

Commonwealth of Massachusetts
Division of Labor Relations

FY2009 ANNUAL REPORT:



November 15, 2007-June 30, 2009

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EXECUTIVE SUMMARY

- On November 14, 2007, the Division of Labor Relations (DLR) came into existence pursuant to [Chapter 145 of the Acts of 2007](#). The legislation reorganized the Commonwealth's neutral labor relations agencies combining the former Labor Relations Commission (LRC) and the Board of Conciliation and Arbitration (BCA) into the new DLR.
- The mission of the agency is to prevent or promptly settle labor disputes by offering dispute resolution services primarily to public sector employers and the labor organizations that represent their employees.
- Now, at the two-year anniversary of the reorganization, we are pleased to announce that the reorganization has been a success. The new agency has maximized its limited resources to eliminate a large backlog of cases while continuing to process new cases in a timely manner.
- The reorganizing legislation created the Commonwealth Employment Relations Board (CERB or Board) as the adjudicatory body within the DLR responsible for reviewing orders and issuing decisions. The CERB is comprised of one full-time Chair and two *per diem* Board members, who are appointed by the governor for staggered five-year terms. During the past fiscal year, the CERB processed over 300 charges, representation petitions and post-hearing complaints. Even though it lacked a quorum for several months during FY09, it published 40 final decisions and rulings and decided ten requests for review of Investigator pre-hearing dismissals.
- From November 14, 2007 to June 30, 2009, the DLR staff has been successful in reducing the Open Docket by nearly **23%**. This reduction is a tremendous achievement which has allowed the DLR to regain its reputation as a functioning labor relations agency in the Commonwealth.
- In order to accomplish its mission, the DLR offers the following services:
 - Processing Prohibited Practice Charges
 - Representation Petitions and Elections
 - Written Majority Authorization Petitions
 - Unit Clarification Petitions
 - Interest Mediation
 - Mediation of Prohibited Practice Charges
 - Grievance Mediation
 - Grievance Arbitration
 - Investigation, Prevention and Termination of Strikes
 - Litigation
- **Future Challenges:** From FY2008 to the end of FY2009, the DLR budget reduction exceeded 20% and the FTE level fell from 27.60 FTE's to 19.80 FTE's. This large staff reduction creates the potential for delays in the processing of cases at a time when the DLR is experiencing an increase in filings as the economic recession continues to impact state and local government.

INTRODUCTION

Nearly two years ago, on November 14, 2007, the Division of Labor Relations (DLR or Division) came into existence pursuant to Article 87 legislation that reorganized the Commonwealth's neutral labor relations agencies. See [Chapter 145 of the Acts of 2007](#) (attached as Appendix 2).

The legislation combined the former Labor Relations Commission (LRC) and the Board of Conciliation and Arbitration (BCA) into the new DLR. The Joint Labor Management Committee for Municipal Police and Fire (JLMC) was also placed under the DLR for administrative and budgetary purposes but retains its unique jurisdiction, structure and independence over municipal police and fire matters.¹ Under the legislation, the DLR includes a dispute resolution office, an advisory council, the Commonwealth Employment Relations Board, and the JLMC. Additionally, the Division "shall be subject to the jurisdiction of the department of labor for all administrative functions, but shall not be subject to the department of labor in the performance of adjudicatory functions, including but not limited to the assignment, evaluation, hiring, and firing of individual adjudicatory personnel."

At the time of the merger, the LRC and the BCA had experienced years of budgetary neglect and personnel shortages, resulting in significant caseload backlogs. Each agency operated independently with little or no positive interaction between them. In September 2007, Governor Patrick filed legislation to reorganize all three agencies in order to restore faith in the Commonwealth's public sector labor relations agencies.

We are now nearing the two-year anniversary of the reorganization and I am pleased to announce that the reorganization has been a success. The new agency has maximized its limited resources to address a large backlog of cases while continuing to process new cases in a timely manner.

As this Report demonstrates, the DLR is now an agency capable of handling the Commonwealth's labor disputes in a timely manner, and it can again take its place as an important and respected neutral labor relations agency.

As required by statute, the Report provides:

[T]he number and types of cases filed with the division, including elections, and the disposition of all such cases; statistics regarding the number of decisions it has rendered and unresolved cases, and the timeliness of the division's decisions; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the division; and an account of all moneys it has disbursed.

More importantly, the Report illustrates how the dedicated staff from two newly-combined agencies worked intensely and cooperatively to erase an unacceptable backlog and to craft a new agency capable of fulfilling its mission. The DLR is proud of its accomplishments over the last two years. The credit for the success must go to the staff to whom this first Annual Report is dedicated.

¹ The Joint Labor Management Committee submits its own Annual Report pursuant to Chapter 589 of the Acts of 1987.

OVERVIEW OF DLR SERVICES

1. Processing Prohibited Practice Charges
 - a. The Initial Review
 - b. The Probable Cause Investigation
 - c. The Results of the Probable Cause Investigation
 - d. Hearings and Appeals
2. Representation Issues
 - a. Representation Petitions and Elections
 - b. Written Majority Authorization Petitions
 - c. Unit Clarification Petitions
3. Mediation of Labor Disputes
 - a. Interest Mediation
 - b. Mediation of Prohibited Practice Charges
 - c. Grievance Mediation
4. Grievance Arbitration
5. Investigation, Prevention and Termination of Strikes
6. Litigation
7. Other Responsibilities
 - a. Requests for Binding Arbitration
 - b. Information on Employee Organizations
 - c. Constituent Outreach

In order to provide prompt and fair resolution of labor disputes, the DLR provides the following services:

1. Processing Prohibited Practice Charges

A great majority of the DLR's time and efforts are focused on processing unfair labor practice charges. In fact, approximately 60% of the DLR's open docket consists of prohibited practice charges filed pursuant to G.L. c. 150A or G.L. c. 150E. Charges of prohibited practice may include, *inter alia*, allegations that an employer has discriminated or retaliated against an employee because the employee had engaged in activities protected by law; allegations that an employer or employee organization has failed to bargain in good faith; or allegations that an employee organization has failed to properly represent a member of the bargaining unit.

a. The Initial Review

Upon receipt of a charge of prohibited practice, the Director or his/her designee reviews the charge and may order the following action:

- (a) dismiss the charge if it is facially insufficient;
- (b) defer the charge to the parties' grievance and arbitration procedure;
- (c) refer the charge to one of the Division's mediators;
- (d) in the case of charges involving municipal police or fire fighters, refer the case to the Joint Labor Management Committee in order to promote resolution of the issue, or
- (e) direct that an investigation take place to determine whether the charge is supported by probable cause.

In the majority of cases, the charging party makes sufficient factual allegations to warrant further processing and the Director orders an investigation to determine whether the charge is supported by probable cause.

b. The Probable Cause Investigation

Pursuant to G.L. c. 150E, § 11, as amended by St. 2007, c. 145, since November 15, 2007, all investigations must be conducted on an in-person basis. At the investigation, the investigator is statutorily obligated to explore whether settlement of the charge is possible. If such discussions do not result in settlement, the investigator will proceed with the investigation. The investigator will allow the parties or their representatives to present information in the form of documents, verbal statements and/or offers of proof as to whether the charge is supported by probable cause. If issues arise during the course of the investigation that warrant further submissions by one or both parties, the investigator may, in his/her sole discretion, grant the parties a reasonable period of time to submit additional documentation or legal support. The intent of the probable cause in-person investigation is to have both parties present all the evidence at the investigation, and therefore, most investigations have the record closed at the end of the in-person investigation. Along with investigating the facts related to the charge, the investigator will also explore whether deferring the charge to the parties' grievance/arbitration procedure is appropriate.

c. The Results of the Probable Cause Investigation

After the investigator has declared that the investigation is closed, she/he will issue a written dismissal, a Complaint of Prohibited Practice or direct the charge to an alternative dispute resolution mechanism (including deferral to the parties' grievance/arbitration procedure). The investigator may dismiss the charge for several reasons. First, if the investigator finds that the evidence submitted is insufficient to establish probable cause, she will dismiss the charge and notify the parties by letter. Second, the investigator may dismiss the charge on the grounds that further proceedings would not effectuate the purposes of Chapter 150E and third, she may dismiss the charge if she is not satisfied that the charging party has made reasonable efforts to resolve the matter. Finally, the investigator may dismiss the charge on procedural grounds, such as a failure to file the charge within the six month statute of limitations set forth in 456 CMR 15.03. Cases dismissed following an investigation may be appealed to the Commonwealth Employment Relations Board (Board or CERB). If affirmed by the Board, appeals can be made to the Massachusetts Appeals Court.

If the investigator finds probable cause to support the charge, he or she will issue a Complaint of Prohibited Practice, and the case will be scheduled for a hearing on the merits to determine whether the respondent violated the law as alleged in the Complaint. The Division will schedule the hearing before a hearing officer who will issue a written decision. Often, conciliation efforts by DLR mediators result in voluntary resolution of a case prior to the hearing.

Finally, following the investigation, the hearing officer may order that the parties engage in an alternative dispute resolution process. This authority is identical to that exercised by the Director during the initial review of the charge. As such, the investigator may defer the charge to the parties' grievance and arbitration procedure; refer the charge to one of the Division's mediators; or refer the case to the JLMC in the case of charges involving municipal police or fire fighters.

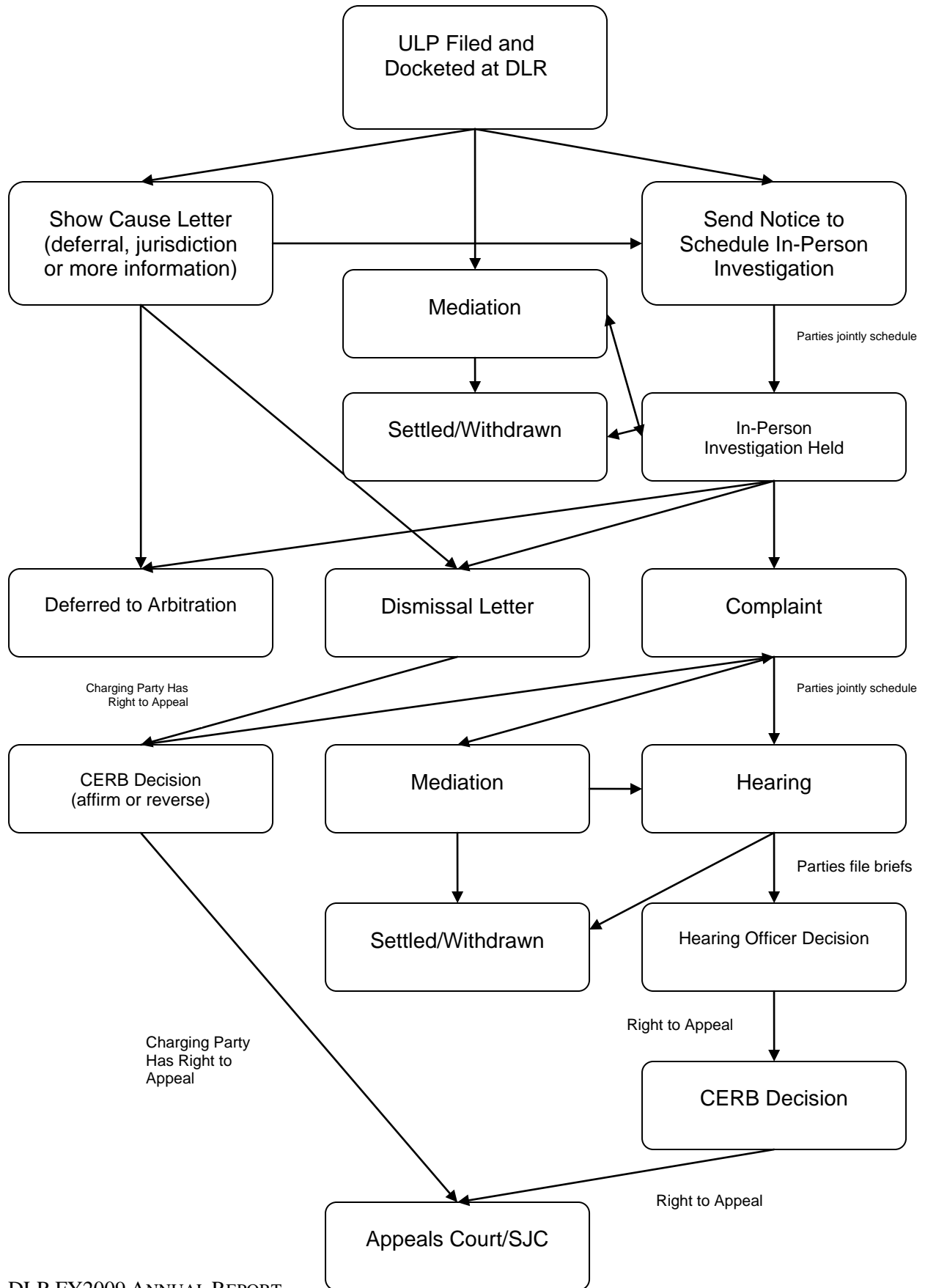
d. Hearings and Appeals

After a Complaint of Prohibited Practice is issued, the parties schedule a hearing before a Division-designated Hearing Officer. The Division requires that the parties file a Joint Pre-Hearing Memorandum and requests that the parties attend a Pre-Hearing Conference in order to (1) clarify and/or narrow the issues, (2) determine whether the amount of anticipated testimony will necessitate scheduling multiple days of hearings, (3) stipulate to facts and/or exhibits, (4) dispose of any preliminary motions, (5) anticipate and, if possible, resolve subpoena issues, (6) facilitate the progress of the case and (7) explore possible utilization of the Division's mediation services. Initiating these requirements has assisted the Division in more efficiently processing cases and alleviated delays in the hearing by completing many of the preliminary matters prior to the first day of hearing.

Unlike the informal, in-person investigation, the prohibited practice hearing is a formal, adjudicatory process. Parties to the proceedings have the right to appear in person, to examine and cross-examine witnesses, to produce evidence and otherwise support or defend the Complaint. Additionally, the sworn testimony is recorded and preserved electronically. At the close of the hearing, the parties often provide the Hearing Officer with post-hearing legal briefs. The Hearing Officer then issues his or her written decision, determining whether a violation of the Law has occurred.

A party who disagrees with the Hearing Officer's decision can appeal to the CERB by filing a Request for Review. In most cases, both sides filed briefs with the Board in support of their respective positions. After careful review of the record and consideration of the issues, the CERB then renders its decision. Once the Board renders its decision, the decision is final and can be appealed to the Massachusetts Appeals Court.

The flowchart on the next page summarizes the processing of a prohibited practice charge.



2. Representation Issues

In all cases that involve representation issues, i.e. representation (or decertification) petitions, written majority authorization petitions, and unit clarification cases, the Division is statutorily mandated to determine an “appropriate” bargaining unit. To make that determination, the CERB considers community of interest among the employees, the employer’s interest in maintaining an efficient operation, and the employees’ interest (or lack thereof) in representation.

In all cases, the Division assists and encourages the parties to reach agreement concerning an appropriate unit. In FY09, the Division resolved approximately 85% of its representation cases through voluntary agreement over the scope of the bargaining unit. When no agreement is reached, however, a Division hearing officer conducts a hearing after which the CERB issues a written decision either dismissing the petition or defining the bargaining unit and directing an election.

a. Representation Petitions and Elections

The Division conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever: 1) an employer files a petition accompanied by an adequate showing of interest, alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit; 2) an employee organization files a petition alleging that a substantial number of employees wish to be represented by the petitioner; or 3) an individual files a petition alleging that a substantial number of employees in the bargaining unit no longer wish to be represented by the current employee organization. Depending on the size of the unit and the relative cost, the Division conducts elections either on location or by mail ballot.

In FY08, the Division docketed 72 representation petitions and conducted 33 elections, involving 1,522 voters. In FY09, the Division docketed 43 representation petitions and held 30 elections involving 1,152 voters. (Graphs detailing these representation elections are available in the Case Statistic section of the Report.)

b. Written Majority Authorization Petitions

On December 27, 2007 the Written Majority Authorization (“WMA” or “card check”) legislation became law. [Chapter 120 of the Acts of 2007](#). The card check law provides for an alternative to the traditional representation petition to certify an exclusive bargaining representative for unrepresented employees. The law provides that the DLR “shall certify to the parties, in writing, and the employer shall recognize as the exclusive representative for the purposes of collective bargaining of all the employees in the bargaining unit, a labor organization which has received a written majority authorization...” Therefore, a union which provides the Division (or a designated neutral) with proof of majority support (50% plus one) of an appropriate bargaining unit will be certified by the Division as that bargaining unit’s exclusive bargaining representative without an election. The Division issued regulations which provide respondents with the right to file objections and challenges prior to a certification. Since the card check law requires certification within 30 days, the Division seeks to work with the parties to expedite all WMA petitions.

Since the card check law has been in effect, 35 written majority authorization petitions have been filed through the end of FY09. The Division issued certifications in 24 of those petitions. (Graphs detailing the written majority authorization certifications issued in FY08 and FY09 are available in the Statistical Reports section of the Report).

c. Unit Clarification Petitions (CAS)

A party to an existing bargaining relationship may file a petition with the Division seeking to clarify or amend an existing bargaining unit or a Division certification. Currently, the Division investigates such petitions through a written investigation procedure and the Board issues decisions resolving such cases. The information that an employer or employee organization must include in a CAS petition is specified in 456 CMR 14.04(2) and 14.03(2). An individual employee has no right to file a CAS petition. 456 CMR 14.04(2). Any CAS petition found to raise a question of representation must be dismissed and the question of representation addressed by filing a representation petition. In FY09, the Division received fourteen (14) CAS petitions.

3. Mediation of Labor Disputes

One of the most important services rendered by the DLR is mediation of all types of labor disputes, in both the public and the private sectors. The Division's mediation services can be categorized as follows:

a. Interest Mediation

Interest mediation is the mediation of disputes arising out of contract negotiations. The DLR provides mediators to assist parties from the public and private sectors who are involved in such disputes. The DLR jurisdiction extends to all public sector labor contract disputes except those involving municipal police and fire fighters. The DLR places a high priority on interest mediation because the prevention and prompt settlement of labor contract disputes benefits not only the negotiating parties but the delivery of core services to both the local community and the Commonwealth. As such, the DLR's mediation services are one of the most cost efficient and valuable forms of local aid provided by the Commonwealth. In the event that there are prohibited practice charges pending when a DLR mediator is involved in a contract dispute, the mediator attempts to resolve the charges as part of the overall settlement. In cases where the parties have exhausted the mediation process, the DLR maintains a panel of private neutrals to provide fact-finding services pursuant to G.L. c. 150E, § 9.

b. Mediation of Prohibited Practice Charges

The formal mediation of prohibited practices charges is one of the most important features of the reorganization statute. Prior to the reorganization, there was no regular communication between the BCA and LRC nor was there a formal mechanism in place to refer such cases to the BCA for mediation. Since the reorganization, the DLR affords the parties numerous opportunities, both formal and informal, to avail themselves of the Division's mediation services.

c. Grievance Mediation

The DLR provides mediation services to parties who desire to mediate grievances arising out of the collective bargaining agreement. The DLR offers grievance mediation to all parties who file for grievance arbitration. In some cases, DLR mediators assist parties on an ongoing basis to settle numerous grievances.

4. Grievance Arbitration

The DLR provides grievance arbitration services that are utilized by all sectors of the Commonwealth's labor relations community. In the past fiscal year the DLR has received grievance arbitration petitions from a variety of employer and employee representatives involving departments of state, county and municipal government, including police departments, fire departments, public works departments and school departments. Many of the disputes are settled before a hearing is held. If the disputes are not settled, then DLR arbitrators hold evidentiary hearings, hear arguments and accept briefs. After the close of the hearing and submission of briefs, if any, the DLR arbitrator renders an award. The Division's goal is to issue full arbitration decisions within 30 days for discharge cases, and within 60 days of the close of the hearing in non-discharge cases (prior to the reorganization, it was 75 days).

5. Investigation, Prevention and Termination of Strikes

Strikes by public employees in Massachusetts are illegal. G.L. c. 150E, § 9A. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the Division for an investigation. The Division immediately investigates the allegations contained in the petition and decides whether an unlawful strike has occurred or is about to occur. If the DLR finds unlawful strike activity, the CERB issues a decision directing the striking employees to return to work. The DLR may issue additional orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the Division's order, but judicial enforcement of the order sometimes necessitates Superior Court litigation. Such litigation can result in court-imposed sanctions against strikers and/or their unions.

6. Litigation

As noted above, parties in prohibited practice cases issued by the Division may appeal the final decision of the Commonwealth Employment Relations Board to the Massachusetts Appeals Court. In those cases, in addition to serving as the lower court—responsible for assembling and transmitting the record for appellate review—the CERB is the appellee and defends its decision on appeal. Although a rare occurrence, M.G.L. c.150E also authorizes the Division to seek judicial enforcement of its final orders in the Appeals Court or of its interim orders in strike cases in Superior Court. Division attorneys represent the Division in all litigation activities.

7. Other Responsibilities

a. Requests for Binding Arbitration (RBA)

A party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration may petition the Division to order grievance arbitration. These “Requests for Binding Arbitration” (RBA) are processed quickly by the Division to assist the parties to resolve their grievances. In FY09, the Division received two (2) requests for binding arbitration.

b. Information on Employee Organizations

Pursuant to M.G.L. c. 150E, §§ 13 and 14, the Division maintains files on employee organizations. Those files include: the name and address of current officers, an address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Every employee organization is also required to file an annual report with the Division containing: the aims and objectives of such organization, the scale of dues, initiation fees fines and assessments to be charged to the members, and the annual salaries to be officers. Although M.G.L. c. 150E authorizes the Division to enforce these annual filings by commencing an action in the Superior Court, the Division’s current resources prohibit such action. Instead, by regulation, the Division employs various internal case-processing incentives to ensure compliance with the filing requirements.

c. Constituent Outreach

In an effort to foster better labor relations, the Division is always willing to make presentations before assembled labor and/or management representatives in order to speak about the latest developments at the DLR. For instance, each spring, the Director, the CERB and the Division’s Chief Counsel participate in the planning and presentation of the Annual Workshop for Public Sector Labor Relations Specialists sponsored by the Labor & Employment Law Section of the Boston Bar Association. Additionally, throughout the year, the Division makes formal and informal presentations before various bar associations, union meetings, and employer association groups.

REFORM AND REORGANIZATION: NOVEMBER 15, 2007 – JUNE 30, 2009

1. MISSION

The DLR is a neutral agency statutorily charged with the mission of preventing or promptly settling labor disputes by offering dispute resolution services primarily to public sector employers and the labor organizations that represent their employees. The primary functions of the DLR are:

- (1) adjudication of unfair labor practice charges (or ULPs);
- (2) handling of representation and bargaining unit clarification cases;
- (3) prevention and investigation of strikes by public employees;
- (4) provision of conciliation and mediation services to assist municipalities and school committees and the unions that represent their employees in reaching collective bargaining agreements; and
- (5) mediation and interest arbitration services provided by the Joint Labor Management Committee for Municipal Police and Fire

2. 2007 – THE NEED FOR REFORM

Prior to 2007, the Commonwealth's labor relations agencies charged with resolving public sector labor disputes -- the Labor Relations Commission (LRC) and the Board of Conciliation and Arbitration (BCA) -- suffered from neglect, budgetary shortfalls, and personnel losses that prevented the agencies from performing their mission in a timely manner. The agencies themselves exacerbated these problems, in part, by failing to communicate, cooperate, and collaborate with each other. Each of the agencies lacked both professional management and meaningful performance measures. The end result was a persistent and unacceptable backlog of cases, increased costs to public employers, delay or loss of rights by public employees, and a lack of confidence among those who relied on the agencies to resolve labor disputes.

3. CHAPTER 145 OF THE ACTS OF 2007

In order to address this problem, on behalf of the Patrick Administration, the Executive Office of Labor and Workforce Development reached out to public employment labor relations stakeholders, including the agencies themselves, public sector employers, public sector unions, attorneys representing public employers, attorneys representing labor unions, former employees of the agencies, and recognized labor relations neutrals. (The White Paper that was issued as a result of these discussions is attached as Appendix 1.)

The problems that these stakeholders identified, regardless of their affiliation, were remarkably similar:

- lack of professional management;
- a persistent and unacceptable backlog of cases;
- inadequate personnel levels;
- inefficient and inflexible use of employees;
- an overly politicized appointment process; and
- a general lack of accountability.

After careful consideration, the Administration submitted Article 87 legislation in order to reorganize the agencies. The legislation, codified at [Chapter 145 of the Acts of 2007](#), became effective on November 14, 2007.

4. DLR'S CURRENT STRUCTURE

The reorganization created a new structure that has proven to be both efficient and effective. The DLR is led by a Director who is responsible for the administrative functions of the agency including rule-making, budget preparation and case management. The former LRC, which consisted of three full time commissioners, who issued all decisions in all cases and performed administrative functions, was replaced by the three-member CERB, led by a full-time Chair and two *per diem* members. Although the Director retains oversight over the performance of hearing officers, arbitrators, and other staff, the Director may not interfere with, influence, or overrule any written opinion issued by the Division's staff or by the Board. Any such decision may only be overruled by the members of the Board or a court, in accordance with applicable law. In addition to the Director and the Board, the DLR employs front-line personnel responsible for mediating and/or adjudicating various types of labor disputes.

Finally, an important element of the new structure adopted in Chapter 145 of the Acts of 2007 is the 13-member Advisory Council made up of five labor, five management, and three at large members. The role of the Advisory Council is "to advise the division concerning policies, practices, and specific actions that the division might implement to better discharge its labor relations duties." In addition, the Advisory Council interviews, evaluates and forwards candidates for gubernatorial appointment to the position of Director, Board Chair and Board Member.

5. INITIAL CHALLENGES

a. The Backlog of Cases

Immediately, in November 2007, the new agency faced several significant challenges. The first and most daunting challenge was that the DLR began its existence with a huge backlog of cases. Approximately 400 unfair labor practice charges (ULPs), or nearly 40% of the overall docket, were unassigned and awaiting initial investigation for probable cause determinations. This situation developed because the former LRC had only 3.6 FTEs working on such cases. In addition to the backlog, the reorganization statute mandated that the new agency *promptly*

conduct in-person investigations of all new ULPs filed after the effective date of the legislation. This requirement meant that DLR staff had to spend significant time investigating new charges while continuing to draft decisions and probable cause determinations for the backlog filed with the former LRC.

b. Written Majority Authorization

Just over one month into its existence, the DLR faced another significant test. In December 2007, the Written Majority Authorization (WMA) statute, or card check legislation, became effective. The legislation requires employers to recognize unions that have received written authorizations from a majority of employees in an appropriate bargaining unit. The WMA statute applies in situations where no other union has been or is currently lawfully recognized as the exclusive representative of the employees in the public sector unit. The new legislation required that the DLR draft new regulations and implement new procedures to process WMA petitions within thirty days from the date of filing.

In light of these major changes, the challenge for the agency became the balance between affording fundamental fairness to the parties while achieving efficiency.

6. CASE MANAGEMENT STRATEGIES

In order to meet the above challenges, the DLR employed a variety of strategies. First, the initial savings from the consolidation allowed the DLR to employ additional staff to work on the backlogged ULPs in order to allow the incumbent staff to focus on the new cases. Second, the cross-utilization of personnel, in particular the use of former BCA mediators to mediate ULPs resulted in numerous settlements and voluntary withdrawals, as mediation became the hallmark of the agency. Third, the DLR developed and implemented internal procedures that have accelerated the processing of cases and allowed more efficient tracking of DLR resources. As for ULPs that did not settle, in most cases, the parties have been able to get a probable cause determination within 90 days of the initial filing of the charge. Under the former LRC, the probable cause determination often took two to three years. As the statistics below clearly demonstrate, the utilization of these strategies has resulted in the establishment of an efficient and reliable dispute resolution system.

7. COMMONWEALTH EMPLOYMENT RELATIONS BOARD

a. Background

The Commonwealth Employment Relations Board (CERB or Board) is the adjudicatory body within the DLR responsible for reviewing orders and issuing decisions under M.G.L. c. 150E and M.G.L. c. 150A. The CERB is comprised of one full-time Chair and two *per diem* Board members, who are appointed by the governor for staggered five-year terms. The duties and qualifications of CERB members, as set forth in M.G.L. c. 23, §§ 9R (a)-(c) are: (1) basic understanding of the Commonwealth's public sector labor relations law; (2) skills in decision-making; (3) a law degree; and (4) demonstrated familiarity with legal processes. Two members of the Board constitute a quorum.

b. New CERB Members

Governor Patrick appointed three new CERB members in FY09 from names submitted to him by the Advisory Council. These appointments enabled the Board to function fully in the manner envisioned by the reorganization legislation. In August 2008, the Governor appointed labor arbitrator Elizabeth Neumeier to serve as the first *per diem* Board member. With the appointment of the full-time Chair Marjorie F. Wittner, who worked for the former Labor Relations Commission from 2001-2007, the CERB achieved a quorum for the first time in several months.² In 2009, the Governor filled the remaining *per diem* vacancy with his appointment of Professor Harris Freeman, who began serving in June.

c. Functions

The Chair convenes CERB meetings at the Division's offices in Boston and Springfield where executive sessions are held as needed to discuss and vote on pending matters. During the past fiscal year, these matters have included 1) making probable cause determinations for cases filed before November 14, 2007; 2) ruling on requests for review of Investigator's pre-hearing dismissals of prohibited practice charges; and 3) issuing final decisions in prohibited practice and representation matters.³ The Chair prepares the agenda and materials for all CERB meetings and follows through on matters over which the CERB maintains jurisdiction. This includes drafting Board decisions, orders, and pleadings for discussion and review by the other Board members. The Division's Chief Counsel also attends executive sessions and reviews all CERB decisions prior to publication.

d. Progress

One goal of the reorganization legislation was to decrease the backlog of cases filed before November 14, 2007 that remained pending for probable cause determinations and decision. For these cases, the CERB "steps into the shoes" of the former Labor Relations Commission. The Board is pleased to report that it has made significant strides in this regard. At executive sessions during the past fiscal year, the CERB processed over 300 charges, representation petitions and post-hearing complaints. Even though it lacked a quorum for several months during FY09, it published 40 final decisions and rulings and decided ten requests for review of Investigator pre-hearing dismissals. In comparison, the former LRC published 18 rulings and decisions in FY07 and 23 in FY08. The Board's accomplishments have played a pivotal role in reducing the DLR's backlog of cases by 20%.

e. Decisions

Brief summaries of the CERB's decisions from December 2008 through July 30, 2009 are attached as Appendix 4 to this Report.⁴

² Former member Paul O'Neill's term expired in August 2008, leaving the CERB without a quorum.

³ There were no appeals of Hearing Officer decisions in FY09.

⁴ Synopses of all the CERB's published decisions and rulings with hyperlinks to the full decisions may be found on the Division's website at: www.mass.gov/dlr.

STATISTICAL REPORTS

The following chart depicts the following case statistics:

1. a snapshot of the DLR Open Docket on November 15, 2007;
2. the number of cases that have been filed through the end of FY09;
3. the number of cases that have been closed through the end of FY09; and
4. a snapshot of the DLR Open Docket on June 30, 2009.

Case Type	Open Docket 11/15/2007	Cases Received 11/15/07 to 06/30/09	Cases Closed 11/15/07 to 06/30/09	Open Docket 06/30/09
Unfair Labor Practice	601	691	796	496
Representation Cases	43	126	131	38
Unit Clarification (CAS)	41	29	63	7
Other (SI, AO, RBA)	0	5	5	0
Grievance Arbitration	172	147	171	148
Grievance Mediation	85	117	147	55
Contract Mediation	95	169	210	54
EPRS, RA, CBT	22	9	11	20
TOTAL	1059	1293	1534	818

The statistics speak volumes about the hard work of the DLR staff and the success of the newly implemented case management procedures at the DLR. Combined, the staff has been successful in reducing the Open Docket by nearly **23%**. This reduction is a staggering achievement which has allowed the DLR to regain its reputation as a functioning labor relations agency in the Commonwealth.

The five tables below provide additional details about the types of cases and the number of cases the DLR has processed. The first two are a month-by-month detailed report of the number and types of cases received and closed by the DLR. The next two are summaries of the representation elections held by the DLR. The last table provides details about the 24 written majority authorization certifications issued by the DLR since the written majority authorization statute became effective.

DIVISION OF LABOR RELATIONS

FY2009 CASES RECEIVED

JULY 1, 2008 – JUNE 30, 2009

MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	%	AVG.
Unfair Labor Practice	30	39	26	26	43	39	27	26	38	42	50	79	465	54.90%	38.75
Representation Cases	7	5	9	7	5	1	19	1	2	2	3	3	64	7.56%	5.33
Unit clarification (CAS)	2	2	3	1	2		2		1			1	14	1.65%	1.75
Other (SI, AO, RBA)												5	5	0.59%	5.00
Grievance Arbitration	9	21	6	9	9	5	12	10	5	2	10	12	110	12.99%	9.17
Grievance Mediation	0	9	3	8	2	11	1	8	8	14	6	5	75	8.85%	6.25
Contract Mediation	8	9	9	17	11	6	5	5	7	6	14	12	109	12.87%	9.08
EPRS, RA, CBT				1	1	1					1	1	5	0.59%	1.00
TOTAL	56	85	56	69	73	63	66	50	61	66	84	118	847	100.00%	70.58

DIVISION OF LABOR RELATIONS

FY2009 CASES CLOSED

JULY 1, 2008 – JUNE 30, 2009

MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	%	AVG.
Unfair Labor Practice	34	17	19	38	25	18	32	47	59	63	77	83	512	56.45%	42.67
Representation Cases	2	8	4	9	3	6	1	5	6	10	8	8	70	7.72%	5.83
Unit clarification (CAS)	2		1			1		1			2	1	8	0.88%	1.33
Other (SI, AO, RBA)						1					3	1	5	0.55%	1.67
Grievance Arbitration	5	5	12	13	6	10	13	5	13	15	3	8	108	11.91%	9.00
Grievance Mediation	1	16	2	11	9	1		5	4	8	12	10	79	8.71%	7.18
Contract Mediation	3	7	6	12	12	3	16	11	17	7	10	16	120	13.23%	10.00
EPRS, RA, CBT			1	1							1	2	5	0.55%	1.25
TOTAL	47	53	45	84	55	40	62	74	99	103	116	129	907	100.00%	75.58

FY 2008 REPRESENTATION ELECTIONS*
(EXCLUSIVE OF WRITTEN MAJORITY AUTHORIZATION PETITIONS)

Size of Unit	Municipal		State		Private		Total	
	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters
<10	9	43	1	0	0	0	10	47
10-24	11	185	1	0	0	0	12	199
25-49	1	41	2	0	0	0	3	110
50-74	2	125	0	0	0	0	2	125
75-99	1	79	1	0	0	0	2	175
100-149	1	144	0	0	0	0	1	144
150-199	1	171	0	0	0	0	1	171
200-499	1	272	1	0	0	0	2	551
Total	27	1060	6	462	0	0	33	1522

* NOTE: In FY 2008, parties filed 72 Representation petitions. The above chart contains information only on elections conducted by the DLR in FY2008.

FY 2009 REPRESENTATION ELECTIONS*
(EXCLUSIVE OF WRITTEN MAJORITY AUTHORIZATION PETITIONS)

Size of Unit	Municipal		State		Private		Total	
	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters
<10	4	22	2	13	0	0	6	35
10-24	9	184	1	14	0	0	10	198
25-49	5	182		0	0	0	5	182
50-74	2	107	3	191	0	0	5	298
75-99	2	154	0	0	0	0	2	154
100-149	1	116	0	0	0	0	1	116
150-199	0	0	1	169	0	0	1	169
200-499	0	0	0	0	0	0	0	0
Total	23	765	7	387	0	0	30	1152

* NOTE: In FY 2009, parties filed 43 Representation petitions. The above chart contains information only on elections conducted by the DLR in FY2009.

**FY 2008 and FY 2009
WRITTEN MAJORITY AUTHORIZATION
CERTIFICATIONS***

Size of Unit	Municipal		State		Private		Total	
	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS
Under 10	5	23	0	0	1	9	6	32
10-24	11	160	0	0	0	0	11	160
25-49	3	159	0	0	0	0	3	159
50-74	2	126	0	0	0	0	2	126
75-99	0	0	0	0	0	0	0	0
100-149	2	243	0	0	0	0	0	243
150-199	0	0	0	0	0	0	0	0
200-499	0	0	0	0	0	0	0	0
Total	23	711	0	0	1	9	24	720

* Note: The number of certifications represents the number of petitions filed that resulted in the Division issuance of a certification. Over FY 2008 and FY2009, overall, parties filed a total of 35 written majority authorization petitions. The DLR did not issue a certification in 11 cases either because the DLR dismissed the petition or the petitioner withdrew the petition.

DIVISION OF LABOR RELATIONS STAFF LIST

EMPLOYEES, FUNCTIONAL TITLES, PAYROLL TITLES AND SALARIES

Last Name	First Name	Functional Title	Payroll Title	FTE	Annual Salary
Atwater	Susan	Hearing Officer	Counsel II	0.60	\$46,147.92
Bevilacqua	Heather	Mediator	Program Manager V	1.00	\$52,706.42
Boyle	Michael	Mediator/Arbitrator	Program Manager VII	1.00	\$89,135.28
Byrnes	Michael	Director	Administrator IX	1.00	\$109,375.76
Casey	Geraldine	Mediator/Arbitrator	Program Manager VII	1.00	\$72,603.96
Cohen	Maydad	Chief Counsel	Program Mgr Specialist VIII	1.00	\$95,000.10
Costello	James	Sr. Staff Rep., Labor, JLMC	Administrator VII	1.00	\$98,757.62
Crystal	Erica	Hearing Officer	Counsel II	1.00	\$65,018.72
Davis	Kendrah	Hearing Officer	Counsel II	1.00	\$57,183.10
Eustace	Kimberly	Program Coordinator	Program Coordinator III	0.60	\$36,385.70
Freeman	Harris	Board Member, CERB	Per Diem		\$36,400.00
Goodberlet	Kathleen	Hearing Officer	Counsel II	1.00	\$55,376.88
Gookin	Carol	Mediator	Program Manager V	1.00	\$72,007.00
Hanson	John	Mediator/Arbitrator	Program Manager VII	0.53	\$43,703.14
Harrington	Brian	Field Investigator, JLMC	Program Manager V	1.00	\$67,300.74
Hatfield	Timothy	Mediator/Arbitrator	Program Manager VII	1.00	\$69,512.56
Leach	Katrina	Program coordinator	Program Coordinator I	0.53	\$23,305.10
Marrow	Arnold	Mediator/Arbitrator	Program Manager VII	0.46	\$39,290.68
McLaughlin	Jane	Sr. Staff Rep., Mgmt, JLMC	Administrator VII	1.00	\$98,757.62
McMahon	Gregory	Mediator/Arbitrator	Program Manager VII	1.00	\$78,324.74
Moriarty	Ann	Hearing Officer	Program Manager Spec. VI	1.00	\$84,797.70
Neumeier	Elizabeth	Board Member, CERB	Per Diem		\$36,400.00
Polzin	Sally	Field Investigator, JLMC	Program Manager V	1.00	\$72,559.50
Rauseo	Rosemary	Program Coordinator	Program Coordinator III	1.00	\$67,324.66
Shea	Mary Ellen	Mediator/Arbitrator	Program Manager VII	0.60	\$52,939.12
Siciliano	Shirley	Election Specialist	Collective Brg. Elect. Spc. II	0.40	\$21,620.04
Srednicki	Edward	Executive Secretary	Administrator VII	1.00	\$96,280.34
Sullivan	Margaret	Hearing Officer	Counsel II	1.00	\$75,404.42
Wittner	Marjorie	Chair, CERB	Administrator IX	1.00	\$99,999.90
Zoll	Samuel	Chair, JLMC	Per Diem		\$39,000.00

DLR ADVISORY COUNCIL

There shall be an advisory council to advise the division concerning policies, practices, and specific actions that the division might implement to better discharge its labor relations duties. [Chapter 145 of the Acts of 2007](#).

DLR Advisory Council Membership

Labor

Kate Shea, Esq.	Pyle Rome Ehrenberg, PC
Amy Davidson, Esq.	Sandulli, Grace PC
Ira Sills, Esq.	Segal, Roitman LLP
Jen Springer, Esq.	Assistant General Counsel - AFSCME Council 93
Ira Fader, Esq.	Massachusetts Teachers Association

Management

Peter Berry, Esq.	Deutsch Williams Brooks DeRensis & Holland, P.C.
Jim Hardy	Field Director – Policy Massachusetts Association of School Committees
Diane Crimmins	Human Resources Director - Town of Belmont
Mark D'Angelo	Director - Commonwealth of Massachusetts Office of Employee Relations
John Dunlap	Director - City of Boston - Office of Labor Relations

Neutrals

John Cochran, Esq., Chair	Arbitrator
Thomas A. Kochan	George Maverick Bunker Professor of Management Massachusetts Institute of Technology - Sloan School of Management
Nancy Peace	Arbitrator

BUDGET

DIVISION OF LABOR RELATIONS HISTORICAL BUDGET LEVELS (\$000)

<i>ACCOUNT</i>		FY2007 GAA	FY2008 GAA	FY2009 GAA	FY2009 Expended
7002-0600	Labor Relations Commission	936	954	0	0
7002-0700	Joint Labor-Management Comm.	538	538	0	0
7002-0800	Board of Conciliation & Arbitration	790	792	0	0
7002-0900	Division of Labor Relations	0	0	2,329	2,091
TOTAL		2,265	2,283	2,329	2,091

DIVISION OF LABOR RELATIONS FY 2009 APPROPRIATION SUMMARY

Governor's Budget Recommendation - House 1	\$2,405,415
General Appropriation Act	\$2,328,909
9C Reductions and Planned Savings	\$237,848
Total Available	\$2,091,061
Expenditures	\$2,076,054
Reversion	\$15,007

DIVISION OF LABOR RELATIONS FY 2009 EXPENDITURES

Total Available		\$2,091,061
AA	Employee Compensation	\$1,846,362
BB	Employee Travel Reimbursement	\$43,195
CC	Contracted Services Employees	\$23,960
DD	Medicare, Unemployment, Univ.Health	\$24,500
EE	Administrative Expenses	\$50,900
GG	Space Rental	\$7,774
HH	Consultant Service Contracts	\$855
JJ	Programmatic Operational Services	\$43,391
LL	Equipment Lease, Maintenance, Repair	\$6,614
UU	Information Technology Expenses	\$28,502
Total Expended		\$2,076,054
Reversion		\$15,007
Balance Forward		\$0

FY2010 GOALS AND CHALLENGES

Although the Division has achieved great results since the reorganization, the staff is not content to rest on its laurels. The DLR has set the following goals for FY2010:

- **Regulatory Reform.** The current DLR regulations are in need of a complete overhaul to match to new structure of the agency and the work has begun in the Fall of 2009.
- **Procedural Revision.** As the agency engages in rulemaking, the staff will closely examine current procedures and amend or revise same as necessary.
- **Information Technology.** Currently, the DLR case management systems are the same as what was in place with the predecessor agencies. During FY2009, the agency purchased new software and is beginning the process of customization. The end result will be effective and efficient case tracking software.

The DLR's ability to achieve the above goals depends on its ability to address the following challenges:

- **Budget:** From FY2008 to the end of FY2009, the DLR budget reduction exceeded 20% and the FTE level fell from 27.60 FTE's to 19.80 FTE's. This large staff reduction will make it difficult to keep the same pace as in the previous 18 months and creates the potential for delays in the processing of cases.
- **Increased Caseload.** Since the beginning of calendar year 2009, the number of case filings accelerated noticeably. In the first half of FY09 (July to December, 2008), on average the DLR received 67 case filings per month. This figure increased by more than 10% to 74.17 during the second half of FY09 (January to July, 2009). During the first four months of FY2010, the DLR has averaged 76 case filings per month – with 95 and 103 filings in September and October, respectively. We anticipate a continued increase in filings as the economic recession continues to impact state and local government. Additionally, the recently enacted transportation reform legislation could result in additional filings at the Division.

APPENDIX 1:

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT WHITE PAPER



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

SUZANNE M. BUMP
SECRETARY

PUBLIC SERVICE AT THE SPEED OF BUSINESS:

A PROPOSAL FOR REFORM OF THE MASSACHUSETTS LABOR RELATIONS AGENCIES

August 31, 2007

EXECUTIVE SUMMARY

The twenty-first century is defined by constant evolution to meet the ever-changing needs of the knowledge economy. Only those businesses that are flexible and creative enough to stay ahead of changing markets, products, services, new technologies, and customer needs will be able to grow and thrive. “Speed of business” is not just a buzzword -- it is a reflection of the real world in which we live today. As Massachusetts invests in its people, its infrastructure, and its emerging technologies, we are helping our economy adapt to today’s speed of business. In order to respond to the needs of its citizens, the vital public sector component of our economy can and must be held to the same high standards.

The administrative structure for resolving Massachusetts public sector labor disputes operates far below the speed of business, and is ripe (if not overdue) for reform. Under prior administrations, the three public sector labor relations agencies charged with resolving public sector disputes -- the Labor Relations Commission (LRC), the Board of Conciliation and Arbitration (BCA), and the Joint Labor Management Committee (JLMC) -- have suffered from neglect, political interference, budgetary shortfalls, and personnel losses. The agencies themselves have exacerbated these problems, in part, by failing to communicate, cooperate, and collaborate with each other. Each of the agencies lacks both professional management and meaningful performance measures. The end result is a persistent and unacceptable backlog of cases, increased costs to public employers, delay or loss of rights by public employees, and a lack of confidence among those who rely on the agencies to resolve public sector labor disputes.

The Patrick/Murray Administration, in establishing the Executive Office of Labor and Workforce Development (EOLWD) as a cabinet level secretariat, and in appointing Suzanne Bump as its Secretary, has demonstrated a commitment to ending the neglect of the labor relations agencies. At the same time, however, the Administration is demanding accountability, efficiency, and transparency from these agencies. While Secretary Bump recognizes the long histories and contributions of these agencies to labor-management relations, she is also committed to reforming these agencies so that they can better meet the ever-evolving needs of the twenty-first century and ensure that public sector labor disputes can be both minimized and resolved at the speed of business.

In order to accomplish this mission, Secretary Bump is proposing a number

of significant structural and operational changes to the three agencies to make them more efficient and effective:

- Merging the LRC, the BCA, and the JLMC into one multifunctional agency, with a strong manager at its head;
- Eliminating the administrative and bureaucratic burden on the agencies' labor relations professionals so that they can focus on their core mission of resolving public sector labor disputes;
- Maintaining and protecting the judicial independence of the agencies' labor relations professionals;
- Removing the perception of bias in the agencies by creating an independent, diverse, and representative nominating panel to qualify every candidate for a senior adjudicatory position;
- Upgrading and restoring the professional labor relations specialists who, on a daily basis, are at the front lines of resolving public sector labor disputes;
- Increasing the number of dispute resolution professionals, improving their training, and utilizing them more flexibly in a variety of different roles;
- Preserving the operational structure of the JLMC; and
- Providing a voice for stakeholders by statutorily requiring the establishment of an advisory council.

In order to address this issue comprehensively, Secretary Bump and EOLWD representatives have reached out to a number of public employment labor relations stakeholders, including the agencies themselves, public sector employers, public sector unions, attorneys representing public employers, attorneys representing labor unions, former employees of the agencies, and recognized labor relations neutrals. The problems that these stakeholders identified, regardless of their affiliation, were remarkably similar: lack of professional management; a persistent and unacceptable backlog of cases; lack of adequate personnel at all three agencies; inefficient and inflexible use of incumbent employees; an overly politicized appointment process; and a general lack of accountability. EOLWD representatives also spoke with and examined public sector labor relations agencies

in other states to ascertain the best practices that can be replicated in Massachusetts.

What follows is a more detailed explanation of the reasons for this proposal, the principles that underlay this proposal, and details on how the new system will operate.

I. THE PRESENT STRUCTURE

The Executive Office of Labor and Workforce Development is proposing a reorganization of the LRC, the BCA, and the JLMC into one new umbrella agency -- the Division of Labor Relations (DLR). Below is a brief description of each of the three agencies:

A. The LRC

The LRC, originally established in 1937, is governed by Sections 90 through 9R of Chapter 23 of the General Laws of Massachusetts. The LRC is responsible for the enforcement of Chapter 150A (the state private labor relations act) and Chapter 150E (the state public sector labor relations act). As a result of changes to the federal National Labor Relations Act in the late 1950's, nearly all of the LRC's caseload is now related to public sector employment. The agency's responsibilities range from hearing complaints of alleged unfair labor practices to administering union representation elections.

The LRC's budget and personnel have both declined significantly during the last four years. Under the prior administration, LRC staffing was reduced 15%, and the agency's budget was cut from \$1,072,111 in FY 2002 to \$ 832,701 in FY 2006. According to the Department of Labor's Transition Report, the LRC presently has 10.8 employees, including 3 Commissioners (one of whom the Governor designates as Chairman), 1 Chief Counsel, 1 Executive Secretary, 4.8 Hearing Officers, and 1 Collective Bargaining Specialist.

B. The BCA

Originally established in 1886, the Board of Conciliation and Arbitration is governed by Chapter 23C and Chapter 150 of the General Laws. The BCA is primarily involved in public sector interest mediation and grievance arbitration.

After a significant decline, the BCA's budget and personnel have increased somewhat during recent years. According to the Department of Labor's Transition Report, the staff has grown from 8.6 employees in FY 2004 to 10.2 in FY 2007. The staff includes 1 chairman, 6 mediator/arbitrators, 2 mediators, and 2 program coordinators. Over the same years, the budget has grown from \$514,978 in FY 04 to \$790,043 in FY 07.

Although most unions and employers choose to arbitrate grievances through the American Arbitration Association, many parties still choose to arbitrate their disputes through the BCA, largely due to the costs involved. The cost for arbitrating a private sector dispute through the BCA is \$1,200, and the cost for arbitrating a public sector dispute is \$600, split by each party to the arbitration. Costs for private arbitration are substantially higher.

C. The JLMC

The JLMC is governed by chapter 730 of the Acts and Resolves of 1977, as most recently amended by chapter 589 of 1987. The JLMC is dedicated to resolving disputes between police and fire department unions and local municipalities.

JLMC's budget has fluctuated over the past four fiscal years but is generally heading upward -- the budget has increased from \$447,959 in FY 2004 to \$538,112 in FY 2007. The JLMC's staff includes a mix of volunteers and paid professional employees. There are five paid staff, including two investigators/mediators, two senior representatives (one for labor and one for management), and a program manager. JLMC's Chairman serves on a per diem basis. The volunteers are gubernatorial appointments, and include three firefighters, three police officers, and six representatives from local government.

II. THE PROBLEMS

A. Agency Design

The separation of Massachusetts labor relations work into three separate agencies has resulted in the unnecessary duplication of many costs. Each agency has its own department head, administrative support staff, and separate budgetary responsibility, although all three agencies presently support the salary for one financial analyst. Additionally, there is no professional management of the three agencies -- no standards for evaluating their performance; little or no ongoing training of staff; and, in many years, not even a statutorily-mandated annual report.

Although they are presently segregated into different agencies, purportedly with separate adjudication and mediation functions, LRC and BCA staff already perform both functions. For example, it is not unusual for a LRC Hearing Officer or a Commissioner to mediate rather than adjudicate a case when the parties appear at a hearing. Similarly, most BCA Mediators are also Arbitrators. Despite their

similar responsibilities, however, there is no sharing of professional staff among the three agencies.

B. Employee Issues

The best labor relations professionals are skilled at both mediation and adjudication. Many of the most sought after private mediators and arbitrators in Massachusetts are labor relations professionals who first honed their skills at the LRC or the BCA. Most private mediators are arbitrators, and vice versa, demonstrating that they are skilled at both mediation and adjudication functions.

At the present time, and in contrast to the way that most private professional mediator/arbitrators work, the professional staffs of the LRC, the BCA, and the JLMC have narrowly defined roles -- as LRC Hearing Officers, BCA Mediators or Mediator/Arbitrators, or JLMC Investigators. The agencies offer little professional training, and job dissatisfaction among many of these professionals is significant. LRC Hearing Officers, in particular, have seen the scope of their responsibilities diminish as more and more of the work is performed by the three LRC Commissioners who have turned the Hearing Officers into little more than simple fact-finders.

C. Agency Independence

Under the current statutory scheme, the composition of the labor relations agencies can take dramatic swings over time. For example, any Governor can stack the LRC with Commissioners who may share his or her political ideology, but who do not have the respect of labor relations professionals, either labor or management. There is nothing under the current law that requires any particular skills or experience for LRC Commissioners.

At the present time, the LRC has lost its reputation as an independent agency and is viewed by many professionals, particularly on the union side, but on the management side as well, as rigidly anti-union in its philosophy. Steps need to be taken to address the stature of the LRC, not in a manner that would replace perceived anti-union ideologues with perceived pro-union ideologues, but steps that will enhance the historical independence of the agency while restoring its more recently tarnished reputation.

D. Specific Agencies Issues

1. The LRC

Over the recent past, the LRC has initiated a set of procedures that have aggravated the agency's acknowledged budgetary limitations:

- a. The LRC eliminated an initial pre-investigation conference for prohibited practice charges that most labor relations professionals found useful in resolving disputes.
- b. In its place, the LRC initiated a policy of requiring extensive written submissions at the very beginning of the process, turning every prohibited practice charge into a battle of legal briefs and affidavits, and making settlement of cases much less likely.
- c. While the LRC has recently established an investigation conference, in which a Commissioner attempts to settle the dispute, this new procedure raises ethical and practical concerns because the Commissioner mediating the dispute may eventually be the final adjudicator of the same dispute.
- d. The scope of responsibilities for LRC Hearing Officers has diminished. Instead of issuing decisions that can be appealed to the LRC Commissioners, the LRC Hearing Officers now issue only findings of fact, which can be appealed to the Commission. After the final findings of fact are completed, the LRC Hearing Officer then forwards a draft decision to the Commissioners, which then has to be approved by the Commissioners.
- e. The three Commissioners are now involved in every aspect of every case that is filed with the LRC -- every probable cause determination at the beginning of the process, every Commission decision at the end of the process, and every step in between require the participation of all three LRC Commissioners.
- f. The LRC makes very little use of standard pre-litigation procedures -- such as motions for summary decision as set forth in the Standard Adjudicatory Rules of Practice and Procedure -- which would allow the LRC to quickly and efficiently dispose of

frivolous claims at an early stage in the process.

- g. Although many prohibited practice charges filed at the LRC may also be violations of a collective bargaining agreement, the LRC, unlike the NLRB, rarely if ever defers such cases to arbitration.
- h. The result of these procedures is a backlog of cases that is only increasing -- 598 cases as of November 30, 2006, and up to 688 cases as of July 31, 2007.
- i. The LRC now allows just three cases at a time to be filed at the Appeals Court, and will not compile the record for another appeal until one of the three cases pending at the Appeals Court is concluded. The result, according to information provided by the LRC, is a backlog of well over 50 cases. Given that the Appeals Court process presently takes approximately one year from the filing of the case to the issuance of a decision, the most recent appeals will take up to 20 years to resolve.

2. The BCA

Although the BCA is responsible for interest mediation and grievance arbitration, the BCA's reports do not distinguish between the two functions, but merely report "cases" filed and "cases" closed. Consequently, at the present time there is no accurate and accessible measure of the BCA's performance for its two most important functions.

Regarding grievance arbitration, many labor relations professionals who utilize the BCA's services complained about the timeliness of arbitration decisions. One union representative stated that she had received an arbitration decision from the BCA seven years after the parties had submitted their final briefs.

Regarding mediation, labor relations professionals cite the range of quality of BCA mediators as a concern. Several mediators are well-respected and have the confidence of the parties, while other mediators lack the parties' confidence. The BCA provides little supervision or training of its mediators. It is clear that BCA mediators would benefit from closer collaboration with the professionals at the LRC and the JLMC.

3. The JLMC

The JLMC appears to have the confidence of the parties who rely on its services. As with the LRC and the BCA, however, staff cutbacks are a concern. With just two investigators to cover the entire Commonwealth, the JLMC would certainly benefit from inter-agency collaboration, particularly with the BCA. At the same time, BCA mediators would undoubtedly benefit from collaboration with the JLMC professionals.

III. PRINCIPLES FOR REFORM

A. Respect for the Work of the Labor Relations Agencies

The work of the three labor relations agencies is critical to the Commonwealth. These agencies provide an economic benefit to both state and municipal governments, as well as their employees, who rely on the agencies for the efficient and effective resolution of public sector labor disputes. The role that these agencies play is vital to the mission of the public sector in Massachusetts.

B. The Present Budgetary Climate

There is no question but that budgetary cutbacks have affected the performance of these agencies, but budgetary cutbacks alone cannot explain the extraordinary length of time it takes to resolve many cases at the LRC and the BCA. Moreover, given the present budgetary situation, the Commonwealth cannot afford to just throw money at a problem like this. Instead, it is necessary to look at the labor relations agencies from the ground up, to determine if there are solutions other than just increasing the agencies' budgets.

C. We Can Learn from the Private Sector

In today's competitive, global economy, the businesses that succeed and grow are those that are nimble, flexible, and adaptable to change. Additionally, the most successful businesses also empower their employees -- involve their employees in all aspects of the business, and train their employees to be able to perform multiple functions. Moreover, those businesses are also accountable -- to the demands of the marketplace or stockholders, for example. A government that seeks to become more efficient, effective, and accountable, therefore, has much to learn from the private sector, and should strive to perform at the speed of business.

IV. PROPOSALS FOR REFORM

The present Massachusetts labor relations system is more of a historical anomaly than a carefully thought out organizational structure. The BCA, as noted above, was created in 1886, long before the LRC, as a response to the need for resolving collective bargaining disputes in the private sector. Massachusetts created the LRC by statute in 1937, shortly after the National Labor Relations Act (NLRA) passed, as a so-called “Baby Wagner Act,” to be the state equivalent of the NLRA’s National Labor Relations Board. Since Chapter 150E of the Massachusetts General Laws extended full collective bargaining rights to public employees in 1973, the LRC’s focus has been on the public sector. The JLMC was created in 1977 as an alternative to the BCA for the mediation of police and fire fighter contract disputes. The fragmentary, ad hoc nature of the Massachusetts model stands in sharp contrast to the approach of other states that created public sector labor relations agencies later on -- no state that has created a public sector labor dispute resolution system from scratch -- without a history of a labor mediation agency preceding a labor adjudication agency -- has created three, or even two, separate agencies.

The state public sector labor relations systems fall into three general formats.⁵ The first format -- the NLRA Format -- is employed in Massachusetts and a few other states, including Connecticut and Pennsylvania. Under this model, the adjudicatory and the mediation functions are housed in completely separate agencies. In the second format -- the Comprehensive Agency Format -- one agency addresses all public sector labor-management disputes, but the agency is divided into two separate components, one for adjudication and the other for mediation. This format is in use in New York, Michigan, and Oregon. The third approach -- the Multifunctional Format -- takes the Comprehensive Agency Format to its logical conclusion, by combining the adjudication features of the LRC with the mediation features of the BCA, while training and using the same staff for all of the professional responsibilities. This format is employed in Iowa, Wisconsin, Minnesota, and Washington.

After a thorough review of the available options, as well as a consideration of the systemic needs of all the stakeholders, EOLWD has concluded that a hybrid of the Comprehensive and Multifunctional Formats is the most effective and efficient approach for Massachusetts. EOLWD, therefore, propose the combination of all three agencies under one unified organizational structure, with

⁵ Schurke, M. & Higgins, J., “The Administration of Public Sector Collective Bargaining.”

the JLMC structure remaining essentially intact, in an agency to be known as the Division of Labor Relations (DLR). The major components of the proposal are set forth below:

A. The DLR Director

The DLR will be headed by a Director, appointed by the Governor, who will manage the entire organization. Only a strong manager with administrative responsibility for all three agencies will have the authority to ensure that staff are adequately trained, allocate staff across the agency based on need, carry out performance evaluations, and hire and fire as warranted. The Director's duties will include, for example, the authority to shift mediators from their current narrow duties as a "BCA mediator" to another sector of the DLR that needs more of a concentrated effort to reduce or avoid a backlog.

The DLR Director will also be the public face of the agency, overseeing the production of annual reports, communicating with stakeholders, processing revisions of existing regulations, proposing new rules and regulations, and ensuring that the DLR remains at the forefront of innovation in public sector labor law. The Executive Director will set benchmarks for the DLR, measure the agency's performance, shift resources when necessary, work closely with the Advisory Council, and recommend further changes.

B. The Commonwealth Employment Relations Board (CERB)

EOLWD also proposes a number of significant changes to the current LRC structure. As currently structured, there is no independent review of the selection process for LRC Commissioners, so no candidate selected has been independently vetted to determine if he or she is qualified. Within a few years after taking office, a new Governor can replace the existing LRC Commissioners and appoint people reflecting a different political ideology. This does nothing to advance the goal of having a highly professional group of neutral adjudicators.

To address this problem, EOLWD proposes the elimination of the LRC's three full-time Commissioners, and their replacement with a three-member appellate body called the Commonwealth Employment Relations Board (CERB), which will be able to focus solely on its appellate role without being distracted with day-to-day administrative responsibilities. While the CERB Chair will be full-time, the other two CERB Members will work on a per diem basis. All CERB Members will be appointed for definite yet staggered terms.

As set forth below, the CERB Members will be appointed by the Governor for a term of years, only after being qualified by an independent nominating panel. While housed within the Division of Labor Relations for administrative purposes, the CERB Members will be diverse, independent, and immune from political manipulation. By professionalizing the selection of the adjudicators, CERB will undoubtedly improve confidence in the resolution of public sector labor disputes. Regarding the present LRC Commissioners, EOLWD proposes that they serve out their current terms, if they desire to do so, as Members of the new CERB.

C. The Advisory Council and the CERB Nominating Panel

To provide stakeholders with an opportunity to work with the Director, EOLWD's proposal creates a statutory Advisory Council on Public Employment Relations. Members of the Council will be appointed by the Governor, with membership consisting of an equal number of representatives of public sector employees and employers, as well as the Director of Labor, labor relations dispute professionals, academicians, and members of the public.

To maximize the professionalization of the CERB, EOLWD proposes the development of concrete and relevant qualifications for the CERB Members, including familiarity with Massachusetts public sector labor law, the ability to write clearly, legal training, and skills in decision-making. EOLWD also proposes using the Advisory Council as a CERB nominating panel. The panel will identify and screen candidates to be the CERB Members and the DLR's Director. The qualified candidates will then be forwarded to the Governor for selection.

Relying on a nominating/screening panel has been highly successful in improving the quality of candidates for other administrative adjudicators, including those at the Division of Industrial Accidents (DIA) and the Division of Unemployment Assurance (DUA). A more neutral and professional process will broaden and improve the quality of CERB Members and the administration of the DLR.

D. Streamlined Procedures and Enhanced Staff Roles

EOLWD also proposes the streamlining of the process for resolving public sector labor disputes, while enhancing the role of the professional staff. The professional dispute resolution staff will be able to fill a variety of roles, and work in areas where needed. The Director will assign staff to the responsibilities for

which they are most needed and most qualified. For example, a BCA Mediator may be able to assist the JLMC in initial investigations, or help to resolve prohibited practice charges at the LRC. Given the number of new professional positions that this proposal will create, and the Director's flexibility in assigning personnel, no professional who mediates any particular dispute will have any role in adjudicating the same dispute.

With regards to the LRC, the professional staff will be empowered to hold investigative conferences early in the process, and resolve disputes quickly at this stage by, where appropriate, deferring cases to arbitration, issuing bargaining orders, narrowing the issues in dispute, and dismissing cases on jurisdictional grounds. If cases proceed to the adjudication stage, other professional staff will hold adjudicatory proceedings, and issue findings of fact and conclusions of law. Those decisions will be binding unless appealed to the CERB level. EOLWD also proposes an expedited process to bring extraordinary cases, particularly those involving public safety, immediately to the CERB.

APPENDIX 2:
CHAPTER 145 OF THE ACTS OF 2007

CHAPTER 145 OF THE ACTS OF 2007

AN ACT INCREASING THE EFFICIENCY, EFFECTIVENESS, AND FAIRNESS OF THE COMMONWEALTH'S LABOR RELATIONS AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. [Sections 17D](#) and [17E of chapter 6A of the General Laws](#) are hereby repealed.

SECTION 2. Subsection (c) of [section 1A of chapter 23](#) of the General Laws, as appearing in [section 15 of chapter 19 of the acts of 2007](#), is hereby amended by striking out the words “the division of conciliation and arbitration, the labor relations commission, the joint labor-management committee” and inserting in place thereof the following words:- the division of labor relations.

SECTION 3. [Section 3 of chapter 23](#), as appearing in the 2006 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following section:-
(a) Within the department, there shall be the following agencies and divisions: the division of industrial accidents, the division of labor relations, and the division of occupational safety.

SECTION 4. Subsection (c) of [section 3 of chapter 23](#) is hereby repealed.

SECTION 5. [Chapter 23](#) is further amended by striking out sections 9O, 9P, 9Q and 9R and inserting in place thereof the following 7 sections:-

Section 9O. There shall be within the department of labor a division of labor relations, in this and the following 6 sections called the “division,” which shall be administered by a director, who shall be appointed by the governor. The division shall include: (1) a dispute resolution office; (2) an advisory council; (3) the commonwealth employment relations board; and (4) the joint labor-management committee. The division and its staff shall be subject to the jurisdiction of the department of labor for all administrative functions, but shall not be subject to the department of labor in the performance of adjudicatory functions, including but not limited to the assignment, evaluation, hiring, and firing of individual adjudicatory personnel.

It is hereby declared to be the public policy of the commonwealth that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; and it shall be the responsibility and objective of the division to take such steps as will most effectively and expeditiously encourage the parties to a labor dispute to agree on the terms of a settlement or to agree on the method and procedure which shall be used to resolve a dispute.

It is recognized that a constructive and harmonious long-term collective bargaining relationship is the most positive way to avoid labor disputes, and such a relationship can be effectively developed in the public sector through the use of joint labor management committees.

Section 9P. The dispute resolution office shall consist of hearing officers, mediators, arbitrators, investigators, and other skilled professionals who shall attempt, through the use of pre-hearing investigative conferences, expedited hearings, mediation, deferral to arbitration, and other dispute resolution procedures, to resolve any labor dispute brought to the attention of the division. Such staff may be assigned to investigate labor disputes pursuant to section 11 of chapter 150E, to mediate labor disputes pursuant to section 9 of chapter 150E, to assist the joint labor-management committee in the investigation of disputes involving municipal police and fire departments, and to perform such other duties as the division may require.

Section 9Q. (a) There shall be an advisory council to advise the division concerning policies, practices, and specific actions that the division might implement to better discharge its labor relations duties. The director shall provide for the council suitable meeting space and such clerical and other assistance as the director and the council may deem necessary.

(b) The advisory council shall consist of 13 members to be appointed by the governor, 5 of whom shall be members or representatives of public sector labor unions, 5 of whom shall be representatives of public sector managers, including the director of employee relations for the commonwealth, and 3 of whom shall be at large members. Seven members shall constitute a quorum for purposes of holding a meeting and voting. No action shall be taken by the council without the affirmative vote of at least 7 members. All members of the advisory council shall serve without compensation and at the pleasure of the governor. The advisory council shall meet no less than quarterly during each calendar year. Meetings of the advisory council shall be called by the chair or upon petition by a majority of voting members. Such meetings shall be subject to section 11A 1/2 of chapter 30A. The director of labor, the chair of the commonwealth employment relations board, and the director of the division shall serve as ex-officio non-voting members of the advisory council.

(c) The governor shall, from time to time, designate one of the council members as chair of the advisory council. The chair shall serve for no more than 2 years, and the position shall rotate among employee, employer, and at large members. No member of the advisory council shall be subject to chapter 31.

(d) With the approval of the advisory council, the director of labor may establish standards regarding the performance of the division, and require periodic reports from the director of the division regarding the division's attainment of such standards.

Section 9R. (a) There shall be in the division of labor relations a commonwealth employment relations board, in this and the following 5 sections called the "board," consisting of 3 members to be appointed by the governor. The board shall in no respect be subject to the jurisdiction of the department of labor except to the extent of compliance with reasonable requests from the director for the sharing of information which does not interfere with the efficient and independent functioning of the board. Each member of the board shall be appointed for a term of 5 years; provided, however, that a term of appointment shall be shortened, if necessary, to ensure that the members' terms are staggered such that a term expires every 2 years. Any vacancy in the board shall be filled by appointment in like manner. No more than 2 members shall be from the same political party. Upon the expiration of the term of any member,

her successor shall be appointed in like manner. Any member may be removed by the governor for neglect of duty or malfeasance in office, but for no other cause.

(b) The governor shall designate one of the members of the board as chair. The chair shall be responsible for convening meetings of the board. The position of chair shall be classified in accordance with section 45 of chapter 30 and the chair's salary shall be determined in accordance with section 46C of said chapter 30. The chair shall devote her full time to the duties of her office and shall not engage in other employment or business activities during regular business hours.

(c) The board members other than the chair shall serve on a per diem basis, to be reimbursed at an appropriate rate to be established by the director, in consultation with the advisory council. The board members shall hold no other public office or public employment in the commonwealth, and shall devote whatever time is necessary to fulfill the obligations of their positions.

(d) Pursuant to [section 11 of chapter 150E](#), the members shall be responsible for reviewing orders and issuing decisions.

(e) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and 2 members of the board shall at all times constitute a quorum. The board shall have an official seal which shall be judicially noticed.

(f) The appointment or reappointment of a member shall be made by the governor from names submitted to the governor by the advisory council. Before any appointment or reappointment to the position of member of the commonwealth employment relations board, the advisory council shall review all applications for such nominations and consider the following factors: (1) basic understanding of the commonwealth's public sector labor relations law; (2) skills in decision-making; (3) a law degree; and (4) demonstrated familiarity with legal processes. The advisory council shall rank each candidate as qualified, unqualified, or highly qualified. The governor may select 1 or more candidates recommended by the advisory council; provided, however, that the governor may decline to appoint any of the proffered candidates, in which case the council shall reopen the application process and submit new candidates for the governor's consideration.

(g) Attorneys employed by the division may appear for and represent the board in any case in court.

Section 9S. There shall be within the division the joint labor-management committee as established by chapter 1078 of the acts of 1973, and as most recently amended by chapter 589 of the acts of 1987.

Section 9T. (a) The division shall be administered by a director, who shall be appointed by the governor to serve for a term coterminous with that of the governor. The position of director shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section [46C of said chapter 30](#). The director shall devote her full time to the

duties of her office and shall not engage in other employment or business activities during regular business hours.

(b) The appointment or reappointment of the director of the division shall be made by the governor from names submitted to the governor by the advisory council. Before any appointment or reappointment to the position of director of the division, the advisory council shall review all applications for such nominations and consider the following factors: (1) basic understanding of the commonwealth's public sector labor relations law; (2) skills and experience in managing organizations; and (3) any other relevant experience and education. The advisory council shall rank each candidate as qualified, unqualified, or highly qualified. The governor may select 1 of the candidates recommended by the advisory council; provided, however, that the governor may decline to appoint any of the proffered candidates, in which case the council shall reopen the application process and submit new candidates for the governor's consideration. Any director may be removed by the governor for neglect of duty or malfeasance in office, or for the division's failure to meet the performance standards as set forth in subsection (d) of section 9Q, but for no other cause.

(c) The director shall be the executive and administrative head of the division and shall have charge of the administration of the division. The director shall have the authority, pursuant to [chapter 30A](#), and after consultation with the advisory council and the members of the commonwealth employment relations board, to issue any regulation for the enforcement and administration of the provisions of this section and the 3 following sections, as well as [chapters 150](#), [150A](#), and [150E](#). The director shall prepare an annual operating budget and other funding requirements and requests pursuant to this chapter to be submitted to the executive office of labor and workforce development.

(d) In addition to the responsibilities specified above, the director's duties shall include, but not be limited to, the following:

(i) the training of newly appointed board members, hearing officers, mediators, arbitrators, investigators, and any other staff as to their responsibilities and powers, including, but not limited to: the conduct of investigations, conferences, hearings, and mediations; the prompt, clear, and concise writing of decisions; and the prompt resolution of labor disputes brought to the attention of the division;

(ii) the establishment of an annual training program to instruct all board members, hearing officers, mediators, arbitrators, investigators, and any other staff as the director deems appropriate, in matters related to their professional development;

(iii) the establishment of reasonable criteria, in conjunction with the general counsel, and after consultation with the advisory council, upon which to perform an annual review of each board member;

(iv) the establishment of performance standards for all of the functions of the division;

(v) the appropriate allocation of all disputes brought to the attention of the division, to ensure that all professional staff receive balanced and equitable case loads; and

(vi) the hiring, supervision, and evaluation of hearing officers, mediators, arbitrators, investigators, and other staff, for the purpose of fostering more effective resolution of disputes brought to the attention of the division.

(e) While the director shall have oversight over the performance of hearing officers, arbitrators, and other staff, neither the director nor any other person may interfere with, influence, or overrule any written opinion issued by the division's staff or by the board. Any such decision may only be overruled by the members of the commonwealth employment relations board or a court, in accordance with applicable law.

Section 9U. The division shall, within 120 days of the close of each fiscal year, make a detailed report in writing to the general court, including without limitation: the number and types of cases filed with the division, including elections, and the disposition of all such cases; statistics regarding the number of decisions it has rendered and unresolved cases, and the timeliness of the division's decisions; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the division; and an account of all moneys it has disbursed.

SECTION 6. Chapter 23C of the General Laws is hereby repealed.

SECTION 7. [Chapter 150E](#) of the General Laws is hereby amended by striking out section 11 and inserting in place thereof the following section:-

Section 11. (a) When a complaint is made to the division that a practice prohibited by section 10 has been committed, the director may refer the matter to an investigator. The employer, the employee organization, or the person so complained of shall have the right to file an answer to the original or amended complaint within 5 days after the service of such complaint or within such other time as the division may require. Before the receipt of any answer, any complaint may be amended as of right, and, after the receipt of any answer, only with the permission of the division.

(b) The investigator may issue an order dismissing the complaint, deferring any complaint which is the subject of a pending grievance or arbitration, referring any complaint to one of the division's mediators, or directing that a hearing take place. Unless the complaint is dismissed, deferred, or referred, the investigator shall promptly meet with the parties, investigate whether settlement of the complaint is possible, clarify and narrow the issues before the complaint is forwarded to a hearing, or dismiss the complaint without a hearing. The investigator may dismiss the complaint if she finds no probable cause to believe that a violation of this chapter has occurred or if she otherwise determines that further proceedings would not effectuate the purposes of this chapter.

(c) If a hearing is ordered, the division shall set the time and place for the hearing, which time and place may be changed by the division at the request of one of the parties for cause shown. Any party may file a motion to dismiss the complaint or for a summary decision prior to a

hearing. At the hearing, which shall be presided over by a hearing officer, the employer, the employee organization, or the person so complained of shall have the right to appear in person or otherwise to defend against the complaint. At the discretion of the division, any person may be allowed to intervene in such proceeding. In any hearing, the division shall not be bound by the technical rules of evidence prevailing in the courts. The testimony, if any, may be preserved by a taped recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.

(d) At the conclusion of the hearing, the hearing officer shall issue written findings of fact and shall determine whether a practice prohibited under section 10 has been committed and, if so, shall issue an order requiring the charged party to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. The hearing officer shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this chapter. If the hearing officer determines that a practice prohibited under section 10 has not been or is not being committed, the hearing officer shall state her findings of fact and issue an order dismissing the complaint.

(e) Any order issued pursuant to this section shall become final and binding unless, within 10 days after notice thereof, any party requests a review by the board. A review may be made upon the record, which shall consist of the pleadings, motions, rulings, and the testimony taken at the hearing, if any, or upon such portions of the record as the parties may designate.

(f) Upon any complaint made under this section and a petition filed by one or more parties to the proceeding, the board, in its discretion, and for good cause shown, may order that the hearing be conducted by the board itself. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the board, any person may be allowed to intervene in such proceeding. In any hearing, the board shall not be bound by the technical rules of evidence prevailing in the courts. The testimony, if any, may be preserved by a taped recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.

(g) At the conclusion of the hearing, the board shall state its findings of fact and shall determine whether a practice prohibited under section 10 has been committed and if so, it shall issue an order requiring the charged party to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. The board shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this chapter. If the board determines that a practice prohibited under section 10 has not been or is not being committed, it shall state its findings of fact and issue an order dismissing the complaint.

(h) Whenever it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative as required in section 10 and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the division shall, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. Where such interim order is issued, the board shall hold a hearing on the charge in a summary manner and shall speedily determine the issues raised and shall make an appropriate decision.

(i) The board may institute appropriate proceedings in the appeals court for enforcement of its final orders. Any party aggrieved by a final order of the board may institute proceedings for judicial review in the appeals court within 30 days after receipt of the order. The proceedings in the appeals court shall, insofar as applicable, be governed by [section 14 of chapter 30A](#). The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the board's order.

SECTION 8. Notwithstanding any general or special law to the contrary, the division shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission, the board of conciliation and arbitration, and the joint-labor management committee, including without limitation those set forth in [chapter 23C](#), [chapter 150](#), [chapter 150A](#), and [chapter 150E of the General Laws](#). The commissioners of the labor relations commission holding office upon the effective date of this act may serve on the commonwealth employment relations board until the expiration of their current terms.

SECTION 9. This act shall take effect as soon as it has the force of law under subsection (c) of section 2 of [Article LXXXVII of the Amendments to the Constitution](#).

[Senate, October 16, 2007.](#)

Approved (under the provisions of [Article LXXXVII of the Amendments to the Constitution](#) and [Joint Rule 23A](#)).
[Therese Murray, President.](#)
William F. Welch, Clerk.

House of Representatives, October 17, 2007.

Approved (under the provisions of [Article LXXXVII of the Amendments to the Constitution](#) and [Joint Rule 23A](#)).
[Salvatore F. DiMais, Speaker.](#)
Steven T. James, Clerk.

Approved October 17, 2007

APPENDIX 3:
CHAPTER 120 OF THE ACTS OF 2007

CHAPTER 120 OF THE ACTS OF 2007

AN ACT RELATIVE TO CERTAIN WRITTEN MAJORITY AUTHORIZATION EVIDENCE OF COLLECTIVE BARGAINING RESULTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Section 2 of chapter 150A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following subsection:-

(12) The term “written majority authorization” shall mean writings signed and dated by employees in the form of authorization cards, petitions or such other written evidence that the commission finds suitable, in which a majority of employees in a unit appropriate for the purposes of collective bargaining designates or selects a labor organization as its representative for the purposes of collective bargaining and certifies the designation to be its free act and deed and given without consideration. Employee signatures shall be dated within the 12 months preceding the date on which the writings are proffered to establish majority and exclusive representative status within the meaning of subsection (a) of section 5.

SECTION 1A. Section 3 of said chapter 150A, as so appearing, is hereby amended by adding the following sentence:- An employee shall also have the right to refrain from any such activities, except to the extent of making payment of service fees to an exclusive representative.

SECTION 1B. Section 4A of said chapter 150A, as so appearing, is hereby amended by inserting after the word “therein”, in line 20, the following words:- ; or

(4) To interfere with, restrain or coerce an employer or employee in the exercise of a right guaranteed under this chapter.

SECTION 2. Subsection (c) of section 5 of said chapter 150A, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding any other provision of this section, the commission shall certify to the parties, in writing, and the employer shall recognize as the exclusive representative for the purposes of collective bargaining of all the employees in the bargaining unit, a labor organization which has received a written majority authorization, but this shall apply only when no other labor organization has been and currently is lawfully recognized as the exclusive representative of the employees in the appropriate bargaining unit. Whenever a labor organization proffers evidence that it has received a written majority authorization, the labor organization and the employer shall agree upon a neutral to conduct a confidential inspection of the evidence of a written majority authorization. If within 10 days the labor organization and the employer do not agree upon a neutral, the commission shall act as the neutral. The neutral shall verify the labor organization’s majority support within the appropriate bargaining unit and report the results of its inspection in writing to the parties and, if the verification was conducted by an agreed neutral, to the commission, which shall in turn certify the results to the parties in writing. The commission

shall establish rules and procedures for the prompt verification of evidence of a written majority authorization, which rules shall include safeguards to protect the privacy of individual employee choice, and which shall further provide that, absent exceptional cause, the verification procedure shall last not longer than 30 days after the appointment of the neutral or after the assumption by the commission of the duties of the neutral. As used in this paragraph, the term “employer” shall not include a health care facility, a nonprofit institution or a vendor who contracts with or receives funds from the commonwealth or a political subdivision thereof to provide social, protective, legal, medical, custodial, rehabilitative, respite, nutritional, employment, educational, training or other similar services to the commonwealth or a political subdivision thereof.

SECTION 3. Section 1 of chapter 150E of the General Laws, as so appearing, is hereby amended by adding the following definition:-

“Written majority authorization”, writings signed and dated by employees in the form of authorization cards, petitions, or such other written evidence that the commission finds suitable, in which a majority of employees in an appropriate bargaining unit designates an employee organization as its representative for the purpose of collective bargaining and certifies the designation to be its free act and deed and given without consideration. Employee signatures shall be dated within the 12 months preceding the date on which the writings are proffered to establish majority and exclusive representative status within the meaning of section 4.

SECTION 4. Section 4 of said chapter 150E, as so appearing, is hereby amended by adding the following paragraph:-

Notwithstanding any other provision of this section, the commission shall certify and the public employer shall recognize as the exclusive representative for the purpose of collective bargaining of all the employees in the bargaining unit an employee organization which has received a written majority authorization, but this shall apply only when no other employee organization has been and currently is lawfully recognized as the exclusive representative of the employees in the appropriate bargaining unit. Whenever an employee organization proffers evidence that it has received a written majority authorization, the employee organization and the public employer shall agree upon a neutral to conduct a confidential inspection of the evidence of a written majority authorization. If within 10 days the employee organization and the public employer do not agree upon a neutral, the commission shall act as the neutral. The neutral shall verify the employee organization’s majority support within the appropriate bargaining unit and report the results of its inspection in writing to the parties and, if the verification was conducted by an agreed neutral, to the commission, which shall in turn certify the results to the parties in writing. The commission shall establish rules and procedures for the prompt verification of evidence of a written majority authorization, which rules shall include safeguards to protect the privacy of individual employee choice, and which shall further provide that, absent exceptional cause, the verification procedure shall not last longer than 30 days after the appointment of the neutral or after the assumption by the commission of the duties of the neutral.

Approved September 27, 2007.

APPENDIX 3:
COMMONWEALTH EMPLOYMENT RELATIONS
BOARD DECISIONS:
DECEMBER 2008-JULY 30, 2009

Brief summaries of the CERB's decisions from December 2008 through July 30, 2009 are below:

Massachusetts Board of Higher Education and Massachusetts College Law Enforcement Association and AFSCME, Council 93, Local 1067, AFL-CIO, 35 MLC 81 (2009)

The Board dismissed the petition of the Massachusetts College Law Enforcement Association to sever Campus Police Officers I and II from a bargaining unit of maintenance and security workers at numerous state and community colleges represented by AFSCME, Council 93, Local 1067. The Board found that there was insufficient evidence to conclude that the petitioned-for employees had special negotiating concerns that have caused or were likely to cause serious conflicts or divisions within the bargaining unit that would effectively interfere with collective bargaining.

City of Boston and United Steelworkers of America, SENA, Local 9158 and AFSCME, Council 93, AFL-CIO, 35 MLC 137 (2008)

The Board dismissed a unit clarification petition filed by SENA to accrete a newly-created administrative assistant position to its unit. The Board found that the position was different from a SENA position that the City had recently eliminated and that the new position shared a greater community of interest with other administrative assistant in AFSCME's unit than it did with the Senior Administrative Assistant in SENA's unit.

Town of Boxford and Professional Firefighters of Massachusetts, Local 3250, IAFF, 35 MLC 113 (2008)

The union filed a petition seeking to represent only the Town's two full-time firefighters. The Board held that the appropriate bargaining unit consisted of all full-time and regular part-time firefighters employed by the Town. The Board defined regular part-time firefighters as those firefighters who had, within the past calendar year, responded to no less than 33% of the total number of alarms sounded and who had attended no less than 60% of all the fire department's scheduled training sessions. The Board rejected the Union's argument that Chapter 1078 of the Acts of 1973, Section 4A, prevented the Board from finding appropriate a mixed unit of part-time and full-time firefighters.

Office and Professional Employees International Union, Local 6 AFLCIO and City of Boston, 35 MLC 91 (2008)

The Board dismissed a strike petition filed by the City of Boston alleging that the Union, the exclusive representative of the City's Housing Inspectors, had engaged in a strike within the meaning of Section 9A of Chapter 150E when the Housing Inspectors declined to accept on-call assignments. The Board found that the on-call assignments were not an express or implied condition of employment.

City of Boston and Boston Police Patrolmen's Association, IUPA, Local 16807, AFL-CIO, 35 MLC 95 (2008) (Notice of Appeal filed)

The Board determined that the City of Boston had failed to bargain in good faith by failing to provide certain information that the Union needed in connection with separate pending

grievances and prohibited practice charges that it had filed. Relying on City of Boston v. Labor Relations Commission, 15 Mass. App. Ct. 122 (1983), the Board declined the Union's request for attorneys' fees incurred in litigating the separate prohibited practice and grievance proceedings.

Newton Police Association and City of Newton, 35 MLC 142 (2008)

The Board concluded that the City had violated Section 10(a)(5) of the Law when it transferred bargaining unit work to non-bargaining unit clerical employees without first bargaining with the Union over the impacts of the decision to resolution or impasse.

Bristol County Sheriff's Office and National Correctional Employees Union, 35 MLC 149 (2009)

The National Correctional Employees Union petitioned to be the exclusive representative of a unit of canine officers employed by the Bristol County Sheriff's Office (BCSO). Based on the stipulated record, the Board concluded that two separate bargaining units of supervisory and non-supervisory canine officers were appropriate. In so holding, the Board rejected the BSCO's argument that the canine officers, who were appointed as Deputy Sheriffs, should be excluded from collective bargaining because they were appointed officials within the meaning of M.G.L. c. 150E, Section 1. The Board held that the language of Section 1 demonstrates that appointed officials are a subcategory of managerial employees and found no incongruity between a deputy sheriff's method of appointment and right to bargain collectively.

City of Holyoke and International Brotherhood of Police Officers, Local 388, 35 MLC 153 (2009)

The Board concluded that the City of Holyoke's police department did not violate Section 10(a)(3) of M.G.L. c. 150E when it transferred a police officer from the detective unit of its Criminal Investigation Bureau to the Field Operations Bureau. Although the officer had engaged in protected, concerted activity and the City knew of that activity, the IBPO failed to establish that the transfer constituted an adverse action or that it was unlawfully motivated.

Cambridge Public Health Commission d/b/a Cambridge Health Alliance and Massachusetts Nurses Association, 35 MLC 157 (2009)

The Massachusetts Nurses Association (Union) alleged that the Cambridge Public Health Alliance (Alliance) violated Section 10(a)(5) of the Law when it refused to provide it with copy of a report that an outside consultant had prepared for the Alliance. Upon review the record, the Board concluded that the Union had a need for the information and had made its reasons for the information request clear to the Alliance. However, the Board also found that some of the information requests had occurred outside of the six-month period of limitations and were, therefore, untimely.

Commonwealth of Massachusetts, Commissioner of Administration and Finance and New England Police Benevolent Association, Local 200, 35 MLC 268 (2008)

The Investigator dismissed a charge of prohibited practice filed by the New England Police Benevolent Association, Local 200 (Union) because the Union had filed it more than six months after it knew or should have known of the alleged prohibited practice. On reconsideration, the

Union argued that the Board should create an exception to the six-month rule because the parties had agreed that the Commonwealth would not raise timeliness as an affirmative defense if the Union filed a prohibited practice charge. Noting that the former Labor Relations Commission had treated the period of limitations set forth in 456 CMR 15.03 both as strictly jurisdictional and as an affirmative defense, the Board held that it would not treat the period of limitations as strictly jurisdictional where a respondent agrees not to raise it as an affirmative defense and the agreement is made before the charge is filed. Under those circumstances, the Board held that the risks attendant with stale or less than prompt adjudication of claims are outweighed by the benefits of giving effect to parties' express agreements regarding the method and procedures chosen to resolve their labor disputes.

Commonwealth of Massachusetts, Commissioner of Administration and Finance and National Association of Government Employees, 35 MLC 105 (2008)

The Board concluded that the Commonwealth had unlawfully transferred bargaining unit work previously performed by an Administrative Assistant I in the Office of the Chief Medical Examiner to non-bargaining unit employees without first giving NAGE notice and an opportunity to bargain to resolution or impasse. Though the affected employee filed a whistleblower claim, the Board rejected the Commonwealth's argument that the Whistleblower statute's waiver provision, M.G. L. c. 149, § 185(f), precluded the Board from ordering a make-whole remedy.

Town of South Hadley and AFSCME, Council 93, AFL-CIO, 35 MLC 122 (2008)

AFSCME, Council 93, AFL-CIO petitioned to create two separate bargaining units of employees of non-uniformed employees within the Town of South Hadley: Unit A, non-supervisory employees and Unit B, supervisory employees. After hearing, the Board determined that the units were appropriate and further determined that the Assistant Town Clerk/Treasurer, Building Commissioner, Conservation Administrator, Waste Water Treatment Plant Operation manager and Waste Water Treatment Plant Compliance Officer were not confidential or managerial employees within the meaning of Section 1 of M.G.L. c. 150E and placed those employees in Unit B. The Board also determined that the Dog Officer and Assistant Dog Officer shared a community of interest with the positions within Unit A.

Chief Justice for Administration and Management of the Trial Court and National Association for Government Employees, 35 MLC 163 (2009) (Notice of Appeal filed)

The Board concluded that the Trial Court of Massachusetts/Chief Justice for Administration & Management (CJAM) violated Section 10(a)(5) of the Law by assigning per diem retirees to perform the bargaining unit work performed by the court officers in Suffolk Superior Court, without first giving the court officers' union notice and an opportunity to bargain to resolution or impasse. In so holding, the Board rejected the CJAM's argument that it had the statutory or contractual right to assign the retirees to work as court officers in Suffolk Superior Court.

Chief Justice for Administration and Management of the Trial Court and National Association of Government Employees, Local 5000, SEIU, 35 MLC 171 (2009)

The Board dismissed a complaint alleging that the Chief Justice for Administration and Management of the Trial Court (CJAM) violated Section 10(a)(5) of the Law by repudiating an

oral agreement finding that the parties had not reached a meeting of minds as to the terms of the settlement.

Commonwealth of Massachusetts, Commissioner of Administration and Finance and Massachusetts Correction Officers Federated Union, 35 MLC 178 (2009)

The Commonwealth of Massachusetts alleged that the Massachusetts Correction Officers Federated Union violated Section 10(b)(2) of M.G.L. c. 150E by repudiating certain anti-discrimination and sexual harassment provisions of the parties' collective bargaining agreement. The Board dismissed the complaint because the Commonwealth failed to show that the Union deliberately refused to abide by the contract provisions by the manner in which it handled a bargaining unit member's sexual harassment complaint.

Marion Town Employees Association and Polly Church, 35 MLC 173 (2009)

The Board concluded that the Marion Town Employees Association (Union) had not violated Section 10(b)(1) of M.G.L. c. 150E by the manner in which it handled the charging party's request for a job upgrade. The fact that the Union chose to pursue the upgrade as part of successor contract negotiations, but was ultimately unable to secure the upgrade, either during negotiations or thereafter, does not amount to a violation of the duty of fair representation where there was no evidence that the Union's behavior was arbitrary, perfunctory or discriminatory.

Lowell School Committee, Greater Lowell Unionized Employees and International Union of Public Employees, 35 MLC 193 (2009)

The sole issue in dispute in these consolidated cases was whether the Board should entertain the IUPE's petition to sever security guards from an existing, historical bargaining unit of the buildings and grounds employees and represent the security guards in a separate bargaining unit. GLUE and the School Committee opposed the severance. After hearing, the Board dismissed the IUPE's petition concluding that the security guards did not constitute a functionally distinct, appropriate unit with special interests sufficiently distinguishable from those of the custodians and the HVAC technician so as to satisfy the first prong of the Board's severance analysis. The Board further concluded that the security guards did not have any special negotiating concerns that caused or were likely to cause serious conflicts and divisions within the existing buildings and grounds bargaining unit.

City of Cambridge and Cambridge Police Patrol Officers Association, 35 MLC 183 (2009)

The Board concluded that the Employer's four month delay in signing a typed settlement agreement accurately memorializing an earlier handwritten settlement agreement violated Section 10(a)(5) of the Law, where the Employer's justifications for not signing the agreement were not supported by the record evidence and the Employer did not communicate with the Association about the typed agreement until after the Association filed the instant charge. The Board declined to deem the matter because the Employer did not offer any plausible explanations for its failure to communicate with the Association for over four months and where an employee had suffered financial losses as result of the delay.

Town of Harwich and SEIU, Local 888, 35 MLC 188 (2009)

The Union filed a Petition for Certification by Written Majority Authorization. During the pendency of the petition, the Town of Harwich filed written challenges to six positions in the proposed unit. Because the number of challenges was insufficient to affect the result, the Division dismissed the challenges pursuant to 456 CMR 14.19(8) and issued a Certification of Written Majority Authorization (Certification). Approximately one month later, the Town filed a Motion for Reconsideration and Reinvestigation of the Certification under Division Rule 14.15, 456 CMR 14.15, arguing that certain positions should be excluded from the bargaining unit as confidential or managerial employees. The Union opposed the motion arguing that the Division must dismiss the challenges by operation of Rule 14.19(8). The Board disagreed, noting that its earlier dismissal of the challenges under Rule 14.19(8) did not foreclose the Town from raising and having the Division address challenges once the Certification was issued. In so holding, the Board noted that the possible inclusion of employee who may be found to be managerial or confidential employees constitutes good cause to reinvestigate the petition under Rule 14.15 and had the practical effect of resolving the underlying dispute promptly.

City of Boston and AFSCME Council 93, Local 1526, AFL-CIO, 35 MLC 289 (2009)

On September 22, 2003, the City posted a notice pursuant to the former Labor Relations Commission's order in Case No. MUP-01-2940 (reported at 30 MLC 38 (2003)) stating, among other things, that it would not unilaterally change the job duties of principal account clerk and bargaining unit member. The same day, the employee's supervisor instructed him to watch while a courier counted Library deposit monies. The Union filed the instant charge alleging that the City imposed these duties in retaliation for the employee's participation in MUP-01-2940, in violation of Section 10(a)(4) of the Law. The charge also alleged that the City violated Section 10(a)(5) of the Law by unilaterally changing the employee's duties. The Board dismissed the allegation that the City violated Section 10(a)(4), holding that the change in job responsibilities did not constitute an adverse action in the absence of evidence of any significant detriment to his career, job benefits or salary. The Board concluded that the City had unlawfully changed the employee's job duties, rejecting the City's argument that the change was de minimis. As to remedy, the Board announced henceforth, its order to post notices in places where notices to employees are usually posted would include electronic postings via a respondent's internal e-mail or intranet system in workplaces where employers customarily communicate to employees in this manner.

Boston School Committee and Boston Teachers Union, Local 66, MFT/AFT, AFL-CIO, 35 MLC 277 (2009) (Notice of Appeal filed)

The Boston Teachers Union (Union) filed a charge alleging that the Boston School Committee had violated Sections 10(a)(5) and (1) of the Law by 1): increasing co-payments for two of its health plans; and 2) eliminating two HMO plans offered to bargaining unit members. The Board dismissed the first allegation as untimely, finding that the Union knew more than six months before it filed the charge that the School Committee intended to increase co-payments later that year and had refused to bargain over the change and the impacts of the change during successor contract negotiations. The Board noted that the six-month period of limitations to file a charge begins to run on the date that the union receives actual notice of the change, not the date the

Employer implements the change. The Board further noted that the possibility that an employer will change its mind over the bargaining scope or venue does not excuse a failure to file a charge within six months of the date the union knew of should have known of the violation. Regarding the second allegation, the Board concluded that the City violated the Law by insisting on bargaining only over the impacts of eliminating the plans, away from the main table bargaining. The Board also rejected the City's argument that it needed to act by a date certain, noting that the City's own refusal to address this issue at successor negotiations had contributed to the delay.

Town of Berkley and New England Police Benevolent Association, Inc. and Massachusetts Laborers' District Council on behalf of Public Local 1144, Laborers' International Union of North America AFL-CIO, 35 MLC 266 (2009)

The Petitioner New England Police Benevolent Association Inc. (Petitioner) filed a representation petition with the Division seeking to represent a unit of permanent full-time police officers employed by the Town of Berkeley (Town). At the time, the Laborers' International Local 144 (Incumbent) represented the police officers in a unit comprised of three full-time officers and one sergeant. In determining the contested unit placement of the sergeant and the reserve officer/dispatcher, the Board concluded that the sergeant shared a community of interest with the patrol officers based on similarity of duties and working conditions. Assuming without deciding that the sergeant was a supervisor, the Board declined to exclude him from the unit noting that its policy of rejecting one-person units outweighed its usual concern about placing supervisors with the employees they supervise. The Board declined to place the reserve officer/dispatcher in the unit, because this position shared a greater community of interest with the Town's bargaining unit of dispatchers. The Board also declined to restrict the unit to full-time officers, as requested by the Petitioner, based on its policy of including part-time employees in the same bargaining unit as full-time employees with whom they share a community of interest.

New England Police Benevolent Association, I.U.P.A., AFL-CIO and Commonwealth of Massachusetts, Secretary of Administration and Finance and Alliance, AFSCME/SEIU, Local 509, 35 MLC 255 (2009)

The Petitioner filed a petition with the Division seeking to sever three bargaining unit positions from statewide bargaining unit 8 and represent them in a separate unit. The Commonwealth of Massachusetts and the Incumbent opposed the petition, arguing that it should be dismissed pursuant to Division Rule 14.07(1), which precludes the Division from entertaining petitions that seek certification in a unit not in substantial compliance with the statewide bargaining unit set forth in that Rule, except in extraordinary circumstances. The Board rejected the Petitioner's argument that extraordinary circumstances were present due to a servicing agreement that the Incumbent had negotiated with Local 5000 NAGE to serve as its agent in the petitioned-for titles. The Board reasoned that to hold otherwise would effectively penalize employers and unions for structuring collective bargaining in a manner that best suits their operations and employees. The Board also rejected the Petitioner's argument that the employees' right to select representatives of their own choosing outweighed all the other considerations that the former Commission took into account when creating the ten statewide bargaining units in 1975. Ultimately, the Board

concluded that the petition was nothing more than a traditional severance petition that did not rise to the level of extraordinary circumstances required to make changes in statewide bargaining units.

City of Easthampton and Daniel Mazzolini, 35 MLC 257 (2009)

The Board dismissed a complaint alleging that the City of Easthampton had terminated the Charging Party in violation of Section 10(a)(3) of Chapter 150E because he had filed grievances over his failure obtain a transfer that he sought. The Board concluded that the Charging Party had established, through direct evidence, that the City's decision was motivated in part by the hostility that the Charging Party's direct supervisor had expressed towards the Charging Party's multiple grievances. However, after applying the two part shifting burden of proof set forth in Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655 (2000), the Board concluded that the City had established by a preponderance of the evidence that the Mayor would have terminated the Charging Party even if he had not filed grievances, based on a report that the City's counsel had written concluding that the Charging Party had engaged in offensive and unwelcome sexual conduct in the workplace.

Amherst Police League and William J. Koski, 35 MLC 239 (2009)

The Board found that the Amherst Police League (Union) had breached its duty of fair representation in violation of Section 10(b)(1) of Chapter 150E by the manner in which it handled the Charging Party's grievance. The Board concluded that the Union had acted with a reckless disregard and gross negligence that severely prejudiced the Charging Party's right to challenge his termination, when, after the Union's counsel told the Charging Party that the Union would take his grievance to arbitration, the Union erroneously assumed that two separate steps of the grievance procedure had been merged; failed to advise the Charging Party of the Town's Manager's offer to meet with him, thereby foreclosing timely access to the Town's Manager's step of the grievance procedure; and ultimately decided not to arbitrate the grievance, based in part on the Charging Party's silence at a meeting in which Union counsel had advised him to remain silent. The Board rejected the Union's argument that its counsel had no apparent or actual authority to act on the Union's behalf, where the Union president authorized Union's counsel to speak with the Charging Party's counsel without communicating any restrictions on his authority.

City of Newton and Newton Municipal Employees Association, 35 MLC 296 (2009)

The issue before the Board was whether the City of Newton (City) violated Section 10(a)(5) and (1) of the Law by unilaterally requiring a bargaining unit member to return to work at a lower rate of pay after suffering an on-duty injury for which he was collecting workers' compensation and which permanently prevented him from performing the duties of paver/operator. The Board found that the City's decision to lower the pay and grade of the employee constituted a new condition of employment over which the City was required to bargain, and ordered a status quo and make whole remedy.

Chief Justice for the Administration and Management of the Trial Court (CJAM) and the National Association of Government Employees, Local 254, 35 MLC 230 (2009) (Notice of Appeal filed)

The issue before the Board was whether the CJAM unilaterally changed the job duties and/or workload of probation officers and assistant chief probation officers at HCSC, when it assigned each of them to staff the front desk for one half day per week for an eight-week period. The Board concluded that the CJAM violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unilaterally increasing the workload of probation officers and assistant probation officers. The Board dismissed the allegation that the CJAM violated the Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unilaterally changing the job duties of those probation officers and assistant probation officers because these did not constitute new job duties.

Salem Teachers Union, Local 1258, MFT, AFT, AFL-CIO and Elizabeth Babcock, 35 MLC 225 (2009).

The Board determined that the Salem Teachers Union did not violate Section 10(b)(1) of M.G.L. c. 150E when it refused to process two grievances over the Salem School Committee's refusal to allow teachers to place materials in teachers' mailboxes without prior approval. The findings reflect that the Respondent's decision was based on its interpretation of the collective bargaining agreement as granting Respondent, not other entities or individuals, general, unrestricted access to teacher's mailboxes. The Board therefore concluded that the Salem Teachers Union did not violate its duty of fair representation where there was no evidence that its decision not to process the grievances was improperly motivated, arbitrary, perfunctory or demonstrative of inexcusable neglect.

Salem School Committee and Elizabeth Anne Babcock, 35 MLC 199 (2009)

The Charging Party, a Salem High School teacher, filed a charge alleging that the Salem School Committee had violated the Law by its actions after a number of high school teachers (not including the Charging Party) distributed fliers in teachers' mailboxes urging members of the Salem Teachers Union not to ratify a collective bargaining agreement. The Board issued a complaint alleging 11 separate violations of Section 10(a)(1) of the Law. The Board found that the teachers who had distributed the flier were engaged in protected, concerted activity and concluded that the School Committee violated the Law when the Superintendent and High School principal implemented a rule requiring teachers to get approval before distributing materials in teachers' mailboxes. The Board rejected the School Committee's argument that the collective bargaining agreement precluded entities other than the Union from using the mailboxes and further concluded that the School Committee intended to implement the rule in a discriminatory manner. The Board also found that the School Committee had violated Section 10(a)(1) by failing to reappoint three teachers who distributed the flier, and by certain statements that the Superintendent made regarding teachers' efforts to communicate about terms and conditions of employment. The Board dismissed a count alleging that the School Committee unlawfully failed to process the Charging Party's grievance

City of Methuen and New England Police Benevolent Association, I.U.P.A, AFL-CIO, 35 MLC 295 (2009)

The Board dismissed a challenge to an election filed by the former incumbent union, which, without providing supporting details, stated the incumbent's president and business agent's belief that the employee whom the union believed initiated the representation petition had "campaigned" on behalf of the petitioner during the election. The Board held that such subjective impressions, without more, were insufficient to establish probable cause that electioneering or any type of sustained conversations had occurred that improperly affected the result of the election or merited further proceedings.

City of Boston, Boston Public Library and Professional Staff Association, CWA Local 1333, AFL-CIO, 35 MLC 293 (2009)

The union filed a unit clarification petition in 2008 seeking to accrete certain titles into its unit in the period after its collective bargaining agreement expired, but before the parties negotiated a successor agreement. After the parties signed a successor agreement that was retroactively effective from 2007-2010, the Employer filed a motion to dismiss the petition on grounds of contract bar. The Board denied the motion, finding that the union had filed its petition during the open period set forth in Section 14.06(1)(b) of the Division's regulations, 456 CMR 4.06(1)(b), and noting that the purpose of the contract bar rule had been served by the pendency of the petition during the parties' negotiations for a successor collective bargaining agreement.

AFSCME, Council 93, AFL-CIO and Bruce Gauvain, 35 MLC 300 (2009)

The Charging Party filed a charge alleging that AFSCME, Council 93, AFL-CIO (Union) violated its duty of fair representation when it failed to investigate, evaluate or process a grievance concerning his layoff from his provisional position as a code inspector for the City of Lynn (City). The Board concluded that the Union had not failed to investigate the grievance, acted in a hostile, arbitrary or cursory manner, where it had filed 30 separate grievances on behalf of all laid off union members; engaged in impact bargaining at Step 3 of the grievance procedure regarding the layoffs and ultimately decided not submit any of the grievances to arbitration because the City had demonstrated to its satisfaction that it acted for budgetary reasons. The Board also held that the fact that the Union did not communicate with the Charging Party for a three-month period did not violate the Union's duty of fair representation, where the Union made a reasoned judgment that the grievance lacked merit and the decision did not otherwise impair or prejudice the Charging Party's contractual rights.

Boston School Committee and Boston Teachers Union, Local 66, MFT/AFT/AFL-CIO, 35 MLC 305 (2009)

The Boston Teachers Union, Local 66, MFT/AFT/AFL-CIO (Union), filed a unit clarification petition seeking to accrete the position of instructional technician into its existing bargaining unit of paraprofessionals in the Boston schools. The Board dismissed the petition pursuant to the Division's contract bar rule, which, absent good cause shown, requires unit clarification petitions to be filed within 150-180 days prior to the expiration date of a collective bargaining agreement, or where a position is newly-created or has changed since the effective date of the most recent agreement. The Board concluded the petition was untimely because the Union did not file the petition during the open period and the instructional technician position existed at the time the

parties entered into their most recent agreement. The Board rejected the Union's argument that good cause existed to waive the contract bar rule because it waited to file the petition until it received a related arbitration award. The Board noted that the contract bar rule did not require the Union to choose between the grievance procedure and filing a unit clarification petition, or forever preclude the Union from filing a petition.

AFSCME, Council 93, AFL-CIO and Dale Webber, 36 MLC 1 (2009)

The Hearing Officer considered whether AFSCME, Council 93 (Union) had violated its duty of fair representation to the Charging Party, a former Union president, when it: 1) settled a two-count complaint that alleged in Count II that the Town of Plymouth (Town) had removed overtime opportunities for bargaining unit members in retaliation for the Charging Party's protected activities, without informing the Charging Party of the terms of the agreement; and 2) failed to explain to the Charging Party its decision to withdraw certain grievances from arbitration. With respect to the first count of the instant charge, the Hearing Officer concluded that the Union had not violated its duty of fair representation to the Charging Party because the terms of the settlement of the prohibited practice charge took Count II into account even though it did not specifically reference it, and because unions have the statutory right to determine whether to settle or litigate a particular grievance and no concomitant obligation to inform individual unit members of that decision. The Hearing Officer similarly held that the Union had no obligation to discuss its decision to withdraw four grievances from arbitration that involved him because, in the absence of evidence of deliberate bad faith or personal hostility, a union's failure to communicate or explain its decisions to bargaining union members does not violate the duty of fair representation.

Massachusetts Port Authority and International Longshoremen's Association, Local 810, 36 MLC 5 (2009) (Notice of Appeal filed)

The Board considered whether the Massachusetts Port Authority (Employer) failed to bargain in good faith when it ordered a port officer whom it had suspended for suspected violence in the workplace to undergo a psychological evaluation, and changed the port officer's work location and schedule upon his return to work. The Board concluded that although the parties had held one meeting to discuss the psychological evaluation, the Union's silence regarding some of the Employer's proposals, coupled with a handshake at the end of the meeting, did not amount to tacit agreement to the Employer's proposals, where, at the outset of the meeting, the Employer announced that the parties were not engaged in bargaining and that it was going to go forward with the evaluation. The Board also rejected the Employer's affirmative defenses that the Union had waived its right to bargain by inaction and/or contract over the evaluation and MassPort's decision to change the port officer's work location and schedule upon his return to work.