

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF PALMER

and

UNITED PUBLIC SERVICE
EMPLOYEES UNION, LOCAL 424M

and

UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 1459

Case No. MCR-22-9034

Date Issued: July 28, 2022

CERB Members Participating:

Marjorie F. Wittner, Chair
Kelly Strong, CERB Member

Appearances:

Nicholas Anastasopoulos, Esq. - For the Town of Palmer
Chelsea Choi, Esq. - For UPSEU, Local 424M
G. Alexander Robertson, Esq. - For UFCW, Local 1459

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

3 Summary

4 The United Food and Commercial Workers Union, Local 1459 (UFCW) filed a
5 motion to have the prohibited practice charge in Case No. MUP-22-9152 block further
6 processing of the representation petition that the United Public Service Employees Union,
7 Local 424M (UPSEU) filed in Case No. MCR-22-9034 (Motion). UPSEU's petition seeks

1 to replace the UFCW as the exclusive bargaining representative for certain employees
2 who work in the Administrative Offices, Department of Public Works, and the Council on
3 Aging in the Town of Palmer (Town). The Commonwealth Employment Relations Board
4 (CERB) grants the UFCW's Motion for the reasons set forth below.

5 Statement of the Case

6 Representation Petition

7 On January 11, 2022, UPSEU filed a petition with the Department of Labor
8 Relations (DLR) seeking certification as the exclusive bargaining unit representative for
9 certain employees who work for the Town and who are currently represented by the
10 UFCW. The DLR docketed the petition as Case No. MCR-22-9034. On January 20, 2022,
11 the UFCW filed a motion to intervene, which the DLR granted on January 25, 2022.

12 Prohibited Practice Charge

13 On February 28, 2022, the UFCW filed a prohibited practice charge in Case No.
14 MUP-22-9152 alleging that the Town had engaged in prohibited practices within the
15 meaning of Sections 10(a)(1) and 10(a)(5) of M.G.L. c. 150E (the Law). Pursuant to
16 Section 11 of the Law and Section 15.05 of the DLR's Rules, 456 CMR 15.05, a DLR
17 Investigator (Investigator) investigated the charge on April 4, 2022. On April 13, 2022, the
18 Investigator issued a five-count Complaint of Prohibited Practice (Complaint). Count I of
19 the Complaint alleges that the Town failed to provide the UFCW with an opportunity to
20 meet with new bargaining unit members hired on September 7, September 8, and
21 December 22, 2021 within ten calendar days of their date of hire as required under
22 Section 5(a)(b)(iii) of the Law, in violation of Section 10(a)(5), and derivatively, Section
23 10(a)(1) of the Law. Count II of the Complaint alleges that the Town violated Section

1 10(a)(5), and derivatively, Section 10(a)(1) of the Law by repudiating Article 3 of the
2 parties' collective bargaining agreement by failing to notify the Union on a monthly basis
3 of all newly hired employees, including the employees hired in the fall of 2021.

4 In addition, paragraphs 15 and 16 of the Complaint allege that, prior to January 26,
5 2022, UFCW representative Chris Adams (Adams) was permitted to visit the Town's
6 Wastewater Treatment Facility once a month to speak with bargaining unit members
7 during working hours at their workstations and was not required to obtain permission or
8 to notify management before visiting. Paragraph 17 alleges that on or about January 26,
9 2022, UFCW representative Drew Weisse (Weisse), without notifying management,
10 entered the Wastewater Treatment Facility during working hours to speak with bargaining
11 unit members about a decertification petition filed with the DLR. Department of Public
12 Works Director and Wastewater Treatment Facility Supervisor Gerry Skowronek
13 (Skowronek) "yelled at Weisse and objected to his presence in the facility." In addition,
14 paragraph 18 of the Complaint alleges that Town Manager Ryan McNutt (McNutt) filed a
15 grievance with Adams "objecting to Weisse's presence at the Wastewater Treatment
16 Facility." McNutt further "instructed Adams to ensure that [UFCW] representatives
17 checked in with a supervisor when they arrive at a Town facility and that they only have
18 contact with employees during their lunch or break times."

19 Based on these allegations, Count III of the Complaint alleges that the Town
20 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to
21 provide the UFCW with prior notice and an opportunity to bargain to impasse or resolution
22 over the decision and the impacts of its decision to require a union representative to notify
23 a supervisor before entering a Town facility and to limit the representative's access to

1 bargaining unit members to break and lunch times. Counts IV and V of the Complaint
2 allege that, through Skowronek's and McNutt's conduct, the Town independently violated
3 Section 10(a)(1) of the Law.

4 On March 4, 2022, the UFCW filed the instant Motion pursuant to 456 CMR 15.11
5 to have the pending prohibited practice charge in Case No. MUP-22-9152 block further
6 proceedings in Case No. MCR-22-9034. Neither the Town nor UPSEU filed a response
7 to the Motion. After reviewing the record before us, we issue the following ruling.¹

8 Ruling

9 A party to a representation petition filed with the DLR pursuant to Section 4 of the
10 Law may file a motion requesting that a pending prohibited practice charge block the
11 conduct of an election. The purpose of the blocking charge is to ensure that prohibited
12 practices that interfere with certain employee rights under the Law also do not interfere
13 with a representation election. Commonwealth of Massachusetts, 17 MLC 1650, 1652,
14 SCR-2201 (April 9, 1991). No purpose would be served by proceeding with an election
15 when there exists unremedied, alleged conduct that would tend to interfere with the free
16 electoral choice of employees. Id. The CERB's procedure for processing alleged blocking
17 charges is set forth in DLR Rule 15.11, 456 CMR 15.11. This regulation requires that the
18 moving party submit with its motion evidence sufficient to establish probable cause to
19 believe that: a) the conduct alleged in the prohibited practice charge has occurred; b) the
20 alleged conduct violated the Law; and c) the alleged conduct may interfere with the

¹ DLR Rule 456 CMR 15.11(2) states that upon receipt of a blocking charge motion, the DLR may "investigate the matter, issue a notice to the other parties to the election to show cause why the motion should not be granted, or conduct further proceedings to dispose of the matter."

1 conduct of a valid election. Here, because the Investigator found probable cause to issue
2 a complaint in Case No. MUP-22-9152, the UFCW has satisfied the first two parts of the
3 analysis. The CERB must therefore examine whether the acts that form the basis of the
4 Complaint could interfere with the conduct of a valid election.

5 In determining whether a prohibited practice could interfere with the conduct of a
6 valid election, the CERB considers the character and scope of the allegations in the
7 charge and their tendency to impair employees' free choice; the size of the working force
8 and the number of employees involved in the events on which the charge is based; the
9 entitlement and interest of the employees in an expeditious expression of their preference
10 for representation; the relationship of the charging party in the prohibited practice charge
11 to the labor organizations involved in the representation case; the showing of interest, if
12 any, presented in the representation case and the timing of the charge. New England
13 Police Benevolent Association, 37 MLC 27, 28, SCR-10-2283, 2285, 2294 (August 6,
14 2010) (citing Commonwealth of Massachusetts, 21 MLC 1713, 1717, SCR-2219, 2220,
15 2221 (April 9, 1995)).

16 In support of its Motion, the UFCW argues that the Town's conduct impairs the
17 UFCW's ability to meet and communicate with bargaining unit members. The UFCW
18 alleges that the Town's failure to allow it to access new employees who were hired less
19 than four months before the representation petition was filed has impacted the UFCW's
20 ability to forge relationships with them and rendered the new employees open to
21 supporting a rival union. Further, the UFCW argues that the Town's decision to restrict
22 the UFCW representatives' access to its facilities, although occurring after the petition
23 was filed, forced it to curtail its organizing activity and had a chilling effect on employees'

1 communications with the UFCW. The UFCW also argues that the violations directly affect
2 a substantial portion of the unit and may impact the UFCW's ability to communicate with
3 bargaining unit members during the election.

4 We grant the UFCW's Motion. Counts III and IV of the Complaint allege that the
5 day after the UFCW intervened in the present matter, a supervisor yelled at a UFCW
6 union representative while he was speaking to a bargaining unit member and verbally
7 objected to the representative's presence in the Town's Wastewater Treatment Facility.
8 Subsequently, the Town allegedly changed the process by which the UFCW could access
9 its bargaining unit members. We find that these allegations could reasonably tend to
10 interfere with employees' free choice in an election for several cumulative reasons.

11 First, the Town's decision to limit access to bargaining unit members at all Town
12 facilities impacts the entire bargaining unit. Compare New England Police Benevolent
13 Association, 37 MLC at 28 (granting motion to block where, among other things, alleged
14 employer conduct impacted the entire bargaining unit) to Commonwealth of
15 Massachusetts, 21 MLC at 1713 (charge did not block representation petition, where,
16 among other things, the alleged conduct impacted only a small minority of a much larger
17 bargaining unit).

18 Second, the alleged unlawful conduct in Counts III and IV occurred just one day
19 after the UFCW intervened in this matter. Based on similar close timing, the CERB has
20 granted a motion to block. See Town of Franklin, 46 MLC 81, MCR-19-7425, October 31,
21 2019 (motion to block allowed where there were only a few days between the alleged
22 unlawful conduct and the signing of showing of interest).

1 Finally, the alleged chilling conduct by the Town towards the UFCW's presence in
2 the workplace, coupled with its decision to limit the UFCW's access to its bargaining unit
3 members, demonstrates a potential bias against the UFCW that would reasonably tend
4 to impair employees' freedom to choose a representative in the election. In City of Everett,
5 47 MLC 313, 314, MCR-20-8331 (June 30, 2021), we allowed a Motion to Block based
6 upon allegations that the employer had allowed a rival union unauthorized access to the
7 workplace for solicitation, and that a supervisor had made statements supporting a rival
8 union. The CERB concluded that this conduct demonstrated a bias in favor of the rival
9 union that would reasonably tend to impair employees' freedom of choice in the election.
10 Id. In the present matter, the UFCW bargaining unit members who witnessed or were
11 affected by the Town's alleged misconduct, or new employees who have not had any
12 interaction with their representatives due to management's unwillingness to notify the
13 UFCW of their presence, could reasonably conclude that the UFCW is ineffective in
14 representing their members' interest and thus, not the best representative to elect. They
15 might also reasonably conclude that the Town's apparent bias against the UFCW could
16 extend to them if they were known to support the UFCW. Thus, as in City of Everett, we
17 find that the Town's conduct indicates a bias that would reasonably tend to impair
18 employee free choice should the petition proceed to election without resolution of the
19 unfair labor practice.

20 For all the foregoing reasons, we grant the UFCW's Motion.² The parties are
21 advised that pending representation petitions that are blocked by a prohibited practice

² Because we grant the UFSW's motion based on Counts III and IV of the Complaint, we do not address whether the allegations set forth in Counts I, II and V of the Complaint should also block the election.

1 charge will be held in “inactive status” until the resolution of the prohibited practice
2 complaint at issue. Commonwealth of Massachusetts, 17 MLC at 1658. During its
3 pendency in inactive status, the petition will not be considered to raise a question
4 concerning representation and will not bar the employer and the incumbent union from
5 fulfilling their statutory obligation to bargain in good faith. New England Police Benevolent
6 Association, 37 MLC at 28. The final disposition of the representation petition will depend
7 on the outcome of the prohibited practice charge that rendered the petition inactive. Id.

8 In accordance with the above, the DLR will not schedule an election in the
9 bargaining unit until the final disposition of Case No. MUP-22-9152.³ The DLR shall
10 nevertheless list the UPSEU as an interested party in Case No. MUP-22-9152 for the sole
11 purposes of receiving copies of any DLR or CERB orders or any other documents that
12 dispose of the case.

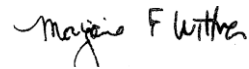
13 Conclusion

14 For the above-stated reasons, we ALLOW the UFCW’s Motion and block further
15 processing of Case No. MCR-22-9034. MCR-22-9034 will be held in inactive status. As a
16

³ On July 15, 2022, the UFCW filed a second charge of prohibited practice, which the DLR docketed as Case No. MUP-22-9431. In a cover email, the UFCW asked the CERB to hold off on issuing a ruling on the instant blocking charge motion to allow it time to file a supplemental blocking charge motion pertaining to the alleged unlawful conduct in Case No. MUP-22-9431 (Supplemental Motion). The UFCW filed the Supplemental Motion on July 22, 2022. We have not addressed the Supplemental Motion in this ruling, but will address it in a future ruling. Should we grant the Supplemental Motion, the DLR will not schedule an election in MCR-22-9034 until the final disposition of Case No. MUP-22-9431.

- 1 result, there is no pending question concerning representation.
- 2 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CERB CHAIR



KELLY STRONG, CERB MEMBER