

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of	*	
	*	Case No. MCR-20-8220
TOWN OF SEEKONK	*	
	*	Date issued: February 8, 2021
and	*	
	*	
SEEKONK PUBLIC SAFETY	*	
DISPATCH AND POLICE CLERICAL	*	
	*	
and	*	
	*	
AFSCME, COUNCIL 93, Local 1701,	*	
AFL-CIO	*	

RULING ON MOTION TO TREAT PROHIBITED PRACTICE
CHARGE AS BLOCKING CHARGE

1 The American Federation of State, County, Municipal Employees, Council 93,
2 Local 1701, AFL-CIO (AFSCME) filed a motion to have the prohibited practice charge
3 that it filed in Case No. MUP-20-8170 block the Department of Labor Relations (DLR)
4 from further processing the above-captioned representation petition. The Commonwealth
5 Employment Relations Board (CERB) denies AFSCME's motion for the reasons set forth
6 below.

7 BACKGROUND

8 Prohibited Practice Charge

9 On August 28, 2020, AFSCME filed a prohibited practice charge in Case No. MUP-
10 20-8170 alleging that the Town of Seekonk (Town) had engaged in prohibited practices
11 within the meaning of Sections 10(a)(5), 10(a)(2), and derivatively, 10(a)(1) of M.G.L.
12 c.150E (the Law). Pursuant to Section 11 of the Law, on November 16, 2020, a DLR

1 Investigator conducted an investigation of Case No. MUP-20-8170. On November 20,
2 2020, the Investigator issued a two-count complaint of prohibited practice (Complaint)
3 and partial dismissal. The Complaint contains several allegations pertinent to the CERB's
4 consideration of this blocking motion, including the timing of the unit members' expressed
5 desire to be represented by a different union in relation to the Town's alleged unlawful
6 conduct.

7 Specifically, Paragraph 7 of the Complaint alleges that in late July 2020, Town
8 Administrator Shawn Cadime (Cadime) called AFSCME staff representative Kim Sylvia
9 (Sylvia) to inform her that the Massachusetts Coalition of Police (MassCOP) had filed a
10 petition with the DLR seeking to represent the bargaining unit of full-time and regular part-
11 time civilian dispatchers and executive assistants in the Police Department that AFSCME
12 currently represents in the Town. Paragraph 8 alleges that MassCOP subsequently
13 withdrew its petition, and the DLR never issued a notice of hearing regarding the petition.
14 Paragraph 9 alleges that on June 30, 2020, Melissa Zasowski (Zasowski), a member of
15 AFSCME's bargaining unit, emailed Cadime to inform him that unit members no longer
16 wanted to be represented by AFSCME. Paragraphs 10 and 11 allege that on August 6,
17 2020, Cadime responded to an email from Sylvia inquiring about AFSCME contract
18 negotiations by stating that, "the Board of Selectmen did not want to be in the middle of
19 the dispute over the bargaining representative and would prefer to have the DLR make
20 the ruling." Paragraph 12 alleges that between August 6, 2020 and October 5, 2020, the
21 Town declined to engage in successor contract negotiations with AFSCME. Finally,
22 paragraphs 13-19 allege that the Town failed to bargain in good faith in violation of Section
23 10(a)(5), and derivatively, Section 10(a)(1) of the Law when the Town declined to engage

1 in successor contract negotiations with AFSCME on August 6, 2020, and interfered with
2 AFSCME's existence and administration as the exclusive bargaining representative in
3 violation of Section 10(a)(2), and derivatively, Section 10(a)(1) of the Law when it
4 deprived AFSCME of the opportunity to negotiate a successor agreement.¹

5 Representation Petition

6
7 On October 1, 2020, the "Seekonk Public Safety Dispatch and Police Clerical"
8 (Petitioner) filed a petition with the DLR seeking to represent an eleven-person unit that
9 it described as "AFSCME 93 Local 1701 Public Safety Communications Civilian
10 Dispatchers and Police Department Executive Assistants." The petition indicated that
11 there was an incumbent labor organization, AFSCME, and that AFSCME had been
12 certified or recognized as the exclusive representative of the petitioned-for unit since
13 2004. Zasowski signed the petition on behalf of the Petitioner and listed herself as its
14 representative. On October 7, 2020, the DLR sent a Notice of Hearing to the Town
15 regarding the petition. On October 20, 2020, AFSCME filed a motion to intervene in this
16 proceeding. On October 20, 2020, AFSCME also filed a motion to have Case No. MUP-
17 20-8170 block further proceedings in Case No. MCR-20-8220.

18 On November 8, 2020, the Petitioner filed an opposition to AFSCME's motion.²
19 The opposition attached several emails that Zasowski wrote from June 30, 2020 to

¹ The Investigator dismissed for lack of probable cause a Section 10(a)(5) allegation that the Town failed to bargain in good faith when it resumed bargaining with AFSCME on October 6, 2020. AFSCME did not seek review of the dismissed allegation. Because this allegation was dismissed, we do not consider whether the alleged conduct could interfere with the election in this matter.

² Zasowski signed the opposition as the "Interim Steward, Seekonk Communications and Clerical."

1 October 1, 2020, including a group email from Zasowski to bargaining unit members
2 dated June 30, 2020, which stated that “votes were counted on the question of remaining
3 with AFSCME or transitioning to MassCOP, and the group voted overwhelmingly in favor
4 of the new union 10-0.” On July 27, 2020, Zasowski emailed the same group indicating
5 that AFSCME has received the “petition to decertify,” and that she had explained “how
6 unresponsive and difficult to navigate [AFSCME had] been over the past year . . .to both
7 Kim Sylvia and her boss Mike Coogan...” In this email, Zasowski also informed
8 bargaining unit members that AFSCME was interested in organizing a meeting to discuss
9 the petition. On July 29, 2020, Sylvia emailed Zasowski and other bargaining unit
10 members to see if they could schedule a meeting. Zasowski replied a few minutes later
11 indicating that through emails and face-to-face conversations, eight bargaining unit
12 members had communicated to her “that they are not interested in meeting with the
13 union.”

14 On July 30, 2020, Zasowski sent an email to Cadime in which she referenced the
15 petition to “decertify with AFSCME and join MassCOP,” and stated, “it is my
16 understanding that while this petition is pending we need to put our contract negotiation[s]
17 on hold, but can pick up again as soon as we are certified with MassCOP.”

18 On September 23, 2020, Sylvia wrote to Zasowski³ stating that the Town and the
19 AFSCME were currently holding October 6th and 9th to resume contract negotiations and
20 asking if there was a better date or time for them. Zasowski replied to Sylvia on
21 September 25, 2020, with an email that stated in pertinent part:

³ The email was also addressed to Lisa Parker, who we presume is a bargaining unit member because she was included in all of Zasowski’s earlier group emails.

1 At last night's union meeting, the group voted to decertify with AFSCME
2 with a unanimous vote by those in attendance. In one week they will decide
3 how they wish to proceed moving forward with that decision, whether it is
4 by organizing as their own union or joining another. Once that vote is
5 recorded, the appropriate documentation will be filed with the DLR. As a
6 result we will not be taking part in a contract negotiations alongside
7 AFSCME.

8
9 On October 1, 2020, Zasowski emailed bargaining unit members indicating that
10 the group had voted 5-4 "in favor of establishing our own unit rather than join SPEA."⁴
11 Zasowski further indicated that she would file a petition with the DLR that afternoon, and
12 copy both the Town and AFSCME, which she did.

13 Arguments⁵

14 AFSCME contends that the Town unlawfully refused to engage in successor
15 negotiations beginning in August⁶ 2020 due to its mistaken belief that a representation
16 petition was pending. However, the petition in Case No. MCR-20-8220 was not filed with
17 the DLR until October 1, 2020. AFSCME thus argues that because no petition was
18 pending when it approached the Town to schedule bargaining sessions, the Town's
19 conduct identified in the Complaint should block the representation election. AFSCME
20 further argues that because of the small size of the bargaining unit, the Town's conduct

⁴ The investigation record does not reflect what SPEA stands for.

⁵ The Town has remained neutral in this matter and did not submit anything in response to AFSCME's blocking motion.

⁶ In its blocking motion, AFSCME states that the Town unlawfully refused to engage in successor negotiations beginning in *April* 2020. In MUP-20-8170, AFSCME also alleged that on "*April* 6, 2020" Sylvia and Cadime had the email exchange described in Paragraphs 10 and 11 of the Complaint regarding the Town's contract negotiations with AFSCME. However, the email that AFSCME attached to the charge in support of the allegations shows that this exchange occurred on *August* 6, 2020, not *April* 6, 2020. Based on these emails, AFSCME's contention that the Town allegedly refused to bargain on April 6, 2020 appears to be a typographical error, and we treat it as such.

1 likely had an impact on all or a substantial majority of the members. AFSCME asserts
2 that the Town's refusal to bargain unfairly prejudices the employees' perception of the
3 incumbent union and will infect the election process. Finally, citing Commonwealth of
4 Massachusetts, 21 MLC 1713,1717, SCR-2219, 2220, 2221 (April 5,1995), AFSCME
5 argues that the possibility of a bargaining remedy in Case No. MUP-20-8170 requires that
6 charge to block this petition.

7 Zasowski, however, seeks to move to an immediate election asserting that the members
8 who no longer want AFSCME to represent them came to this decision on their own,
9 without any influence from any other party. Zasowski also maintains that the employees'
10 dissatisfaction with AFSCME predates the events at issue in the prohibited practice
11 charge as evidenced by the unit's unanimous ballot votes to leave AFSCME in both June
12 and September 2020, and her communications with Cadime in July 2020 regarding
13 discontinuing bargaining with AFSCME. Zasowski asserts that the unit had no knowledge
14 of any attempted discussions between AFSCME and the Town, or of the Town's refusal
15 to participate in negotiations until September 2020, when Zasowski learned that AFSCME
16 had filed Case No. MUP-20-8170 with the DLR. Zasowski summarized that the evidence
17 reflects that the unit as a whole held a longstanding dissatisfaction with AFSCME's
18 representation due to a variety of issues occurring over a substantial period of time. More
19 significantly, the Town's actions underlying the potential blocking charge were a result of
20 the unit's own request to the Town Administrator to stop further negotiations with
21 AFSCME.

22 RULING

1 Any party to a representation petition filed with the DLR pursuant to Section 4 of
2 the Law may file a motion requesting that a pending prohibited practice charge block the
3 conduct of an election. The purpose of the blocking charge policy is to ensure that
4 prohibited practices that interfere with certain employee rights under the Law also do not
5 interfere with a representation election. Commonwealth of Massachusetts, 17 MLC at
6 1652. No purpose would be served by proceeding with an election when there exists
7 unremedied, alleged conduct that would tend to interfere with the free electoral choice of
8 employees. Id.

9 The CERB's procedure for processing alleged blocking charges, as set forth in 456
10 CMR 15.11, requires the moving party to submit with its motion evidence sufficient to
11 establish probable cause to believe that: a) the conduct alleged in the prohibited practice
12 charge has occurred; b) the alleged conduct violated the Law; and c) the alleged conduct
13 may interfere with the conduct of a valid election. Here, because the Investigator found
14 probable cause to issue a complaint in Case No. MUP-20-8170, AFSCME has satisfied
15 the first two parts of the analysis. The CERB must therefore examine whether the acts
16 that form the basis of the complaint in Case No. MUP-20-8170 may interfere with the
17 conduct of a valid election in Case No. MCR-20-8220.

18 In determining whether a prohibited practice charge interferes with the conduct of
19 a valid election, the CERB considers the following factors:

20 “[T]he character and scope of the charge and its tendency to impair the
21 employees' free choice; the size of the working force and the number of
22 employees involved in the events on which the charge is based; the
23 entitlement and interest of the employees in an expeditious expression of
24 their preference for representation; the relationship of the charging parties
25 to the labor organizations involved in the representation case; the showing
26 of interest, if any, presented in the representation case by the charging
27 party, and the timing of the charge.”

1
2 New England Police Benevolent Association, 37 MLC 27, 28, SCR-10-2283, 2284, 2285
3 (August 6, 2010) (citing Commonwealth of Massachusetts, 21 MLC at 1718).

4 The CERB has recognized that a key element in determining whether a prohibited
5 practice charge should block a representation election is whether the conduct alleged in
6 the blocking charge may interfere with the conduct of a valid election. North Attleborough
7 Electric Department, 35 MLC 54, MCR-08-5330 (July 9, 2008) (citing Commonwealth of
8 Mass., 21 MLC at 1716). The CERB has also stated that, “except in unusual
9 circumstances, it would be inappropriate to proceed with a pending representation petition
10 after the [CERB] has authorized a complaint alleging a violation of Section 10(a)(2) or
11 (5).” Id.

12 Applying these principles to the conduct described above, we conclude that the
13 Town’s allegedly unlawful refusal to bargain would not interfere with the conduct of a free
14 election. We reach this conclusion based on the Complaint allegations and emails
15 showing that bargaining unit members unanimously voted to leave AFSCME or to meet
16 with AFSCME to discuss the MassCOP petition well before the Town refused to bargain.
17 Further, Zasowski, the Petitioner’s representative in this matter, told Cadime at the end
18 of July 2020, that the Town needed to “put its contract negotiations on hold” once
19 MassCOP filed the petition seeking to represent the unit. Even if Zasowski was wrong,
20 this demonstrates that it was the dissatisfied bargaining unit members’ conduct that gave
21 rise to the allegations underlying the proposed blocking charge and not the Town’s
22 allegedly unlawful conduct that led to employee dissatisfaction with AFSCME. This chain
23 of events thus tends to demonstrate that, but for the bargaining unit’s conduct, the Town’s
24 allegedly unlawful conduct may not have occurred at all. Moreover, even when Sylvia

1 informed Zasowski that the Town and AFSCME were resuming negotiations, Zasowski
2 informed Sylvia that the bargaining unit had again voted not to be represented by
3 AFSCME and thus would not participate in AFSCME's negotiations with the Town. Under
4 these circumstances, it is highly improbable that the two-month period in which the Town
5 allegedly refused to bargain with AFSCME prejudiced bargaining unit members'
6 perceptions of AFSCME, as AFSCME argues. Their opinion was already formed by the
7 time this conduct took place, and continued even after the Town resumed bargaining.
8 Accordingly, when balancing the unlikely impact of the pending complaint on employee
9 free choice against the impact of continuing to process this petition, we believe that the
10 balance should be struck in favor of continuing to process the petition.

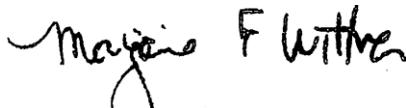
11 AFSCME's assertion that this Petition must be blocked because the disposition of
12 Case No. MUP-20-8170 may require a bargaining remedy does not change this result.
13 First, the decision that it cites for this principle, Commonwealth of Massachusetts, 17 MLC
14 1650, involved multiple prohibited practice complaints alleging that the Commonwealth
15 had refused to bargain in good faith during the incumbent's certification year by, for
16 example, unilaterally changing terms and conditions of employment and failing to submit
17 a wage proposal until eight months after bargaining began. Id. at 1655. These facts led
18 the CERB to speculate that a remedy in that case could include reinstating the
19 certification year and with it, the "irrebuttably presumed majority status of the incumbent,"
20 thus precluding a question concerning representation. Id. at 1656. The alleged refusal
21 to bargain in this case did not occur during AFSCME's certification year, and thus the
22 potential remedy in this case would not raise a question concerning representation.

1 Further, the CERB also recognized that the tendency of some alleged conduct to
2 interfere with employee free choice may be so limited that it should not block the
3 processing of a representation petition. Commonwealth of Massachusetts, 21 MLC at
4 1717 (citing 17 MLC at 1656, n. 9). For the reasons set forth above, this is such a case,
5 and thus, any potential remedy that may be awarded in Case No. MUP-20-8170 provides
6 no basis for us to delay the election in this matter.

7 CONCLUSION

8 For the above-stated reasons, we deny AFSCME's Motion to Block the processing
9 of the representation petition in Case No. MCR-20-8220. In accordance with the above,
10 the DLR will schedule an election in the bargaining unit while a formal hearing for Case
11 No. MUP-20-8170 remains pending. The DLR shall list Zasowski as an interested party
12 in Case No. MUP-20-8170 for the sole purpose of receiving copies of any DLR or CERB
13 orders or any other documents that dispose of the case.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



JOAN ACKERSTEIN, CERB MEMBER



KELLY STRONG, CERB MEMBER