

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

In the Matter of

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TOWN OF HUDSON

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Case No.: MUP-13-3223

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and

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Date Issued: July 24, 2014

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HUDSON SUPERIOR OFFICERS
ASSOCIATION, MCOP, LOCAL 433

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Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Appearances:

Kimberly A. Rozak, Esq.

Representing the Town of Hudson

Amy L. Davidson, Esq.

Representing the Hudson Superior
Officers Association, MCOP, Local 433

DECISION ON APPEAL OF HEARING OFFICER'S RULING ON MOTION FOR
SUMMARY JUDGMENT

Summary

This matter arises out of Case No. WMAM-12-2446, in which the DLR certified the Hudson Superior Officers Association, MCOP, Local 433 (Union) as the exclusive representative of a bargaining unit comprised of the Town of Hudson's superior police officers, including the position of Captain, but excluding the Chief and all sworn police officers below the rank of Sergeant. After the certification, the Town objected to the Captain's inclusion in the bargaining unit on the grounds that the Captain was a

managerial or confidential employee, or did not otherwise share a community of interest with the certified bargaining unit. The DLR treated the Town's objections as a motion to reinvestigate the certification pursuant to 456 CMR 14.16, and held a hearing to address the issues raised by the Town's objections. The Commonwealth Employment Relations Board (Board) issued a Decision upon Reinvestigation of Certification on August 7, 2013 declining to remove the Captain from the certified unit.¹ The Town subsequently refused to bargain with the Union over the Captain's terms and conditions of employment and the Union filed the instant prohibited practice charge alleging that the Town's conduct violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. The charge was investigated and the DLR issued an expedited complaint alleging that the Town had violated the Law as alleged. On June 26, 2014, a DLR hearing officer granted the Union's motion for summary judgment, concluding that the Town unlawfully refused to bargain. The Town appeals from this Ruling and the Board affirms for the reasons set forth below.²

Facts

The Hearing Officer relied on the following facts, which are not challenged, and which we reprint verbatim below.

Stipulations of Fact

On February 19, 2014, the Town and Union entered into the following stipulations:

¹ The Board's decision is reported at 40 MLC 42 (August 7, 2013).

² The Town filed its supplementary statement in support of its appeal on July 7, 2014. The Union did not file a response to the Town's supplementary statement.

1. The sole issue before the hearing officer in this matter is whether or not the position of Captain shall be included in the police superior officers' bargaining unit; and
2. The entire record of the certification proceeding in 40 MLC 42 (August 7, 2013) shall be incorporated into this matter, including the following documents: relevant DLR documents, pleadings of both parties, briefs of both parties, the stenographic transcript of the hearing before the CERB, exhibits introduced at the CERB hearing, the CERB decision, and all motions.

Findings of Fact

1. The Town is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the law.
3. The Union is the exclusive bargaining representative for all sworn police superior officers employed by the Town excluding the Chief and all sworn police officers below the rank of sergeant.
4. On December 10, 2012, the DLR certified the Union as the exclusive representative for the bargaining unit referred to in paragraph 3.
5. On or about December 10, 2012, the Town challenged the inclusion of the Captain in the bargaining unit.
6. On December 11, 2012, the DLR notified the parties that the Town's objection would be treated as a request for reinvestigation of the certification pursuant to 456 CMR 14.15.
7. On March 27, 2013, the DLR held a hearing before CERB chair Marjorie Wittner, Esquire, concerning the inclusion of the position of Captain in the bargaining unit.
8. On August 7, 2013, the CERB issued its Decision upon Reinvestigation finding that the position of Captain should be included in bargaining unit of superior officers represented by the Union.
9. On August 29, 2013, the Town refused to bargain with the Union over the terms and conditions of employment for the Captain.

Opinion³

On appeal, the Town argues that the Hearing Officer's decision is erroneous because it relied on the Board's decision in Case No. WMAM-12-2446, which it claims was both factually and legally erroneous. Factually, the Town argues that the Board's decision "failed to consider and/or credit or otherwise minimized the significance of the evidence presented by the Town that showed the Captain's significant and broad scope of independent judgment in matters involving both the interpretation of the patrol officers' collective bargaining agreement as well as personnel administration generally." It further contends that the Board "failed to account for the Captain's service as Acting Police Chief, which would then require the Captain not only to exercise full authority of the position of Chief but also be aware of all types of confidential information." As to legal error, the Town claims that by "failing to consider and/or credit or minimizing the significance of the evidence presented by the Town, the CERB erred by including the Captain position in the unit." The Town therefore argues that the Hearing Officer's decision contains errors of law because it relied on the Board's decision.

We disagree. As the Hearing Officer properly recognized, when an employer seeks to test the certification of an employee organization by refusing to bargain, the representation proceeding and the prohibited practice are treated as one case. Town of Wenham, 23 MLC 82, 83, MUP-1472 (September 5, 1996) (citing City of Lawrence, 13 MLC 1087, 1092, MUP-6230 (August 12, 1986)). Therefore, the Board's long-standing policy is that a party may not relitigate issues in an unfair labor practice proceeding that

³ The Board's jurisdiction is not contested.

have been or could have been litigated in the prior representation proceeding between the parties. Id.

In this case, the stipulated issue before the Hearing Officer was whether the Captain is appropriately included in the unit. All of the issues concerning the Captain title were fairly litigated, or could have been litigated, in the reinvestigation of the certification in Case No. WMAM-12-2446 including the Town's arguments concerning the Captain's service as Acting Chief, and his role in interpreting collective bargaining agreements and personnel administration. See Town of Hudson, 40 MLC 42 *passim*. The Hearing Officer therefore committed no error by declining to relitigate these issues in this proceeding. Moreover, we agree with the Hearing Officer that the Town raised no new issues that would otherwise provide any basis for him to reconsider or reverse our decision.

Therefore, because it was uncontested that, around August 29, 2013, the Town refused to bargain with the Union for a first contract over the Captain's terms and conditions of employment, the Hearing Officer properly granted summary judgment and concluded that the Town refused to bargain in good faith in violation of Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law.

The Town does not raise any other issues in its appeal that provide any reason for us to reconsider or reverse our determination that the Captain is appropriately included in the unit certified in Case No. WMAM-12-2446. Nor has it raised any other defenses that suffice as matter of law to excuse its refusal to bargain with the Union over the Captain's position. Thus, a hearing is not required, and we affirm the Hearing

Officer's decision that the Town violated the Law when it refused to bargain over the Captain's terms and conditions of employment.

Conclusion

For the reasons stated above and those set forth in the Hearing Officer's Ruling, we hold that the Town has failed to bargain in good faith as alleged in the Complaint and issue the following Order.

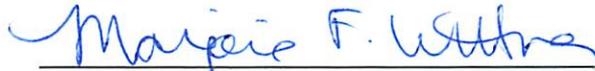
Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town of Hudson shall:

1. Cease and desist from:
 - (a) Failing and refusing to bargain in good faith with the Hudson Superior Officers Association, MCOP, Local 433 with respect to the position of Captain.
 - (b) In any like manner, interfere with, coerce or restrain its employees in the exercise of their protected rights under the law.
2. Take the following affirmative action that will effectuate the purposes of the Law.
 - (a) Upon request, bargain in good faith with the Hudson Superior Officers Association, MCOP, Local 433, with respect to the wages, hours, and other terms and conditions of employment of the position of Captain.
 - (b) Post in all conspicuous places where the members of the Hudson Superior Officers Association, MCOP Local 433, including the Captain, congregate or where notices are usually posted and displayed, including electronically, if the Town customarily communicates with these unit employees via intranet or e-mail for a period of thirty days, signed copies of the attached Notice to Employees.
 - (c) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of the receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



ELIZABETH NEUMEIER, BOARD MEMBER



HARRIS FREEMAN, BOARD MEMBER

APPEAL RIGHTS

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of M.G.L. c. 150E, § 11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L. c. 150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision.** No Notice of Appeal need be filed with the Appeals Court.



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

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board has determined that the Town of Hudson (Town) violated Section 10(a)(5) and derivatively, (a)(1) of the Massachusetts General Laws, Chapter 150E (the Law) by refusing to bargain in good faith with Hudson Superior Officers Association, MCOP, Local 433 over the wages, hours, and other terms and conditions of employment of the Police Captain in the certified bargaining unit.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

To engage in self-organization to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT refuse to bargain with Hudson Superior Officers Association, MCOP, Local 433, over the wages hours, and other terms and conditions of employment regarding the Captain position.

We WILL NOT, in any like manner, interfere with, restrain, coerce any employee in the exercise of their rights under the Law.

WE WILL take the following affirmative action that will effectuate the purposes of the Law:

WE WILL bargain in good faith, upon request, with the Hudson Superior Officers Association, MCOP, Local 433, over the wages, hours, and other terms and conditions of employment of the position of Police Captain.

Town of Hudson

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).