

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS¹

In the Matter of *

BOARD OF HIGHER EDUCATION *

and *

MASSACHUSETTS STATE COLLEGE *

ASSOCIATION *

Case No. SUP-05-5212

Date Issued:
May 11, 2011

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

James B. Cox, Esq. - Representing the Board of Higher Education

Matthew D. Jones, Esq. - Representing the Massachusetts State College
Association

HEARING OFFICER'S DECISION AND ORDER

1

SUMMARY

2 The issue in this case is whether the Board of Higher Education (Employer)
3 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General
4 Laws, Chapter 150E (the Law) by repudiating a settlement agreement with the
5 Massachusetts State College Association (Union) when it billed bargaining unit member
6 James Fitzpatrick (Fitzpatrick) for certain costs that the Employer incurred after the
7 2004 fall semester. I find that the Employer violated the Law as alleged.

¹ Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations is now the Department of Labor Relations (DLR).

STATEMENT OF THE CASE

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On October 7, 2005, the Union filed a charge of prohibited practice with the former Labor Relations Commission² alleging that the Employer had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law, by repudiating a settlement agreement between the Union and the Employer. Pursuant to Section 11 of the Law and Section 15.04 of the Rules in effect prior to November 15, 2007, the CERB investigated the charge and issued a complaint of prohibited practice on September 18, 2009. The Employer filed an answer to the complaint on September 23, 2009.

I conducted a hearing on November 15, 2010 at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The Employer and the Union filed timely post-hearing briefs. Based on the record evidence, which includes witness testimony, stipulations of fact, and documentary exhibits, and in consideration of the parties' arguments, I make the following findings of fact and render the following opinion.³

STIPULATIONS OF FACT

² Pursuant to Chapter 145 of the Acts of 2007, the DLR "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission. The Commonwealth Employment Relations Board (CERB) is the body within the DLR charged with deciding adjudicatory matters. References in this decision to the Board include the former Labor Relations Commission (former Commission).

³ Pursuant to Standing Order 2009-1, the CERB designated hearing officers to preside over hearings and decide the allegations set forth in complaints for prohibited practice charges filed on or before November 14, 2007.

- 1 1. The Board is a public employer within the meaning of Section 1 of G.L.
2 c.150E ("the Law"), and is the employer, for purposes of the Law, of faculty
3 and other employees at [the] Massachusetts State Colleges.⁴
4
- 5 2. The Association is an employee organization within the meaning of Section 1
6 of the Law.
7
- 8 3. The Association is the exclusive bargaining representative of a unit consisting
9 of full-time faculty and librarians, and part-time faculty teaching three
10 consecutive semesters, employed in the Day Divisions of the nine
11 Massachusetts State Colleges, including the [Massachusetts Maritime]
12 Academy.
13
- 14 4. The Board and the Association were parties to a collective bargaining
15 agreement ("collective bargaining agreement"), with respect to the unit
16 described in the preceding paragraph, that by its terms was in effect from July
17 1, 2004 through June 30, 2007.
18
- 19 5. At all times material to this matter, James Fitzpatrick was a faculty member
20 at the Academy in the bargaining unit described in paragraph 3, above.
21
- 22 6. At all time material to this matter, C.J. O'Donnell was the President of the
23 Association's Chapter at the Academy and, as such, represented the
24 Association and its members with respect to discipline of bargaining unit
25 members.
26
- 27 7. At all times material to this matter, Donna Sirutis was a Consultant employed
28 by the Massachusetts Teachers Association assigned to the Massachusetts
29 State College Association, and, as such, represented the Association and its
30 members with respect to discipline of bargaining unit members, including
31 members at the Academy.
32
- 33 8. At all times material to this matter, Richard Gurnon was Acting President of
34 the Academy, with authority to initiate termination and other disciplinary
35 proceedings against faculty members at the Academy, in accordance with the
36 terms of the collective bargaining agreement.
37
- 38 9. Gurnon had delivered on or about November 29, 2004 the memorandum to
39 Fitzpatrick dated November 23, 2004.
40
- 41 10. O'Donnell, Sirutis and Gurnon met on November 24, 2004 to discuss the
42 recommendation for the termination of Fitzpatrick's employment being

⁴ Under St. 2010, c. 189, most of the state colleges have been renamed universities, although the name of the Academy remains unchanged. Section 82 of c. 189 expressly provides that nothing in the act affects existing bargaining units.

1 contemplated by Gurnon. The three of them met again on December 1,
2 2004. Fitzpatrick joined them in a meeting on December 2, 2004.

3
4 11. While at the Academy the parties executed a one-page document entitled
5 "Settlement in Lieu of Dismissal: James Fitzpatrick" on December 2, 2004.

6
7 12. On or about May 12, 2005, the Academy sent Fitzpatrick an invoice for
8 \$4,250 as the billing under paragraph 5 of the Settlement dated December 2,
9 2004.

10
11 FINDINGS OF FACT

12 The Massachusetts Maritime Academy (Academy) is one of the Massachusetts
13 state colleges. Its specialized program trains students to work in a variety of fields,
14 including engine and marine transportation, international maritime business, and marine
15 safety. The Academy's academic year consists of a fall semester; a vacation break in
16 late December; an "along side sea" term that runs between January 1 and January 10
17 to prepare the Academy's training ship for sea travel between January 10 and the end
18 of February; and a spring semester.

19 In the fall semester of the 2004-2005 academic year, Fitzpatrick taught a course
20 at the Academy entitled "Global Maritime Distress and Safety System II." The course
21 taught students to operate the radio communications required on board GMDSS-
22 compliant vessels, ensured their proficiency with GMDSS equipment and operation, and
23 developed their knowledge of radio wave propagation. The course began in September
24 of 2004, ended in December of 2004, and consisted of lectures, group discussions, and
25 laboratory work with the equipment. Fitzpatrick maintained a course outline and
26 schedule listing the lesson and laboratory topics for each class, and the examination
27 preparation and examination dates. To pass the course, students had to demonstrate
28 their competency to use various pieces of equipment, such as medium and high

1 frequency receivers, and to perform such tasks as making emergency distress calls.
2 Students received three opportunities to demonstrate their competency to use the
3 equipment. To ensure his students' long-term retention of the course material,
4 Fitzpatrick assessed his students' competency on the equipment at the end of the
5 course, after he had trained them on all of the equipment.

6 At some point prior to November 5, 2004, Fitzpatrick told students in his class
7 that he planned to urinate on the grave of the then-Academy President.⁵ He also stated
8 to the students: "don't f--- with me. If you f--- with me, I'll f--- with you." A student in
9 Fitzpatrick's class reported the comments to an Academy staff officer, and the Academy
10 launched an investigation.

11 The Academy notified Fitzpatrick of the allegations against him. Fitzpatrick
12 responded to the allegations by letter dated November 22, 2004, and his letter came to
13 the attention of Acting President Richard Gurnon (Gurnon). Gurnon was distressed by
14 the statements that Fitzpatrick had allegedly made and what Gurnon perceived to be a
15 lack of remorse. After learning of the investigation, Fitzpatrick contacted O'Donnell and
16 Sirutis. O'Donnell subsequently contacted Gurnon and asked to meet with him
17 regarding the situation.

18 O'Donnell, Sirutis and Gurnon met on November 24, 2004. Gurnon showed
19 O'Donnell and Sirutis a letter that he had written to Fitzpatrick on November 23, 2004,
20 outlining the allegations against him and advising Fitzpatrick that he intended to initiate
21 termination proceedings. O'Donnell and Sirutis did not believe that Fitzpatrick's conduct
22 warranted termination and asked Gurnon to consider a less severe penalty. Gurnon

⁵ At that time, the President was battling a serious illness.

1 offered to reduce the discipline to include a two-week suspension, reduction in military
2 rank, completion of a medical evaluation, and a written and oral apology to his students.

3 O'Donnell and Sirutis subsequently relayed Gurnon's offer to Fitzpatrick.
4 Fitzpatrick rejected the offer. Thereafter, O'Donnell told Gurnon of Fitzpatrick's
5 decision. Gurnon then told O'Donnell that he would proceed with Fitzpatrick's
6 termination, and Gurnon forwarded the termination letter to Fitzpatrick on November 29,
7 2004. Fitzpatrick contacted O'Donnell after he received the letter, which prompted
8 another meeting on December 1, 2004 between O'Donnell, Gurnon and Sirutis.

9 At the December 1 meeting, Gurnon again sought an apology, a reduction in
10 military rank, and a medical evaluation. In addition, he increased the suspension from
11 two weeks to three weeks and stated that he wanted to meet with Fitzpatrick to discuss
12 his concerns. After concluding the meeting, O'Connell and Sirutis advised Fitzpatrick
13 that Gurnon had increased the duration of the suspension and wanted to meet with him.

14 O'Donnell, Sirutis, Fitzpatrick and Gurnon met the next day, December 2, 2004.
15 O'Donnell and Sirutis advised Gurnon that Fitzpatrick would accept the offer. At that
16 point, Gurnon realized that the Academy would need to replace Fitzpatrick in the
17 classroom to ensure that the students finished their course work. Gurnon then stated
18 that Academy would not bear any cost of the suspension - would not "spend a nickel" -
19 and Fitzpatrick would have to pay for his replacement in the classroom. Gurnon
20 imposed the unpaid suspension and replacement cost requirement because he wanted
21 Fitzpatrick to pay a financial penalty. Otherwise, Gurnon believed, it would seem like
22 the Academy let Fitzpatrick take a three week vacation and pay someone else to take
23 over his teaching load.

1 Because Gurnon had not previously raised the issue of payment for replacement
2 coverage, O'Donnell, Fitzpatrick and Sirutis left the meeting to caucus in the hallway.
3 O'Donnell calculated what he thought it would cost the Academy to replace Fitzpatrick
4 for the remaining time in the fall semester, estimating a \$1500 - \$2000 cost. O'Donnell
5 was surprised by the new requirement, Fitzpatrick was upset, and Sirutis was agitated,
6 but they ultimately agreed to accept the settlement that Gurnon was offering. When
7 they returned to the meeting, Sirutis told Gurnon that part-time coverage "would be
8 expensive – around \$1500." Gurnon nodded his head forward, shrugged his shoulders,
9 and said nothing in response to Sirutis's statement.⁶ The parties did not discuss
10 whether Fitzpatrick's replacement would perform any work after the fall 2004 semester,
11 and there is no evidence that either party considered it at that time.⁷

12 The parties decided to reduce the settlement agreement to writing, so O'Donnell,
13 Sirutis, and Fitzpatrick went to O'Donnell's office to draft the agreement and type it.
14 When they returned, Sirutis thought the situation was "tense" and felt "on edge"
15 because she feared for Fitzpatrick's job and believed that Gurnon would take the

⁶ Gurnon testified that the amount of the replacement cost did not matter to him because he would not be paying for it. However, he did not state this out loud or explain his thought process to O'Donnell, Sirutis and Fitzpatrick.

⁷ In response to the Employer attorney's question: "[w]as it your intention to cap the amount of money that Mr. Fitzpatrick would have to pay?" Gurnon responded: "[n]o, sir." This evidence does not demonstrate that Gurnon considered whether Fitzgerald's replacement would perform work outside of the 2004 fall semester or intended to require Fitzgerald to pay for replacement work performed outside the 2004 fall semester. Gurnon's answer is consistent with his belief that there was no limit to the amount of money that Fitzgerald would have to pay for work that his replacement performed within the fall 2004 semester. I draw no other inference from this testimony because the attorney's question seemed to prompt Gurnon's answer, and Gurnon did not explain his answer further.

1 settlement off the table if anything angered him. Consequently, Sirutis was concerned
2 about doing anything – even talking – that might disturb the process of signing the
3 agreement.⁸ Gurnon, Sirutis, O'Donnell, and Fitzpatrick reviewed the document that
4 O'Donnell had typed (Settlement Agreement), and they all signed it without further
5 discussion. The Settlement Agreement provides as follows:

6 Settlement in Lieu of Dismissal: James Fitzpatrick

- 7 1. Three-week suspension without pay, starting December 3, 2004.
- 8
- 9 2. Reduction in MMA military rank to LCDR.
- 10
- 11 3. Written and oral apologies to students in the section(s) where the
12 remarks were made.
- 13
- 14 4. Physical and mental health evaluation; report to be furnished to
15 Commodore Gurnon.
- 16
- 17 5. Reimbursement for "03" coverage of classes and labs for the
18 remainder of the 2004 fall semester.
- 19

20 Fitzpatrick began to serve his suspension and retired Academy professor Robert
21 Buckley (Buckley) agreed to replace him. On December 7, 2004, the Academy
22 executed a contract with Buckley for payment of \$2,000. The contract contained a start
23 date of December 6, 2004 and a completion date of December 17, 2004. Fitzpatrick
24 was on target with his syllabus at that time and had finished the lesson scheduled for
25 November 19, 2004 and the lab scheduled for November 29, 2004.

⁸ Sirutis testified that she explained that the Academy would not lose money because the savings from Fitzpatrick's suspension would pay for his replacement. I do not credit this testimony. None of the other witnesses corroborated it, and Gurnon did not recall it. Additionally, it is unlikely that Sirutis offered this explanation when she was trying to avoid saying anything that could anger Gurnon or derail the settlement process.

1 At some point prior to December 25, 2004, Buckley advised the Academy that
2 only 25% of the student competency assessments had been completed, and that he
3 could not complete the remaining assessments before the end of the fall semester.
4 Gurnon then authorized the Academy to contract with Buckley to perform work during
5 the "along side sea" term. On or about December 28, 2004, Buckley and the Academy
6 executed an additional contract for \$1,500. The contract contained a start date of
7 January 2, 2005 and a completion date of January 8, 2005. After the Academy's
8 training ship sailed in January of 2005, Buckley advised the Academy that a few more of
9 Fitzpatrick's students needed to complete their competency assessments, so Gurnon
10 authorized the Academy to execute a third contract with Buckley. This \$750 contract
11 dated April 7, 2005, contained a start date of March 28, 2005 and a completion date of
12 April 15, 2005.

13 In May of 2005, the Academy gave Fitzpatrick an invoice for the cost of the
14 services that Buckley had performed. The invoice separated Buckley's services into
15 three contracts, identifying them as follows:

- 16 Contract #1 – Fall semester \$2,000.00
- 17 Contract #2 – Along side sea term \$1,500.00
- 18 Contract #3 – Spring 05 semester \$ 750.00

19 Fitzpatrick was surprised to see the charges for contracts 2 and 3, but he paid the entire
20 bill. He discussed the invoice with O'Donnell, and the Union subsequently filed this
21 charge of prohibited practice.

OPINION

1
2 To establish that an employer repudiated an agreement, a union must show that
3 the employer deliberately refused to abide by the unambiguous terms of the agreement.
4 Worcester County Sheriff's Department, 28 MLC 1, 6 (2001). If the language of the
5 agreement is ambiguous, the Board will look to the bargaining history that culminated in
6 the provision at issue to determine whether there was an agreement between the
7 parties. City of Waltham, 25 MLC 59, 60 (1998). If the evidence is insufficient to find an
8 agreement underlying the matter in dispute, or if the parties hold differing good faith
9 interpretations of the terms of the agreement, there is no repudiation because the
10 parties did not achieve a meeting of the minds. City of Boston/Boston Public Library, 26
11 MLC 215, 216 (2000). To achieve a meeting of the minds, the parties must manifest
12 assent to the terms of the agreement. Suffolk County Sheriff's Department, 30 MLC 1,
13 6 (2003).

14 The parties here dispute the temporal meaning of paragraph 5 of the Settlement
15 Agreement. The Union asserts that the phrase: "reimbursement for '03' coverage of
16 classes and labs for the remainder of the 2004 fall semester" means reimbursement for
17 the costs associated with an "03" employee instructing during scheduled class meetings
18 and labs *until* the end of the 2004 fall semester. Conversely, the Employer argues that
19 the language means reimbursement for all *work associated* with coverage of classes
20 and labs arising during the fall 2004 semester – even if that work extended past the
21 calendar end of the semester. Additionally, the Employer contends that there can be no
22 repudiation because the parties hold differing good faith interpretations of the
23 Settlement Agreement, the bargaining history does not clarify the parties' intent, and

1 there is no evidence that the Employer deliberately refused to abide by the Settlement
2 Agreement.

3 I first consider whether the disputed provision of the Settlement Agreement is
4 ambiguous. The Board has found that contract language is ambiguous if it is
5 susceptible of different meanings on its face or in the context of the agreement. See
6 City of Holyoke, 28 MLC 393 (2002) (language at issue arguably applies to all court
7 actions but not complaints pending before administrative agencies); Town of
8 Belchertown, 27 MLC 73 (2000) (language of agreement found to be ambiguous
9 because it could be construed to require a condition precedent to implementation);
10 Town of Dracut, 21 MLC 1593 (H.O., 1995), aff'd. 24 MLC 37 (1997) (possible
11 interpretations of the language are as numerous as the different types of fire alarms);
12 City of Lawrence, 23 MLC 213 (1997) (term "employee" found to be ambiguous
13 because it could be applied to prisoners or welfare recipients). Because paragraph 5 of
14 the Settlement Agreement can plausibly be read to support either the Employer or the
15 Union's interpretation, I find the language to be ambiguous.

16 I next consider whether the bargaining history demonstrates that the Employer
17 and the Union achieved a meeting of the minds on the time period for which Fitzpatrick
18 had to pay the costs of his replacement. The evidence shows that Fitzpatrick and the
19 Union representatives understood Gurnon's statement to require Fitzpatrick to pay the
20 costs of replacing him during the remainder of the 2004 fall semester. In their hallway
21 caucus, O'Donnell, Sirutis and Fitzpatrick discussed the costs of a contractor replacing
22 Fitzpatrick for the balance of the fall semester and calculated the costs to range from
23 \$1500 - \$2000. When they returned to the meeting, Sirutis told Gurnon what the Union

1 expected the replacement to cost. Gurnon's testimony shows that he too focused on
2 the time period of the fall 2004 semester. Gurnon explained that he imposed the unpaid
3 suspension and the replacement cost requirement because otherwise, it would seem
4 like the Academy let Fitzpatrick take a three week vacation and pay someone else to
5 take over his class. This evidence reveals that when the agreement was discussed,
6 drafted, and reviewed, both parties linked the replacement costs to the time period of
7 the suspension (which coincided with the remainder of the 2004 fall semester), and the
8 balance of time left in the fall 2004 semester.

9 Further, there is no evidence that Gurnon ever held any contrary intent during the
10 negotiations. The Employer argues that Gurnon did not agree to fix the cost of
11 Fitzpatrick's replacement at \$1,500 to \$2,000. However, there is no evidence that
12 Gurnon ever considered whether Fitzpatrick's replacement would perform work outside
13 of the 2004 fall semester, and Gurnon's statement that the Academy did not want to
14 "spend a nickel," does not establish otherwise. Gurnon's statement is entirely
15 consistent with the parties' mutual understanding that Fitzpatrick pay for whatever
16 replacement costs the Academy would incur within the 2004 fall semester.

17 Additionally, the first contract that the Academy executed with Buckley contained
18 a start date of December 6, 2004, a completion date of December 17, 2004, and a
19 defined amount of \$2,000. If, at the time of the negotiations, Gurnon intended the
20 Settlement Agreement to cover costs incurred in 2005, it is unlikely that he would have
21 executed a contract with a completion date of December 17, 2004.

22 Finally, when Sirutis told Gurnon that the costs of the replacement would be
23 about \$1500, Gurnon nodded. He did not advise the Union that the costs were

1 unlimited in time or scope and could therefore differ significantly from the Union's
2 estimate. Consequently, I find that when Gurnon nodded, he manifested his assent to
3 the replacement cost portion of the parties' agreement, and the parties achieved a
4 meeting of the minds at that point. See City of Everett, 26 MLC 25, 28 (1999).

5 I next consider whether the parties had a differing good faith interpretation of the
6 terms of the Settlement Agreement that precludes the finding of a violation. The
7 Employer argues that the parties have differing views of the Settlement Agreement, and
8 that the Union has failed to demonstrate that this interpretative difference is founded in
9 anything but good faith. I am not persuaded by this argument.

10 As previously noted, on December 2, 2004, the parties both focused on
11 replacement costs for the time left in the 2004 semester. There is no evidence that
12 either party considered whether replacement costs could be incurred after the 2004 fall
13 semester or whether Fitzpatrick would have to pay replacement costs incurred after the
14 fall semester. Thus, at the time of the negotiations, there was no conflicting
15 interpretation of the agreement. The parties' differing interpretations appear to have
16 surfaced only after the Employer learned that Buckley could not complete all of the work
17 associated with Fitzpatrick's classes and labs in 2004. However, the Employer's failure
18 to recognize during the negotiations that the replacement work and cost could span
19 more than one semester does not constitute a good faith different interpretation or a
20 mistake that excuses non-compliance, and the fact that the Employer may have
21 subsequently expanded its interpretation of the agreement is inconsequential. See
22 generally, City of Waltham, 25 MLC 59 (1998) (employer's failure to appreciate at the
23 time of the agreement how a negotiated stipend would apply to an employee on injured

1 leave did not excuse its failure to pay the stipend). The Employer knew that the Union
2 believed that the replacement costs would approximate \$1,500, yet it did not propose
3 any clarification indicating that the costs were unlimited in time. By failing to do so, the
4 Employer tacitly assumed the risk that Fitzpatrick's replacement would not complete the
5 classes and labs in 2004, the time period referenced in the agreement.⁹ See generally,
6 Commonwealth of Massachusetts, 23 MLC 160 (H.O. 1996) (employer that failed to
7 anticipate legislative pay increase still bound to comply with negotiated salary
8 agreement; employer assumed the risk that employees' salary schedules would not
9 change).

10 Finally, I find no merit in the Employer's argument that it did not violate the Law
11 because it did not deliberately refuse to abide by the Settlement Agreement. To
12 establish that an employer acted deliberately, a union must show that the employer
13 engaged in a pattern of conduct designed to ignore the agreement or purposefully
14 intended to disregard the agreement. Commonwealth of Massachusetts, 26 MLC 87,
15 89 (2000). There is no pattern of conduct relevant to this case. However, the Employer
16 knew that the Union believed the replacement costs to approximate \$1500, yet its
17 invoice sought payment for work performed after the fall 2004 semester, at over double
18 the expected amount. Because the Employer knew the invoice exceeded the cost that
19 the Union anticipated and covered more time than the parties discussed, the Employer's

⁹ Citing Bowser v. Chalifour, 334 Mass. 348, 352 (1956), the Employer argues that ambiguous language and sequencing should be construed against the party who drafted it. Bowser v. Chalifour, which involves a lease, a supplemental agreement and a governmental taking of property, is significantly distinguishable from the circumstances here and does not require a contrary result.

1 actions were sufficiently deliberate to violate the Law.

2 CONCLUSION

3 Based on the record and for the reasons explained above, I conclude that the
4 Board of Higher Education repudiated the December 2, 2004 Settlement Agreement by
5 requiring Fitzpatrick to pay for the costs of replacing him during the 2005 "along side
6 sea term" and spring semester.

7 Order

8 WHEREFORE, based upon the foregoing, it is hereby ordered that the Board of Higher
9 Education shall:

10 1. Cease and desist from:

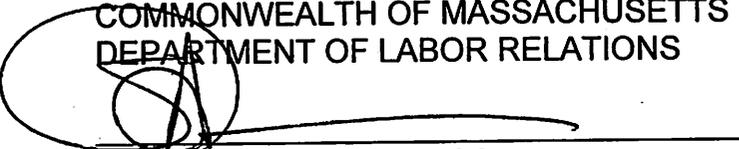
- 11
- 12 a) Failing to bargain in good faith by repudiating the December 2,
- 13 2004 Agreement.
- 14
- 15 b) In any like or related manner, interfering with, restraining or
- 16 coercing employees in the exercise of their rights guaranteed under
- 17 the Law.
- 18

19 2. Take the following affirmative action that will effectuate the purposes of the Law:

- 20
- 21 a) Make James Fitzpatrick whole for the economic loss that he
- 22 suffered when he reimbursed the Academy for the cost of Robert
- 23 Buckley's services during the 2005 "along side sea" term and
- 24 spring semester, plus interest on any sums owed at the rate
- 25 specified in M.G.L. c.231, section 6I, compounded quarterly.
- 26
- 27 b) Post immediately in all conspicuous places where members of the
- 28 Union's bargaining unit usually congregate and where notices to
- 29 these employees are usually posted, including electronically, if the
- 30 Employer customarily communicates to its employees via intranet
- 31 or email, and maintain for a period of thirty (30) consecutive days
- 32 thereafter, signed copies of the attached Notice to Employees.

SO ORDERED.

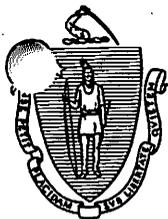
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



SUSAN L. ATWATER, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.02(1)(j), and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations has held that the Board of Higher Education has violated Section 10(a)(5) and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by repudiating the terms of a December 2, 2004 settlement agreement with the Massachusetts State College Association.

The Board of Higher Education posts this Notice to Employees in compliance with the hearing officer's order.

WE WILL NOT repudiate the terms of the December 2, 2004 settlement agreement with the Union.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

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

Make James Fitzpatrick whole for the economic loss that he suffered when he reimbursed the Massachusetts Maritime Academy for the cost of Robert Buckley's services during the 2005 "along side sea" term and spring semester, plus interest on any sums owed at the rate specified in M.G.L. c.231, Section 6I, compounded quarterly.

For the Board of Higher Education

Date

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

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