

MASSACHUSETTS LABOR CASES

*Commonwealth of Massachusetts
Department of Labor Relations*

Administrative Law Decisions

**VOLUME 50
2023-2024**

**DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH OF MASSACHUSETTS**

Philip T. Roberts, Director

Marjorie F. Wittner, Chair
Kelly Strong, Board Member
Victoria Caldwell, Board Member

Lan Kantany, Chief Counsel

HEARING OFFICERS

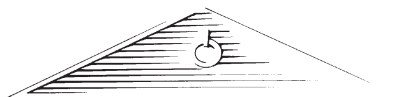
Holly Accica
Philip Brown
Erica Feldman
Joseph Griffin
Sara J. Hiller
Gail Sorokoff
James Sunkenberg

Susan L. Atwater
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



Massachusetts Landlaw's MLC is published monthly.

Copyright © 2024 by Landlaw, Inc.
MASSACHUSETTS LABOR CASES (ISSN-1051-6123)
675 VFW Parkway, #354, Chestnut Hill, MA 02467
(800) 637-6330

Massachusetts Department of Labor Relations—Administrative Law Decisions

In This Issue

ANDOVER EDUCATION ASSOCIATION AND ANDOVER SCHOOL COMMITTEE, MUPL-22-9378 (March 4, 2024) (CERB Decision in the First Instance)122

ANDOVER SCHOOL COMMITTEE AND ANDOVER EDUCATION ASSOCIATION, MUP-20-7795 (March 15, 2024) (Hearing Officer’s Decision)148

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)163

BOSTON SCHOOL COMMITTEE AND BOSTON TEACHERS UNION, LOCAL 66, MUP-20-7886 (March 13, 2024) (CERB Decision on Appeal of Hearing Officer’s Decision).128

CITY OF LOWELL AND LOWELL FIREFIGHTERS’ UNION, LOCAL 853, ARB-22-9609 (March 15, 2024) (Arbitrator’s Decision).143

CITY OF SOMERVILLE AND SOMERVILLE MUNICIPAL EMPLOYEES ASSOCIATION, CAS-23-9758 (March 19, 2024) (CERB Decision).157

GLOUCESTER SCHOOL COMMITTEE AND GLOUCESTER TEACHERS ASSOCIATION, CAS-23-10146 (March 4, 2024) (CERB Decision)135

TOWN OF LANCASTER AND TEAMSTERS, LOCAL 170, ARB-21-8856 (March 1, 2024) (Arbitrator’s Decision)121

Indicesi-xviii



CITE BY VOLUME AND PAGE OF
Massachusetts Labor Cases *THUS*:
International Union of Public Employees, Local 4 v. Leicester Public Schools, 50 MLC 1 (2023)

MLC Indices



MASSACHUSETTS LABOR CASES

Cumulative Decisions Reported — July 2023–March 2024

Alphabetical Listing—Petitioner v. Respondent

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

AFSCME, Council 93 v. Suffolk County District Attorney’s Office	September 29, 2023	56
AFSCME, Council 93 v. Town of Harvard	February 1, 2024	113
AFSCME, Council 93, Local 245 v. Essex North Shore Agricultural & Technical School District	October 20, 2023	76
AFSCME, Council 93, Local 646 v. Commonwealth of Massachusetts/Secretary of Administration and Finance/Department of Developmental Services	November 27, 2023	97
Andover School Committee v. Andover Education Association	November 9, 2023	94
Andover School Committee v. Andover Education Association	March 4, 2024	122
Andover School Committee v. Andover Education Association	March 15, 2024	148
Boston Teachers Union, Local 66, AFL-CIO v. Boston School Committee	August 31, 2023	24
Boston Teachers Union, Local 66, AFL-CIO v. Boston School Committee	October 3, 2023	59
Boston Teachers Union, Local 66, AFL-CIO v. Boston School Committee	March 13, 2024	128
Cambridge Police Superior Officers Association v. City of Cambridge	October 23, 2023	84
City of Malden v. Malden Police Patrolmen’s Association and Malden Police Superior Officers Association	August 15, 2023	5
Gloucester Teachers Association v. Gloucester School Committee	March 4, 2024	135
Greater Lowell Regional Teachers Organization v. Greater Lowell Regional Vocational Technical School District	September 7, 2023	31
IAFF, Local 143, Everett Fire Fighters v. City of Everett	October 27, 2023	85
IAFF, Local 853, Lowell Firefighters Union v. City of Lowell	March 15, 2024	143
International Union of Public Employees, Local 4 v. Leicester Public Schools	August 8, 2023	1
Massachusetts Laborers District Council, Local 22 v. City of Revere	September 28, 2023	53
NAGE v. Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA	November 6, 2023	87
New England Police Benevolent Association, Local 117 v. City of Methuen	October 5, 2023	60
Newton School Committee v. Newton Teachers Association	September 26, 2023	39
Newton School Committee v. Newton Teachers Association	January 24, 2024	105
Professional Staff Union and University Staff Association, NTA/NEA v. Board of Trustees of the University of Massachusetts	March 28, 2024	163
Somerville Municipal Employees Association v. City of Somerville	August 28, 2023	13
Somerville Municipal Employees Association v. City of Somerville	March 19, 2024	157
Springfield Education Association v. Springfield School Committee	October 20, 2023	64
Teamsters, Local 170 v. Town of Lancaster	March 1, 2024	121
United Food and Commercial Workers, Local 1459 v. Berkshire Roots, Inc.	September 20, 2023	36
United Food and Commercial Workers, Local 1459 v. Berkshire Roots, Inc.	February 26, 2024	117

Cumulative Decisions Reported — July 2023–March 2024

Alphabetical Listing—Respondent; Petitioner v.

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

Andover Education Association; Andover School Committee v. November 9, 2023. 94
Andover Education Association; Andover School Committee v. March 4, 2024 122
Andover Education Association; Andover School Committee v. March 15, 2024 148
 Berkshire Roots, Inc.; United Food and Commercial Workers, Local 1459 v. September 20, 2023 36
 Berkshire Roots, Inc.; United Food and Commercial Workers, Local 1459 v. February 26, 2024 117
Board of Trustees of the University of Massachusetts; Professional Staff Union and University Staff Association, NTA/NEA v. March 28, 2024 163
 Boston School Committee; Boston Teachers Union, Local 66, AFL-CIO v. August 31, 2023. 24
 Boston School Committee; Boston Teachers Union, Local 66, AFL-CIO v. October 3, 2023 59
Boston School Committee; Boston Teachers Union, Local 66, AFL-CIO v. March 13, 2024 128
 City of Cambridge; Cambridge Police Superior Officers Association v. October 23, 2023 84
 City of Everett; IAFF, Local 143, Everett Fire Fighters v. October 27, 2023 85
City of Lowell; IAFF, Local 853, Lowell Firefighters Union v. March 15, 2024 143
 City of Methuen; New England Police Benevolent Association, Local 117 v. October 5, 2023 60
 City of Revere; Massachusetts Laborers District Council, Local 22 v. September 28, 2023 53
 City of Somerville; Somerville Municipal Employees Association v. August 28, 2023. 13
City of Somerville; Somerville Municipal Employees Association v. March 19, 2024 157
 Commonwealth of Massachusetts/Secretary of Administration and Finance/Department of Developmental Services;
 AFSCME, Council 93, Local 646 v. November 27, 2023 97
 Commonwealth of Massachusetts/Secretary of Administration and Finance and MEMA; NAGE v. November 6, 2023. 87
 Essex North Shore Agricultural & Technical School District; AFSCME, Council 93, Local 245 v. October 20, 2023 76
Gloucester School Committee; Gloucester Teachers Association v. March 4, 2024 135
 Greater Lowell Regional Vocational Technical School District; Greater Lowell Regional Teachers Organization v. September 7, 2023 31
 Leicester Public Schools; International Union of Public Employees, Local 4 v. August 8, 2023. 1
 Malden Police Patrolmen’s Association and Malden Police Superior Officers Association; City of Malden v. August 15, 2023. 5
 Newton Teachers Association; Newton School Committee v. September 26, 2023 39
 Newton Teachers Association; Newton School Committee v. January 24, 2024 105
 Springfield School Committee; Springfield Education Association v. October 20, 2023 64
 Suffolk County District Attorney’s Office; AFSCME, Council 93 v. September 29, 2023 56
 Town of Harvard; AFSCME, Council 93 v. February 1, 2024 113
Town of Lancaster; Teamsters, Local 170 v. March 1, 2024 121

Cumulative Decisions Reported — July 2023–March 2024

Alphabetical Listing—Third Party v. Respondent

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

Bach v. Andover Education Association	November 9, 2023.....	94
Eichelser v. Berkshire Roots, Inc.	February 26, 2024	117
Newton School Committee v. Walsh	September 26, 2023	39
Newton School Committee v. Zilles	September 26, 2023	39
Newton School Committee v. Zilles	January 24, 2024	105

Topical Index — July 2023–March 2024

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 MLC 56

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 MLC 157

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 MLC 13

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 MLC 13

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 MLC 157

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 MLC 135

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 MLC 13

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 MLC 135

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 MLC 117

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 MLC 13

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 MLC 87

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 MLC 122

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 MLC 87

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 MLC 76

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 MLC 148

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 MLC 113

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 MLC 113

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 MLC 148

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 MLC 113

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 MLC 64

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 MLC 148

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 MLC 113

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 MLC 113

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 MLC 113

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 MLC 128

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 MLC 31

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 MLC 31

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 MLC 97

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 MLC 97

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 MLC 85

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 MLC 97

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 MLC 105

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 MLC 64

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 MLC 148

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*

TOPICAL INDEX — JULY 2023—MARCH 2024

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 MLC 76

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 MLC 76

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 MLC 24

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 MLC 87

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 MLC 60

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 MLC 148

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 MLC 113

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 MLC 87

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 MLC 76

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 MLC 64

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 MLC 60

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 MLC 5

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 MLC 122

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 MLC 128

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 MLC 87

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 MLC 59

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 MLC 84

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 MLC 163

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*

Topical Index Outline — 2023-2024

- 10. Definition**
- 11. Employee Organizations**
 - 11.1 employee organizations - capacity to be sued
- 12. Municipal Employee**
 - 12.1 elected official
 - 12.2 executive officer
 - 12.3 appointed official
- 13. Municipal Employer**
 - 13.1 chief executive officer
- 14. Professional Employees**
- 15. Supervisory and Managerial Employees**
 - 15.1 dual function managerial employees
 - 15.2 police/security employees
- 16. Strike**
 - 16.1 impasse
 - 16.2 "work to rule"
 - 16.3 lockout
- 17. Employee**
 - 17.1 confidential employee
 - 17.2 probationary employee
 - 17.3 CETA employees
 - 17.31 federally funded employees
 - 17.4 judicial employees
 - 17.5 public employee
 - 17.6 "03" consultant
 - 17.7 "at-will" employee
 - 17.8 casual employee
 - 17.9 legislative employee
- 18. Employer**
 - 18.1 district
 - 18.2 public employer
 - 18.3 "alter ego"
 - 18.4 employer under Chapter 150A
- 19. Independent Contractor**
- 20. Jurisdiction**
- 21. The Act**
- 22. Arbitration - Deferral to**
 - 22.1 post-award deferral
 - 22.2 pre-award deferral
- 23. Contract Bar**
- 24. Parties**
 - 24.1 casual and temporary employees
- 25. Preemption**
 - 25.1 decisions by other agencies
 - 25.2 prior court decision - res judicata
 - 25.3 judicial immunity
- 26. Statutory Bar**
 - 26.1 jurisdiction
 - 26.2 election of remedies
- 27. Subject Matter**
 - 27.1 prohibited practice
 - 27.11 consideration of union activity with appointing to non-unit position
 - 27.12 jurisdiction over internal union matters
 - 27.13 duty of fair representation
 - 27.2 representation
 - 27.21 employer's petition
 - 27.3 unit determination
 - 27.31 clarification
- 28. Relationship Between c.150E and Other Statutes Not Enforced by Commission**
- 30. Bargaining Unit Determination**
- 31. Jurisdiction**
- 32. Binding Effect of a Unit Determination**
- 33. Consent Agreements and Stipulations**
- 34. Criteria - In General**
 - 34.1 appropriate unit
 - 34.11 statutory unit
 - 34.2 community of interest
 - 34.3 desires of employees
 - 34.4 efficiency of operation (fragmentation)
 - 34.5 established practice (history)
 - 34.6 extent of organization
 - 34.7 geographical location - place of employment
 - 34.71 departmental unit
 - 34.72 institution
 - 34.73 jurisdiction
 - 34.731 campus
 - 34.732 county
 - 34.733 municipality
 - 34.734 state
 - 34.8 similarity of work (interchangeability)
 - 34.9 unit modification
 - 34.901 timeliness of filing
 - 34.902 add-on election
 - 34.91 accretion
 - 34.92 clarification
 - 34.93 severance
 - 39.94 fringe groups
- 35. Criteria - Specific**
 - 35.1 casual and temporary employees
 - 35.11 regular part-time employees
 - 35.12 students as employees
 - 35.13 provisional employees
 - 35.2 confidential employees
 - 35.21 spouse and relatives of managerial employees
 - 35.3 inclusion of professionals and craft severance
 - 35.31 non-professionals included in professional unit
 - other non-professionals
 - 35.41 clericals
 - 35.411 tax collectors
 - 35.42 craft employees
 - 35.43 hospital workers
 - 35.44 laborers
 - 35.45 maintenance and custodial
 - 35.46 administrative employees
 - 35.47 customer service representatives
 - 35.4 paraprofessionals
 - 35.51 paraprofessionals - technical
 - 35.511 emergency medical technicians
 - 35.52 inspectors
 - 35.6 professionals
 - 35.61 engineers and scientists

TOPICAL INDEX OUTLINE — 2023-2024

- 35.62 interns and residents
- 35.63 lawyers
- 35.64 nurses
 - 35.641 LPNs
- 35.65 other professional employees
- 35.66 social workers
- 35.67 teachers
 - 35.671 principals and department heads
 - 35.6711 administrative
 - 35.672 teacher aides
 - 35.673 university faculty
 - 35.6731 university department heads
 - 35.674 graduate assistants
 - 35.675 substitute teachers
 - 35.676 federally funded program personnel
 - 35.677 adult education teachers
- 35.68 librarians
 - 35.681 library aides
 - 35.682 library directors
 - 35.683 library bookkeepers
 - 35.684 contractors
- 35.69 guidance counselors
 - 35.691 mental health counselors
- 35.7 supervisory and managerial employees
 - 35.71 executive officer
- 35.8 uniformed services - general
 - 35.81 firefighters
 - 35.811 call-firefighters
 - 35.812 dispatchers
 - 35.82 police
 - 35.821 correctional officers
 - 35.822 traffic supervisors
 - 35.823 reserve officers
 - 35.824 detectives
 - 35.825 police dispatchers
 - 35.826 campus police
 - 35.83 sanitation
 - 35.84 transit workers
 - 35.841 bus drivers
 - 35.842 bus monitors
 - 35.85 militia
 - 35.86 security guards
- 35.9 judicial employees
 - 35.91 legislative employees
- 36. One Person Units**
- 37. Multi-Employer Units**
 - 37.1 shared employees
 - 37.2 dual-function employees
- 38. State Employee Unit**
- 39. Residual Unit**
- 40. Selection of Employee Representative**
- 41. Jurisdiction**
- 42. Decertification**
 - 42.1 contract bar
 - 42.2 defunctness
 - 42.3 loss of majority status
 - 42.4 schism
 - 42.5 merger
 - 42.6 disaffiliation
- 42.7 settlement agreement
- 43. Election**
 - 43.01 date of election
 - 43.1 ballot
 - 43.11 absentee
 - 43.12 appearance and design
 - 43.13 challenged
 - 43.14 inclusion of professionals and craft severance
 - 43.15 intent of voter controlling
 - 43.16 protest
 - 43.17 inclusion of union affiliation
 - 43.18 designation of union name
 - 43.2 election - basis for ordering or denying
 - 43.21 violations of laboratory conditions
 - 43.211 certification without an election
 - 43.3 challenges and objections
 - 43.31 challenged ballot
 - 43.32 campaign practice
 - 43.321 electioneering
 - 43.322 employer free speech
 - 43.323 misconduct in voting area
 - 43.324 no solicitation
 - 43.325 union misrepresentation
 - 43.326 observers at election
 - 43.327 employer preference for one of competing unions
 - 43.328 facsimile ballot
 - 43.33 continue to bargain
 - 43.34 continue to transact union business
 - 43.35 list of employee names and addresses
 - 43.36 list of eligible employees
 - 43.37 access to election site
 - 43.4 consent elections
 - 43.41 challenged ballot
 - 43.5 determination of results
 - 43.51 certification
 - 43.52 majority status
 - 43.53 run-off elections
 - 43.6 notification of election
 - 43.61 notice posting
 - 43.7 vacating an election
 - 43.8 voter eligibility
 - 43.9 type of election
 - 43.91 mail ballot
- 44. Exclusive Representative**
- 45. Limitations**
 - 45.1 contract bar
 - 45.2 pending proceeding
 - 45.21 arbitration
 - 45.22 court action
 - 45.23 fact-finding
 - 45.24 petition for certification
 - 45.25 prohibited practice
 - 45.3 prior certification
 - 45.31 failure to seek position previously
 - 45.4 timeliness of filing
 - 45.41 "expanding unit"
 - 45.42 open period
 - 45.43 automatic renewal clause
 - 45.5 no raiding agreement
 - 45.6 prior agreement as to unit composition

TOPICAL INDEX OUTLINE — 2023-2024

46. Petition for an Election

- 46.1 challenges and objections
 - 46.11 disagreements as to unit composition
 - 46.111 disagreement as to unit description
 - 46.12 rival claims of representation
 - 46.121 employer's duty of neutrality
 - 46.13 validity of authorization cards
 - 46.14 eligibility of recently hired employees
 - 46.15 status of employee organization
 - 46.151 representing both rank and file and supervisors
 - 46.152 representing guards and non-guards
 - 46.16 showing of interest
 - 46.17 future expansion of unit
- 46.2 employer
 - 46.21 procedure
 - 46.211 filing
 - 46.212 withdrawal
- 46.3 parties in interest
 - 46.31 notice to parties
- 46.4 union
 - 46.41 authorization cards
 - 46.411 employee's intent
 - 46.412 employer good faith doubt
 - 46.413 form and wording
 - 46.414 no solicitation rule
 - 46.415 timeliness
 - 46.416 withdrawal
 - 46.42 procedure
 - 46.421 filing
 - 46.422 withdrawal
 - 46.423 amendment

47. Recognition Without an Election

- 47.1 authorization cards
- 47.2 concerted activities to secure
- 47.3 legality of
- 47.4 prerequisites

48. Petition for Certification by Written Majority Authorization

- 48.1 appropriateness of unit
- 48.2 disagreements as to unit composition
- 48.3 authorization cards
- 48.4 designation of neutral
- 48.5 rival claims of representation

50. Duty to Bargain**51. Bargaining Representatives**

- 51.1 employer
 - 51.11 authority of employer representative
 - 51.12 composition of team
 - 51.13 multi-employer
 - 51.14 limits of employer's bargaining discretion
 - 51.15 bargaining on matters not in employer's control
 - 51.16 obligations of successor employer
 - 51.17 change in employer responsibility within municipality
 - 51.18 joint employers
- 51.2 union
 - 51.21 composition of bargaining team
 - 51.22 exclusive representation
 - 51.23 multi-union
 - 51.231 proportional representation
 - 51.24 multi-unit
 - 51.25 agents of union

52. Collective Bargaining Agreement

- 52.1 breach
 - 52.11 definition
 - 52.12 remedies
 - 52.121 arbitration
 - 52.122 grievance procedure
 - 52.123 judicial remedies
- 52.2 conflicts between individual and union contracts
- 52.3 duration and effective date
 - 52.31 application
 - 52.311 prospective
 - 52.312 retrospective
 - 52.32 reopening clause
 - 52.33 rights under expired contract
 - 52.331 rights of successor union under predecessor's contract
 - 52.332 arbitration under expired contract
 - 52.333 management rights under expired contract with predecessor union
- 52.34 termination date
- 52.35 bargaining in the face of rival union's petition
- 52.36 impact of one unit's contract on another unit
- 52.37 bargaining during life of contract on new issues
- 52.38 unsigned agreements
- 52.39 cessation of operations
- 52.4 extension and renewal
 - 52.41 automatic
 - 52.42 extension pending renewal
 - 52.421 oral
 - 52.422 written
- 52.5 implementation
 - 52.51 executive order
 - 52.52 legislative approval
 - 52.521 relationship between legislative and executive
 - 52.522 rejection or approval by referendum
 - 52.523 funding for multi-year agreements
 - 52.524 funding for agreement pursuant to a wage reopening clause
 - 52.53 ordinance or resolution
 - 52.54 written contract
- 52.6 interpretation
 - 52.61 implied contracts
 - 52.611 health insurance
 - 52.62 matters not covered
 - 52.63 oral agreements
 - 52.631 parol evidence rule
 - 52.64 past practices
 - 52.641 matters not expressed
 - 52.642 rejected proposals
 - 52.65 "meeting of the minds"
 - 52.66 plain meaning
- 52.7 modification
 - 52.71 authority to modify
 - 52.72 by consent
- 52.8 unlawful provisions

53. Influence on Bargaining

- 53.1 budget submission date
- 53.2 conflicting ordinances and by-laws
 - 53.21 by-laws referenced in contract
 - 53.22 tax cap legislation

TOPICAL INDEX OUTLINE — 2023-2024

- 53.23 Proposition 2-1/2
 - 53.231 relationship between school committee and local government under Proposition 2-1/2
- 53.24 local option laws
- 53.25 conflicting legislation
- 53.3 legislative rejection (subsequent bargaining)
- 53.4 open meeting laws
 - 53.41 public records
- 53.5 other influences on bargaining
 - 53.51 press releases and publicity
 - 53.52 outside sources of funding
 - 53.53 transfers of funds
 - 53.54 defamation of employer or union representative
- 53.6 parity provisions
- 53.7 submitting warrant article as affecting contract
- 54. Scope of Bargaining**
 - 54.1 exclusions and limitations
 - 54.11 bargaining over employees not in bargaining unit
 - 54.12 bargaining over future economic conditions
 - 54.2 hours
 - 54.21 holidays
 - 54.22 leave of absence
 - 54.221 maternity/paternity leave
 - 54.222 union business
 - 54.2221 union meetings during work time
 - 54.2222 union elections during work hours
 - 54.223 sabbatical leave
 - 54.224 sick leave
 - 54.2241 injured-on-duty leave
 - 54.2242 psychiatric evaluation
 - 54.225 professional meetings
 - 54.226 time swaps
 - 54.227 emergency leave
 - 54.2271 bereavement leave
 - 54.228 Family and Medical Leave Act
 - 54.229 Paid Family and Medical Leave Act
 - 54.23 overtime
 - 54.231 teacher late afternoon programs
 - 54.232 police paid details
 - 54.233 summer replacements
 - 54.234 court time
 - 54.2341 moonlighting
 - 54.2342 outside consulting
 - 54.235 parent-teacher conference
 - 54.236 on-call time
 - 54.24 vacations
 - 54.25 work shifts
 - 54.251 remote work
 - 54.26 conventions
 - 54.27 time clocks
 - 54.28 length of school year
 - 54.29 days worked; length of work week/year
 - 54.291 length of work day
 - 54.292 teaching periods
 - 54.3 management rights
 - 54.31 impact of management rights decisions
 - 54.4 meetings and communications
 - 54.41 ground rules
 - 54.42 use of recording devices in bargaining sessions
 - 54.5 other conditions of employment
 - 54.51 employment security
 - 54.511 discharge
 - 54.5111 layoff
 - 54.51111 job security seminars
 - 54.5112 wholesale discharge
 - 54.51121 training
 - 54.5113 abolition of position
 - 54.5114 non-renewal
 - 54.5115 disciplinary investigation
 - 54.51151 discipline
 - 54.51152 use of polygraph
 - 54.51153 drug-alcohol testing
 - 54.51154 psychological testing
 - 54.51155 fitness for duty examinations
 - 54.51156 surveillance
 - 54.5116 demotion
 - 54.5117 reduction from full to part-time
 - 54.5118 suspension
 - 54.5119 retirement
 - 54.512 hiring
 - 54.5121 creating new position
 - 54.513 promotion
 - 54.514 reinstatement
 - 54.515 reorganization
 - 54.5151 affirmative action plan
 - 54.516 retirement
 - 54.517 seniority
 - 54.518 subcontracting
 - 54.5181 use of volunteers
 - 54.519 technological change
 - 54.52 evaluation of employee performance
 - 54.520 residency requirement
 - 54.5201 tenure
 - 54.5202 civil service protection
 - 54.521 civil servant
 - 54.522 evaluation - teachers
 - 54.523 standards of productivity and performance
 - 54.524 evaluating job classifications
 - 54.525 certification requirements
 - 54.53 grievance administration
 - 54.531 implementation of arbitrator's award
 - 54.532 duty to support grievance settlement
 - 54.54 no-strike provision
 - 54.55 past practices
 - 54.56 safety
 - 54.57 union security
 - 54.571 agency shop
 - 54.5711 agency service fee
 - 54.572 dues check off
 - 54.573 hiring hall
 - 54.574 maintenance of membership
 - 54.575 union shop/closed shop
 - 54.58 work assignments and conditions
 - 54.581 minimum manning
 - 54.582 transfers
 - 54.583 work rules and regulations
 - 54.5831 relaxation on the job
 - 54.5832 AIDS policy
 - 54.5833 non-smoking policy
 - 54.5834 ban on eating at desk
 - 54.5835 meal breaks

In the Matter of the Arbitration Between: TOWN OF LANCASTER

and

TEAMSTERS, LOCAL 170

Case No. ARB-21-8856

111.81 firefighters
113.116 wage differentials

March 1, 2024
Holly Accica, Arbitrator

Eli Gillen Representing the Teamsters, Local 170

Marc Terry, Esq. Representing the Town of Lancaster

ARBITRATOR’S DECISION

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issue, and, having studied and weighed the evidence presented, conclude as follows:

THE ISSUE

Did the Town violate Article 12 of the Collective Bargaining Agreement (CBA) when it denied the Grievant, Courtney Manning (Manning), the base wage increase?¹

RELEVANT CONTRACT LANGUAGE

Article 3: Definitions:

A. “... Call Firefighter is defined as a ‘paid intermittent uniformed member of the Fire Department’...”²

B. “...Full-Time Firefighter is defined as a ‘paid uniformed member of the Fire Department... on a regular schedule of at least 40 hours a week.’”

Article 12: Wages:

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

FACTS

The Town of Lancaster (Town or Employer) and the Teamsters Local 170 (Union) are parties to a Collective Bargaining Agreement (CBA) with an effective period between July 2020 through June 2023. The Union is the collective bargaining representative for a unit comprised of firefighters and EMTs employed by the Town.

The bargaining unit includes only one full-time firefighter-EMT: the Grievant, Captain Courtney Manning (Manning). The other bargaining unit employees are regular part-time or “call” firefighters, working less than 40 hours per week. The term “dual-role” appears only once in the CBA: in Article 12.

During May 2020, the parties engaged in negotiations for the 2020 to 2023 contract. The Union submitted three proposals to the Town with respect to bargaining unit employee wages. The Town responded and provided the Union with cost analyses of the \$0.75 base-wage increase proposals. The Town and the Union claimed to have had numerous conversations, both during and outside negotiations, pertaining to the applicability of the base-wage increase for full-time firefighter-EMTs (i.e., Manning), and have differing assertions as to the results of those discussions. After the CBA was ratified, Manning was not provided with the \$0.75 base-wage increase. As a result, the Union filed a grievance against the Town for failure to provide Manning with the increase. The grievance was denied at all steps of the grievance procedure, resulting in the instant arbitration.

POSITIONS OF THE PARTIES

The Union

The Union contends that the applicable language in Article 12 should be construed based upon the plain reading of the language. Essentially, by failing to explicitly exclude full-time firefighters from the base-wage increase, the only conclusion to be drawn is that Manning was intended to be included and receive a base wage increase along with the part-time firefighters.

The Town

The Town asserts that the Union is seeking to use the grievance and arbitration process to obtain a benefit not sought through the collective bargaining process. The Town argues that there was never an intent to include full-time firefighter-EMTs in the wage increase promulgated by Article 12 of the CBA. The Town asserts that as the Town’s only full-time firefighter, Manning was always required to maintain his EMT certification as a condition of his employment, and that the base-wage increase was never intended to apply. The Town argued that the base-wage increase was solely meant to be an incentive for part-time employees to also obtain and maintain their EMT certification. The Town goes on to argue that this information and intent was clearly conveyed to the Union throughout the successor negotiation process in 2020.

OPINION

The parties stipulated to the issue in this case, which is: Did the Town violate Article 12 of the Collective Bargaining Agreement (CBA) when it denied the Grievant, Courtney Manning (Manning), the base wage increase. After a thorough review of the evidence, arguments presented, and relevant contractual provisions, I hereby find that the Town has violated the terms of the CBA.

1. During the hearing, the Town withdrew its arguments pertaining to any procedural arbitrability issues.
2. For the purposes of this Award, I will refer to “call” firefighters as “part-time.”

3. The abbreviation “FF/EMT” is used by the parties to refer to individuals employed by the Town in the dual role of firefighter (FF) and emergency medical technician (EMT). There are other employees who are solely firefighters and solely EMTs and do not retain the “dual-role” status.

As a contract interpretation case, I must first decide whether the language in Article 12 of the CBA is clear and unambiguous. As explained below, I find that it is, and thus, the clear and unambiguous language dictates the result.

Article 12 states that ... “Effective 7/1/2020, any firefighter that qualifies for the dual role of FF/EMT³ will receive a \$0.75 base wage increase. This increase shall apply to members as they receive the qualifications to achieve the dual role of FF/EMT...” Notably, this language explicitly states that “any” firefighter that qualifies for the dual-role will receive a base-wage increase upon signing of the contract, and it does not distinguish between full and part-time firefighter-EMTs.

Further, upon reviewing the contract in its entirety, it is clear that if the parties had intended for a distinction to be made when applying the base-wage increase based on full or part-time status, the language in the CBA would have reflected as such. This is evident from the fact that other provisions in the CBA explicitly reference a distinction between full-time and part-time employees in determining the application of those provisions. For example, Article 4 of the CBA reads as follows: “Seniority shall be defined as length of continuous service in the Lancaster Fire Department as a *call or full-time* firefighter or EMT...” (emphasis added). Similarly, Articles 13, 15, 20, and 21, differentiate between full and part-time status in the application of those provisions.

The language of Article 12 is clear and unambiguous, and thereby controls this dispute. Further, it would be contrary to the fundamental tenets of contract interpretation for the Arbitrator to ignore the language throughout the remaining provisions of the CBA. Therefore, any assertion that Article 12, which lacks a distinction between full and part-time firefighter-EMTs, is disregarded.

As noted, the Town argues that there was never an intent to include full-time firefighter-EMTs in the wage increase promulgated by Article 12 of the CBA, and that this information and intent was clearly conveyed to the Union throughout the successor negotiation process in 2020. However, because the contractual language at issue is unambiguous, I need not look at bargaining history to determine its meaning.

However, even if I agreed with the Town that the language in Article 12 was ambiguous, and then considered evidence stemming from the 2020 negotiations, the result would be the same. The May 13, 2020 “Recap Tentative Agreement” states that the “...Town agrees to a [\$0.75] increase for each ‘dual role’ member of the department... Town agrees to match call hour guarantee for FT staff.” In this document, the Town does not indicate that it agrees to a \$0.75 increase only for the “call” members of the department. Yet, in the following sentence, it differentiates between full and part-time staff.

In sum, upon reviewing the language of the CBA, it is evident that Article 12 unambiguously requires the Town to grant base-wage increases to any bargaining unit employees in the dual role of firefighter-EMT, irrespective of full or part-time status. This would include Manning, as the Town’s only bargaining unit employee in the full-time firefighter-EMT role. The provision specifies the effective date, the amount of the increase, and the scope of ap-

plication, leaving no room for interpretation that would exempt Manning from this benefit.

AWARD

The Town violated Article 12 of the CBA when it denied the Grievant, Courtney Manning, the base wage increase. The Town is hereby ordered to make Manning whole for the loss of wages.

* * * * *

In the Matter of: ANDOVER EDUCATION ASSOCIATION

and

ANDOVER SCHOOL COMMITTEE

Case No. MUPL-22-9378

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

March 4, 2024

Marjorie F. Wittner, Chair

Kelly B. Strong, CERB Member

Victoria B. Caldwell, CERB Member

Ryan McGovern Quinn, Esq. *Representing the Andover Education Association*

John Foskett, Esq. *Representing the Andover School Committee*

CERB DECISION IN THE FIRST INSTANCE

SUMMARY

The issue before the Commonwealth Employment Relations Board (CERB) is whether the Andover Education Association (AEA or Union) failed to bargain in good faith and violated Section 10(b)(2) of MGL c. 150E (the Law) when it bypassed the School Committee by 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 under the American Recovery Plan Act (ARPA). For the reasons outlined below, we find that the Union’s efforts to seek wage increases through the Town Meeting process, outside of collective bargaining, violated the Law as alleged.

STATEMENT OF THE CASE

On June 21, 2022, the Andover School Committee (School Committee or Employer) filed a charge of prohibited practice with the Department of Labor Relations (DLR), alleging that the Union had violated Sections 10(b)(1) and 10(b)(2) of Mass. General Laws, Chapter 150E (the Law). On July 5, 2022, the Union filed a motion to dismiss the charge and a response to the

charge. The DLR denied the motion to dismiss on July 8, 2022, without prejudice, and allowed the motion to be renewed at the investigation. After the investigation, on November 1, 2022, the DLR Investigator denied the motion in part, issuing a complaint and partial dismissal.

The complaint alleges that the Union, in violation of Section 10(b)(2) and derivatively, of Section 10(b)(1), bypassed the School Committee and attempted to utilize the Town Meeting process to achieve an objective that it failed to reach at the bargaining table several months earlier. The Investigator, however, dismissed an allegation that the Union had also independently violated Section 10(b)(1).¹ Specifically, the complaint alleges that the Union violated the Law in campaigning for the Board of Selectmen to authorize a vote at a Special Town Meeting that would approve a warrant article providing an \$800 stipend for Instructional Assistants (IAs) to be paid out of federal Coronavirus relief funds and by sending the School Committee a demand to bargain over finalizing the distribution of the stipends after the Special Town Meeting voted to approve the warrant article.

On November 13, 2023, the School and the Union agreed to waive their rights to an evidentiary hearing and jointly petitioned the CERB to exercise its discretion and decide the complaint in the first instance pursuant to 456 CMR 13.03(1)(b). The joint petition included a written statement of stipulated facts, fourteen joint exhibits, as well as post-hearing briefs from both parties. On December 1, 2023, the CERB issued a written ruling granting the parties' request.

FINDINGS OF FACT

Stipulations of the Parties

1. The Town of Andover (“the Town”) is a public employer within the meaning of G.L. c. 150E, § 1. In the case of employment relations with all persons employed by the Andover Public Schools (“APS”) whose terms and conditions of employment are determined by collective bargaining agreements, the Committee is the Town’s collective bargaining representative, with the Town Manager also participating and voting as a member of the Committee.

2. The Union is an employee organization within the meaning of G.L. c. 150E, § 1. The Union is the exclusive bargaining representative for certain categories of positions held by employees of APS, including Instructional Assistants (“IA’s”), Educators/Teachers, and Secretaries. The Union is a local affiliate of the Massachusetts Teachers Association (“MTA”).

3. The Committee and the Union are parties to a collective bargaining agreement (“CBA”) which governs the terms and conditions of employment of the IA’s.

4. During the period June 2021 - January 2022, the Committee and the Union were involved in extensive negotiations for a successor CBA for the IA’s, including the use of a mediator assigned by the Department of Labor Relations. During these negotiations,

proposals were exchanged by the parties regarding a one-time payment to the IA’s. All but one of these proposals involved a payment of \$300. One proposal verbally transmitted by the mediator was for a one-time payment of \$800. The last proposal that included any one-time payment was made on January 19, 2022. None of the one-time payment proposals was tied to federal ARPA funds.

5. Following the mediator’s issuance of a fact-finding report in February 2022, the Committee and the Union met for another bargaining session on March 5, 2022 and reached agreement on a Memorandum of Agreement (“MOA”) that determined the terms of the successor CBA. The MOA did not include a one-time payment to the IA’s. Jt. Exhibit 1.

6. The terms of the MOA were ratified and the successor CBA was executed on March 17, 2022, covering the period September 1, 2020 - August 31, 2023. Jt. Exhibit 2; Jt. Exhibit 3.

7. In early April 2022, several residents of the Town filed a petition requiring a Special Town Meeting to be held in connection with the upcoming Annual Town Meeting. The petition specified six petitioned articles to be placed on the warrant and voted on at the Special Town Meeting.

8. Among the six petitioned warrant articles was an article pertaining to certain categories of APS employees, including the IA’s. When the warrant articles were published, this article was designated as “Article 1”. Jt. Exhibit 4.

9. The Special Town Meeting was scheduled to be held in connection with the first day of the Annual Town Meeting on May 17, 2022.

10. On April 21, 2022, the Town held the required “tri-board” joint hearing of its Select Board, Finance Committee, and Planning Board on the articles in the Town Meeting warrant, including those in the Special Town Meeting warrant. During the hearing regarding Article 1, reference was made by Town Counsel to a public opinion by Committee counsel regarding the legality of Article 1. On April 22, 2022 a member of the Union’s bargaining team during negotiation of the IA’s successor CBA who had spoken in favor of Article 1 at the hearing requested a copy of the public opinion from the Committee. On April 25, 2022 the Committee responded by forwarding the opinion to her. Jt. Exhibit 11.

11. During the period leading up to the Special Town Meeting, the Union’s Facebook page contained posts regarding the Special Town Meeting. Jt. Exhibits 6, 7, and 8.

12. During the period leading up to the Special Town Meeting, the Union also published a letter to its members regarding the Special Town Meeting. Jt. Exhibit 5.

13. Andover Citizens for Transparency (“ACT”) is a citizens’ “coalition” that was formed to support adoption of articles in the Special Town Meeting warrant, including Article 1. During the period leading up to the Special Town Meeting, ACT’s Facebook

1. The School Committee did not appeal the Investigator’s decision to dismiss the independent 10(b)(1) allegation and the complaint before us concerns only the 10(b)(2) and derivative 10(b)(1) allegations outlined in the complaint.

page published posts regarding the Special Town Meeting. Jt. Exhibits 12, 13, and 14.

14. At the Special Town Meeting on May 17, 2022 Article 1 was adopted by a vote of 250-231.

15. On May 27, 2022, the Union forwarded three letters to the Committee that referenced the Special Town Meeting vote on Article 1. Jt. Exhibit 9.

16. On June 8, 2022, the Committee forwarded a response to the Union's letters. Jt. Exhibit 10.

17. The payments referred to in Article 1 were not made.

Additional Findings of Fact Based Upon the Joint Exhibits

The MOA signed by the parties on March 5, 2022, included under the signature line for the Union, the signature of Holly Currier (Currier), a member of the AEA's negotiating team. The MOA included provisions providing for retroactivity of wage increases, percentage increases to the hourly rates for IAs, as well as a \$100 increase in pay for IAs with sixteen or more years of service. The amended collective bargaining agreement executed after the MOA also includes Currier's signature on behalf of the Union.

Article 1 on the Warrant for the Special Town Meeting scheduled for May 17, 2022 provided as follows:

ARTICLE 1 COVID-19 STIPEND FOR EDUCATIONAL SUPPORT PROFESSIONALS

Authorize a one-time pandemic stipend and retention premium for educational support professionals (instructional assistants, food service workers, administrative assistants, custodians, and any other hourly education support professional) providing in-person essential work since March 20, 2020, in the flat sum of \$800 per person. The Pay shall be distributed pursuant to Federal Coronavirus State and Local Fiscal Recovery Funds Final Guidelines for "eligible workers."

If the above eligible workers are deemed ineligible for the receipt of the above funding for any reason, then the Town shall transfer \$300,000 from the most recent certification of free cash to a reserve to be distributed by the School Committee subject to collective bargaining and in accordance with the above Federal Guidelines.

The Final Rule provides that "Premium pay" must be entirely additive to a workers' regular rate of wages and compensation and may not be used to reduce or substitute for a worker's normal earnings.

Prior to the Special Town Meeting, the Union sent a letter to its members that included the AEA's logo at the top with the words "Special Town Meeting Endorsed by the AEA." The letter provided as follows:

Dear MTA member,

We're tired of town government ignoring the people and the school committee disrespecting educators. We should all have a say in decisions that affect our work and our community.

So a group of MTA members and other concerned citizens got together and created six Articles to help people in need, give town employees a voice, support small business, and give community members a chance to decide how to invest millions in COVID-19 relief funds.

More than 1000 residents signed the petition, so now the Articles will be presented at Special Town Meeting.

- Article 1: \$800 pandemic stipend for low-paid school workers
- Article 4: 1 million to Mental Health Services
- Article 6: community input on 109 million in COVID-19 relief funds

Special Town Meeting is a rare and unique opportunity for MTA members to push for change from the ground up. Andover deserves transparency and accountability.

In Solidarity,

The Andover Education Association Executive Board

For questions, contact:
Holly Currier [email address]
Susan Greco [email address]

Follow our coalition [Facebook](#) page! Andover Citizens for Transparency

VOTE YES

- ✓ **Community input on 10.9 million COVID-19 relief funds**
- ✓ **COVID-19 stipends for Education Support Professionals**
- ✓ **\$1 Million for Mental Health Services**
- ✓ **Employee feedback on Town Manager & Superintendent**
- ✓ **Posting no-bid agreements**
- ✓ **Prohibiting Employee Gag Orders (NDAs)**

(emphasis in original)

The letter included a summary of the six articles and indicated that Article 1 would be presented by Currier and Susan Greco (Greco)² at the Special Town Meeting to be held at the Andover High School Field House on Tuesday, May 17, 2022 at 7 p.m. It encouraged people to stay through Article 6 "which goes hand in hand with Article 1."

On April 6, 2022, John Foskett, labor counsel for the School Committee, sent a memorandum to Town Counsel, Thomas J. Urbelis, in response to Town Counsel's request for an opinion on the legality of Article 1. The memorandum concluded that Article 1 was unlawful.³

On May 11, 2022, the AEA posted a notice on its Facebook page with the date and time of the meeting and the message "Vote for transparency in Andover." On May 12, 2022, the AEA posted another notice with the date and time of the meeting, this time including the location—the "AHS Field House" with the message "Vote YES on Articles 1-6." In the early morning of May 17, 2022, the AEA shared a post by the Andover Citizens for Transparency

2. Greco is a member of the Union's Executive Board.

3. The legal opinion refers to the provision as Article 5, but the text is identical to what was published as Article 1 on the Special Town Meeting Warrant for May 17, 2022.

urging attendance at the Special Town meeting along with the following post:

Why Special Town Meeting?

The purest form of democratic governing is practiced in a Town Meeting, which has been in use for over 300 years and still today in our Town. We consider it as the People's Town Meeting because it has been proven to be a valuable means for many MA taxpayers to voice their opinions and directly effect (sic) change in our beautiful community, Andover. It is where your voice can be heard as you, your neighbor and other residents decide the course of our government with your vote.

Per MA General By-laws, citizens can call for a Special Town Meeting.

Please consider voting **YES** for:

- Article 1: COVID-19 stipends for Educational Support professionals
- Article 2: Prohibiting use of non-disclosure agreements (NDAs)
- Article 3: Employee Feedback on Town Manager & Superintendent
- Article 4: Mental health and wellbeing general fund
- Article 5: Public posting of no-bid agreements
- Article 6: Community input on \$10.9 million COVID-19 relief funds

Citizen articles represent our values of respect, open and transparent government and our community, residents, small businesses and employees. (emphasis in original)

Also prior to the Special Town Meeting on May 17, 2022, the AEA together with the Andover Citizens for Transparency (ACT), created a coalition Facebook page and began posting information about the Special Town Meeting and encouraging people to vote yes on Article 1 and the other articles. The ACT Facebook page listed Greco as its moderator/administrator.

After Article 1 was approved at the Special Town Meeting, the Union President, on May 27, 2022, sent a letter to the Chair of the School Committee on behalf of the AEA that stated in relevant part as follows:

... [W]e would like to formalize the compensation of our members in a manner that is consistent with fulfilling the parties' collective bargaining roles. We believe that the most efficient way to achieve this would be for the School Committee to permit the Town to execute a one-time transfer [of] funds directly to the relevant employees, with an agreement that preserves the bargaining role of the Committee. We inform you in advance that, as the collective bargaining representatives of many of the recipient employees, we agree to these payments.

On June 8, 2022, the Chair of the School Committee sent a letter to the Union President in response, rejecting the Union's proposal. The response referred to the Union's letter as a demand to bargain and cited the two legal opinions the Committee had received

which had determined that warrant article was unlawful.⁴ The School Committee Chair noted that to agree to the Union's request would require reopening the collective bargaining agreement that had been ratified only a few months earlier in the year and which was valid through August 31, 2023.

OPINION⁵

The question before us is whether the Union violated the Law when it took actions to promote and endorse a warrant article seeking Town approval for \$800 stipends for IAs and other employees to be paid out of federal coronavirus relief funds provided to the Town by the federal government. As the CERB recently held in *International Association of Firefighters, Local 1713 (Town of Hudson)*, 48 MLC 136, 139, MUP-19-7565 (November 15, 2021), the Law places similar obligations on employers and unions to bargain in good faith such that a union's duty under Section 10(b)(2) mirrors the employer's obligation under Section 10(a)(5). The stipulations and exhibits the parties have agreed to, along with the reasonable inferences drawn therefrom, clearly establish that the Union, through the actions of its Executive Board members, violated its duty to bargain in good faith under Section 10(b)(2) of the Law when, barely three weeks after executing the MOA, it sought additional compensation for IAs through the Town Meeting process, thereby bypassing the School Committee in an effort to obtain what it could not obtain through negotiations. This is precisely what the Supreme Judicial Court found to be the opposite of good faith bargaining in *Anderson v. Board of Selectmen of Wrentham*, 406 Mass. 508, 512, n.8 (1990). In *Anderson*, the Supreme Judicial Court favorably citing *Weymouth School Committee*, 9 MLC 1091, MUP-4293 (July 2, 1982), noted that:

[P]ermitt[ing] resort to the town meeting on a subject of mandatory collective bargaining [health insurance contribution rates] would enable a party to the negotiations to circumvent the bargaining process altogether. If a party was unable to achieve the desired contribution rate through collective bargaining, it could simply put the issue before town meeting and pack the meeting with voters who supported its position. 406 Mass. at 512, n. 8.

The facts here are strikingly similar to those present in *Town of Hudson, supra*. There, the CERB, in affirming a hearing officer's decision, held that the union's conduct constituted an unlawful attempt to bypass the employer's bargaining representatives when it petitioned Town Meeting to appropriate funds to increase minimum staffing beyond the level provided in a memorandum of agreement the parties had negotiated. 48 MLC at 140-142. The case for finding that the AEA engaged in an unfair labor practice is even more compelling here than in *Town of Hudson*, as here the attempt to gain a wage increase in the form of a \$800 stipend involves a mandatory subject of bargaining—wages—and one that is typically the central focus of any contract negotiation. The Union's attempt to place a wage increase (albeit in the form of a stipend funded by federal COVID-19 relief monies), contravenes the deal reached just a few months earlier. The parties bargained

4. Article 1 of the warrant at the May 17, 2022 Special Town Meeting represented the second attempt to have Town Meeting approve a stipend for IAs funded by federal COVID-19 funds. An earlier attempt to include a provision in the regular Town Meeting warrant had also resulted in a finding by counsel that it was unlawful.

5. The CERB's jurisdiction is not contested.

In the Matter of GLOUCESTER SCHOOL COMMITTEE

and

GLOUCESTER TEACHERS ASSOCIATION

Case No. CAS-23-10146

34.91 *accretion*
35.6711 *administrative*

March 4, 2024

Marjorie F. Wittner, Chair

Kelly B. Strong, CERB Member

Victoria B. Caldwell, CERB Member (concurring)

Gregor Pagnini, Esq. *Representing the Gloucester School Committee*

James Racine, Esq. *Representing the Gloucester Teachers Association*

CERB DECISION

SUMMARY AND STATEMENT OF CASE

The Gloucester Teachers Association, MTA/NEA (Union or GTA) represents Unit A, which is a bargaining unit of teachers and other employees who are employed by the Gloucester School Committee (School Committee). On July 20, 2023, the Union filed a unit clarification petition with the Department of Labor Relations (DLR) seeking to accrete the “O’Maley Science Center Coordinator” (SCC) to Unit A. The Union contends that the SCC shares a community of interest with other Unit A positions in Unit A. The Employer opposes the petition on grounds that the SCC is an administrative position that does not share a community of interest with Unit A.

On October 4, 2023, the Union and the Gloucester School Committee (School Committee or Employer) participated in an informal conference regarding the petition.¹ Before, during, and after the conference, the parties provided position statements, documents and affidavits to support their respective positions. On December 5, 2023, the DLR sent the parties a letter asking them to show cause why the petition should not be resolved based upon

the information summarized therein and seeking some additional information. Both parties filed responses that included the additional information. After reviewing the responses and incorporating the additional information, the Commonwealth Employment Relations Board (CERB) has determined that there are no material disputes of fact and accretes the SCC to Unit A.

BACKGROUND

Bargaining units

There are six bargaining units in the Gloucester Public Schools (GPS or District). In addition to Unit A, which is described in greater detail below, there is a paraprofessionals unit represented by the Gloucester Association of Educational Paraprofessionals MTA/NEA; a clerical unit represented by AFSCME Council #92; Local # 687; a school nurses unit represented by the Massachusetts Nurses Association; and three bargaining units represented by Teamsters, Local # 42: a food service workers unit, a bus drivers unit, and a bus monitors unit. There is no separate school bargaining unit for administrators or supervisors.²

Unit A

The Unit A collective bargaining agreement (CBA) is effective from September 1, 2020 to August 31, 2024. The CBA contains the following recognition clause:

The Gloucester School Committee, hereinafter referred to as the Committee, recognizes the Gloucester Teachers Association, hereinafter referred to as the Association, for purposes of collective bargaining, as the exclusive representative of the members of Unit A including Title I teachers, but excluding the Superintendent, Assistant Superintendent, Administrative Assistant to the Superintendent, managerial, and/or confidential employees as defined in Chapter 150E of the General Laws of Massachusetts as defined in the election conducted by the Massachusetts Labor Relations Commission on December 1, 1966, (MCR 83). Academic coaches are members of the teacher bargaining unit. Any and all bargaining Unit A positions will be posted in accordance with the contract.

Unless otherwise indicated, the word “teacher” will be used to refer to any and all personnel covered by this agreement.³

Unit A includes the following titles: Teacher, Program Leader, Guidance Counselor, Psychologist, Adjustment Counselor, Social Worker, Positive Alternative Consequence and Education (PACE), Speech and Language Teacher, Hearing Impaired Specialist, Visually Impaired Specialist, Learning Center Teacher, Partnership Services Teacher, Language Based Learning Disabilities Teacher, Academic Coach, Specialist (physical education, art and music),

1. The conference was conducted remotely, using the Webex videoconference platform.

2. We take administrative notice of Case No. MCR-3178. The case file reflects that at some point prior to January 20, 1981, the GTA represented an administrators unit in the Gloucester Public Schools. On January 20, 1981, the Gloucester Administrators’ Association filed a petition seeking to represent the administrators unit and the GTA intervened. After an election, the GAA was certified as the exclusive representative of the following unit:

All Principals, Assistant Principals, Director of Auxiliary Services, Director of Audio Visual Media, Director of Title I, Director Vocational School[,] regularly employed by the Gloucester School Committee in the Gloucester Public Schools and excluding all other employees.

It would appear based on a passing reference in *City of Gloucester*, 40 MLC 359,n. 3, CAS-12-2115 (May 30, 2014), that, as of 2014, the GAA represented a unit of “Assistant Principals.” The parties did not otherwise provide, and the CERB was unable to locate, any information regarding when or why the administrators’ unit ceased to exist.

3. Appendix B, Article of the CBA, “Gloucester Educator Evaluation Agreement,” defines “Teacher,” as “An Educator employed in a position requiring a certificate or license as described in 603 CMR 7.04 (3) (a, b, and d) . . . Teachers may include, for example, classroom teachers, librarians, guidance counselors or school nurses.” An “Educator” is defined as an “inclusive term that applies to all classroom teachers and caseload educators, unless otherwise noted.” “Classroom Teacher” is defined as an “Educators who teach pre-K-12 whole classes, and teachers of special subjects such as art, music, library and physical education. May also include special education teachers and reading specialists who teach whole classes.”

School Library Teacher/Media Specialist, and GAP Program.⁴ All of these positions report to their building principal. All positions are building-based, except the Hearing Impaired Specialist, Visually Impaired Specialist, and one school psychologist, all of whom perform district-wide services.⁵

Amy Donnelly and the O'Maley Science Center

The O'Maley Innovation Middle School (O'Maley School) serves District students in grades 6-8. Since about 2010, the O'Maley School has housed the Birdseye-Hammond Science Center, also referred to as the O'Maley Science Center (Science Center). The Science Center contains a variety of labs and rooms where middle school students can take classes and perform science, technology, engineering and math (STEM) experiments.

Amy Donnelly (Donnelly) has worked for the Gloucester Public Schools since 2000. Donnelly has a bachelor's degree in biology and is certified to teach science in Massachusetts. From 2000 until the end of the 2022-2023 school year, Donnelly was a science teacher at the O'Maley Middle School and a Unit A member.

From 2014 until the 2022-2023 school year, Donnelly also served as the science department's (Department) Program Leader. Donnelly's responsibilities as Program Leader included ordering material and equipment for the Science Department and overseeing the Department's budget. Donnelly also prepared multiple grant proposals on behalf of the Department for amounts ranging from \$7,000 to over \$50,000.⁶ She helped create partnerships between the District and various education and science related organizations and businesses.⁷

Since about 2012, Donnelly, along with Engineering Specialist David Brown (Brown),⁸ has also been responsible for overseeing the Science Center, where her duties include ordering supplies, and planning and overseeing student experiments and other lab-based activities. Prior to the fall of 2023, Donnelly performed all of these duties in addition to maintaining a teaching load of four 60-minute classes a day, plus a fifteen-minute homeroom period.

During the 2022-2023 school year, Donnelly was at the top of the Unit A pay schedule for teachers. Her base salary that year was \$95,167. Her total salary including extra hours, longevity pay, and a \$6,104.54 stipend for being Program Leader, was \$103,846.56.

Creation of SCC Position

Around 2022, Donnelly, Brown, and then-Assistant Superintendent and former Executive Director of the Gloucester Education Foundation, Tina Raimo, drafted a grant proposal pertaining to the

Science Center. The proposal sought \$300,000 over three years to make the Science Center's resources available to elementary school students and teachers in grades 3-5. The grant would also fund a new "Science Center Coordinator" position, which was described as "an experienced STEM educator who will plan the activities and the future direction of the initiative." The proposal stressed the importance of improving the quality of STEM education at the elementary school level, and the need for trained or engaged STEM elementary school teachers to accomplish that goal. To that end, the proposal stated that a primary focus of the Science Center would be to train elementary schools teachers to provide project-based instruction that encouraged critical thinking and innovation, while building content knowledge and understanding of concepts. The grant set forth four goals: 1) To extend high quality science professional development to grade 3-8 teachers; 2) to utilize the Science Center as a field trip and experiential science programming destination for District elementary students during the school day; 3) to strengthen local science community partnerships; and 4) to strengthen college and university partnerships.

With respect to the first goal of extending high quality science professional development to staff, the grant indicated that:

Gloucester's elementary teachers and, by extension, their students, have benefited greatly from having specific coaching in literacy and mathematics in the past. It is our aim to provide this same level of intentional coaching support in the area of science through the work of the O'Maley Science Center and the Center Coordinator.

In other places, the grant stated that the SCC would provide "intentional coaching support to grade 3-8 teachers," "foster" meaningful interactions between community organizations and Gloucester students, and be responsible for creating an Advisory Council consisting of representatives from local STEM organizations and STEM high school teachers.

On September 21, 2022, the Brace Cove foundation awarded a two year, \$200,000 grant to the District to create the SCC position. In December 2022, District Superintendent Ben Lummis (Lummis) sent a letter to GTA President Rachel Rex (Rex), which contemplated that the SSC would not be a Unit A position, but which, if signed, would constitute the parties' agreement that if a GTA bargaining unit member was selected for the position, the individual filling the position would maintain their position on the GTA seniority list while serving as the SCC. The parties never signed this letter.

4. In response to the DLR's information request, the Union provided a list of bargaining unit positions. Although the title "Special Education Coordinator," was on that list. based on other information provided by the parties, we find that the Special Education Coordinator is an unrepresented position.

5. The Hearing Impaired Specialist position is not currently filled. There are other school psychologists who are building based. Appendix B, Section 2, of the CBA contains the following definition of "Teaching Staff Assigned to More than One Building":

Each Educator who is assigned to more than one building will be evaluated by the appropriate administrator where the individual is assigned most of the time. The principal of each building in which the Educator serves must review and sign the evaluation, and may add written comments. In cases where

there is no predominate assignment, the superintendent will determine who the evaluator will be.

6. For example, in 2022, Donnelly drafted a grant proposal to Mass Life Sciences to fund equipment and professional development, which resulted in a \$53,000 grant. Donnelly states in her affidavit that this grant was used as a supporting document for the Brace Cove grant described below.

7. In 2018, Donnelly facilitated a partnership between Salem State University and the District that resulted in university students interning at the Science Center's biology lab. Donnelly has overseen that program since its creation.

8. As discussed below, Brown is a non-unit employee.

On February 3, 2023, the District created a draft job posting, which described the SCC as a two-year, grant-funded position, with a work year of 210 days and an 8-hour workday, including afternoon and evening activities as required. The responsibilities listed in the posting included:

- Design and lead O'Maley Summer Science Institutes for all incoming GPS Science teachers, grade 3-8
- Design and lead in service training throughout the school year for GPS Science teachers, grade 3-8
- Provide and/or coordinate modeling, coaching and mentoring for elementary science teachers
- Utilize the O'Maley Science Center as a field trip and experiential science programming destination for GPS elementary students during the school day
- Work with teachers to develop, refine, and practice grade-level laboratory experiences that will then be implemented with confidence in each elementary science classroom
- Foster meaningful interactions between the Gloucester Schools and local, respected science-related organizations and businesses
- Seek out and apply for relevant grant opportunities to support current and future Science Center needs
- Develop a multi-year sustainability plan
- Collect and report data regarding training content, hours, and participants as well as evidence of successful implementation of strong science instructional practice
- Continue and expand partnerships and internship programs with local universities to provide student mentors, Science Center assistants, and to attract new science teachers to Gloucester
- Conduct periodic staff and student surveys to measure impact of in service trainings and field experiences
- Organize annual demonstration of learning events that engage students, families, and industry partners
- Maintain clear, accurate records and guidance documents, including budget, inventories, ordering, staffing, [and] facility use
- Other related duties as assigned by the Superintendent.

The posting set forth the following “Skills and Competencies”:

- 2-4 years of laboratory experience in a professional environment preferred
- 5 years of public school science teaching experience preferred
- Experience designing and leading professional development activities
- Exceptional written/oral communications skills, with skill presenting information in engaging ways
- Extremely well-organized, with a strong attention to detail

9. Lewis is the Chair of the Union’s negotiation committee. Rex is Union president. Both Lewis and Rex are GPS educators.

- The ability to work both collaboratively and independently, seeking support when needed.

The education requirements were a bachelor’s degree in science and Massachusetts certification as a science teacher.

On February 8, 2023, the District shared this posting with Union officers Matthew Lewis (Lewis) and Rex.⁹ Later that day, Rex sent an email to Assistant Superintendent Amy Pasquarello (Pasquarello) questioning why the position had not been placed in Unit A. Rex emphasized that the position did not require administrative certification or any responsibility for evaluating or hiring/firing other educators. Lewis wrote a more detailed email to Lummis and Pasquarello on February 9, stating his belief that under the grant, the SCC position was being established like an existing Unit A coaching position, which already exists at the elementary schools. Lewis further noted that teachers across the district have community outreach duties.

Pasquarello responded to the emails on February 28. She disagreed that there were Unit A positions comparable to the SCC. Pasquarello acknowledged that the position required modeling, coaching and mentoring, but indicated that the position’s primary responsibilities went beyond that, and included different workdays, different hours, designing and managing summer institutes and recruiting staff and securing funding. She indicated that to “help clear up the confusion,” she had updated the posting, which she planned to issue the next day.

The revised posting, which was dated March 1, 2023, was similar but not identical to the February posting. It notably eliminated the responsibility of modeling, coaching and mentoring elementary science teachers, but stated in a summary that the SCC would design and provide professional development to staff. The educational requirements, hours, and workday were the same.

On March 1, 2023, Rex made a formal demand to bargain over the SCC’s inclusion in the bargaining unit and its terms and conditions of employment. The Union’s demand included a draft Memorandum of Understanding that would have included the SCC in Unit A. After several bargaining sessions in April and May 2023, the parties did not agree on whether to place the SCC in Unit A. On May 25, Lummis wrote a letter to the Union that summarized their disagreement over whether the position was an administrative or a coaching position. Lummis stated that because of that disagreement, the District would not put forth any further proposals. Lummis noted however that the School Committee had agreed to guarantee that any Union member hired as SCC would be able to return to their unit position and maintain their existing benefits if the SCC position is discontinued or if the staff member chooses to leave the position while they are in good standing.

Donnelly applied for the SCC position and the District selected her to fill it. On July 1, 2023, Donnelly entered into a two-year employment contract with the District. The District set her annual salary at \$104,500. The contract indicated that increases would be conditioned upon satisfactory performance.¹⁰ Other contract terms

10. The section of the contract also stated that, “As a general principle, the district will strive to maintain an alignment between increases in administrators’ compensation and increases in all negotiated labor contracts.”

included suspension, demotion or dismissal for “good cause;”¹¹ and a number of benefits, including eligibility for a 403(b) annuity plan, sick leave, group health insurance, personal leave, and bereavement leave benefits. The leave benefits were essentially the same as Unit A benefits.¹² The contractual work-year was 200 days. The provision “Evaluations,” states, “The Superintendent or his designee shall evaluate the performance of the Science Center Coordinator in writing at least once annually...”

Since beginning the SCC position, Donnelly has taught lab classes to middle school classes about two to three times a week, or about 20% of her workweek.¹³ She spends the rest of her time meeting with teachers, following up on grant writing, planning curriculum, interviewing interns, going into the middle school and elementary schools, and setting up classrooms to be conducive to science teaching. Donnelly worked with elementary school teachers in the summer of 2023, but as of the conference, had not yet started working with elementary school students. She expected to do so by the end of the 2023/2024 school year. Donnelly reports to the Assistant Superintendent and has no formal evaluation or supervisory duties. She is not licensed as a DESE administrator.¹⁴

Donnelly no longer serves as the O’Maley Science Department’s Program Leader. A seventh grade math teacher has filled that position.

Additional Information Regarding Selected Unit A and Non-Unit Positions
Unit A Program Leader

A May 2023 posting for the Program Leader position includes the following responsibilities and qualifications:

- Program Leaders will be members of the school-based leadership team organized by the principal. As members of the school’s Leadership Team, Program Leaders will contribute to the development of professional development, the planning and facilitation of school and department meetings, assisting with the hiring process, School Improvement Planning, and the identification of school and department goals.
- Program Leaders are responsible for facilitating the creation of and the implementation of standards-based curriculum, effective instructional practices, and common assessments that measure student progress.
- As instructional leaders, Program Leaders will model effective, high quality, culturally responsive instructional practices that lead to deeper student engagement and learning;
- Program Leaders will support teachers in the areas of instruction, curriculum, lesson planning, and assessment including strategizing, consulting, organizing peer observations, and assisting with their professional goals;

- Program Leaders will be responsible for other applicable administrative duties such as attending meetings led by the school principal, conducting departmental meetings, contributing to scheduling, fulfilling duties related to the budget, and overseeing the purchase, review of invoices, and shipment of curriculum materials and other supplies to ensure the department’s teachers are sufficiently equipped during the school year;
- Program Leaders will help plan and prioritize professional development support for teachers in conjunction with school administrators including setting up peer observations;
- Program Leaders will work 185 days per year with two days being assigned during the summer as part of work related to curriculum development and review, planning for professional development and other responsibilities described above.

The posting listed the following qualifications:

- A teacher in the Gloucester Public School system. Must have had a successful teaching experience as a classroom teacher.
- Must have had both theoretical and practical preparation in his/her specialty.
- Must have the personal qualities necessary to lead teachers with regard to group and individual curriculum, instruction and assessment matters.

The job description did not contain specific educational requirements.

In addition to the foregoing, Donnelly and at least one other Program Leader have written grants for their department.¹⁵

Program Leader CBA Provisions

The CBA contains separate provisions for several different Unit A titles, including Program Leaders. Those provisions include an annual stipend¹⁶ and several provisions pertaining to Teaching Hours and Teaching Load,” including Article 6(B)(3), which states:

The work year of the program Leaders shall include their attendance prior to the opening of school at orientation of new members to their departments. In addition, the work year shall include their attendance prior to orientation to review shipments and invoices to ensure that the department is equipped for the beginning of classes.

Article 6(D)(2) also provides that Program Leaders shall teach no more than four (4) periods per day.

Unit A Academic Teaching Coach

The District employs a number of academic teaching coaches at the elementary school level. A May 2023 posting for an elemen-

11. “Good cause” was defined as “any ground which is put forth by the Superintendent in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the task of building up and maintaining an efficient and effective school system.”

12. There were some minor differences in sick leave benefits.

13. Although the School Committee disputes that Donnelly is teaching classes, claiming instead that she is just modeling appropriate instructional practices, it provided a color-coded calendar depicting Donnelly’s schedule for September and October 2023 that showed that Donnelly taught or co-taught between one and three classes a week during those months.

14. In Appendix B of the CBA, the term Evaluator is defined as, “Any building or district administrator who is appropriately licensed and designated by the superintendent who has responsibility for observation and evaluation.”

15. Rex formerly served as Program Leader of Gloucester High School’s science department. She stated at the informal conference that she wrote many grants for equipment while serving in that capacity.

16. In FY 23, the Program Leader’s annual stipend was \$4,145.

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 MLC 87 (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 MLC 271 (March 29, 2013).

In *Essex North Shore Agricultural School District*, 50 MLC 76 (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 MLC 60 (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 MLC 64 (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 MLC 85 (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 MLC 97 (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 MLC 94 (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. ■

MLC 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 MLC 64 (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 MLC 94 (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. ■