

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

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In the Matter of:	*	
	*	Case No.: WMAP-21-8450
GREEN THUMB INDUSTRIES	*	
and	*	Date issued:
	*	April 29, 2021
UNITED FOOD AND COMMERCIAL	*	
WORKERS, LOCAL 1459	*	

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CERB RULING ON REQUEST TO REINVESTIGATE CERTIFICATION  
BY WRITTEN MAJORITY AUTHORIZATION

1 Summary

2 For the following reasons, the Commonwealth Employment Relations  
3 Board (CERB) denies Green Thumb Industries' (GTI) request to reinvestigate the  
4 certification in the above-captioned matter.

5 Background

6 GTI is a national cannabis consumer packaged goods company and  
7 retailer. GTI operates a 45,000 square foot Medical and Recreational Grow and  
8 Processing Facility for the cultivation and production of medical marijuana. This  
9 facility is located at 28 Appleton Street, Holyoke, Massachusetts.

10 On February 16, 2021, the United Food and Commercial Workers Union,  
11 Local 1459 (Union) filed an Amended Written Majority Authorization (WMA)  
12 petition (Amended Petition) with the Department of Labor Relations (DLR)  
13 pursuant to Section 5 of M.G.L. c. 150A (the Law) and 456 CMR 2.04 and 14.19  
14 seeking to represent a bargaining unit consisting of the following employees:

1 All full-time and regular part-time agricultural employees employed  
2 by Green Thumb Industries, including but not limited to Cultivation  
3 Technicians and Lead Cultivation Technicians, but excluding all non-  
4 agricultural employees, including Post-Harvest Technicians and  
5 Trimmers, and all managerial, confidential, casual and other  
6 employees employed by Green Thumb Industries.<sup>1</sup>

7 The Amended Petition indicated that there were twenty employees in this  
8 unit. The Union submitted fourteen written majority authorization cards in support  
9 of the petition. On February 28, 2021, the DLR became the neutral pursuant to  
10 456 CMR 14.19(6).

11 On March 3, 2021, GTI filed forty-nine challenges to the Amended Petition,  
12 forty-eight of which pertained to its claim that the proposed unit was expanding  
13 and would, at some unspecified date, more than triple in size from twenty to sixty-  
14 eight employees. The Neutral determined that the forty-eight challenges were  
15 outcome-determinative and investigated them pursuant to 456 CMR 14.19(10),  
16 which requires the Neutral to resolve outcome determinative challenges but to  
17 dismiss non-outcome determinative challenges without resolving them.

18 In support of the forty-eight challenges, GTI stated that in January 2021, it  
19 executed an agreement to purchase a 146,000 square foot, three-building site  
20 located across the street from the 28 Appleton Street facility. GTI stated that it  
21 planned to open the additional buildings in the first quarter of 2022 and that one of  
22 those buildings would be devoted to cannabis cultivation. GTI further indicated  
23 that, as a result, it was currently budgeting to increase the number of Cultivation

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<sup>1</sup> The Union originally filed a petition on February 2, 2021, seeking twenty-seven employees but amended the petition to exclude seven employees (five Post-Harvest Technicians and two Trimmers) after GTI argued that the employees were not agricultural employees within the meaning of Section 5A of the Law.

1 Technicians from eighteen to forty-eight, and the number of Lead Cultivation  
2 Technicians from two to six. This would result in a sixty-two-person bargaining  
3 unit instead of a twenty-person bargaining unit. According to GTI, this would result  
4 in only 16% of the eventual complement of agricultural employees deciding the  
5 union status of the unit, should the DLR certify the unit based only on twenty  
6 employees. To avoid this result, GTI asked the DLR to adopt the National Labor  
7 Relations Board's (NLRB) "expanding unit doctrine," which it alleged would require  
8 this matter to be dismissed as "premature."

9 The Union opposed the challenges on grounds that the DLR had never  
10 adopted the NLRB's expanding unit doctrine. It urged the DLR not to do so,  
11 claiming that it would be at odds with the intent of Section 5(c) of the Law, which  
12 provides for a quick, 30-day WMA process and timely representation.

13 At the time of the investigation, GTI had not hired any additional Cultivation  
14 Technicians or Lead Cultivation Technician employees or provided a date when it  
15 would start to do so.<sup>2</sup>

#### 16 Inspection Report and Ruling on Challenges

17 On March 22, 2021, the Neutral issued a Confidential Inspection Report  
18 (Report) reflecting a twenty-person unit, fourteen valid Written Majority  
19 Authorization cards and forty-nine challenges. The Neutral dismissed the forty-  
20 eight challenges for reasons that she set forth in a letter that she attached to the

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<sup>2</sup> GTI stated that it had already completed environmental, mechanical, architectural, electrical, plumbing and demolition feasibility surveys, as a well as a structural analysis of the existing buildings on the site.

1 Report. In that letter, the Neutral indicated that the CERB had not adopted the  
2 NLRB's expanding unit doctrine and that she would not do so in this matter based  
3 on Section 5 of the Law, which states that the DLR "shall certify to the parties, in  
4 writing, and the employer shall recognize as the exclusive representative for the  
5 purposes of collective bargaining of all the employees in the bargaining unit, a  
6 labor organization which has received a written majority authorization." The Neutral  
7 noted that GTI had not cited, and she had not found, any statute or case law that  
8 permitted the DLR to dismiss or delay a WMA certification pending an employer's  
9 operational expansion.

10 Rather, citing Upper Cape Cod Regional Vocational-Technical School  
11 Committee, 9 MLC 1503, MCR-3327 (1982) and County of Worcester, 3 MLC  
12 1273, MCR-2234, 2367 (November 8, 1976), the Neutral noted that the DLR has  
13 consistently declined to consider theoretical and speculative future events when  
14 deciding issues of unit placement and bargaining rights. Based on this  
15 longstanding principle, the Neutral found that GTI's expansion plans for 2022  
16 should not now deny twenty employees' rights under the Law.<sup>3</sup>

17 Request for Reinvestigation

18 On March 29, 2021, GTI filed a request with the DLR to amend or revise the  
19 March 22, 2021 certification to specify that it only covered bargaining unit members  
20 who were employed at its 28 Appleton Street location. In the event the DLR denied

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<sup>3</sup> Having dismissed the forty-eight outcome determinative challenges, the Neutral dismissed GTI's 49<sup>th</sup> challenge to Connor Dunphy (Dunphy) without resolving it because it was not outcome determinative. See 456 CMR 14.19 (10). GTI claimed that Dunphy had voluntarily resigned his employment on March 1, 2021. GTI did not request reinvestigation of the dismissal of the Dunphy challenge.

1 its request, GTI requested that the DLR reinvestigate the certification based on the  
2 same expanding unit argument that it made to the Neutral. GTI contended that the  
3 Neutral's treating its proposed expansion as too speculative to warrant denying the  
4 certification of the unit was tantamount to her holding that the scope of the certified  
5 bargaining unit did not extend beyond the 28 Appleton Street location. GTI thus  
6 argued that if the DLR adopted the Neutral's reasoning, it should narrow the scope  
7 of the petition accordingly. GTI argued conversely that if the DLR were unwilling  
8 to limit the scope of the bargaining unit, then it must adopt the expanding unit  
9 doctrine to "assess the impact on representation rights of soon to be hired  
10 employees arguably covered by the Certification's scope."

11 On March 31, 2021, the DLR denied GTI's request to amend or revise the  
12 March 22, 2021 certification. Pursuant to 456 CMR 14.15 and 456 CMR 14.19,  
13 however, it referred the request for reinvestigation to the CERB. The Union filed a  
14 brief response to the request for reinvestigation on April 15, 2021.

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#### Ruling

17 456 CMR 14.15 of the DLR's regulations permit the DLR to "reinvestigate  
18 any matter concerning any certification issued by it" but only for "good cause  
19 shown." We do not find good cause to reinvestigate this certification for several  
20 reasons.

21 First, for reasons similar to those stated in Southeastern Massachusetts  
22 Regional 911 District (SEMRECC), 47 MLC 66, 67, WMAM-20-8054 (October 14,  
23 2020), because Section 5 of Chapter 150A does not provide for any sort of hearing  
24 or appeal for written majority authorization matters and because 456 CMR 14.15,

1 permits an employer to seek review of a Neutral's dismissal of *non-outcome*  
2 *determinative* challenges but not outcome-determinative challenges, we do not  
3 construe the WMA statute or its related regulations to provide a right of review of  
4 a Neutral's dismissal of outcome determinative challenges.<sup>4</sup> Thus, other than the  
5 more general right of reinvestigation for "good cause shown" set forth in 456 CMR  
6 14.15, the only right to any type of administrative review that an employer has of  
7 any aspect of the WMA process is for matters raised, but not previously addressed,  
8 by the Neutral during that process.

9 Here, the only grounds the Employer seeks for reinvestigation is that it  
10 disagrees with the Neutral's ruling dismissing its forty-eight exclusionary  
11 challenges. As we stated in SEMRECC, however, given the absence of any  
12 statutory or regulatory right of administrative review of dismissed outcome  
13 determinative challenges, to establish good cause for the DLR to reinvestigate its  
14 certification, a party must do more than seek a second opportunity to argue its  
15 case. 41 MLC at 67. GTI has not done so here.

16 Furthermore, from a policy standpoint, we find no flaws in the Neutral's  
17 decision. As the cases the Neutral cited reflect, the CERB has consistently  
18 declined to make elections determinations on speculative future events. Moreover,  
19 in University of Massachusetts, Amherst, 41 MLC 233, SCR-14-3687 (February  
20 20, 2015), the CERB declined to dismiss a petition for a non-WMA add-on election

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<sup>4</sup> Although SEMRECC was decided under Chapter 150E, Section 4 of Chapter 150E and Section 5(c) of the Law are substantially similar for purposes of determining that the Legislature did not intend there to be any right of administrative review from determinations made by a neutral in WMA verification proceedings in either Chapter 150E or Chapter 150A proceedings.

1 for Peer Mentor positions based on certain changes that the University planned to  
2 make to the Peer Mentor program, which the University claimed would affect  
3 whether the Peer Mentors were entitled to collective bargaining rights. In  
4 considering whether the anticipated changes warranted dismissing the petition, the  
5 CERB looked to the NLRB for guidance. Citing Douglas Motors Corporation, 128  
6 NLRB 307, 308 (1960), the CERB noted that the NLRB makes election  
7 determinations “based not merely on the employer’s planned changes, but on  
8 whether the evidence establishes with sufficient definiteness that a fundamental  
9 change in the nature of the employer’s business operations is in progress and is  
10 certain to take effect.” 41 MLC at 240. Based on evidence showing that the  
11 University was still in the planning stage of designing the program and that key  
12 changes were still undecided and unapproved, the CERB found that the  
13 University’s plans lacked sufficient definiteness and declined to dismiss the add-  
14 on election petition based on those plans. Id.

Here, where GTI has not even begun to hire new employees and the building in which it expects they will work is not scheduled to be completed for at least another eight months, the quick timeline that the Legislature imposed upon the DLR to complete the WMA verification process described in Section 5(c) of the Law provides an even more compelling basis to deny GTI’s request for

1 reinvestigation based on GTI's plans.<sup>5</sup>

2 Conclusion

3 For the foregoing reasons, the CERB denies GTI's request for  
4 reinvestigation of the DLR's March 22, 2021 certification.

5 **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

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<sup>5</sup> To the extent that GTI's request for reinvestigation encompasses the DLR Director's denial of its request to amend the certification to add the 28 Appleton Street address, we decline to consider this issue for two reasons. First, the DLR Director did not refer this issue to us and GTI did not appeal from this determination. Second, GTI did not raise this issue during the investigation. When reinvestigating WMA matters, the CERB does not consider challenges that could have been made, but were not. See City of Somerville, 37 MLC 161, WMAM-10-104 (February 10, 2011) (declining to address issues raised for the first time in a request for reinvestigation).