

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Rochester Bituminous Products, Inc.,  
Michael P. Todesca, Albert M. Todesca, and  
Thomas N. Russo,  
Petitioners,

No. LB-22-5

Dated: October 4, 2022

v.

Office of the Attorney General, Fair Labor  
Division,  
Respondent.

ORDER

This appeal was brought in January 2022. A plan for discovery, motion practice, etc. was established at a February 2022 prehearing conference. The parties agreed on a September 2022 evidentiary hearing. At their subsequent request, the hearing was continued to early November 2022. The parties now move for a second continuance.<sup>1</sup>

Adjudicative tribunals are responsible for guiding slates of competing cases toward dispositions that are both fair and “speedy.” G.L. c. 7, § 4H. Postponements of long-scheduled trials and hearings tend to disrupt that mission. *See Commonwealth v. Fernandez*, 480 Mass. 334, 341 (2018). *See also United States v. Poulack*, 556 F.2d 83, 86 (1st Cir. 1977).

Accordingly, even when all parties jointly seek a continuance, their request may only be granted upon “good cause shown.” 801 C.M.R. § 1.01(7)(d)(1).

The instant motion does not satisfy this requirement. Its lynchpin is that the petitioners have recently reinforced their legal team with new attorneys from another law firm. The judicial

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<sup>1</sup> The motion, captioned “Motion to Extend Deadlines and Schedule Prehearing Conference,” was filed by the division with the petitioners’ assent.

courts have not viewed even a party's forceful dissatisfaction with his or her representation as a compelling reason for a continuance. *See Commonwealth v. Chavis*, 415 Mass. 703, 712 (1993); *Commonwealth v. Haas*, 398 Mass. 806, 814-15 (1986); *Commonwealth v. Wright*, 11 Mass. App. Ct. 276, 279 (1981).

In the criminal context, the courts have been somewhat open to continuance requests arising out of an attorney's unpreparedness for trial. *See Commonwealth v. Carsetti*, 53 Mass. App. Ct. 558, 562 (2002). It is possible that the petitioners' *new* attorneys would struggle to prepare themselves on the existing schedule. But the motion does not back up even that hypothesis (by affidavit or otherwise) with any relevant details. It does not say when the new attorneys took the case. It does not estimate the volume of the pertinent documentation. It offers no factual reason to believe that the new attorneys would be unable to learn the case during the weeks that remain until the hearing. In any event, even a criminal defendant has no firm entitlement to representation by more than one well-prepared lawyer. The same must be true in administrative proceedings, where the right to counsel is less robust. *See generally Goldberg v. Kelly*, 397 U.S. 254, 270-71 (1970).

The parties also make no showing that they have made industrious efforts to keep the schedule on track. *See Commonwealth v. Philyaw*, 55 Mass. App. Ct. 730, 735 (2002). Indeed, the motion states that the parties—apparently including the division—are “in the initial stages” of their efforts to review documents and discuss settlement. In other passages, the motion suggests that discovery may not yet be complete, and that even the “issues in dispute” have not yet crystallized. Presumably these are overstatements. By January 2022, the division was confident enough in its knowledge of the case to levy significant penalties. And in ordinary fair-labor cases, the petitioners learn the key facts and documents well ahead of the division.

There is no question that the new attorneys' arrival may benefit both the parties and the tribunal. But this development is not an adequate reason to redo prehearing events that have already taken place.

For the foregoing reasons, it is ORDERED that the motion for a second continuance of the evidentiary hearing is DENIED. This ruling is without prejudice to a renewed motion that (a) is filed forthwith, (b) demonstrates good cause for a continuance in light of the applicable case law, and (c) proposes unshakable hearing dates in late November or early December 2022.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate