In the Matter of CAMBRIDGE HEALTH ALLIANCE

and

MASSACHUSETTS NURSES ASSOCIATION

Case No. PS-001-2011

97. Certification of Collective Bargaining Process

May 1, 2014
Erica F. Crystal, Esq. Director

RULING ON REQUEST BY CAMBRIDGE HEALTH ALLIANCE FOR CERTIFICATION OF COLLECTIVE BARGAINING PROCESS

On March 11, 2014, the Cambridge Public Health Commission d/b/a Cambridge Health Alliance (CHA) filed with the Department of Labor Relations (DLR) its Request for Certification of Collective Bargaining Process (Request). On March 14, 2014, the Massachusetts Nurses Association (MNA or Union) filed its opposition to the CHA's Request. For the reasons addressed below, I am granting the CHA's request, since it is clear to me that the collective bargaining process, including mediation and fact-finding has been completed as required by Section 9 of Massachusetts General Laws, Chapter 150E (the Law).

BACKGROUND[1]

The MNA and the CHA were parties to a collective bargaining agreement for the period July 1, 2007 through June 30, 2010 (2007-2010 Agreement). The parties held successor negotiation sessions on May 13, May 25, June 10, June 15 and June 24, 2010. The CHA gave the MNA its first set of proposals on May 3, 2010, including a proposal that changed retiree health insurance benefits. The MNA rejected the proposal.

On June 25, 2010, CHA offered a "Last Best and Final Offer" package proposal that included the proposed retiree health insurance benefit changes that the MNA previously rejected on May 3, 2010. During the June 25, 2010 bargaining session, the MNA again rejected the package proposal. Later that day the Employer emailed bargaining unit members that it would implement changes in retiree health insurance benefits immediately. The following day, the Employer implemented the changes.

The Union filed its petition for mediation and fact-finding in this case on June 29, 2010.

On June 30, 2010, the Union filed a charge or prohibited practice against CHA, alleging a violation of MGL c. 150E, Sections 10(a)(5) and (1) (the Law). The case (MUP-10-5888) was expedited and bifurcated because of legal issues concerning Section 9 of the Law and CHA's exigent circumstances affirmative defense.

On August 27, 2010, the Commonwealth Employment Relations Board (CERB) issued a decision concluding that the CHA had failed to establish the elements of its economic exigency affirmative defense and ordering the CHA to participate in good faith in the collective bargaining procedures set forth in Section 9 of the Law. The decision further ordered the CHA to restore all terms of the MNA retiree health insurance in effect prior to the CHA's unilateral change, make whole bargaining unit members for economic losses suffered, if any, as a result of the unilateral change and to post a notice before August 31, 2010.[2]

By letter dated December 23, 2010, the CHA notified the CERB that it fully implemented the CERB's Order; including restoring all terms of the retiree health insurance benefits for MNA bargaining unit members as in effect prior to the CHA's unilateral change, making employees whole, and posting a notice. Additionally, the CHA informed the CERB that it would participate in good faith in the collective bargaining procedures, including mediation, fact-finding, or arbitration, if applicable, set forth in Section 9 of the Law.

POST-DECEMBER 23, 2010 EVENTS

The parties resumed successor negotiations in 2011. On April 22, 29, and June 30, 2011, the parties participated in DLR mediation.[3] After the related Superior Court litigation concluded, the Employer emailed the MNA asking it to return to the bargaining table.

In January and February of 2013, the parties held negotiation sessions. On March 1, 2013, the parties participated in a DLR mediation session. On March 5-6, the parties participated in joint negotiation sessions with other bargaining units. On March 6, 2013, the parties signed a memorandum of agreement for the period July 1, 2010 through June 30, 2013 (March 2013 MOA) on all terms and conditions of employment, except retiree health insurance benefits. Paragraph 5 of the MOA provides the following:

> The collective bargaining negotiations between MNA and the Cambridge Hospital (TCH) will be considered closed for all purposes, including for issues concerning compensation, except that the parties will continue in mediation on the sole issue of retiree health benefits for TCH bargaining unit employees. Those matters that previously have been tentatively agreed upon in those negotiations will become a part of the MNAfTCH final agreement.

On May 7, 2013, two months after signing the March 2013 MOA, the parties participated in their second DLR mediation session of 2013.[4] On May 16, 2013, the DLR mediator emailed the CHA that

1. I rely on the DLR's November 15, 2013 dismissal letter and the CERB's decisions in Case MUP-10-5888 to summarize the relevant facts here.

2. On October 8, 2010, the CERB issued a Compliance Order. On November 5, 2010, the CERB denied the CHA's Motion to Stay Compliance.

3. The MNA filed a Superior Court complaint regarding the Employer's proposed retiree health insurance benefit changes that was ultimately dismissed by the Appeals Court. The MNA refused to negotiate with the Employer about retiree health insurance benefits from about July of 2011 through October of 2012 because of the pending litigation.

4. The details of these mediation sessions are explored in the Dismissal Letter in Case MUP-13-3156, in which the DLR Investigator rejected the MNA's claim that the CHA was bargaining in bad faith and refusing to participate in good faith in mediation in May 2013 with respect to retiree health insurance benefits.

form these duties. The CSU also claims there is no common supervision because CD II's are supervised by a CD III, who is supervised by the Chief of Police while patrol officers are directly supervised by superior officers. Finally, the CSU argues that the Board has long followed the rule of placing public safety officials with the power to arrest in separate bargaining units and urges the Board to do the same here.

We agree with the University and Local 25 that the CDs share a greater community of interest with Local 25's unit than with the CSU's bargaining unit. We begin our analysis by recognizing that a separate unit of patrol officers is an appropriate unit within the meaning of Section 3 of the Law. However, the issue before us at this point in time is not whether to place the patrol officers in the CSU unit, as it was when the Board first certified the campus police officers at UMB. Rather, at issue is where the dispatchers are most appropriately placed. Because the dispatch positions were created only recently, we decline to treat either the 1975 certification or Local 25's current recognition clause as specifically excluding the titles at issue here.[8]

Further, contrary to the CSU's argument, this matter is not resolved by simply ruling that dispatchers can never be placed in a unit with law enforcement officers. There is no such *per se* rule. Rather, as the cases below indicate, the appropriate unit placement of dispatchers must be decided on a case-by-case basis.

Thus, while the Board placed dispatchers into their own bargaining unit instead of in a wall-to-wall city-wide unit in *City of Somerville*, 24 MLC 69, MCR-4517, CAS-3217 (1998), it also denied petitions seeking to sever dispatchers from civilian wall-to-wall units in *Town of Marblehead*, 27 MLC 142, MCR-4799 (2001) and *City of Worcester*, MCR-09-5360 (April 5, 2010). And, critical to this case, it granted a petition severing dispatchers and other security personnel from the skilled and trades workers unit at UMass Lowell, and ordered an election in a unit comprised of those titles and the campus police. *Board of Trustees, University of Massachusetts/Lowell*, 23 MLC at 273. Significantly, on at least two other occasions, the Board found that dispatchers and uniformed public safety personnel shared a community of interest and ordered an election in a unit consisting of both titles. *See Town of Falmouth*, 27 MLC 27, CAS-3319, MCR-4946, (2000) (ordering add-on election of fire dispatchers to fire department personnel and *Town of Newbury*, 13 MLC 1676, MCR-3669 (May 19, 1987) (including dispatchers in unit of patrol officers).

Accordingly, after careful review of the facts of this case, we conclude that the dispatchers share a greater community of interest with the patrol officers unit than with the clerical unit for all the reasons cited by the University and Teamsters, Local 25. We are particularly persuaded by the fact that the dispatchers and patrol officers interact on a frequent and daily basis on the same schedule and under the overall supervision of the Chief of Police to serve the common end of providing police protection to all those on the UMB campus. The patrol officers' training functions and job interchange also demonstrate a strong community of interest with the CDs that is greater than that of any other titles in the CSU's unit, including the other civilian DPS titles. While there may be some community of interest between the ISOs and the dispatchers, to the extent that patrol officers fill in for both titles, the ISOs do not train CDs and there is no interchange of work. Further, ISOs and CDs have different schedules and there is no evidence that they interact with the CDs with the same level of frequency as the CDs and patrol officers. The same can be said of the DPS administrative assistant.

CONCLUSION

For the reasons set forth above, we conclude that the CD II and CD III titles share a greater community of interest with Local 25's unit. Accordingly, we dismiss the CSU's petition and grant Local 25's petition to accrete these titles into its unit.

SO ORDERED.

* * * * * *

8. *See* note 7, above.