decertification Petition. As discussed below, the Board finds that AFSCME's certification year began when the Division of Labor Relations (Division) initially certified AFSCME on March 31, 2009, and the certification year ended twelve months later. Because Petitioner Lisa Sanford (Sanford) filed the decertification petition on July 9, 2010, after AFSCME's certification year had ended, the decertification petition was timely filed.

Statement of the Case

Sanford filed a petition to decertify AFSCME on July 9, 2010. AFSCME, the incumbent collective bargaining representative, filed a Motion to Dismiss the petition on September 13, 2010, and a supplemental Motion to Dismiss on September 20, 2010, both alleging that AFSCME's certification bars the decertification petition. Specifically, AFSCME alleges that its certification year did not begin until October 16, 2009 - the date on which the Division amended AFSCME's certification - and thus the decertification petition was prematurely filed during AFSCME's certification year. AFSCME further argues that the Division should not entertain the petition because the Springfield Housing Authority (Employer) and AFSCME did not commence bargaining until after the Division issued the amended certification.

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Sanford lodged an oral objection to AFSCME's Motion but did not file a written statement. The Employer filed a written opposition to AFSCME's Motion on or about October 7, 2010.

#### Facts<sup>1</sup>

On November 24, 2008, AFSCME filed a petition for certification by Written Majority Authorization, and the Division docketed the case as WMAM-08-1030. On December 24, 2008, the Employer filed a Motion to Dismiss the petition and challenged the inclusion of certain positions. The Division, acting as the neutral, conducted a confidential inspection of AFSCME's evidence of written majority authorization, verified AFSCME's majority support, and certified AFSCME as the exclusive representative on March 31, 2009. On April 2, 2009, the Employer filed a motion for reconsideration seeking to exclude five (5) positions from the certified bargaining unit. On April 21, 2009, AFSCME and the Employer agreed to exclude the disputed positions from the bargaining unit.

By letter dated April 28, 2009, AFSCME told the Employer that it would contact the Employer in the near future to start contract negotiations. The Employer responded by letter dated May 4, 2009, advising AFSCME that it had filed motions with the Division regarding AFSCME's certification, and stating that AFSCME's certification "is not yet final." On May 11, 2009, the Employer filed an additional Motion for Reconsideration and Reinvestigation of the Certification.

On September 25, 2009, the Union forwarded a letter to the Employer seeking to start negotiations for the agreed-upon certified positions. The Board issued its Reinvestigation of Certification decision on October 16, 2009, holding that the challenged position should remain in the bargaining unit, and the Division amended the certification in accordance with the parties' April 21, 2009 agreement. The Union reiterated its bargaining demand on October 19, 2009, and, receiving no response from the Employer, filed a Petition for Mediation and Fact-Finding on November 16, 2009. In December of 2009, the Employer contacted AFSCME to schedule negotiations. The parties held their first bargaining session on February 22, 2010.

#### Ruling

Division Rule 14.06(4), 456 CMR 14.06(4), entitled "Certification Year Bar" states that:

Except for good cause shown, the Division will not process a petition for an election in any bargaining unit or subdivision thereof represented by a certified bargaining representative when the Division has issued a certification of representative within the preceding 12 months.

The issue we decide in this case is whether AFSCME's certification year began on the original certification date or the amended certification date. The dual certification dates resulted from the application of the Division's application of its written majority authorization procedure, and this issue may arise again in cases where an employer's challenges to the petitioned-for positions are numerically insufficient to affect the verification process and are reviewed after the certification has issued.

As the certified collective bargaining representative AFSCME was entitled to bargain collectively with the Employer after its March 31, 2009 certification. AFSCME notified the Employer in April of 2009 that it would contact the Employer in the near future to start the contract negotiations. The Employer responded by stating that the certification was not yet finalized. Although AFSCME could have interpreted the Employer's response as a refusal to bargain, it did not question or challenge the Employer's assertion; nor did it file a refusal to bargain charge with the Division at that time. The evidence demonstrates that AFSCME did not seek to initiate bargaining again until September 25, 2009, approximately five months later.

The principal purpose of the one-year certification bar is to insulate a newly-certified union from the disruptive pressure of outside organizing or decertification drives while it establishes a new bargaining relationship with the employer. *Commonwealth of Massachusetts*, 19 MLC 1069, 1096 (1992). We recognize that in cases applying the certification year bar, we must balance the right of the newly-certified bargaining representative to a reasonable period of good faith negotiations, with the right of employees under Section 2 of M.G.L. c.150E to freely choose their representative. *Springfield School Committee*, 27 MLC 20, 21 (2000). Here, we strike that balance by finding that AFSCME's certification year began on the date of its initial certification. AFSCME had the opportunity to bargain with the Employer after its March 31 certification or to file a refusal to bargain charge against the Employer within the following 12-month period. Additionally, to find that the certification year does not begin until the certification is amended would both delay and confuse the parties' post-certification bargaining obligations, to the detriment of the public interest in promoting labor stability through collective bargaining.<sup>2</sup>

#### Conclusion

For the above-stated reasons, we hereby deny AFSCME's Motion to Dismiss the decertification petition. Accordingly, the Division will continue to process the petition.

SO ORDERED.

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1. All parties agreed to the facts as stated in AFSCME's motions and the Employer's opposition statement.

2. We need not address AFSCME's argument based on the policies underlying the Division's recognition year bar. The recognition year bar is not applicable to this case.

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