

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

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In the Matter of:	*	
	*	Case No.: WMAM-20-8054
SOUTHEASTERN MASSACHUSETTS	*	
REGIONAL 911 DISTRICT	*	Date Issued: October 14, 2020
	*	
and	*	
	*	
MASSACHUSETTS COALITION OF	*	
POLICE	*	
	*	

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1                    CERB RULING ON REQUEST TO REINVESTIGATE CERTIFICATION BY  
2                    WRITTEN MAJORITY AUTHORIZATION

3                    SUMMARY

4                    On August 4, 2020, the Southeastern Massachusetts Regional 911 District  
5 (SEMRECC or Employer) filed a request with the Department of Labor Relations (DLR)  
6 pursuant to 456 CMR 14.15, seeking to reinvestigate a certification by written majority  
7 authorization (WMA) that the DLR issued on July 28, 2020. The DLR certified that the  
8 Massachusetts Coalition of Police (Union) had been selected by a majority of employees  
9 to serve as their exclusive representative for purposes of collective bargaining in a unit  
10 comprised of Communications Officers and Operations Supervisors. During the  
11 verification process, the DLR, acting as the neutral (Neutral), investigated SEMRECC's  
12 outcome-determinative challenges that the Operations Supervisors should be excluded  
13 from the unit because they supervise the Communications Officers and because, in that  
14 capacity, they allegedly unduly influenced the Communications Officers to sign WMA  
15 cards. The Neutral found that SEMRECC had not presented sufficient evidence to sustain

1 its burden of proving its challenges and dismissed them. The Neutral subsequently  
2 issued a confidential inspection report that verified the Union's majority support, and the  
3 DLR certified the unit based on that report.

4 As grounds for reinvestigation, SEMRECC disputes the Neutral's findings  
5 regarding the Operations Supervisors' duties and claims that the Neutral overlooked the  
6 role that the Operations Supervisors will play as SEMRECC's operations expand.  
7 SEMRECC also claims that the Neutral "belittled its concerns" that the Operations  
8 Supervisors unduly influenced the Communications Officers to sign cards and asks the  
9 DLR to conduct a hearing so that it can examine the Operations Supervisors under oath.  
10 As relief, SEMRECC asks that the DLR "reconsider" its challenges that the Operations  
11 Supervisors be excluded from the unit. SEMRECC does not, however, argue that the  
12 Neutral made numerical errors or that the Investigation was not conducted pursuant to  
13 the DLR's rules. We dismiss the request.

14 Ruling

15 Section 3 of M.G.L. c. 150E (the Law) requires the DLR to "prescribe rules and  
16 regulations and establish procedures for the determination of appropriate bargaining units  
17 which shall be consistent with the purposes of providing for stable and continuing labor  
18 relations." Consistent with the directive, 456 CMR 14.15 of the DLR's regulations permit  
19 the DLR to "reinvestigate any matter concerning any certification issued by it," but only  
20 for "good cause shown."

21 In considering whether SEMRECC has shown good cause here, we note first that  
22 nothing in the 2007 WMA amendments to Section 4 of the Law provides for  
23 reinvestigation, reconsideration, or a right of appeal from any determinations made by the

1 Neutral during the WMA verification process. Rather, Section 4 provides that, once a  
2 Neutral verifies the employee organization's majority support and reports the results to  
3 the DLR, the DLR "shall certify the results in writing." By contrast, the provisions of  
4 Section 4 pertaining to traditional, i.e., non-WMA, representation matters, permit a party  
5 to obtain review "by the full commission"<sup>1</sup> of any decisions or determinations made by a  
6 "member or agent of the commission." We view the absence of any similar administrative  
7 right of review of a Neutral's determinations in the WMA context to indicate Legislative  
8 intent that none exists.

9 Consistent with this statutory scheme, nothing in the DLR's WMA regulations  
10 provides for any right of administrative review of any challenges that the Neutral  
11 investigates and resolves. Although 456 CMR 14.19(15) permits an employer to seek  
12 review of a Neutral's dismissal of *non-outcome determinative* challenges, pursuant to 456  
13 CMR 14.19(10), a Neutral is required to dismiss those challenges without resolving them.  
14 Thus, other than the more general right of reinvestigation "for good cause shown" set  
15 forth in 456 CMR 14.15, the only right to any type of administrative review that an  
16 employer has of any aspect of the WMA process is for matters not previously addressed  
17 by the Neutral during that process.

18 Here, SEMRECC's only grounds for seeking reinvestigation is that it disagrees  
19 with the dismissal of its challenges and believes that it did not have an adequate  
20 opportunity to prove its claims of undue influence. In other words, as SEMRECC itself  
21 states in its request for relief, it seeks "reconsideration" of the Neutral's dismissal ruling.

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<sup>1</sup> In our recent ruling in Cultivate Holdings, LLC, \_\_\_ MLC \_\_, WMAP-20-8085 (Slip. op. September 24, 2020), we construed the reference to the "full commission" in Section 4 of the Law to mean the CERB, because it is the only appellate body within the DLR.

1 Given the absence of any statutory or regulatory right of administrative review of a  
2 Neutral's challenge determinations, to establish good cause for the DLR to reinvestigate  
3 its certification, a party must do more than dispute the Neutral's findings or conclusions  
4 or seek a second opportunity to prove its claims. Because SEMRECC has not done so  
5 here, we dismiss the request for reinvestigation. Compare Framingham Housing  
6 Authority, 42 MLC 340, WMAM-16-5045 (June 28, 2016) (granting request to  
7 reinvestigate WMA certification for four reasons, including to rectify Neutral's numerically  
8 incorrect inspection report that led to Neutral's failure to investigate outcome  
9 determinative challenges and the Neutral's failure to include standard exclusionary  
10 language in certification). To hold otherwise in these circumstances would not only be  
11 inconsistent with the WMA statutory and regulatory scheme, but with what the SJC has  
12 deemed to be the DLR's "unequivocal" policy directive to provide "for stable and  
13 continuing labor relations." Collective Bargaining Reform Association v. Labor Relations  
14 Commission, 436 Mass 197, 206 (2002). See generally, Stow v. Bologna, 32 Mass. App.  
15 Ct. 612, 616 (1992) (although agencies have the inherent right to review their own  
16 decisions in the absence of statutory limitations, this authority must be used sparingly if  
17 administrative decisions are to have resolving force on which persons can rely.)

18 Conclusion

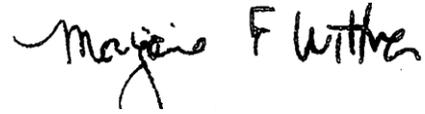
19 For the foregoing reasons, the CERB denies SEMRECC's request to reinvestigate  
20 the DLR's July 28, 2020 certification. The DLR's July 28, 2020 certification therefore  
21 remains intact and unchanged.

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**SO ORDERED**

COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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MARJORIE F. WITTNER, CHAIR



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JOAN ACKERSTEIN, CERB MEMBER



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KELLY STRONG, CERB MEMBER