

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of	*	
	*	Case No. MCR-20-8331
CITY OF EVERETT	*	
	*	Date issued: June 30, 2021
and	*	
	*	
TEAMSTERS LOCAL UNION NO. 25	*	
	*	
and	*	
	*	
NEW ENGLAND POLICE	*	
BENEVOLENT ASSOCIATION, INC.	*	
	*	

CERB Members Participating

Marjorie F. Wittner, Chair
Kelly Strong, CERB Member
Joan Ackerstein, CERB Member

Appearances

Collen Mejia, Esq.	-	For the City of Everett
Lynn V. Alexis, Esq.	-	For the Teamsters, Local 25
Thomas E. Horgan, Esq.	-	For the NEBPA, Inc.

1 CERB RULING ON MOTION TO TREAT PROHIBITED PRACTICE CHARGE AS
2 BLOCKING CHARGE

3
4 Summary

5 The Teamsters Local Union, No. 25 (Teamsters) has filed a motion to have the
6 prohibited practice charge in Case No. MUP-20-8310 block further processing of the
7 representation petition filed by the New England Police Benevolent Association, Inc.

1 (NEBPA) in Case No. MCR-20-8331 (Motion). The NEBPA's petition seeks to replace
2 the Teamsters as the exclusive bargaining representative of all full-time and part-time
3 employees in the Emergency Communications unit (E-911 Dispatch) employed by the
4 City of Everett (City). The Commonwealth Employment Relations Board (CERB) grants
5 the Teamsters' Motion for the reasons set forth below.

6 Statement of the Case

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8 Prohibited Practice Charge

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10 On November 12, 2020, the Teamsters filed a prohibited practice charge in Case
11 No. MUP-20-8310 alleging that the City had engaged in prohibited practices within the
12 meaning of Sections 10(a)(2) and 10(a)(1) of M.G.L. c.150E (the Law). Pursuant to
13 Section 11 of the Law and Section 15.05 of the Rules of the Department of Labor
14 Relations (DLR), a DLR Investigator (Investigator) investigated the charge on May 24,
15 2021. On May 28, 2021, the Investigator issued a two-count Complaint of Prohibited
16 Practice (Complaint).

17 Paragraph 6 of the Complaint alleges that, "[a]t all relevant times, Captain Paul
18 Hamilton (Hamilton) was the acting director of the dispatch center, supervised Unit
19 employees, acted as an agent of the City, and was included in the NEBPA's superior
20 officers' bargaining unit." Paragraph 9 of the Complaint alleges that, beginning in
21 September 2020, "Hamilton encouraged on-duty subordinate Unit employees to select
22 the NEBPA as their exclusive collective bargaining representative in place of the
23 [Teamsters]." Paragraphs 7, 10 and 11 allege that unnamed Unit employees gave Sean
24 McArdle (McArdle), a NEBPA executive board member and business agent for the City's
25 patrol officers' union, along with another (unnamed) NEBPA executive board member,

1 unauthorized access to the secure dispatch center in order to solicit on-duty support for
2 NEBPA. Paragraph 12 of the Complaint alleges that on or about November 2020, the
3 City conducted an investigation into the unauthorized access and that, “normally,” such
4 unauthorized access to the dispatch center would result in discipline or discharge.
5 Paragraph 13 alleges that since November 3, 2020, the City has not disciplined Unit
6 employees for allowing the unauthorized access into the secure dispatch center.

7 Based on these allegations, Count I of the Complaint alleges that the City violated
8 Section 10(a)(2) and, derivatively, Section 10(a)(1) of the Law when: 1) Hamilton
9 encouraged bargaining unit members to vote for the NEPBA; and 2) the City failed to
10 discipline any employees for allowing unauthorized access into the secure dispatch
11 center. Count II alleged that Hamilton’s conduct independently violated Section 10(a)(1)
12 of the Law.

13 Representation Petition

14
15 On November 23, 2020, the NEBPA filed a petition in Case No. MCR-20-8331
16 seeking certification as the exclusive bargaining unit representative of all full-time and
17 part-time employees in the Emergency Communications Unit (E-911 District) employed
18 by the City. The petition noted that the bargaining unit was currently represented by the
19 Teamsters. On December 9, 2020 the Teamsters filed a motion to intervene, which the
20 DLR granted. On April 22, 2021, the Teamsters filed the instant Motion to have the
21 pending prohibited practice charge in Case No. MUP-20-8310 block further proceedings
22 in Case No. MCR-20-8331.¹

¹ On June 3, 2021, the City filed an affidavit from Police Chief Steven Mazzie (Mazzie) stating that: 1) he is the only managerial, exempt employee in charge of the Everett Police Department; 2) no Patrol Officer, Superior Officer, or NEPBA official acted on his behalf

1 Ruling

2 Any party to a representation petition filed with the DLR pursuant to Section 4 of
3 the Law may file a motion requesting that a pending prohibited practice charge block the
4 conduct of an election. The purpose of the blocking charge policy is to ensure that
5 prohibited practices that interfere with certain employee rights under the Law also do not
6 interfere with a representation election. Commonwealth of Massachusetts, 17 MLC 1650,
7 1652, SCR-2201 (April 9, 1991). No purpose would be served by proceeding with an
8 election when there exists unremedied, alleged conduct that would tend to interfere with
9 the free electoral choice of employees. Id.

10 The CERB's procedure for processing alleged blocking charges is set forth in 456
11 CMR 15.11. This regulation requires the moving party to submit with its motion evidence
12 sufficient to establish probable cause to believe that: a) the conduct alleged in the
13 prohibited practice charge has occurred; b) the alleged conduct violated the Law; and c)
14 the alleged conduct may interfere with the conduct of a valid election. Here, because the
15 Investigator found probable cause to issue a complaint in Case No. MUP-20-8310, the
16 Teamsters have satisfied the first two parts of the analysis. The CERB must therefore
17 examine whether the acts that form the basis of the Complaint could interfere with the
18 conduct of a valid election in Case No. MCR-20-8331.

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

21 [T]he character and scope of the charge and its tendency to impair the
22 employees' free choice; the size of the working force and the number of

or with his permission; and 3) that the City did not issue discipline in this matter because he (Mazzie) had not found that anyone had granted unauthorized access to the dispatch center.

1 employees involved in the events on which the charge is based; the
2 entitlement and interest of the employees in an expeditious expression of
3 their preference for representation; the relationship of the charging parties
4 to the labor organizations involved in the representation case; the showing
5 of interest, if any, presented in the representation case by the charging
6 party, and the timing of the charge.
7

8 New England Police Benevolent Association (NEPBA), 37 MLC 27, 28, SCR-10-2283,
9 SCR-10-2285, 2294 (August 6, 2010) (citing Commonwealth of Massachusetts, 21 MLC
10 1713, 1717, SCR-2219, 2220, 2221 (April 9,1995)).

11 In support of its Motion, the Teamsters argue that as the dispatchers' supervisor,
12 Hamilton's on-duty urging of dispatchers to leave the Teamsters and support the NEBPA,
13 created an impression that would cause the employees to believe that Hamilton was
14 acting for and on behalf of management, thereby tainting the election's "laboratory
15 conditions" and affecting the employees free choice that is necessary for a valid election.²
16 The Teamsters further argue that the City's "silent approval of this solicitation and
17 acquiescence of the NEBPA campaign during working hours signal[ed] the City's support"
18 for the NEPBA.³

19 In response, the City argues that Chief Mazzie is the only managerial employee in
20 charge of the Everett Police Department, and that Mazzie did not give permission to any

² Laboratory conditions refer to those conditions, both before and during a union election, that ought to be maintained to ensure free and fair elections. Teamsters, Local 829, 3 MLC 1696, 1698, CR-3512 (May 6, 1977) (citing General Shoe Corp., 77 NLRB 124 (1948)).

³ The Teamsters also alleged in its Motion that during the November 3, 2020 meeting, NEBPA representatives made false promises of higher pension plans, greater bargaining power, more job protections, "free trips", and being "in better hands" than with the Teamsters. The Complaint does not include this allegation, so we do not consider the potential effect of these alleged statements on the election.

1 patrol officer, superior officer, or NEBPA official to act on his behalf. Additionally, the City
2 argues that Mazzie did not issue discipline in this matter because he did not find that
3 anyone had granted unauthorized access to the secure dispatch center.⁴

4 We grant the Teamsters' Motion. Applying the factors set forth in the 2010 NEPBA
5 decision, we first turn to the character and scope of the charge and its tendency to impair
6 employees' free choice. Here, the Complaint alleges that when Hamilton allegedly
7 encouraged the dispatchers to support the NEPBA, he was the acting Director of the
8 Dispatch Center and supervised unit employees. The Complaint further alleges that the
9 City took no action against employees who gave unauthorized access to NEPBA
10 representatives for purposes of soliciting employees. We agree with the Union that such
11 alleged conduct signals the City's silent support for and acquiescence to such solicitation.
12 When this alleged conduct is coupled with Hamilton's actual or apparent supervisory
13 authority, and the extent, nature, and openness of his alleged pro-NEBPA activity, we find
14 that it would reasonably tend to impair the dispatchers' freedom of choice in the election.
15 See International Association of Machinists v. NLRB, 311 U.S. 72, 80 (1940) ("where
16 employees would have just cause to believe that solicitors professedly for a labor
17 organization were acting for and on behalf of the management, the [NLRB] would be
18 justified in concluding that [employees] did not have the complete and unhampered
19 freedom of choice which the act contemplates.") Cf. Harborside Health Care Inc. and
20 SEIU, Local 47, 343 NLRB 906 (2004) (supervisor need not make explicit threats or
21 promises in order to establish objectionable pro-union supervisory conduct during

⁴ The NEBPA did not file a response to the Teamsters' Motion.

1 election; standard is whether conduct would reasonably tend to have a coercive effect
2 that is likely to impair employee freedom of choice).

3 Regarding the second element, the size of the workforce, the unit at issue here is
4 small, consisting of approximately ten dispatchers. Although the record is not clear on
5 exactly how many employees were present when Hamilton encouraged the dispatchers
6 to choose the NEPBA, the City's conduct, if true, could impact the right of all the
7 bargaining unit employees to freely choose their representative. Compare
8 Commonwealth of Massachusetts, 21 MLC at 1718-1719 (prohibited practice charges did
9 not block representation petition, where, among other things, the alleged conduct
10 impacted only a small minority of a much larger bargaining unit).

11 With respect to timing, there is a close connection in time between the alleged
12 unlawful conduct which took place in October and November of 2020 and the filing of the
13 NEBPA's petition on November 23, 2020. Compare Springfield Housing Authority, MCR-
14 10-5391 slip. op. at 8 (February 4, 2011) (motion to block allowed when decertification
15 petition was filed only weeks after the employer unlawfully disciplined the union president)
16 with North Attleborough Electric Department, 35 MLC 54, 55, MCR-08-5330 (July 9, 2008)
17 (insufficient nexus between an employer's alleged unlawful conduct and the filing of a
18 decertification petition almost two years later).

19 For the above-stated reasons, we grant the Teamsters' Motion and block further
20 processing of the representation petition. The parties are advised that pending
21 representation petitions that are blocked by a prohibited practice charge will be held in
22 "inactive status" until resolution of the prohibited practice complaint at issue.
23 Commonwealth of Massachusetts, 17 MLC at 1658. During its pendency in inactive

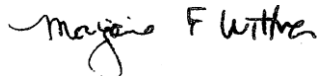
1 status, the petition will not be considered to raise a question concerning representation
2 and will not bar the employer and the incumbent union from fulfilling their statutory
3 obligation to bargain in good faith. New England Police Benevolent Association, 37 MLC
4 at 28. The final disposition of the representation petition will depend on the outcome of
5 the prohibited practice charge that rendered the petition inactive. Id.

6 In accordance with the above, the DLR will not schedule an election in the
7 bargaining unit until the final disposition of Case No. MUP-20-8310. The DLR shall
8 nevertheless list the NEBPA as an interested party in Case No. MUP-20-8310 for the sole
9 purpose of receiving copies of any DLR or CERB orders or any other documents that
10 dispose of the case.

11 Conclusion

12 For the above-stated reasons, we hereby allow the Teamsters' Motion and block
13 further processing of Case No. MCR-20-8331. This case will be held in inactive status.
14 As a result, there is no pending question concerning representation.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CERB CHAIR



JOAN ACKERSTEIN, CERB MEMBER



KELLY STRONG, CERB MEMBER