

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

In the Matter of

JANE MEYRICK

and

UNITED AUTO WORKERS, LOCAL 2322

and

PAULO FREIRE SOCIAL JUSTICE
PUBLIC CHARTER SCHOOL

Case No. MCR-23-9937

Date Issued: June 30, 2023

CERB Members Participating:

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

Appearances:

Marc Terry, Esq. - Representing Paulo Freire Social Justice Public
Charter School

James Shaw, Esq. - Representing United Auto Workers, Local 2322

Jane Meyrick - Pro Se

DECISION

Statement of Case and Summary

1 On March 17, 2023, Jane Meyrick (Meyrick or Petitioner) filed a petition with the
2 Department of Labor Relations (DLR) in the above-referenced case seeking to decertify
3 the United Auto Workers, Local 2322 (Union), which represented a bargaining unit
4 consisting of all full time and regular part-time teachers, social workers, counselors,
5 nurses, department leaders and other professional staff employed by the Paulo Freire
6 Social Justice Charter School (Employer). On or about March 28, 2023, the DLR notified

1 the Union about Meyrick's petition. On or about March 28, 2023, the DLR issued a Notice
2 of Hearing for a pre-hearing conference on April 28, 2023, and a hearing on May 10,
3 2023. On or about April 7, 2023, the Union filed a Motion to Intervene and the DLR
4 approved the request. On or about May 19, 2023, the parties waived the hearing and filed
5 a stipulated record instead. On or about May 26, 2023, the Union and Employer filed post-
6 hearing briefs.¹ For reasons explained below, the Commonwealth Employment Relations
7 Board dismisses the petition.

8 Stipulated Record²

9 The parties agreed to rely on the following stipulated record:

- 10 1. Paulo Freire Social Justice Charter Public School ("Employer") is a
11 Commonwealth Charter School operating under a charter issued by
12 the Department of Elementary and Secondary Education pursuant to
13 G.L. c. 71, § 89.
14
- 15 2. On August 21, 2020, in WMAM-20-7899, the DLR certified the UAW,
16 Local 2322 ("Union") as the exclusive bargaining representative of a
17 bargaining unit of "All full-time and regular part-time teachers, social
18 workers, counselors, nurses, department leaders and other
19 professional staff, but excluding all managerial, confidential, casual
20 and other employees" employed by the Employer.
21
- 22 3. The Employer and the Union have not negotiated any changes to the
23 certified bargaining unit and no new positions exist that any party
24 claims should be in the bargaining unit.
25
- 26 4. The certified bargaining unit is the appropriate bargaining unit.
27
- 28 5. On June 30, 2023, the Employer will permanently cease to exist due
29 to its decision to surrender its charter.
30
- 31 6. The last day of work for bargaining unit members will be on or about
32 June 22, 2023.

¹ Meyrick did not file a post-hearing brief.

² The parties did not include any exhibits in the stipulated record.

1 Opinion³

2 The issue presented is whether the CERB should order a decertification election
3 given that the Employer is losing its charter on June 30, and will thereafter cease to exist.
4 In support of holding the election, the Employer argues that Section 4 of Massachusetts
5 General Laws, Chapter 150E (the Law) and the DLR's regulations, 456 CMR 14.00 et.
6 seq., mandate that the CERB order an election. The Employer contends that pursuant
7 to 456 CMR 14.06, the CERB may only dismiss a representation petition for a certification
8 bar, contract bar, or election year bar. As this case does not implicate those bars, the
9 Employer argues that the CERB must order an election. The Employer asserts that
10 because the post-hearing briefs were due approximately five weeks before the school
11 permanently closed and the Employer ceased to exist, the CERB was obligated to order
12 an election at that time.

13 The Union conversely contends the CERB should dismiss the petition due to the
14 Employer's imminent closure. The Union asserts that the short amount of time between
15 the post-hearing brief due date, the closure of the school on June 22, 2023 and the
16 withdrawal of the charter on June 30, 2023, does not provide the DLR with sufficient time
17 to conduct an election, and any attempts to do so would be a waste of time and resources
18 for all parties. According to the Union, it would be pointless for the CERB to order an
19 election as soon as it received the parties' briefs, because, once the Order issued, the
20 Employer would be required to post a Notice of Election for ten days. Further, the parties
21 would have seven days after the election to challenge the results before the DLR could
22 certify the results. The Union thus argues that even under an extremely expedited and

³ The CERB's jurisdiction in this matter is uncontested.

1 unrealistic timeframe for conducting the election, the earliest that the DLR could certify
2 the results would be on or about June 22, 2023, the bargaining unit members' final day
3 of work. As such, the Union requests that the CERB decline to order an election and
4 dismiss the petition as futile. We agree with the Union.

5 As the stipulations reflect, in just a few days, the Employer will cease to exist.
6 Despite the Employer's argument that the only permissible reasons for the CERB to
7 dismiss a representation petition are a certification, contract, or election year bar, in
8 University of Massachusetts, 41 MLC 233, SCR-14-3687 (February 20, 2015), the CERB
9 considered the employer's argument that the CERB should dismiss the petition because
10 certain changes it planned to make in the upcoming academic year would change the
11 nature of the work performed by the petitioned-for employees and render them ineligible
12 for collective bargaining rights. As part of its analysis, the CERB observed that in the
13 private sector, when an employer anticipates changes in the size of its workforce, the
14 National Labor Relations Board (NLRB) makes an election determination based not
15 merely on the employer's planned changes, but on whether the evidence establishes with
16 sufficient definiteness that a fundamental change in the nature of the employer's business
17 operations is in progress and is certain to take effect. Id. at 240 (citing Douglas Motors
18 Corporation and Shopmen's Local Union no. 471, International Association of Bridge,
19 Structural and Ornamental Ironworkers, AFL-CIO, 128 NLRB 307, 308 (1960)). Further,
20 observing that "no purpose would be served by directing an election amongst individuals
21 whose collective bargaining rights had or would cease shortly after an election and
22 certification," the CERB found that many of the changes that the University relied upon
23 were uncertain, speculative, and conditioned on future approvals. Id. Based on this
24 uncertainty, the CERB declined to strip the petitioned-for employees of their rights as

1 bargaining unit members, and determined that it could conduct an election before the
2 beginning of the next academic year. Id. at 241.

3 Here, unlike in University of Massachusetts, fundamental changes to the nature of
4 the employer's operations, i.e., permanent closure, are definite and imminent. Moreover,
5 regardless of whether the CERB ordered an election now, or had ordered one upon
6 receipt of post-hearing briefs, we find that no purpose would be served by directing an
7 election amongst individuals whose collective bargaining rights have already or will cease
8 shortly after an election or certification.⁴ Accordingly, consistent with the principles
9 articulated in University of Massachusetts and the cases cited therein, and in the interests
10 of conserving the DLR's and the parties' time and resources, we decline to order an
11 election and dismiss the petition.

12 CONCLUSION

13 For the foregoing reasons, the CERB dismisses the representation petition.

14 SO ORDERED.
15
16

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

⁴ The Employer did not offer any legal or practical basis for expediting the DLR's representation process.

