

**TOWN OF NORTH READING AND NORTH READING PUBLIC WORKS UNION, MCR-2696 (8/9/78)**

(40 Selection of Employee Representative  
45.42 open period  
(90 Commission Practice and Procedure)  
92.51 appeals to full Commission  
92.6 time limits

Commissioners Participating: James S. Cooper, Chairman; Garry J. Wooters, Commissioner; Joan G. Dolan, Commissioner

**Appearances:**

Anthony R. DiFruscia, Esq. - Representing the North Reading Public Works Union

Ira Sills, Esq. - Representing the Laborers International Union of North America, Local 1156 AFL-CIO

Michael C. Gilman, Esq. - Representing the Town of North Reading

**DECISION ON APPEAL OF HEARING OFFICER'S DECISION****Statement of the Case**

On January 31, 1978, the North Reading Public Works Union filed a petition with the Labor Relations Commission (Commission) seeking certification as the exclusive bargaining agent for a unit of employees of the Town of North Reading (Employer) currently represented by the Laborers International Union of North America, Local 1156, AFL-CIO (the Laborers).

An expedited hearing was held on April 3, 1978 before Hearing Officer, Robert B. McCormack. The only issue presented was whether the Employer's collective bargaining agreement with the Laborers operated as a bar to the petition filed by the Public Works Union on January 31, 1978. The Hearing Officer found a contract bar. 4 MLC 1920 (1978). We reverse.

**OPINION**

The collective bargaining agreement executed between the Town of North Reading and the Laborers includes the following duration clause: This agreement "shall remain in full force and effect from July 1, 1977 to June 30, 1978...."

Commission Rules and Regulations applicable at the time of filing provided:

"Except for good cause shown, no petition filed under the provisions of Section 4 of the Law during the term of an existing valid collective bargaining agreement shall be entertained unless such petition is filed no more than one hundred and eighty (180) days and no less than one hundred and fifty (150) days prior to the termination date of said agreement."<sup>1</sup>

<sup>1</sup>Article 11, Section 5(1), now superceded without substantive change by 402 CMR 14.06(1).



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The Hearing Officer interpreted this rule to mean that a petition filed on the 150th day prior to the contract expiration date would be time barred. Relying upon Hemisphere Steel Products, Inc., 131 NLRB 56 (1961), he concluded that June 29, 1978 constituted the contract expiration date and therefore barred a petition filed on January 31, 1978.

We reverse the decision of the Hearing Officer to the extent that he finds a petition to be untimely if it is filed one hundred and fifty days prior to the contract expiration date. Our rule requires filing "no less than" 150 days prior to the termination date. It follows, therefore, that a petition is timely within the meaning of our Rules if it is filed on the one hundred and fiftieth day prior to the contract termination date.<sup>2</sup> We need make no finding as to whether June 29 or June 30 constitutes the contract expiration date because under our interpretation of Article 11, Section 5, neither expiration date would render this petition untimely.

We conclude upon the basis of the entire record in this case that:

1. A question has arisen concerning the representation of certain employees of the Town of North Reading, within the meaning of Section 4 of G.L. c.150E.
2. An appropriate unit for purposes of collective bargaining shall include, "All public works personnel employed in the Department of Public Works, excluding all Commissioners, executives, professional employees, clerical employees, and the Director of Public Works."
3. An election shall be held for the purpose of determining whether the majority of employees in the above described unit wish to be represented by the North Reading Public Works Union, the Laborers International Union of North America, Local 1156, AFL-CIO, or by no employee organization.
4. The list of eligible voters shall consist of all those persons within the above described unit, whose names appear on the payroll of the Town of North Reading on July 14, 1978 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws, IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the aforesaid employees at such time and place and under such conditions as shall be contained in the Notice of Election issued by the

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<sup>2</sup>We believe that this conclusion is compelled by the clear language of Article 11, Section 5 of our Rules and Regulations. We recognize that our rule may require a different practice in this regard from that applied by the National Labor Relations Board.



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Commission and served on all parties and posted on the premises of the Employer together with copies of the specimen ballot.

In order to assure that all eligible voters shall have the opportunity to be informed of the issues and the exercise of their 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 (3) copies of an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202 no later than fourteen (14) days from the date of this Decision.

The Executive Secretary shall make the list available to all the parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof 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.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

James S. Cooper, Chairman  
Garry J. Wooters, Commissioner  
Joan G. Dolan, Commissioner

