

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of:

SOMERSET PUBLIC SCHOOL DISTRICT
AND THE SOMERSET BERKLEY REGIONAL
SCHOOL DISTRICT

and

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
COUNCIL 93

*
*
*
*
*
*
*
*
*
*
*

Case Number: MCR-22-9558

Date Issued: February 14, 2023

CERB Members Participating:

Marjorie F. Wittner, Chair
Kelly B. Strong, CERB Member
Victoria B. Caldwell, CERB Member

Appearances:

Andrew Waugh, Esq. - Representing Somerset Public School District and
Somerset Berkley Regional School District

Justin Murphy, Esq. - Representing AFSCME Council 93

DECISION

SUMMARY AND STATEMENT OF THE CASE

- 1 The issue in this case is whether the petition filed by American Federation of State,
- 2 County and Municipal Employees, Council 93 (AFSCME or the Union) is barred by 456
- 3 CMR 14.06(1)(contract bar). The Commonwealth Employment Relations Board (CERB)
- 4 finds that the petition is contract-barred.

1 chosen based upon seniority. No new part-time positions will be added to this
2 Agreement."

3 In August 2018, the Union and the District signed another Memorandum of
4 Agreement (2018 MOA) to extend the terms of the CBA from September 1, 2018 through
5 August 31, 2021, except for certain specific terms as modified within the 2018 MOA. The
6 2018 MOA was silent on the recognition clause. In the signed 2018-2021 CBA, however,
7 the recognition clause did not include the 2016 MOA language pertaining to not hiring
8 new part-time employees. Instead, it stated only that "[t]he Committee recognizes the
9 Union as the sole and exclusive bargaining agent for the purpose of establishing salaries,
10 wages, hours, and other conditions of employment for all full-time, and regular part-time
11 employees, who shall be defined as any employees working twenty (20) or more hours
12 per week, of the Somerset and Somerset Berkley Regional School Districts."²

13 The current CBA, in effect from August 1, 2021, through July 31, 2024, contains
14 the same recognition clause as the 2018-2021 CBA. The current CBA was signed by the
15 Union on December 15, 2021 and by the District on January 18, 2022. By its terms, the
16 signing of the CBA by the authorized representatives constituted the ratification of the
17 agreement.

18 Parties' Assertions Regarding New Part-Time Employees Hired after 2016

19 In support of its petition, the Union asserts that the District recently hired part-time
20 employees who work less than 20 hours per week. More specifically, the Union asserts

² The District attributes the failure to include the language that no new part-time positions will be added to the CBA to a scrivener's error. The Union disagrees, asserting that the language was specifically removed in the subsequent CBAs.

1 that the District hired ten part-time employees in 2022, many of whom were hired for less
2 than 20 hours per week. As such, those employees are not included in the unit, although
3 the Union asserts that, at times, these part-time employees have been assigned to work
4 as many as 19.5 hours per week.

5 The District counters that it has not created a single new non-regular part-time
6 cafeteria worker position. The District further denies increasing the hours of any part-time
7 cafeteria worker to 19.5 hours per week. The District asserts that in 2016, there was a
8 total of 25 cafeteria worker positions. Of those, seven were full-time positions at 30 hours
9 per week, two were regular part-time positions at 20 hours per week, four were part-time
10 positions at 15 hours per week, and twelve were part-time positions working between 10
11 and 13.75 hours per week. The District asserts that there remain 25 cafeteria worker
12 positions, and that there has been no substantial change to the roster of cafeteria workers.
13 The District admits that it has hired new part-time employees to fill vacancies as they arise
14 but asserts that it has not added any new non-regular part-time cafeteria worker positions.

15 OPINION³

16 456 CMR 14.06(1)(a) provides:

17 Except for good cause shown, no petition filed under the provisions of
18 M.G.L. c.150E, §4 shall be entertained during the term of an existing valid
19 collective bargaining agreement, unless such petition is filed no more than
20 180 days and no fewer than 150 days prior to the termination date of said
21 agreement. No collective bargaining agreement shall operate as a bar for
22 a period of more than three years.

23 The purpose of the contract bar rule is to establish and promote stable labor
24 relations and to avoid instability by, in part, ensuring that the parties to an agreement

³ The CERB's jurisdiction is not contested.

1 know which positions are included within the bargaining unit. City of Boston, 36 MLC
2 194, 197, CAS-07-3692, CAS-07-3708 (May 14, 2010). The application of the good cause
3 exception to the contract bar rule is discretionary, Boston Water and Sewer Commission,
4 6 MLC 1601, 1604, MCR-2824 (November 19, 1979), and the good cause exception is
5 rarely applied. City of Boston, 36 MLC at 197. The contract bar rule has been waived in
6 limited circumstances, such as where the bargaining unit covered by the contract is
7 inappropriate. See Commonwealth of Massachusetts, Chief Justice, Supreme Judicial
8 Court, 4 MLC 1503, 1505-6, SCR-2109 (November 22, 1977) and Commonwealth of
9 Massachusetts, 4 MLC 1830, 1831-2, SCR-2113 (March 31, 1978). Generally, exceptions
10 must be based on evidence of substantial disruption in bargaining relationships and
11 threats to labor stability. Town of Saugus, 28 MLC 80, 83, MCR-4627 (July 18, 2002).
12 Mere dissatisfaction of unit employees with their bargaining representative is insufficient
13 to waive a contract bar. Quincy School Committee, 23 MLC 173, 174, MCR-4468, MCR-
14 4469 (February 4, 1997).

15 Here, there is no dispute that the Union and District signed a complete and final
16 CBA covering the period from August 1, 2021 through July 31, 2024. This petition was
17 filed on September 13, 2022, more than 180 days before the CBA is set to
18 expire. Accordingly, absent good cause shown, the contract bar requires dismissal of this
19 petition.

20 The Union nevertheless argues that good cause exists to process its petition
21 because the District is hiring part-time non-unit employees to work fewer than 20 hours
22 per week, sometimes up to 19.5 hour per week, to avoid including those employees in
23 the bargaining unit. The Union claims that by hiring non-benefitted employees to perform

1 the same duties and share the same title as bargaining unit members, the District is
2 undermining the Union. It points out that there are now almost as many non-benefitted
3 employees as there are bargaining unit members. The Union maintains that this is
4 detrimental to labor relations, as the District:

5 would rather teeter the line between the minimum twenty (20) hour requirement,
6 instead of hiring more bargaining unit members. Soon enough, the bargaining unit
7 could erode and all that would be left are non-benefitted employees who work 19.5
8 hours per week, just so they do not receive the benefits and protections of the
9 collective bargaining agreement.

10
11 Assuming without deciding that the Union's claims regarding contract repudiation
12 or potential unit erosion have merit, similar circumstances have not prevented application
13 of the contract bar. In finding no good cause to waive the contract bar in Hanover School
14 Committee, 32 MLC 101, CAS-04-3592 (November 2, 2005), the CERB referenced an
15 unpublished ruling where the petitioning union alleged that it had reached a settlement in
16 principle regarding the petitioned-for positions, but that the employer had reneged on the
17 deal by not executing the settlement agreement in question. Id. at 104 (citing
18 Commonwealth of Massachusetts, CAS-02-3538 (unpublished ruling, July 23, 2003)). As
19 described in Hanover, the CERB ruled in Commonwealth that, "whatever its possible
20 merits in a prohibited practice proceeding" the alleged conduct "did not rise to the level of
21 disrupting the parties' bargaining relationship or threatening labor stability." Id.

22 Similarly here, the alleged conduct does not rise to the level of good cause to
23 constitute an exception to the contract bar rule. The decision to bar this petition does not
24 prevent the Union from pursuing its allegations that the District repudiated an agreement
25 or eroded the unit, through other avenues such as a prohibited practice proceeding, if
26 timely. Nor does it preclude the Union from filing a petition to seek an election for these

1 part-time employees at the appropriate time. Because the Union has not established good
2 cause to waive the contract bar, we find that the petition is barred by the existence of a
3 valid CBA.

4 CONCLUSION

5 For the reasons stated above, we dismiss the petition pursuant to 456 CMR
6 14.06(1)(a).

7 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Marjorie F Wittner

MARJORIE F. WITTNER, CHAIR

Kelly B Strong

KELLY B. STRONG, CERB MEMBER

Victoria B. Caldwell

VICTORIA B. CALDWELL, CERB MEMBER