

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

In the Matter of:

NATIONAL CORRECTIONAL  
EMPLOYEES UNION

And

BARNSTABLE COUNTY SHERIFF'S  
OFFICE

Case Numbers: WMAS-24-10472

Date Issued: June 17, 2024

CERB RULING ON REQUEST TO REINVESTIGATE CERTIFICATION BY  
WRITTEN MAJORITY AUTHORIZATION

SUMMARY

On May 16, 2024, the Department of Labor Relations (DLR) certified that the National Correctional Employees Union (Union) had been selected by a majority of employees to serve as their exclusive representative for purposes of collective bargaining in the following unit:

All full-time and regular part-time Licensed Practical Nurses, Registered Nurses, Nurse Case managers, and Nurse Practitioners/Physician's Assistants employed by the Barnstable County Sheriff's Office and Correctional Facility.

On May 23, 2024, the Barnstable County Sheriff's Office (Employer) filed a request with the DLR pursuant to 456 CMR 14.15 and 46 CMR 14.19(15) to reinvestigate that certification. For the following reasons, the Commonwealth Employment Relations Board (CERB) denies the request.

1        Background

2        During the written majority authorization (WMA) verification process, the Employer  
3 challenged two of the petitioned-for titles, Nurse Case Manager and Nurse  
4 Practitioner/Physician's Assistant, on the grounds that they were managerial and/or  
5 confidential employees within the meaning of Section 1 of M.G. L. c. 150E (the Law). A  
6 DLR hearing officer, serving as the Neutral, determined that the challenges concerned  
7 four of the five professional employees in the mixed professional/non-professional unit  
8 and therefore were outcome-determinative.<sup>1</sup>

9        The Neutral investigated the challenges pursuant to 456 CMR 14.19 (15).<sup>2</sup> By  
10 letter to the parties dated May 16, 2024, the Neutral rejected those challenges. The letter  
11 summarized the parties' respective positions and provided detailed findings in support of  
12 the Neutral's conclusion that the challenged employees were neither managerial nor  
13 confidential employees and, therefore, appropriately included in the petitioned-for unit.  
14 The Neutral attached this letter to a confidential inspection report that verified the Union's  
15 majority support. The DLR certified the unit based on that report.

16        Request for Reinvestigation

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<sup>1</sup> The Inspection Report Attachment indicated that in addition to the professional employees, there were six non-professional employees in the petitioned-for unit.

<sup>2</sup> 456 CMR 14.19(15) states:

Within seven days after the Department certifies the bargaining unit, the employer may seek review of any previous challenges the neutral had dismissed as non-outcome determinative. The employer may obtain such review by filing a request to reinvestigate the certification pursuant to the procedure outlined in 456 CMR 14.15.

1 This request for reinvestigation followed. In its request, the Employer contends  
2 that the Investigator overlooked evidence that it submitted and erred when concluding  
3 that the two challenged titles should be included in the unit. The Employer states that  
4 good cause exists for the CERB to reinvestigate the petition because the certification “not  
5 only interferes with [the Employer’s] rights to organize a medical unit under the  
6 managerial/confidential employees of its choosing, it coerces and compels [the Employer]  
7 to create additional positions to replace the managerial structure it loses as a result.”<sup>3</sup>

8	<u>Ruling</u>
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Section 3 of the Law requires the DLR to “prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations.” The DLR has promulgated two regulations pertaining to reinvestigation of certifications: 456 CMR 14.15, which permits the DLR to “reinvestigate any matter concerning any certification issued by it,” but only for “good cause shown;” and 456 CMR 14.19(15), which pertains specifically to reinvestigation of certifications by written majority authorization, and permits an employer to seek review of any previous challenges that the neutral dismissed as “non-outcome determinative.” Here, because the Neutral dismissed outcome-determinative challenges, 456 CMR 14.19(15) does not apply. Therefore, the only issue before the CERB is whether “good cause” exists under 456 CMR 14.15 to reinvestigate the certification. We hold that it does not.

21 The CERB was faced with the same issue in Southeastern Massachusetts  
22 Regional 911 District, 47 MLC 66, WMAM-20-8054 (October 14, 2020) where, as here,

<sup>3</sup> The Union did not file a response to the request for reinvestigation.

1 the employer sought reinvestigation of a DLR Neutral's dismissal of its outcome  
2 determinative challenges. The CERB denied the motion for reinvestigation. After  
3 reviewing the applicable statutory and regulatory scheme, the CERB first determined that  
4 there is no statutory or regulatory right of administrative review of any challenges that a  
5 neutral investigates and resolves during the WMA verification process. Id. It then held  
6 that given the absence of such right, to establish good cause under 456 CMR 14.15, a  
7 party must do more than dispute the neutral's findings or conclusions or seek a second  
8 opportunity to prove its claims. Id. at 67. Because the employer had not done so, the  
9 CERB denied the request for reinvestigation.

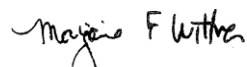
10 The same result is required here, as the Employer's only grounds for seeking  
11 reconsideration is its disagreement with the Neutral's ruling. The Employer's public policy  
12 arguments do not persuade us otherwise, as similar arguments could be made anytime  
13 a neutral disagrees with an employer regarding the managerial or confidential status of  
14 the petitioned-for employees.

15 Conclusion

16 For the foregoing reasons, the CERB denies the Employer's request to  
17 reinvestigate the DLR's May 16, 2024 certification. The certification therefore remains  
18 intact and unchanged.

19 **SO ORDERED**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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MARJORIE F. WITTNER, CHAIR



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KELLY STRONG, CERB MEMBER



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VICTORIA B. CALDWELL