On January 6, 2014, United Public Service Employees Union – COPS Division (UPSEU or Petitioner) filed a petition with the Connecticut State Board of Labor Relations (Labor Board) seeking to decertify AFSCME, Council 15, Local 907, AFL-CIO (AFSCME or Intervener) as the certified representative for the purposes of collective bargaining of “all full-time members of the [Hamden] Police Department with authority to exercise police powers, exclusive of the Chief of Police and one second in command...”, and seeking to be certified as the bargaining representative of the same. (Ex. 1). At all relevant times, the bargaining unit consisted of approximately 100 members.

On January 29, 2014, representatives of UPSEU and AFSCME attended a conference with the agent of the Labor Board, during which the parties entered into an agreement for a consent election. (Ex. 3). The election was scheduled to be held on February 20, 2014, from 6:30 a.m. to 8:30 a.m. and from 2:30 p.m. to 4:30 p.m. (Ex. 5). Members would have the option of voting for the Petitioner, the Intervener or neither organization.
On February 18, 2014, a general membership meeting was held at the Hamden Police Department, during which representatives of the Petitioner and the Intervener were each permitted to separately address bargaining unit members and answer questions. During the meeting, the issue of PORAC\(^1\) insurance coverage was raised. In particular, a member of the executive board asked Ronald Suraci (Suraci), the director of the Petitioner, during his presentation, whether that organization could provide the membership with PORAC insurance. Suraci replied that he was unfamiliar with that plan and could make no guarantees, but that UPSEU would do whatever it could to get it for the membership if they desired it. In addition, during the Intervener’s presentation, one of its representatives advised the membership that PORAC insurance is not exclusive to that organization. Lastly, after the conclusion of both unions’ presentations, three bargaining unit members asked the Union president, Kevin Samperi (Samperi), whether they could get PORAC insurance with UPSEU.

After leaving the meeting that evening, Suraci telephoned the Petitioner’s New York office and spoke to Kevin Boyle (Boyle), the president of UPSEU. Suraci asked Boyle to have someone research PORAC insurance. Suraci also researched PORAC on the internet. However, at no time prior to the election did he speak with anyone from PORAC’s offices.

The following morning, February 19, 2014, Suraci received a text message from the Petitioner’s New York office informing him of the cost of the plan and that an application must be submitted to PORAC along with a list establishing that at least fifty percent of the bargaining unit plus one member desire the insurance. At approximately 12:29 p.m., Suraci informed Samperi by telephone that the bargaining unit could apply for PORAC insurance on its own, but that if UPSEU were certified as it bargaining representative and, if the membership so desired, it would apply on the unit’s behalf.\(^2\) Suraci followed this conversation with a text message to Samperi at 1:26 p.m., in which he stated, in relevant part, that “[w]e will set up the PORAC for your group. We believe the fee is $4.50, we will take care of setting it in place should you become part of our organization…” (Ex. 5).\(^3\) Samperi thereafter requested written confirmation.

Accordingly, at 8:15 p.m., Suraci emailed a letter to Samperi, which provided, in relevant part:

Dear Hamden Police Union Member:

Immediately upon receiving the certification of election stating that UPSEU/COPS is the Exclusive Bargaining agent for the Hamden Police Officers,

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\(^1\) “PORAC” is an acronym for the Peace Officers Research Association of California Legal Defense Fund. PORAC offers programs which can provide police officers with legal representation in local, state or federal probes for matters arising from the performance of their duties. (Exs. 4, 5).

\(^2\) Suraci had a similar telephone conversation that same morning with Dennis Putnam (Putnam), Union vice president.

\(^3\) Samperi also conducted his own research. At some time prior to 1:45 p.m. on February 19th, he contacted Kevin Morano (Morano) of the executive board of the Waterbury police union. Morano informed Samperi that the Waterbury bargaining unit was able to purchase PORAC insurance “right away” despite no longer being members of AFSCME. At about 1:45 p.m., Samperi informed the membership via email.
UPSEU/COPS will process the necessary requirements to implement the PORAC legal plan for the members of the Hamden Police Union.

The cost of the plan is $4.50 plus a $0.15 administrator fee per member per month. Participation needed to join the plan is fifty percent plus one of the total number of the Hamden Union membership.

On Election Day vote UPSEU/COPS

(Exs. 5, 9) (Emphasis in original). Suraci did not request that Samperi distribute his letter. However, at some time after 11:00 p.m. on February 19th, Samperi forwarded Suraci’s email (along with Suraci’s attached letter) to the members.4

On February 20, 2014, the election began at 6:30 a.m. under the supervision of the agent of the Labor Board. A few minutes after the start of the election, a representative of the Intervener learned of Suraci’s letter and registered an objection to the election with the Labor Board’s agent. The election was permitted to proceed. The results of the election were set forth the same day in a “Report Upon Secret Ballot” (the Report) (Ex. 3) prepared by Labor Board Assistant Agent Ronald Napoli and certified by both the observers for the Petitioner and Intervener. The Report provides, in relevant part, that out of the 86 ballots cast, 49 were cast in favor of the Petitioner and 36 were cast in favor of the Intervener. One vote was cast for neither organization. (Ex 3).

On February 24, 2014, the Intervener filed with the Labor Board a timely written objection to the election (Ex. 4), alleging that the Petitioner violated Section 7-471-14a(a)(2)5 of the Labor Board’s regulations by misstating important facts during its representation campaign to which the Intervener did not have a fair chance to reply. According to the Intervener, a bargaining agent seeking to participate in PORAC “must undergo a rigorous, months long, vetting process prior to approval” (Ex. 4) and the Petitioner’s failure to account for this contingency in Suraci’s February 19th letter was misleading.

On February 27, 2014, the Intervener forwarded to the Labor Board a copy of a letter from Edward Mark Fishman (Fishman), Legal Administrator, PORAC Legal Defense Fund, to Jeffrey Matchett (Matchett), president of AFSCME, which provided, in relevant part:

4 Samperi followed his email with a text message to the membership, which provided, in relevant part:

… The executive board was asked to find out if we switched to [UPSEU] can they provide our members with PORAC insurance. The answer is yes and the cost is $4.50 per month. (Ex. 5).

5 Section 7-471-14a(a)(2) provides, in relevant part:

During the course of a representation campaign, certain conduct may interfere with the rights of employees and may result in the setting aside of the election. Examples of such conduct include, but are not limited to, the following: … (2) Misstating important facts by a union or an employer where the other party does not have a fair chance to reply.
At no time has anyone identifying themselves as being a representative of UPSEU contacted the offices of PORAC Legal Defense Fund to inquire about obtaining membership in LDF as an UPSEU member… Please be assured, LDF would not have, and in fact did not, advise any member of UPSEU that LDF membership would be granted in the event of decertification. (Ex. 6).

On March 4, 2014, the Petitioner filed a written response to the Intervener’s objection requesting that the Labor Board overrule the objection on the grounds that nothing in Suraci’s February 19th correspondence was false or misleading. An affidavit from Samperi was submitted with its response. (Ex. 6).

On March 17, 2014, the Labor Board held a formal hearing on the Intervener’s objection, at which the Petitioner and the Intervener appeared, were represented by counsel, and were provided with a full opportunity to present evidence, examine and cross-examine witnesses and make argument. The Town of Hamden did not appear. Although a briefing schedule was set in this case, the parties subsequently declined to file briefs.

DISCUSSION

The Intervener objects to the Petitioner’s letter of February 19, 2014, which provides in, relevant part, that “[i]mmediately upon receiving the certification of election stating that UPSEU/COPS is the Exclusive Bargaining agent for the Hamden Police Officers, UPSEU/COPS will process the necessary requirements to implement the PORAC legal plan for the members of the Hamden Police Union.” (Ex. 9). According to the Intervener, “[c]onsidering PORAC’s claim that the Petitioner had not contacted it, the Petitioner’s statement to the employees was clearly misleading and disingenuous as was the Petitioner’s failure to state that participation in the program could only commence following a multi-month long vetting process.” (Ex. 4). We disagree.

Section 7-471-14a of our regulations under MERA provides, in relevant part:

(a) During the course of a representation campaign, certain conduct may … result in the setting aside of the election. Examples of such conduct include, but are not limited to, the following: … (2) Misstating important facts by a union or an employer where the other party does not have a fair chance to reply.

Contrary to the Intervener’s assertions, however, we find that the Petitioner made no material misstatements in its February 19, 2014 correspondence, by omission or otherwise. Assuming, arguendo, that the Intervener is correct that seeking PORAC coverage involves a multi-month vetting process and that approval is by no means certain, we fail to see where the Petitioner’s correspondence either expressly or implicitly states otherwise. The Petitioner simply states that it will immediately upon certification “process the necessary requirements to implement the PORAC legal plan …” which we think can be reasonably interpreted as nothing more than a pledge to apply for PORAC insurance on behalf of the bargaining unit. The Petitioner’s letter contains no affirmative misrepresentations, such as claims that the Petitioner contacted PORAC, that coverage would be immediate, or for that matter, that acceptance to the
plan is certain. Nor do we agree, as the Intervener contends, that the Petitioner’s failure to include disclaimers in its correspondence alerting the membership to the delay inherent in the vetting process constituted a misleading omission. Accordingly, we decline to set aside the election on that basis.6

The timing of the Petitioner’s letter, however, with its statement soliciting members to vote for UPSEU/COPS is more troubling. We have long subscribed to the rule barring electioneering within twenty-four hours of the start of a representation election. City of New Haven, Decision No. 1760 (1979). Moreover, we have construed electioneering as including statements that “either expressly or by implication urge anyone to vote in a particular way … in favor of or against either party.” City of New Haven, supra at p. 4. There is no dispute that the Petitioner’s letter was sent via email within the final 24 hours before the start of the November 20, 2014 election. Nor can there be any doubt that the statement “On Election Day vote UPSEU/COPS” in bold type in a letter addressed to Hamden police union members constitutes electioneering.7

The Petitioner challenges the continued validity of the so-called 24-hour rule under MERA because it was never codified in our regulations under that Act, including in our most recent round of regulatory revisions in 2013.8 In the alternative, the Petitioner argues that if the 24-hour rule does exist it requires both a showing that campaign material was sent within the 24-hours prior to an election and that the material misstates an important fact. We disagree. Although the 24-hour rule is not codified in our MERA regulations, it has existed as part of our case law under MERA. City of New Haven, supra. Moreover, Section 7-471-14a of our MERA regulations, which sets forth examples of the grounds for setting aside an election, expressly provides that the reasons set forth therein are not exclusive.9 Finally, as we expressly noted in City of New Haven, supra, “the 24 hour ban against electioneering is not confined to a prohibition of false statements…”

In sum, we find that the Petitioner did not make a material misstatement of fact in its letter of February 19, 2014. However, we also find that the Petitioner did violate the ban on electioneering within the 24 hours prior to the start of a representation election and we set aside the election on that basis.

6 In light of our findings, we need not address here the question of what legal standard applies when determining whether a misstatement of important fact warrants setting aside an election.

7 Nor do we find it significant that the Petitioner’s letter was forwarded to the membership through an intermediary, Samperi, in light of the fact that the Petitioner chose to address his correspondence to police union members.

8 The 24-hour rule was codified in the Board’s regulations under the State Employee Relations Act (SERA), which provided that an election could be set aside for “[e]lectioneering by either party within twenty-four (24) hours next prior to an election.” However, that provision was deleted from the SERA regulations in 1981. We take no position today on what impact, if any, that action has on an electioneering case under SERA.

9 See footnote 5, supra.
ORDER

By virtue of the authority vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act and regulations promulgated thereto, it is

ORDERED that

I. The representation election held for this bargaining unit on February 20, 2014 is set aside.

II. A new election shall be held within ten (10) calendar days from the date of the issuance of this order at the same voting site as the previous election and using the same voting lists.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Chairman

Wendella Ault Battey
Wendella Ault Battey
Board Member

Barbara J. Collins
Barbara J. Collins
Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 11th day of April, 2014, to the following:

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Katherine C. Foley, Agent
CONNECTICUT STATE BOARD OF LABOR RELATIONS