

MASSACHUSETTS LABOR RELATIONS REPORTER

*Commonwealth of Massachusetts
Department of Labor Relations*

Administrative Law Decisions

**VOLUME 50
2023-2024**

**DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH OF MASSACHUSETTS**

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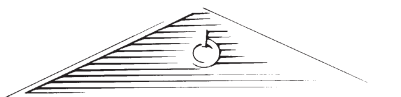
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Kendrah Davis
Kathleen Goodberlet
Timothy Hatfield
Carey Shockey
Margaret Sullivan
Meghan Ventrella

COMMENTARY BY:

Leo J. Peloquin, Esq.
Antoine Fares, Esq.
Norris, Murray & Peloquin

Jillian M. Bertrand
Pyle Rome



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675 VFW Parkway, #354, Chestnut Hill, MA 02467
(800) 637-6330

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Massachusetts Department of Labor Relations—Administrative Law Decisions

NEWS HIGHLIGHTS

ARBITRATOR DENIES GRIEVANCE OVER PAY CALCULATION FOR FIREFIGHTERS RECEIVING EMT AND EDUCATIONAL INCENTIVE STIPENDS. After finding the matter arbitrable, Arbitrator Timothy Hatfield held that the City of Lowell did not violate its contract with the Lowell Firefighters' Union, Local 853, when it calculated employees' Emergency Medical Technician and Education Incentive stipends using the Deputy Chief's weekly base pay.18

ARBITRATOR FINDS AGREEMENT TO RAISE BASE WAGE ALSO APPLIED TO TOWN'S ONLY FULL-TIME FIREFIGHTER. Hearing Officer Holly Accica held that the Town of Lancaster violated its collective bargaining agreement with Teamsters, Local 170 when it denied Courtney Manning, the only full-time firefighter in the Town, a 75-cent increase in the base wage that it provided to all its call firefighters who qualify as a Firefighter/EMT.17

CERB DEEMS COMPLAINT TIMELY AND REMANDS TRANSFER OF UNIT WORK CASE BACK TO HEARING. The CERB overturned a Hearing Officer's dismissal of a complaint on statute of limitations grounds. The complaint alleged that the Boston School Committee violated the Law when it eliminated bargaining unit positions and transferred their job duties to non-unit Climate and Culture Manager positions at Charlestown High School. Specifically, the CERB held that the Union did not have notice of the plan to eliminate the positions and transfer the work more than six months prior to the filing of the charge. After finding the charge timely, the CERB remanded the matter back to the Hearing Officer for a decision on the merits. The CERB, however, affirmed the Hearing Officer's decision dismissing allegations relating to the transfer of unit work to a non-unit Transportation Operation Leader position.17

CERB FINDS SCIENCE CENTER COORDINATOR POSITION BELONGS IN TEACHERS UNIT. On a petition filed by the Gloucester Teachers Association, the CERB found that a newly created position, the O'Maley Science Center Coordinator, shared a community of interest with the teachers and other professional instructional staff, and granted the Association's request to accrete the new position into its Unit A. Where the new position possessed no supervisory authority, the CERB held that the inclusion of the position would not create any conflicts within the bargaining unit, and rejected the School Committee's contention that the position shared a greater community of interest with other unrepresented administrators.18

CERB GRANTS PETITION TO ACCRETE SOMERVILLE INSPECTIONAL SERVICES LIAISON POSITION TO UNION'S UNIT D. On a petition filed by the Somerville Municipal Employees Association to accrete the newly established position of Inspectional Services Department Liaison, the CERB held that the position shared a community of interest with City employees within Unit D, a residual unit that includes employees who do not fit within the Association's other bargaining units.19

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CITE BY VOLUME AND PAGE OF
Massachusetts Labor Cases *THUS*:

International Union of Public Employees, Local 4 v. Leicester Public Schools, 50 MLRR 1 (2023)

CHANGE TO SPECIAL EDUCATION TEACHERS' SCHEDULES VIOLATES LAW. Hearing Officer Margaret M. Sullivan held that the Andover School Committee violated Sections 10(a)(5) and (1) of the Law when it removed time allotted to special education teachers to perform case management duties without first providing the Andover Education Association with prior notice and an opportunity to bargain over the decision and its impacts.18

HEARING OFFICER DENIES MOTION SEEKING DEPOSITIONS OF MSRB EMPLOYEES. Hearing Officer Margaret M. Sullivan denied a motion, filed by the Professional Staff Union and University Staff Association, MTA/NEA, seeking permission to take depositions of two employees of the Massachusetts State Retirement Board (MSRB). The Unions had sought the depositions after the Board of Trustees of the University of Massachusetts stated in its answer to the complaint that the decision to eliminate bargaining unit positions was "significantly dictated by guidance and direction from the MSRB."19

UNION'S ATTEMPT TO SECURE STIPENDS FOR PARAPROFESSIONALS THROUGH THE TOWN MEETING PROCESS VIOLATES THE LAW. In a decision in the first instance, the CERB held that the Andover Education Association violated Section 10(b)(2) of the Law when it bypassed the School Committee by proposing and advocating for a warrant article at a Special Town Meeting that would provide an \$800 stipend for educational support professionals to be funded out of Federal Coronavirus State and Local Fiscal Recovery Funds authorized by the American Recovery Plan Act (ARPA).17

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LABOR RELATIONS DEPARTMENT DOCKET-MARCH 2024

CERTIFICATIONS OF WRITTEN MAJORITY AUTHORIZATION

Listed below are certifications of written majority authorization issued by the Department of Labor Relations in March 2024.

Neighborhood House Charter School and *Boston Teachers Union*, WMAM-24-10479 (March 18, 2024) All full-time and regular part-time employees employed by the Neighborhood House Charter School as teachers, interventionists, speech-language pathologists, school psychologists, therapeutic support specialists, social workers, school adjustment counselors, college/career counselors, school nurses, academic deans, deans of culture/students, and occupational therapists, but excluding principals, non-professional employees, and all managerial, confidential, casual and other employees employed by the Neighborhood House Charter School.

Neighborhood House Charter School and *Boston Teachers Union*, WMAM-24-10480 (March 18, 2024) All full-time and regular part-time employees employed by the Neighborhood House Charter School as fellows, paraprofessionals, behavioral aides, teaching assistants, applied behavioral analyst aides, operations staff, daycare assistants, building substitutes, assistant facilities managers, front office coordinators, dining hall coordinators, custodians, and community support staff including recess coordinators and lunch monitors, but excluding principals, professional employees, and all managerial, confidential, casual and other employees employed by the Neighborhood House Charter School.

CERTIFICATIONS OF REPRESENTATIVES

Listed below are certifications of representatives issued by the Department of Labor Relations in March 2024.

Beverly School Committee and *AFSCME, Council 93*, MCR-23-10297 (March 21, 2024) All full-time and regular part-time employees of the Beverly School Committee in the positions of Crossing Guard and Traffic Supervisor, but excluding Substitute Crossing Guards, all managerial, confidential, casual, irregular, and other employees.

Massachusetts Port Authority and *International Association of Machinists and Aerospace Workers, AFL-CIO*, CR-23-10346 (March 21, 2024) All full-time and regular part-time Building Control Supervisors employed by the Massachusetts Port Authority, but excluding all managerial, confidential, and casual employees.

Town of Southbridge and *United Public Service Employees Union*, MCR-24-10420 (March 28, 2024) All full-time permanent employees of the Department of Public Works of the Town of Southbridge for the following job classifications: laborer, custodian, maintenance man and motor equipment operator, maintenance man and heavy equipment operator, building maintenance craftsman, mechanic, and crew chief but excluding all managerial, confidential, casual, and other employees.

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MASSACHUSETTS LABOR RELATIONS REPORTER

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NOTE: Decisions in **bold** appear in this issue.

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City of Somerville; Somerville Municipal Employees Association v.	August 28, 2023.	1
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Alphabetical Listing—Third Party v. Respondent

NOTE: Decisions in **bold** appear in this issue.

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26. Statutory Bar

26.1 jurisdiction

Where Section 16 of Chapter 12 of the Mass. General Laws explicitly states that the provisions of Chapter 150E shall not apply to assistant district attorneys, the CERB held that the DLR has no jurisdiction and dismissed a petition filed by AFSCME seeking to represent a unit of assistant district attorneys. *Suffolk County District Attorney's Office and AFSCME, Council 93*, SCR-23-10200 (September 29, 2023) (CERB Jurisdictional Ruling), 50 MLRR 5

34. Criteria - In General

34.2 community of interest

The CERB held that the newly created position of Inspectional Services Department Liaison shares a community of interest with employees in Unit D, a residual unit within the City, and granted the Union's petition to accrete the position. *City of Somerville and Somerville Municipal Employees Association*, CAS-23-9758 (March 19, 2024) (CERB Decision), 50 MLRR 19

Where the 311 customer service representatives work alongside unit employees in a variety of City departments in order to field constituents' requests and questions, the CERB found they share a community of interest with the employees in the existing Unit B, sufficient to support a petition for an add-on election. *City of Somerville and Somerville Municipal Employees Association*, MCR-23-9789 (August 28, 2023) (CERB Decision and Direction of Election), 50 MLRR 1

34.902 add-on election

Ordering an election, the CERB found that the Union's petition seeking to represent 311 customer service representatives as a part of its Unit B, met all of the criteria for an add-on election. *City of Somerville and Somerville Municipal Employees Association*, MCR-23-9789 (August 28, 2023) (CERB Decision and Direction of Election), 50 MLRR 1

34.91 accretion

Where an employee promoted to a new position was performing substantially the same duties as she had in her bargaining unit job as an administrative assistant, the CERB granted the Union's petition to accrete the position to the same bargaining unit. *City of Somerville and Somerville Municipal Employees Association*, CAS-23-9758 (March 19, 2024) (CERB Decision), 50 MLRR 19

After finding there was a sufficient community of interest, the CERB granted the Union's petition and accreted the newly created position of O'Malley Science Center Coordinator to the teachers' bargaining unit. *Gloucester School Committee and Gloucester Teachers Association*, CAS-23-10146 (March 4, 2024) (CERB Decision), 50 MLRR 18

35. Criteria - Specific

35.47 customer service representatives

The City's 311 customer service representatives share a community of interest with other employees in a variety of departments across the City, and properly belong in the overall unit, rather than in a standalone unit. *City of Somerville and Somerville Municipal Employees Association*, MCR-23-9789 (August 28, 2023) (CERB Decision and Direction of Election), 50 MLRR 1

35.6711 administrative

Where the inclusion of a newly created Science Center Coordinator position in the teachers' bargaining unit would not cause any internal conflicts, the CERB granted the Union's accretion petition. *Gloucester School Committee and Gloucester Teachers Association*, CAS-23-10146 (March 4, 2024) (CERB Decision), 50 MLRR 18

42. Decertification

42.7 settlement agreement

Citing longstanding agency precedent, the CERB granted the Union's motion to dismiss a decertification petition on the basis of a private settlement agreement of pending unfair labor practice complaints, which included a requirement that the Employer bargain with the Union. *Berkshire Roots, Inc. and Logan Eichelser and United Food & Commercial Workers Union, Local 1459*, CR-22-9340 (February 26, 2024) (CERB Ruling on Motion to Dismiss), 50 MLRR 15

45. Limitations

45.6 prior agreement as to unit composition

The CERB found that the parties' agreement to exclude positions created prior to 2013 from the bargaining unit was limited to the "life of the agreement" and did not bar a petition for an add-on election seeking to include 311 customer service representatives from the bargaining unit. *City of Somerville and Somerville Municipal Employees Association*, MCR-23-9789 (August 28, 2023) (CERB Decision and Direction of Election), 50 MLRR 1

52. Collective Bargaining Agreement

52.1 breach

The CERB affirmed a Hearing Officer's decision holding that MEMA breached its contract with NAGE when it rescinded a Unit 6 member's stand-by pay under Article 7.6 of the agreement, while still requiring the employee to be available on a stand-by basis. *Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA and the National Association of Government Employees*, SUP-20-8314 (November 6, 2023) (CERB Decision on Review of Hearing Officer's Decision), 50 MLRR 11

53. Influence on Bargaining

53.7 submitting warrant article as affecting contract

Union violated Section 10(b)(2) of the Law when it proposed and advocated for a warrant article at a Special Town Meeting that would provide Instructional Assistants with an \$800 stipend funded through federal Coronavirus relief monies allotted to the Town. *Andover Education Association and Andover School Committee*, MUPL-22-9378 (March 4, 2024) (CERB Decision in the First Instance), 50 MLRR 17

54. Scope of Bargaining

54.236 on-call time

Unit 6 employee was entitled to stand-by pay as detailed in the parties' contract when he was required to be available to perform his duties as a public information officer outside of his regularly scheduled hours of work. *Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA and the National Association of Government Employees*, SUP-20-8314 (November 6, 2023) (CERB Decision on Review of Hearing Officer's Decision), 50 MLRR 11

54.25 work shifts

CERB upheld a Hearing Officer's decision finding that the District's failure to bargain to resolution or impasse over a reduction in employees' hours over the summer violated the Law. *Essex North Shore Agricultural & Technical School District and American Federation of State, County, and Municipal employees, Council 93, Local 245*, MUP-20-8072 (October 20, 2023) (Decision on Review of Hearing Officer's Decision), 50 MLRR 8

54.292 teaching periods

School Committee violated Sections 10(a)(5) and (1) of the Law when it changed its practice of providing special education teachers with scheduled time for their case management duties without first providing the Union with notice and an opportunity to bargain. *Andover School Committee and Andover Education Association*, MUP-20-7795 (March 15, 2024) (Hearing Officer's Decision), 50 MLRR 18

54.512 hiring

Hearing Officer held that Town did not have to bargain before changing its practice of offering new hires a starting wage at the lowest step on the salary schedule. *Town of Harvard and AFSCME, Council 93*, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

54.513 promotion

Town violated the Law when it did not bargain with the Union before promoting a bargaining unit employee to a position at Step 2 on the salary schedule, rather than at Step 1. *Town of Harvard and AFSCME, Council 93*, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

54.55 past practices

Hearing Officer found there was a past practice of providing dedicated time in special education teachers' schedules to perform their case management duties, and the School Committee violated the Law when it eliminated this

time without first providing the Union with notice and an opportunity to bargain. *Andover School Committee and Andover Education Association*, MUP-20-7795 (March 15, 2024) (Hearing Officer's Decision), 50 MLRR 18

Where the Employer had a past practice of promoting employees to the lowest step on the pay scale that would result in a pay increase, even if that increase was minimal, it violated the Law when it promoted an employee to Mechanic/Equipment Operator at Step 2, rather than Step 1 of the wage scale in the parties' contract. *Town of Harvard and AFSCME*, Council 93, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

Finding that the former Union President's testimony was credible, the Hearing Officer held that there was no past practice of allowing Union representatives unfettered access to school buildings during the school day and dismissed the complaint. *Springfield School Committee and Springfield Education Association*, MUO-18-6667 (October 20, 2023) (Hearing Officer's Decision), 50 MLRR 7

54.5862 school schedules

Where the parties never discussed, and their agreement did not include, any provisions regarding special education teachers' case management duties, the Hearing Officer held that the Union did not waive by contract its right to bargain over the matter. *Andover School Committee and Andover Education Association*, MUP-20-7795 (March 15, 2024) (Hearing Officer's Decision), 50 MLRR 18

54.67 step increases

Hearing Officer held that the Town violated the Law when it promoted a bargaining unit member to the position of Mechanic/Equipment Operator and placed him at Step 2, rather than Step 1 of the wage schedule, but found that it was free to hire new employees above Step 1 without first bargaining with the Union. *Town of Harvard and AFSCME*, Council 93, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

54.8 mandatory subjects

Where the change in the wage rate involved an applicant for hire, and not an existing bargaining unit member, the Hearing Officer found that the Town's decision to offer a prospective employee a position at the Step 3 pay rate, instead of Step 1, did not implicate a mandatory subject of bargaining. *Town of Harvard and AFSCME*, Council 93, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

Hearing Officer held that where the conditions and standards of promotion are mandatory subjects of bargaining, the Town made an unlawful unilateral change when it promoted an employee to Mechanic/Equipment Operator and paid him at Step 2, rather than Step 1 of the salary schedule for the position. *Town of Harvard and AFSCME*, Council 93, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

54.589 bargaining unit work

The CERB affirmed a Hearing Officer's decision which found that job descriptions alone were insufficient to substantiate an allegation that the School Committee had unlawfully transferred bargaining unit work to the non-union position of Transportation Operation Leader. *Boston School Committee and Boston Teachers Union, Local 66*, MUP-20-7886 (March 13, 2024) (CERB Decision on Appeal of Hearing Officer's Decision), 50 MLRR 17

63. Discrimination

63.21 filing a grievance

While holding that an employee had engaged in protected, concerted activity when the Union filed a grievance on his behalf over his non-selection as the district's softball coach, the Hearing Officer dismissed the complaint after finding that there was no evidence of any unlawful motivation behind the district's subsequent decision not to hire the employee as the golf coach. *Greater Lowell Regional Vocational Technical School District and Greater Lowell Regional Teachers Organization*, MUP-21-8535 (September 7, 2023) (Hearing Officer's Decision), 50 MLRR 3

63.3 discrimination – hiring, layoffs, promotion

In a case involving an employee's nonselection for a coaching position, the Hearing Officer dismissed the complaint after finding the Union had failed to make out a *prima facie* case of discrimination. *Greater Lowell Regional Vocational Technical School District and Greater Lowell Regional Teachers Organization*, MUP-21-8535 (September 7, 2023) (Hearing Officer's Decision), 50 MLRR 3

65. Interference, Restraint or Coercion

65.21 concerted activities – support of grievance

While noting that the employees had engaged in protected, concerted activity when they supported a coworker during termination proceedings, the Hearing Officer nevertheless found that the testimony the Union relied on regarding managers' statements during a meeting with employees was not credible, and dismissed the complaint alleging that the statements constituted a violation of Section 10(a)(1) of the Law. *Commonwealth of Massachusetts/Secretary of Administration and Finance/Department of Developmental Services and American Federation of State, County, and Municipal Employees, Council 93, Local 646*, SUP-21-8687 (November 27, 2023) (Hearing Officer's Decision), 50 MLRR 11

65.3 interrogation, polling

Finding there were no questions directed at the employees during the meeting, the Hearing Officer rejected the Union's argument that a meeting called to diffuse staff tension at a residential group home constituted a coercive interrogation. *Commonwealth of Massachusetts/Secretary of Administration and Finance/Department of Developmental Services and American Federation of State, County, and Municipal Employees, Council 93, Local 646*, SUP-21-8687 (November 27, 2023) (Hearing Officer's Decision), 50 MLRR 11

65.6 employer speech

After the City waived a hearing and admitted to the facts in the complaint alleging that the Fire Chief had denigrated the Union in front of members of the bargaining unit, the Hearing Officer issued an order requiring the City to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights under Section 2 of the Law. *City of Everett and Everett Firefighters, Local 143, I.A.F.F.*, MUP-22-9252 (October 27, 2023) (Hearing Officer's Order), 50 MLRR 9

65.62 threat of reprisal

Hearing Officer found that a manager's comments about allowing a grievance process to "play out," were not tantamount to telling the employees that they should not participate in the process and would not chill reasonable employees from exercising their rights under the Law. *Commonwealth of Massachusetts/Secretary of Administration and Finance/Department of Developmental Services and American Federation of State, County, and Municipal Employees, Council 93, Local 646*, SUP-21-8687 (November 27, 2023) (Hearing Officer's Decision), 50 MLRR 11

65.7 surveillance

The CERB rejected the Union's argument that the School Committee's discovery of documents on its server relating to the Union's strike plans amounted to unlawful surveillance of protected, concerted activity. The School Committee presented evidence to show that the searches it conducted were targeted to discover strike activity and only began after the Superintendent became aware that a strike was being planned. *Newton Teachers Association and Michael Zilles, in his capacity as President of the NTA and the Newton School Committee*, SI-23-10203 (January 24, 2024) (CERB Amended Ruling on Supplemental Strike Petition), 50 MLRR 13

65.95 access to facilities

Hearing Officer dismissed a complaint alleging that the School Committee had violated the Law when it did not allow Union representatives to wander freely inside school buildings, during the school day, and instead required them to remain in the teachers' lounge and talk to teachers there. *Springfield School Committee and Springfield Education Association*, MUO-18-6667 (October 20, 2023) (Hearing Officer's Decision), 50 MLRR 7

67. Refusal to Bargain

67.15 union waiver of bargaining rights

Hearing Officer found that the Union did not waive its right to bargain over the elimination of case management time for special education teachers by inaction or by contract. *Andover School Committee and Andover Education Association*, MUP-20-7795 (March 15, 2024) (Hearing Officer's Decision), 50 MLRR 18

Where the contract clauses cited by the District did not expressly allow it to reduce full-time employees to part-time, the CERB held that the Union did not waive its right to bargain over the plan which required that employees utilize their paid leave benefits during Friday closures in order to maintain their regular weekly wages. In addition, the CERB rejected the District's contention that the Union had also waived its right to bargain by inaction. *Essex North Shore Agricultural & Technical School District and American*

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Federation of State, County, and Municipal employees, Council 93, Local 245, MUP-20-8072 (October 20, 2023) (Decision on Review of Hearing Officer's Decision), 50 MLRR 8

67.165 bargained to impasse

Finding no impasse, the CERB held that the District violated the Law when it imposed its proposal to reduce employees' hours during the summer before it had finished bargaining over the plan with the Union. *Essex North Shore Agricultural & Technical School District and American Federation of State, County, and Municipal employees, Council 93, Local 245*, MUP-20-8072 (October 20, 2023) (Decision on Review of Hearing Officer's Decision), 50 MLRR 8

67.3 furnishing information

Hearing Officer held that the Boston School Committee violated the Law when it failed to provide all of the information the Union requested with respect to disciplinary actions and accommodation requests, and rejected the Committee's arguments that privacy concerns warranted its limited response. *Boston School Committee and Boston Teachers Union, Local 66, AFL-CIO*, MUP-21-8467 (August 31, 2023) (Hearing Officer's Decision), 50 MLRR 2

67.42 renegeing on prior agreements

Upholding a Hearing Officer's decision, the CERB found that MEMA's decision to end an employee's stand-by pay, even though it continued to require him to be available on a stand-by basis, was a repudiation of its contract with NAGE. *Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA and the National Association of Government Employees*, SUP-20-8314 (November 6, 2023) (CERB Decision on Review of Hearing Officer's Decision), 50 MLRR 11

Hearing Officer found that the City had not repudiated a memorandum of understanding it had reached with the Union concerning scheduling and time off for dispatchers during the COVID-19 pandemic. *City of Methuen and New England Police Benevolent Association, Local 117*, MUP-20-8359 (October 5, 2023) (Hearing Officer's Decision), 50 MLRR 7

67.8 unilateral change by employer

School Committee committed an unlawful unilateral change when it eliminated time in the schedule for special education teachers to perform case management duties without providing the Union with notice and an opportunity to bargain. *Andover School Committee and Andover Education Association*, MUP-20-7795 (March 15, 2024) (Hearing Officer's Decision), 50 MLRR 18

When there was an established practice of placing newly promoted employees at the lowest salary step that would provide them with an increase, the Town committed an unlawful unilateral change when it placed an employee promoted to Mechanic/Equipment Operator at Step 2, rather than Step 1 of the wage scale. *Town of Harvard and AFSCME, Council 93*, MUP-21-8528 (February 1, 2024) (Hearing Officer's Decision), 50 MLRR 15

The CERB upheld a Hearing Officer's decision finding that MEMA made an unlawful unilateral change when it eliminated an employee's stand-by pay, but not his stand-by duties, without first bargaining to resolution or impasse with the Union. *Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA and the National Association of Government Employees*, SUP-20-8314 (November 6, 2023) (CERB Decision on Review of Hearing Officer's Decision), 50 MLRR 11

In imposing a reduction in hours worked during the summer by bargaining unit employees, without first bargaining to resolution or impasse, the CERB affirmed a Hearing Officer's conclusion that the District had committed an unlawful unilateral change. *Essex North Shore Agricultural & Technical School District and American Federation of State, County, and Municipal employees, Council 93, Local 245*, MUP-20-8072 (October 20, 2023) (Decision on Review of Hearing Officer's Decision), 50 MLRR 8

School Committee did not make an unlawful unilateral change when it required Union representatives to remain in the teachers' lounge when they visited schools to speak with bargaining unit members during the school day. *Springfield School Committee and Springfield Education Association*, MUO-18-6667 (October 20, 2023) (Hearing Officer's Decision), 50 MLRR 7

Where the parties had agreed that the Chief could rescind the terms of a memorandum of understanding providing additional leave and scheduling accommodations for dispatchers during the pandemic, the Hearing Officer held that the City had fulfilled its obligation to bargain over its decision to

return to the status quo prior to the end of the pandemic. *City of Methuen and New England Police Benevolent Association, Local 117*, MUP-20-8359 (October 5, 2023) (Hearing Officer's Decision), 50 MLRR 7

76. Refusal to Bargain in Good Faith

76.6 furnishing of information by union

The CERB reversed a Hearing Officer's dismissal of complaints alleging that two police unions violated the Law when they refused to provide the City with records relating to the establishment or modification of detail rates by the Detail Board. Where the unions had access to the Detail Board's records that were not within the City's possession, they had an obligation to search their records, including personal emails and texts, and provide any responsive documents. *Malden Police Patrolmen's Association and Malden Police Superior Officers Association and City of Malden*, MUPL-19-7698 and MUPL-19-7699 (August 15, 2023) (CERB Decision on Appeal of Hearing Officer's Decision), 50 MLRR 1

76.9 bypassing employer's bargaining representative

Union unlawfully bypassed the School Committee when it sought an \$800 stipend for Instructional Assistants through the Town Meeting process. *Andover Education Association and Andover School Committee*, MUPL-22-9378 (March 4, 2024) (CERB Decision in the First Instance), 50 MLRR 17

91. Complaint Proceeding

91.11 statute of limitations

The CERB reversed a Hearing Officer's decision which found a charge untimely filed and held that the Union had not been informed of a plan to eliminate bargaining unit positions and transfer their duties to new non-unit positions more than six months prior to the filing of the prohibited practice charge. *Boston School Committee and Boston Teachers Union, Local 66*, MUP-20-7886 (March 13, 2024) (CERB Decision on Appeal of Hearing Officer's Decision), 50 MLRR 17

Finding that the charge was filed within six months of the Union learning that an employee's stand-by pay had been eliminated, the CERB rejected the Commonwealth's argument on appeal that it had been untimely filed. *Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA and the National Association of Government Employees*, SUP-20-8314 (November 6, 2023) (CERB Decision on Review of Hearing Officer's Decision), 50 MLRR 11

91.13 mootness

Rejecting the School Committee's mootness argument, the Hearing Officer denied its motion to dismiss a complaint alleging that it had violated the Law when it transferred bargaining unit members to new work locations without providing notice and an opportunity to bargain. After the complaint issued, an arbitrator had ruled that the transfers violated the parties' contract and had ordered the decisions reversed, but had not addressed the employer's bargaining obligation. *Boston School Committee and Boston Teachers Union, Local 66*, MUP-22-9414 (October 3, 2023) (Hearing Officer's Ruling on Motion to Dismiss Complaint), 50 MLRR 7

91.52 failure to file an answer

Where the hearing was more than six months away, the Hearing Officer found no prejudice to the Union in allowing the City's late-filed answer. *City of Cambridge and Cambridge Police Superior Officers Association*, MUP-22-9551 (October 23, 2023) (Hearing Officer's Ruling on Motion that Allegations in the Complaint Be Admitted as True and that a Default Judgment Be Issued), 50 MLRR 8

92. In General

92.333 depositions; discovery

Citing longstanding CERB policy, Hearing Officer Margaret M. Sullivan denied Unions' motion seeking permission to take depositions of two employees of the Massachusetts State Retirement Board. *Board of Trustees of the University of Massachusetts and Professional Staff Union and University Staff Association, MTA/NEA*, SUP-23-9892, SUP-23-9893 (March 28, 2024) (Hearing Officer's Ruling on Charging Parties' Motion for Permission to Take Depositions), 50 MLRR 19

92.339 hearsay

Noting that the CERB is not bound by the formal rules of evidence pursuant to 456 CMR 13.03(g), and that the Union did not put on any witnesses to confirm or deny the emails and texts submitted by the School Committee, the Board found the employer's evidence sufficient to support the conclusion that a strike vote and a strike were about to occur. *Newton Teachers*

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TOWN OF LANCASTER AND TEAMSTERS, LOCAL 170,
ARB-21-8856 (March 1, 2024) (Arbitrator's Decision)

111.81 *firefighters*
113.116 *wage differentials*

Arbitrator Holly Accica held that the Town of Lancaster (Town) violated its collective bargaining agreement with Teamsters, Local 170 (Union), when it denied Courtney Manning, the Town's only full-time firefighter, a 75-cent increase in the base wage that it provided to all its call firefighters.

The parties had agreed to a contract provision regarding wages in Article 12 that included the following language:

Effective 7/1/2020, any firefighter that (sic) qualifies for the dual role of FF/EMT will receive a \$0.75 base wage increase. The increase shall apply to members as they receive the qualifications to achieve the dual role of FF/EMT . . .

The Arbitrator found the plain meaning of the provision to be unambiguous and that it applied without regard to a firefighter's status. The Arbitrator noted that where the language was unambiguous, she had no need to review the parties' bargaining history and rejected the Town's argument that the parties had only intended this provision to provide an incentive for call firefighters to achieve FF/EMT status since the full-time firefighter has always been required to maintain this status. The Arbitrator also observed that even if the language was not clear and unambiguous, the fact that other provisions in the contract explicitly reference employees' status as full-time or call firefighters supports a conclusion that the 75-cent increase applied to all firefighters, regardless of status.

* * * * *

ANDOVER EDUCATION ASSOCIATION AND ANDOVER
SCHOOL COMMITTEE, MUPL-22-9378 (March 4, 2024)
(CERB Decision in the First Instance)

53.7 *submitting warrant article as affecting contract*
76.9 *bypassing employer's bargaining representative*

In a decision in the first instance, the CERB held that the Andover Education Association (Union) violated Section 10(b)(2) and derivatively, Section 10(b)(1) of Mass. General Laws, Chapter 150E (the Law) when it bypassed the School Committee in proposing and advocating for a warrant article at a Special Town Meeting that provided for a "one-time pandemic stipend and retention premium for educational support professionals" to be funded out of Federal Coronavirus State and Local Fiscal Recovery Funds authorized by the American Recovery Plan Act (ARPA).

In March 2022, the Union and the Andover School Committee had entered into a Memorandum of Agreement governing wages and other conditions of employment. The parties had discussed stipend payments for Instructional Assistants during negotiations, but the deal they agreed to did not include stipend payments. In April 2022, the Union's leadership proposed a warrant article that would provide Instructional Assistants and other employees with an \$800

stipend funded through the federal Coronavirus relief monies allotted to the Town of Andover. The Union's leadership engaged in a campaign to promote the article, which was passed at a Special Town Meeting in May 2022. The School Committee subsequently rejected the Union's attempt to have it implement the stipends approved by the voters and filed an unfair labor practice charge.

Rejecting the Union's free speech argument, the CERB found the facts to be strikingly similar to those present in *International Association of Firefighters, Local 1713 (Town of Hudson)*, 48 MLC 136 (2021), and ruled that the Union's actions constituted bad faith bargaining in violation of the Law. The CERB held that the Union's actions amounted to a bypass of the School Committee when it sought through the Town Meeting process what it was unable to achieve at the bargaining table.

* * * * *

BOSTON SCHOOL COMMITTEE AND BOSTON
TEACHERS UNION, LOCAL 66, MUP-20-7886 (March 13,
2024) (CERB Decision on Appeal of Hearing Officer's Decision)

54.589 *bargaining unit work*
91.11 *statute of limitations*

The CERB overturned a decision by a Hearing Officer [49 MLRR 28, 49 MLC 191] which held that the Boston School Committee (School Committee) did not violate Sections 10(a)(5) and (1) of Mass. General Laws, Chapter 150E (the Law) when it eliminated bargaining unit positions and transferred their job duties to non-unit positions. Specifically, the CERB found the allegation that the School Committee transferred bargaining unit work to a non-bargaining unit position, Climate and Culture Manager, was timely, as the Boston Teachers Union, Local 66 (Union) did not have notice of the issue more than six months prior to the charge being filed. Upon determining that the charge was timely filed, the CERB remanded the case back to the Hearing Officer for a decision on the merits. Where the job descriptions were the only evidence submitted with respect to an allegation that the School Committee transferred unit work to the non-union Transportation Operational Leader position, the CERB, however, upheld the Hearing Officer's determination that there was not enough evidence in the record to show that the School Committee had unlawfully transferred bargaining unit work.

Prior to the spring of 2019, the School Committee employed several bargaining unit members as Community Field Coordinators (CFC) at the Charlestown High School. Some of these employees also served as Assistant Unit Leaders (AULs) to a team of employees who serve a small learning community determined by grade level or subject area. At a School Site Council meeting in January 2019, the Head of the School announced a plan to eliminate these positions and create non-unit, managerial positions. Union members were present at the meeting.

In March 2019, the Union received an "excess list"—a list of positions that the School Committee did not intend to fill the following school year. The list revealed that three of these CFC/AUL positions were being eliminated. At the start of the new

school year, the School Committee created a new non-unit position of Climate and Culture Manager, whose duties included some of the work that CFC/AULs had performed. In addition, the School Committee had another position listed, the Transportation Operational Leader, whose job description was identical to that of the CFC/AUL working with students with disabilities, with some additional duties. The Union learned that these positions no longer existed in the bargaining unit during an arbitration in January 2020, which led to the filing of the charge.

On appeal, the CERB agreed with the Union, which had argued that the bargaining unit members on the School Site Council were not its representatives for purposes of collective bargaining, and that the Union did not have notice of the plan to transfer bargaining unit work more than six months before it filed the charge.

With respect to the transfer of work performed by the CFC/AUL for students with disabilities to the Transportation Operation Leader position, the two job descriptions were the only pieces of evidence submitted, and there was no evidence to show that the incumbent in the new position was actually performing any of the duties of the CFC/AUL position. The CERB upheld the Hearing Officer’s finding that the job descriptions standing alone were not sufficient to substantiate an unlawful transfer of bargaining unit work.

GLOUCESTER SCHOOL COMMITTEE AND
GLOUCESTER TEACHERS ASSOCIATION, CAS-23-10146
(March 4, 2024) (CERB Decision)

- 34.91

accretion
- 35.6711

administrative

On a petition filed by the Gloucester Teachers Association (Union), the CERB held that a newly created position in the Gloucester Public Schools, the O’Maley Science Center Coordinator, shared a community of interest with the employees in the Union’s Unit A, and ordered it accreted to the unit. The Gloucester School Committee had argued that the position shared a greater community of interest with other unrepresented administrative positions which report to the Superintendent and Assistant Superintendent, and did not belong in a unit with teachers and other professional staff included in Unit A.

The position was created after the district received a \$200,000 grant over two years to make the resources at the O’Maley Science Center, located at the middle school, also available to elementary teachers and students in grades three through five. The parties did not agree on the placement of the position in Unit A and the position was eventually filled by Amy Donnelly (Donnelly). Prior to her appointment, Donnelly had been a science teacher at the O’Maley Middle School and also served as the science department’s Program Leader, a position for which she received a contractually negotiated stipend. The new position involved many of the same professional development and grant-writing duties she performed as a teacher and Program Leader, but did not require her to teach the four middle school science classes as she had when she was in Unit A. The new position also came with a

longer work year and longer workweek than Donnelly had when she was in Unit A.

Noting that there was no evidence to show that placing the position in Unit A would create a conflict within the unit, the CERB found that there was a sufficient community of interest to support its inclusion.

CITY OF LOWELL AND LOWELL FIREFIGHTERS’ UNION,
LOCAL 853, ARB-22-9609 (March 15, 2024) (Arbitrator’s
Decision)

- 111.81

firefighters
- 113.116

wage differentials
- 113.31

arbitrability of grievance

After finding the matter procedurally and substantively arbitrable, Arbitrator Timothy Hatfield denied a grievance filed by the Lowell Firefighters’ Union, Local 853 (Union), and held that the City of Lowell (City) did not violate the contract when it calculated employees’ Emergency Medical Technician and Education Incentive stipends using the Deputy Chief’s weekly base pay.

Rejecting the City’s argument that the grievance was time barred and not arbitrable, the Arbitrator held that because the dispute was over an alleged miscalculation of wages, it was a continuing violation—with each pay period potentially producing a new violation.

On the merits, however, the Arbitrator determined that the plain language of the contract was clear and unambiguous and its provisions dictated that the stipends be pegged to the “Deputy Fire Chief weekly base pay” and not to an increased weekly base pay amount enhanced by the inclusion of the HazMat, weekend, and night differential stipends. The Arbitrator also noted that even if the language was not clear and unambiguous, the Town had consistently calculated the stipends in this manner over an extended period of time, with the Union’s knowledge. In addition, the Arbitrator found that the Union had renegotiated the various stipend provisions on numerous occasions since 2001, without ever contesting the method used to calculate them.

ANDOVER SCHOOL COMMITTEE AND ANDOVER
EDUCATION ASSOCIATION, MUP-20-7795 (March 15,
2024) (Hearing Officer’s Decision)

- 54.292

teaching periods
- 54.55

past practices
- 54.5862

school schedules
- 67.15

union waiver of bargaining rights
- 67.8

unilateral change by employer

Hearing Officer Margaret M. Sullivan held that the Andover School Committee (School Committee or District) violated Sections 10(a)(5) and (1) of Mass. General Laws,

Chapter 150E (the Law), when it removed time allotted to special education teachers to perform case management duties without first providing the Andover Education Association (Union) with prior notice and an opportunity to bargain over the decision and its impacts.

In 2014, the parties had engaged in impact bargaining over the School Committee's decision to change from a "4x4" block schedule to a new "7+H" schedule and reached a memorandum of agreement. During negotiations, the parties did not discuss special education teachers' case management duties. The schedule change was not implemented until the 2017-2018 school year.

During the first year of the new schedule, special education teachers were directed to use the blocks designated for student enrichment to perform case management duties. While this gave the special education teachers less case management time than they had during the 4x4 schedule (95 as opposed to 123 hours), the Union did not file a grievance. At the end of the 2017-2018 school year, the high school principal, however, acknowledged the lost time and provided them with three professional days to make up for the time. During the 2018-2019 school year, the teachers once again had only 95 hours for case management, but did not receive three additional professional days to make up for the lost time.

In 2019-2020, the full implementation of the 7+H schedule eliminated the use of enrichment blocks for case management duties, as special education teachers were required to be available to special education students during these blocks. The District did, however, began assigning two teachers to a classroom during these blocks, rather than one, to allow one teacher to use the time for case management. The District also allowed teachers to use their professional learning group time and permitted them to alert the assistant principal if they needed to block themselves off for a day to perform case management duties.

The Hearing Officer found that there was a longstanding past practice of allotting case management time to special education teachers in their schedules that had been maintained during a period when the district had a 4x4 block schedule and continued when it transitioned into the 7+H Schedule. She rejected the School Committee's contention that the teachers had ample time in their schedules to perform case management duties as well as its argument that it had satisfied any bargaining obligation when it negotiated over and signed the 2014 memorandum of agreement.

The Hearing Officer held that the Union had not waived its right to bargain over the issue by inaction or by contract. While noting that the School Committee has the prerogative to determine matters of educational policy, such as providing special education students with the same access to enrichment as general education students, the Hearing Officer held that this does not negate its obligation to bargain over how that access is provided.

In ordering the School Committee to bargain with the Union over providing case management time, the Hearing Officer allowed that any implementation of any agreed-upon schedule changes could be delayed until the start of the 2024-2025 school year.

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CITY OF SOMERVILLE AND SOMERVILLE MUNICIPAL
EMPLOYEES ASSOCIATION, CAS-23-9758 (March 19, 2024)
(CERB Decision)

34.2 community of interest
34.91 accretion

On a petition filed by the Somerville Municipal Employees Association (Union) to accrete the newly established title of Inspectional Services Department Liaison (Liaison) into its Unit D, the CERB allowed the petition, holding that the position shares a community of interest with the other employees. The Union represents three bargaining units within the City of Somerville (City). Unit A is a bargaining unit of supervisory employees and Unit B includes non-supervisory clerical employees and laborers. They also represent a residual unit, Unit D, which was created by agreement of the parties in 2007 to include specialized positions not within Units A or B.

Kelly Como (Como) had worked in the City's Building Department as the Inspectional Services Department Administrative Assistant, a Unit D position, for more than 20 years when she was selected to fill the new position of Liaison within the Department. After finding that Como was performing substantially the same duties as she did when she was the Inspectional Services Department Administrative Assistant in Unit D, the CERB held that the position shared a community of interest with other Unit D employees. Noting that its decision must be based upon a position's actual duties—not potential or future duties—the CERB rejected the City's arguments that its increased responsibilities and higher pay rate make the position more like other non-unit positions.

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BOARD OF TRUSTEES OF THE UNIVERSITY OF
MASSACHUSETTS AND PROFESSIONAL STAFF UNION
AND UNIVERSITY STAFF ASSOCIATION, MTA/NEA, SUP-
23-9892, SUP-23-9893 (March 28, 2024) (Hearing Officer's
Ruling on Charging Parties' Motion for Permission to Take
Depositions)

92.333 depositions; discovery

Hearing Officer Margaret M. Sullivan denied a motion, filed by the Professional Staff Union and University Staff Association, MTA/NEA (Unions), seeking permission to take depositions of two employees of the Massachusetts State Retirement Board (MSRB). The Unions had sought the depositions after the Board of Trustees of the University of Massachusetts stated in its answer to the complaint that the decision to eliminate bargaining unit positions was "significantly dictated by guidance and direction from the MSRB."

In denying the motion, the Hearing Officer noted the Union's ability to subpoena the two MSRB employees, as well as the CERB's policy of not permitting depositions unless witnesses are unavailable to testify at hearing.

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ABRIDGED SAMPLE

MLRR Labor Commentary

October-December 2023

Jillian Bertrand, Esq.
Pyle Rome

Bargaining Obligations

Employers must provide unions with notice and an opportunity to bargain before implementing a change to terms and conditions of employment and cannot declare impasse and implement a change if the union has requested to continue bargaining

A public employer may not make a unilateral change to established terms and conditions of employment without providing the employees' exclusive representative with advance notice **and** an opportunity to bargain to resolution or impasse. *School Committee of Newton v. Labor Relations Commission*, 388 Mass. 557 (1983). The duty to bargain extends to both conditions of employment established through a collective bargaining agreement as well as conditions established through custom and past practice. *City of Boston*, 16 MLC 1429 (December 19, 1989).

Thus, in *Commonwealth of Massachusetts*, 50 MLRR 11 (November 6, 2023), the CERB found that the Commonwealth of Massachusetts, acting through the Massachusetts Emergency Management Agency ("MEMA"), violated the Law when it revoked an employee's stand-by pay without giving the Union prior notice and an opportunity to bargain to resolution or impasse over its decision and the impacts of its decision on the employee's terms and conditions of employment.

Even where an employer provides the union with advance notice and an opportunity to bargain over its decision to change terms and conditions of employment, the employer is required to continue bargaining with the union until the parties reach resolution or impasse. The CERB considers a number of factors in determining whether the parties are at impasse, including bargaining history, the parties' good faith in negotiations, the length of the negotiations, the importance of the issues in disagreement, the contemporaneous understanding of the parties as to the state of negotiations, the likelihood of further movement by either party, and whether the parties have exhausted all possibility of compromise. *New Bedford School Committee*, 8 MLC 1472 (November 6, 1981), *aff'd sub nom. School Committee of New Bedford v. Labor Relations Commission*, 15 Mass. App. Ct. 172 (1983). Impasse does not exist where one of the parties indicates that it wishes to continue bargaining and that its position is flexible. *City of Worcester*, 39 MLRR 39 (March 29, 2013).

In *Essex North Shore Agricultural School District*, 50 MLRR 8 (October 20, 2023), the CERB affirmed a Hearing Officer decision finding that the District unilaterally changed employees' summer work schedules and required them to use paid or unpaid leave on certain Fridays without first bargaining to resolution or impasse with the Union. After the District notified the Union of

its intent to close on Fridays and require employees to use paid or unpaid leave, the Union requested to bargain over the schedule changes and whether the employees would be mandated to use paid leave on Fridays. The Union also expressed its desire to enter into a memorandum of understanding ("MOU") regarding the changes. The Union objected to several provisions of the District's draft MOU, including the date when the schedule changes would take effect. The District responded that it would change the implementation date and asked the Union to confirm whether the MOU was otherwise okay. The Union did not respond. Six days later, the District announced its plan to the bargaining unit. The CERB rejected the District's claim that the parties had reached impasse where the District had time to continue bargaining but artificially shortened bargaining by presenting its plan as a *fait accompli* after only one meeting and a few days of bargaining via email, despite the Union's repeatedly expressed interest in continuing to bargain over the details of the District's decision to close on Fridays on three separate occasions, including over whether employees would be mandated to use paid leave. The CERB also rejected the District's claim that Union waived its right to continued bargaining after it failed to respond to District's request that the Union confirm whether its draft MOU was okay. The CERB concluded that although the Union did not respond, it had previously requested on multiple occasions to continue to bargain, particularly over the paid leave issue, and to enter into an MOU. Thus, the parties were not at impasse when, less than six days later, the District announced its plan to the bargaining unit without warning and without suggesting further bargaining or preparing a revised MOU that incorporated its proposed modifications.

In contrast, in *City of Methuen*, 50 MLRR 7 (October 5, 2023), a hearing officer held that the City was not required to provide the Union with notice and an opportunity to bargain to resolution or impasse before rescinding an MOU that provided dispatchers additional leave and scheduling accommodations during the COVID-19 pandemic because the parties' bargaining history demonstrated that the Union and the City had agreed that the Police Chief could rescind the MOU if/when he deemed it necessary. In *Springfield School Committee*, 50 MLRR 7 (October 20, 2023), a hearing officer held that the School Committee was not required to provide the Union with notice and an opportunity to bargain when it prohibited Union representatives from conducting "walkabouts" during the school day seeking impromptu meetings with teachers. Although the Union claimed that there was a long-standing past practice of allowing Union representatives to do so, the hearing officer credited the former Union president's testimony that no such practice existed and, each time a Union representative conducted such a walkabout during the new Union president's

tenure, the superintendent warned the Union against this conduct because it disrupted teaching and learning for the students.

Interference, Restraint or Coercion

Although motivation and actual effect are not material, alleged interference with employees' protected activity must be supported by credible evidence and the DLR will not consider employees' unwillingness to testify, on its own, as evidence of unlawful coercion

Section 2 of the Law provides that employees have the right to "form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion." A public employer violates Section 10(a)(1) of the Law when it engages in conduct that may reasonably be said to interfere with, restrain, or coerce employees in the exercise of their rights under Section 2 of the Law. The Law prohibits any employer action, regardless of motivation, that reasonably could have a chilling effect on the exercise of employee rights, including the expression of employer anger, criticism, or ridicule directed to an employee's protected activity. *Groton-Dunstable Regional School Committee*, 15 MLC 1551 (March 20, 1989).

In *City of Everett*, 50 MLRR 9 (October 27, 2023), the City admitted that the Fire Chief unlawfully interfered with, restrained and coerced bargaining unit members in the exercise of their Section 2 rights when he loudly denigrated the Union in front of bargaining

unit members by blaming the Union president and the Union's labor counsel for a probationary employee's termination. However, in *Commonwealth of Massachusetts*, 50 MLRR 11 (November 27, 2023), the hearing officer dismissed a complaint alleging that the Employer engaged in unlawful interference by telling bargaining unit members supporting a coworker during termination proceedings to "stay out of it," concluding that the Union witness's testimony in this regard was not credible. The hearing officer also rejected the Union's argument that the bargaining unit employees' refusal to testify during the grievance procedure should, standing alone, sufficiently support a finding of unlawful interference, restraint, or coercion in violation of the Law.

Strikes

CERB finds insufficient evidence that Union President induced, encouraged, or condoned strike

Section 9A(a) of the Law prohibits public employees and employee organizations from engaging in, inducing, encouraging, or condoning any strike, work stoppage, slowdown, or withholding of services. In *Andover Education Association*, 50 MLRR 11 (November 9, 2023), the CERB concluded that the Union was about to engage in an unlawful strike after taking a strike vote on November 9, 2023. The CERB dismissed the School Committee's petition with respect to the Union President, however, because the only evidence the School Committee submitted in support of its allegation against the Union President was a grainy news photo that did not clearly show the Union President participating. ■

MLRR Management Commentary

October–December 2023

Antoine Fares, Esq.

Norris, Murray and Peloquin, LLC

BARGAINING OBLIGATION

Hearing Officer Finds That Springfield School Committee Did Not Violate Law When It Ordered Union Representatives To Meet With Bargaining Unit Members In The Teachers' Lunchroom Instead Of Freely Walking Around The Schools To Speak With Unit Members In Any Area Of Their Choosing

In *Springfield School Committee*, 50 MLRR 7 (October 20, 2023), Hearing Officer Kathleen Goodberlet found that the Springfield School Committee (“School Committee”) did not violate the Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E when it changed the manner and location in which Springfield Education Association (“Union”) representatives may meet with bargaining unit members.

The Union meetings at issue in this case involve unscheduled, informal, school visits whereby the current Union President would go around schools during the school day to meet with teachers in any area of their choosing. None of the meetings at issue were pre-arranged or staff meetings. The Union argued that a long-standing practice existed whereby Union representatives would sign in at the school’s front desk and then be granted unlimited access to all areas at the schools before, during or after hours. It further argued that Union representatives have the right to walk throughout the school to speak with bargaining unit members in any area of their choosing and that included unlimited access to those members during their lunch period or classroom to discuss Union business. The Union claimed that the School Committee changed this practice without bargaining when it ordered Union representatives to meet with their members in the teachers’ lunchroom and not any other areas.

Hearing Officer Goodberlet find no evidence that would indicate that there was a binding practice whereby the Union representatives freely walked throughout schools during the school day looking to meet with members in their classrooms or another area of their choosing regarding Union business. The evidence in fact showed that, for at least two decades, the former Union President would only walk freely throughout the schools before or after the school day to meet with teachers, but not during the school day.

Hearing Officer Goodberlet rejected the Union’s argument that the current Union President’s visits to the schools during the school day in a 4-month period whereby she met with teachers in their classrooms and other areas established a binding practice. First, she found that the School Superintendent objected to that practice because it disrupted learning for students and directed the current Union President to meet with members in the teachers’ lunchroom. In addition, she found that a 4-month practice of such visits was not long enough to show that it is a binding practice. She noted that the practice created by the former Union President in the past two decades was more relevant to her past practice analysis.

Hearing Officer Goodberlet also dismissed the Union’s allegation that the School Committee interfered with the employee’s protected rights when the School Superintendent and School Principals directed Union representatives to meet with teachers during the school day in the teachers’ room/lunchroom. She found no evidence that would indicate that the school officials imposed those requirements to discriminate against the Union or unit members for exercising their rights under the Law.

UNLAWFUL STRIKES

Andover Teachers Go On Strike Again Less Than Four (4) Months After A CERB Order Requiring Andover Teachers To Cease And Desist From Further Inducing, Encouraging or Condoning Teacher Strikes

As you may recall from our commentary back in 2020, the Commonwealth Employment Relations Board (“CERB”) held that the Andover Teachers engaged in an unlawful strike by refusing to participate in mandatory annual professional development training inside of the classroom in defiance of the Superintendent’s directives. In that decision, the Andover Teachers were ordered by the CERB to cease and desist from engaging in any future strikes. Clearly, that decision did not deter them from engaging in an unlawful strike less than (4) years later as evidenced by the following CERB decision.

In *Andover School Committee*, 50 MLRR 11 (November 9, 2023), the Andover School Committee (“School Committee”) filed a petition with the Department of Labor Relations (“DLR”) for a strike investigation because it had reason to believe that the Andover Teachers intended to hold a strike vote for two (2) of their bargaining units on November 9, 2023, and planned to go on strike the following day. After holding a strike investigation, the CERB issued a decision on November 9 ordering the Andover Teachers to cease and desist from further engaging in, inducing, encouraging, or condoning a strike. In its decision, the CERB found undisputed evidence that the Andover Teachers were planning a strike and had in fact held a strike vote on November 9 to go on strike immediately.

The Andover Teachers went on strike on November 10 in violation of the CERB Order. The CERB immediately sought to enforce its Order by seeking a temporary injunction in Superior Court, which was granted by the Court. In addition, the Superior Court judge set an initial fine of \$50,000 (<https://www.cbsnews.com/boston/news/judge-slaps-striking-andover-teachers-with-50>) for the Andover Teachers for their unlawful conduct and the fine was scheduled to increase \$10,000 each additional day they continued to defy the Court Order.

Despite several efforts taken by School Districts and the DLR to deter and/or prevent unlawful strikes by teachers, including by taking appropriate legal action in court, the Teachers Unions re-

main undeterred. Worse yet, the Teachers' Unions continue with their efforts to try to repeal the law that currently prohibits public employees from engaging in strikes. *See* MGL c. 150E § 9(a) ("No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.") Currently, there is a pending bill (H. 1845/S. 1217) being considered by the state legislature that would allow public employees (excluding public safety personnel) to strike after six (6) months of unsuccessful negotiations with their employers. ■

ABRIDGED SAMPLE