

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of

MARION TOWN
EMPLOYEES ASSOCIATION

and

POLLY CHURCH

*
*
*
*
*
*
*
*
*
*

Case No. MUPL-04-4486

Date Issued:

January 30, 2009

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Appearances:

Gerard S. McAuliffe, Esq.	-	Representing the Marion Town Employees Association
Margaret A. Ishihara, Esq.	-	Representing Polly Church

DECISION¹Statement of the Case

1 On March 15, 2004, Polly Church (Church)² filed a charge with the former
2 Commission, alleging that the Marion Town Employees Association (Association) had
3 violated Sections 5 and 10(b)(1) of Massachusetts General Laws, Chapter 150E (the
4 Law). Following an investigation, the former Commission issued a complaint of
5 prohibited practice on January 10, 2006, alleging that the Association had violated
6 Section 10(b)(1) of the Law by interfering with, restraining, coercing and discriminating
7 against Church in the exercise of her rights guaranteed under Section 2 of the Law.³
8 The Association filed its answer to the complaint on March 2, 2006.

9 On March 28, 2006 and May 16, 2006, Margaret M. Sullivan, Esq., a duly-
10 designated Board hearing officer (Hearing Officer), conducted a hearing. Both parties
11 had the opportunity to be heard, to examine witnesses, and to introduce evidence. The
12 parties submitted post-hearing briefs on or about July 10, 2006. On July 21, 2008, the
13 Hearing Officer issued her Recommended Findings of Fact. Pursuant to 456 CMR

¹ Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." References in this decision to the Commonwealth Employment Relations Board (Board) include the former Labor Relations Commission (Commission). Pursuant to Section 13.02(1) of the Commission's Rules in effect prior to November 15, 2007, the former Commission designated this case as one in which it would issue a decision in the first instance.

² Although Church's current name is Polly Church Savaria, she will be referred to as Church for the purposes of this case.

³ The Commission dismissed the portions of the charge alleging that the Association violated Section 5 of the Law. Church did not seek reconsideration, pursuant to 456 CMR 15.03 of the Commission's regulations in effect prior to November 15, 2007, of the portion of the dismissal.

1 13.02(2), Church filed challenges to the Recommended Findings of Fact on July 29,
2 2008. The Association filed no challenges to the Recommended Findings of Fact. On
3 August 14, 2008, the Association filed its opposition to Church's challenges. After
4 reviewing those challenges and the record, we adopt the Hearing Officer's
5 Recommended Findings of Fact and summarize the relevant portions below.

6 Findings of Fact⁴

7 The Association is the exclusive bargaining representative for certain full-time
8 and regular part-time clerical employees of the Town, including administrative clerks,
9 the assistant assessor, clerk typists, bookkeeper/payroll clerks, principal clerks and
10 secretaries, but excluding the Town Administrator, the secretary to the Board of
11 ~~Selectmen, the council on aging coordinator, and the clerk dispatchers in the police~~
12 department. The Town and the Association were parties to a collective bargaining
13 agreement which by its terms was in effect from July 1, 1999 through June 30, 2002
14 (1999-2002 Agreement). Article XXIV of the 1999-2002 Agreement contained a
15 duration clause continuing the terms of the collective bargaining agreement until the
16 parties agreed upon a successor agreement.

17 Church has worked as a full-time clerk/dispatcher in the Town's fire department
18 since July of 2000, and is a member of the Association's bargaining unit.⁵ She holds
19 the grade of TH4⁶ on the Town's wage classification scale.⁷ On or about February or

⁴ The Board's jurisdiction in this matter is uncontested.

⁵ Church is the only member of the bargaining unit who does not work at Town Hall.

⁶ Church is at Step III, the top step of the TH-4 grade.

⁷ Article XV of the 1999-2002 Agreement contains the wage classification scale.

1 March of 2003, Pat DeCosta (DeCosta), a co-worker of Church and a non-bargaining
2 unit member, informed Church that the former Town Manager Raymond Pickles
3 (Pickles) had upgraded all of the other full-time bargaining unit members⁸ to a grade of
4 TH5 on the wage classification scale before he retired in 2000.⁹ Shortly thereafter,
5 Church asked then-Association president Barbara Mauro (Mauro) about the procedure
6 that other unit members had used in order to receive upgrades, because Church
7 wanted to be advanced to a grade of TH5.¹⁰ Because Mauro herself had not previously
8 requested an upgrade, she made inquiries of other unit members. She informed
9 Church that other unit members who had received upgrades had requested that their
10 department heads rewrite their job descriptions to reflect their additional job duties. The
11 ~~department heads then presented the revised job descriptions to the Town~~
12 Administrator and the Town's Finance Committee, and urged them to upgrade the
13 employees.

14 On March 31, 2003, Church sent the following letter to Town Administrator Julia
15 Enroth-Whitlock (Enroth-Whitlock):

16 As per our conversation regarding upgrading my position, I am requesting
17 that the position of Fire Department Clerk/Dispatcher be upgraded to a
18 "TH-5." I feel that my responsibilities are the same or more than most
19 town hall workers. I have enclosed a list of duties composed by the Chief
20 for my position. I would like a response as to why my job was the only full
21 time position that was not upgraded to a "TH-5" before Mr. Pickles retired.
22 I am forwarding a copy to the Union president, as I am not sure who would

⁸ There are currently nine full-time members of the Union's bargaining unit.

⁹ The record does not contain sufficient information to ascertain whether DeCosta's statement to Church was correct.

¹⁰ The 1999-2002 Agreement is silent about the issue of job reclassification requests. However, Article II, the Management Rights Clause, of that Agreement states that the Town retains the right to reclassify employees.

1 pursue this matter. Please respond in writing as to what my next step
2 should be.¹¹

3
4 Church attached to the letter a copy of a job description that Fire Chief Richard
5 Guerzoni (Guerzoni)¹² had compiled for her position.¹³ Thereafter, Enroth-Whitlock
6 verbally advised Church that the appropriate method for seeking an upgrade was to
7 have the Association make the request on her behalf rather than Church filing a request
8 directly with the Town.

9 On April 17, 2003, Mauro sent the following email message to Church:
10 I missed you at the union meeting.¹⁴ I did speak to Gerry [Gerard
11 McAuliffe]¹⁵ re TH4 to TH5. He said that it should be negotiated with the
12 union. The non-objection in the past is considered union ok.

13 Thereafter, the Association held an election for officers, and the membership
14 ~~electd Lisa Perry (Perry) as president. On May 15, 2003, Perry sent an e-mail~~
15 message to Church stating:

16 FYI. Julia [Enroth-Whitlock] copied me on your letter and attachment
17 today regarding your TH-4 status. She contacted Tom Crotty¹⁶ and they

¹¹ Church copied Mauro on the letter.

¹² Previously, no job description had existed for the clerk dispatcher position in the Fire Department. However, Church contends that since Guerzoni became fire chief in 2002, he assigned the following new job duties to her: 1) writing grants; 2) ordering services and materials from vendors, which includes reviewing bid specifications; 3) preparing the bi-annual payroll for the Town's call fire fighters; 4) performing station checks; and 5) enforcing station lockdown procedures, if necessary.

¹³ Guerzoni supported Church's request for an upgrade and verbally communicated his support to Enroth-Whitlock on at least two occasions.

¹⁴ The Association held approximately one meeting per month. Church attended approximately half of the meetings.

¹⁵ Gerard McAuliffe, Esq. (McAuliffe) is the Association's counsel.

¹⁶ Thomas Crotty, Esq. (Crotty) was the Town's labor counsel.

1 agree that it should be discussed in negotiations. She stated to me that it
2 can be discussed at the meeting with the mediator. On a side note, Julia
3 asked if anyone knows why the position wasn't a TH-5 to begin with ...
4 other than because it was a personality reason.

5 As of May 17, 2003, the Association and the Town had been engaged in
6 successor contract negotiations¹⁷ for approximately one year¹⁸ and had enlisted the
7 services of a mediator under the auspices of the former Board of Conciliation and
8 Arbitration (BCA). The Association and the Town previously had agreed upon certain
9 ground rules for their negotiations including that: 1) the parties would not introduce new
10 issues after the third meeting, and 2) the parties would not comment publicly about
11 specific proposals that had been introduced at negotiations.

12 Thereafter, Perry informed Church¹⁹ that the Association might not be able to
13 introduce a proposal requesting an upgrade for Church during successor contract
14 negotiations, because of the ground rule precluding the introduction of any new
15 proposals after the third bargaining session.²⁰ On July 24, 2003, Church sent the
16 following email message to Perry:

17 I would like to know if and when the Union [Association] intends to
18 negotiate for me to go to a TH5? It obviously won't happen during the

¹⁷ The Town and the Association were parties to a collective bargaining term which by its terms was in effect from July 1, 1999 through June 30, 2002 (1999-2002 Agreement). However, Article XXIV of the 1999-2002 Agreement contained a duration clause continuing the terms of the collective bargaining agreement until the parties agreed upon a successor agreement.

¹⁸ The Town and the Association had participated in numerous bargaining sessions during the one-year period of time.

¹⁹ Church was not a member of the Association's negotiating committee.

²⁰ The record does not contain the exact date of Perry's conversation with Church. However, Church had numerous conversations with Perry and Mauro about her upgrade request during the period between March 31, 2003 and July 24, 2003.

1 current negotiations so could you please tell me when. My first request
2 was two months ago.

3 On July 29, 2003, Enroth-Whitlock sent a memorandum to Perry stating:

4 In response to the enclosed memo regarding Clerk-Dispatcher Polly
5 Church, the Town would like to discuss this request with the union at the
6 next negotiating/mediation session whenever this is scheduled by the
7 mediator.²¹

8
9 On August 26, 2003, the Association and the Town met with the mediator for another
10 bargaining session. On August 28, 2003, Perry sent out the following letter stating in
11 relevant part:

12 I had hoped that this next correspondence would be with good news of our
13 contract being settled, but that is not the case. I have some good news,
14 and some not so good news. First, the good news is that we have a
15 decision regarding our case with the Labor Relations Commission, and it
16 is in our favor.²² The not so good news is that it doesn't offer an
17 immediate remedy on our behalf. ...

18
19 The Town must bargain with us and restore the assistant assessor's job
20 duties that were transferred to non-unit employees in January of 2002.
21 Unfortunately, because the Town cannot hire a person to replace our
22 missing person until Town Meeting approves it, the interim solution is to
23 have a Union [Association] member work in that office. Julia [Enroth-
24 Whitlock] has proposed scheduling us on a rotating basis to cover the
25 office. I don't know that we have a choice in this matter.

26
27 Secondly, on Tuesday, the Collective Bargaining Committee and I met
28 with our Attorney, the Town and their Attorney, and Mediator James Kelly
29 in another attempt to settle our contract. The Town in essence made an
30 offer to us but has thrown two monkey wrenches into the mix with asking
31 us to negotiate the Labor case in conjunction with the contract, and also
32 informing us that the Town failed to ask for the appropriation of funds at
33 the last Town Meeting for the clerical union.

²¹ Enroth-Whitlock attached a copy of Church's March 31, 2003 letter and the job description for the position of clerk/dispatcher at the Fire Department.

²² The Hearing Officer took administrative notice of the Commission's August 20, 2003 decision in Case No. MUP-02-3329. In that decision, the Commission found that the Town had unlawfully transferred some of the duties of the unit position of assistant assessor to a non-bargaining unit employee in violation of Section 10(a)(5) of the Law.

1
2 There are dangers in complying with their request. If we don't agree to
3 negotiate the Labor issue, the Town will not settle the contract and
4 therefore will not ask for our raises to be appropriated at the next fall Town
5 Meeting. If they don't ask for the money in the fall, not only do we have to
6 wait for the next spring Town Meeting (if we settle before then), but
7 additionally we may lose the money being held for our raises from last
8 year, (the first year of the contract). Technically, they only have to hold
9 the money for one year, then we lose it.

10
11 The only good in agreeing to lump the Labor issue and the contract
12 negotiations together is that it will force them to ask for our raise in the fall,
13 and to negotiate regarding the assistant assessor's position rather than
14 just doing whatever they want. After speaking with Gerry [McAuliffe]
15 today, he does feel that it will be in our best interest to lump them
16 together.

17 Thereafter, Church left a message on Perry's voice mail questioning why, if the ground
18 rules prevented the introduction of new issues after the third bargaining session, the
19 Association and the Town were now bargaining over the so-called "Labor" case. On
20 September 2, 2003, Perry responded with the following e-mail message:

21 I received your message you left on my voice mail. I will copy your letter
22 and attached job description of March 31st and will give to Gerry
23 [McAuliffe] the next time he is here (this month, but the date is not yet
24 determined).

25
26 In response to your question of how we are able to negotiate Labor
27 Relations if no new issues can be brought up at this time, is that it is
28 separate from the contract, not part of it. The Town is using it as leverage,
29 dangling the carrot in front of us to settle their issue and in return we get
30 our contract and raises. There is nothing to prevent them from asking to
31 discuss both at the same time, and it may even be in our best interest.

32
33 Because they are using it as leverage, we may as well play the game also.
34 I intend to ask Gerry to bring up your issue at that next meeting. We will
35 see how it goes.

36 The parties and the mediator met for another negotiation session on September
37 16, 2003. On September 17, 2003, Perry sent the following memorandum to the
38 Association members:

Decision (cont'd)

1 First off, the answer is no, we did not settle the contract last night at
2 mediation, but we feel that we have made excellent progress.

3
4 Secondly, everyone needs to know that:

5
6 1. The Town responded to the Labor Relations Commission within 10
7 days of receiving the Order as to the steps that they will take to comply
8 with the Order.

9
10 2. The Town has appealed the Order to the Labor Relations Commission.

11
12 The second issue although disappointing, isn't as awful as it seems. By
13 procedure, they probably should have filed the appeal in order to buy
14 themselves time since they aren't fully complying with the Order (they
15 haven't staffed the Assessor's Office with a Union employee).

16
17 Now, that you have the background, it's easier to provide the current
18 status. The Town has agreed to settle our contract as we discussed at
19 our last Union meeting, will agree to drop the appeal to the Labor
20 Relations Commission, and is making an attempt to settle the issue of
21 staffing the Assessors' Office with a part-time Union employee. The only
22 hang up (as stated by the Mediator) is a monetary settlement to all of the
23 Union employees. This should be a small yearly increase, to all Union
24 employees, but has not been worked out. We physically ran out of time
25 last night to negotiate further as Julia [Enroth-Whitlock] and Gerry
26 [McAuliffe] had to leave at 6:00 PM. If we had more time, we may have
27 reached an agreement.

28 On September 19, 2003 Perry sent an email message to the Association's members

29 indicating that the next mediation session would take place on October 8, 2003. On

30 October 3, 2003, Church sent the following memorandum to Perry:

31 I am writing to let you know that I am not satisfied with the answer (or lack
32 thereof) from Julia [Enroth-Whitlock] that a step increase would have to be
33 negotiated. No other positions have gone through this process, including
34 your own. I also asked for a response in writing as to what the next step
35 should be. Naturally, I never heard a word. Jerry felt that this did have to
36 be done through negotiations and that at the time other people were given
37 increases myself or someone would have had to file a grievance. I have
38 two responses to that; one is how would I know when someone got an
39 increase and two is why if increases have never gone through
40 negotiations would anyone file a grievance? I am asking the union to do
41 some homework and back me up on this. I was under the impression that

1 paying dues was supposed to mean you had the union backing. From
2 now on, I will be paying dues under protest.

3 On October 7, 2003, Margaret Ishihara, Esq., (Ishihara), acting as counsel for Church,
4 sent a letter to McAuliffe stating:

5 Please be advised that I represent Polly Church, a union member and fire
6 department dispatcher in Marion. I understand from speaking with the
7 Town Administrator that the issue of moving Polly Church from the T4
8 classification to the T5 classification is on the table in the union contract
9 negotiations. We would expect the union to pursue this issue vigorously in
10 order to meet their duty of fair representation to Ms. Church. Would you
11 keep me apprised of the status of this case.

12 Another mediation session was scheduled for October 22, 2003. Earlier that
13 same date, Ishihara sent McAuliffe a letter via facsimile stating in pertinent part:

14 You have advised me that the union's position is that the issue of
15 reclassification of Polly Church from the TH4 to TH5 level is that the union
16 is willing to negotiate this reclassification, but only after the current
17 contract negotiations are concluded. Your reasoning is that this issue was
18 not brought up a year and a half or so ago when the mediator first became
19 involved in the negotiations between the union and the Town of Marion,
20 and that pursuant to the union's ground rules with the Town, new issues
21 could not be raised. However, the Town Administrator has advised me
22 that the Town is willing to consider this issue, and she did not raise the
23 issue of any ground rules. Therefore, we would expect the union to press
24 this issue now as part of the union's duty of fair representation owed to
25 Ms. Church.

26 At some point in negotiations, the Association made a proposal to the mediator to
27 upgrade Church's position to TH5, and Perry subsequently informed Church that the
28 Association had made the proposal to the mediator. The Association also raised the
29 issue of Church's upgrade directly with members of the Town's bargaining team,²³ but

²³ The Town's bargaining team consisted of Crotty, Enroth-Whitlock, and Selectman David Pierce.

1 the Town did not agree to grant Church's upgrade request at that time.²⁴ The
2 Association and the Town subsequently agreed to a tentative successor collective
3 bargaining agreement, an agreement that members of the Association's negotiating
4 committee believed was in the best interests of the entire bargaining unit. The tentative
5 successor agreement did not include an upgrade for Church.

6 At an October 31, 2003 meeting, the Association's members voted to ratify the
7 successor agreement. At this meeting, Church asked Perry what was happening with
8 her upgrade. Perry responded that the Association would propose her pay upgrade to
9 the Town after the parties executed the successor collective bargaining agreement, but
10 that any pay raise would not be retroactive. The Town and the Association
11 subsequently executed a successor agreement, which, by its terms, was retroactively in
12 effect from July 1, 2002 through June 30, 2005 (the 2002-2005 Agreement).

13 After John Dolan, Jr. (Dolan) became the Town Administrator in March of 2004,
14 Perry approached Dolan and requested that the Town upgrade Church,²⁵ but Dolan did
15 not approve the request.²⁶ Perry also placed the request before the Board of
16 Selectmen, who did not approve it.²⁷ Subsequently, the Town and the Association
17 entered into negotiations for a successor collective bargaining agreement that, by its
18 terms, would be in effect from July 1, 2005 through June 30, 2008 (the 2005-2008

²⁴ The record is silent as to when the Association raised the issue of Church's upgrade request with the mediator and with the Town.

²⁵ The record does not indicate when Perry made this request.

²⁶ Dolan could not recall whether he affirmatively denied the request or simply did not act upon it.

²⁷ It is unclear whether the Board of Selectmen affirmatively denied the request or simply did not act upon it.

1 Agreement).²⁸ The Association presented a proposal to the Town to have the employer
2 reclassify Church's position as a grade TH5. The Association did not withdraw this
3 proposal until the final bargaining session,²⁹ but the 2005-2008 Agreement ultimately
4 did not contain an upgrade for Church.

5 Opinion

6 Once a union acquires the right to act for and to negotiate agreements on behalf
7 of employees in a bargaining unit, Section 5 of the Law imposes on that union an
8 obligation to represent all bargaining unit members without discrimination and without
9 regard to employee organization membership. A union breaches its statutory
10 responsibility to bargaining unit members if its actions towards an employee, during the
11 performance of its duties as the exclusive bargaining representative, are unlawfully
12 motivated, arbitrary, perfunctory, or reflective of inexcusable neglect. Quincy City
13 Employees Union, H.L.P.E., 15 MLC 1340, 1355 (1989), aff'd sub nom., Pattison v.
14 Labor Relations Commission, 30 Mass. App. Ct. 9 (1991), further rev. den'd, 409 Mass.
15 1104 (1991). If the facts support a finding that an exclusive bargaining representative
16 has breached its duty of fair representation, the Board concludes that the union has
17 violated Section 10(b)(1) of the Law.

18 The issue here is whether the Association violated its duty of fair representation
19 by the manner in which it handled Church's request to reclassify her position to a grade
20 TH5. In support of her claim, Church contends that the Association violated its duty to

²⁸ The record does not indicate when the parties began negotiations for the 2005-2008 Agreement.

²⁹ The record is silent concerning the date of the final bargaining session for the 2005-2008 Agreement.

1 fairly represent her, because it made little effort to secure an upgrade for her position
2 and, thus, acted in a perfunctory manner. Upon review of the record, we disagree. A
3 union's action is perfunctory if it is done as a matter of routine and for form's sake,
4 without interest or zeal, as a matter of routine. Independent Public Employees
5 Association, Local 195 and Elizabeth P. Clarke, 12 MLC 1558, 1565 (1985). Here, the
6 Association and the Town had been engaged in successor contract negotiations for
7 approximately one year, which included agreeing upon certain ground rules, when
8 Church notified the Association that she was seeking an upgrade. On or about that
9 time, the Town and the Association also engaged the services of a mediator from the
10 former BCA. Thereafter, newly elected Association president Perry informed Church
11 about the existence of the ground rule that neither the Town nor the Association could
12 raise new issues after the third bargaining session and the fact that this ground rule
13 could preclude the Union from introducing a proposal about Church's upgrade during
14 successor negotiations. Nevertheless, despite the existence of the ground rule, the
15 Association presented the proposal about the upgrade to the mediator and also raised
16 the issue with members of the Town's bargaining team. Ultimately, the Town and the
17 Association agreed upon a successor collective bargaining agreement, the 2002-2005
18 Agreement, that did not include an upgrade for Church.

19 The fact that the 2002-2005 Agreement did not contain an upgrade for Church
20 does not, standing alone, support Church's contention that the Association treated her
21 upgrade request in a perfunctory manner. The Board has recognized that a bargaining
22 unit includes different voices with varying needs, and that a union must, at times,
23 choose from among those voices and act in a way that it believes is best for the unit as

1 a whole. Fitchburg School Committee, 9 MLC 1399, 1414 (1982). Therefore, unions are
2 permitted a wide range of reasonableness in fulfilling their statutory obligations, subject
3 to good faith and honesty in the exercise of their discretion. Trinque v. Mount Wachusett
4 Community College Faculty Association, 14 Mass. App. Ct. 191, 199 (1982) (quoting,
5 Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953)). Here, members of the
6 Association's negotiating committee determined that it was in the best interests of the
7 entire bargaining unit to consent to the 2002-2005 Agreement, even in the absence of
8 an upgrade for Church. This was not inconsistent with its duty of fair representation.
9 See Michael Silvia and Taunton Police Supervisory Association, 31 MLC 153, 160
10 (2005) (in discharging its duty of fair representation, union had room for discretion and
11 consideration of the over-all union membership in relation to that of the individual
12 aggrieved member).

13 Furthermore, the Association continued to pursue an upgrade for Church. On or
14 about March of 2004, the Association unsuccessfully requested that Dolan, the newly
15 appointed Town Administrator, upgrade Church. The Association then placed the
16 upgrade request before the Board of Selectmen, who also did not approve it.
17 Thereafter, the Association presented a proposal to the Town to upgrade Church as
18 part of successor contract negotiations for what eventually would be the 2005-2008
19 Agreement. Although the 2005-2008 Agreement ultimately did not contain an upgrade
20 for Church, the Association did not withdraw the proposal until the final day of
21 negotiations. Thus, on the facts before us, the Association did not give the matter only
22 cursory attention or fail to take a required step. See Somerville Fire Fighters Association
23 and Joseph Crowley, 27 MLC 45, 47 (2000) (union did not act in a perfunctory manner,

Decision (cont'd)

1 when it did not respond with a blanket denial to a unit member's inquiry but continued to
2 pursue other means to assist the member); Compare International Brotherhood of
3 Police Officers, Local 338 and Michael Ciccolini, 28 MLC 285, 289 (2002) (union did not
4 act in cursory manner when it thoroughly and attentively considered how to handle an
5 employee's request to reinstate his seniority) with Independent Public Employees
6 Association, Local 138, 12 MLC at 1565-1566 (union acted in a perfunctory matter when
7 it did nothing to help process a grievance and had no explanation as why it did not
8 pursue the grievance).

9 We also find that the Association did not treat Church's request for an upgrade in
10 an arbitrary manner. A union's action is arbitrary if it is without a rational basis and
11 unrelated to legitimate union interests. International Brotherhood of Police Officers,
12 Local 338, 28 MLC at 288; Somerville Fire Fighters Association, 27 MLC at 47. Here,
13 the Association balanced Church's interest in receiving an upgrade against the interests
14 of other unit members in having a new successor agreement. A union must be afforded
15 a wide range of reasonableness in serving the unit that it represents. Massachusetts
16 State College Association and Jon Bryan, 24 MLC 1, 4 (1997). Even though Church did
17 not receive an upgrade in the 2002-2005 and the 2005-2008 Agreement, the
18 Association had a rational basis for agreeing to the contracts, because the agreements
19 were beneficial to other members of the bargaining unit.

20 Next, Church argues that the Association gave her inconsistent advice
21 concerning her upgrade request and that such inconsistent advice demonstrates bad
22 faith. In particular, Church points out that former Union president Mauro first told her in
23 March of 2003 to have her department head request an upgrade for her, but that Mauro

1 subsequently informed her on or about April 17, 2003 that the Town and the Union
2 needed to negotiate the matter. However, Mauro's advice changed because the Town
3 informed her that the Union needed to request the upgrade and Association counsel
4 McAuliffe notified her that the Town and the Association should negotiate the issue.
5 Additionally, Mauro previously had informed Church that she was unfamiliar with the
6 manner in which the Association had handled other unit members' requests for
7 upgrades. We will not infer arbitrariness or bad faith in the Association's decision-
8 making process simply because Mauro's initial determination about how the upgrade
9 process should take place may have been mistaken. See Teamsters, Local 437 and
10 James L. Serratore, 10 MLC 1467, 1477 (1984) (union did not act in an arbitrary or bad
11 faith manner when it negotiated a collective bargaining agreement that did not contain
12 seniority or recall provisions for provisional employees in the belief that it was illegal to
13 do so). Moreover, the Association had a rational basis for seeking to bargain with the
14 Town over Church's upgrade, because it was a possible change in a mandatory subject
15 of bargaining, i.e., an increase in the salary of a unit position. Finally, the record contains
16 no evidence showing that personal hostility motivated the Association's handling of
17 Church's upgrade request. Compare Graham v. Quincy Food Service Employees
18 Association, 407 Mass. 601, 609 (1990) (unit member showed a history of hostility and
19 animosity between herself and union officials concerning the running of the union that
20 arguably tainted the handling of her grievance) with American Federation of State,
21 County, and Municipal Employees and Daryl D. Dunlap, 27 MLC 113, 116 (2001)
22 (record devoid of any evidence showing that a union's decision to proceed on the first
23 grievance that an employee filed rather than a subsequent grievance was tainted by

1 personal hostility). Conversely, the Association demonstrated good faith and lack of
 2 hostility by its continuing attempts, which are described above, to secure an upgrade for
 3 Church. See International Brotherhood of Police Officers, Local 338, 28 MLC at 289
 4 (2002) (union demonstrated good faith and lack of hostility towards an employee, who
 5 had resigned his position but subsequently wanted to return to work, by assisting him in
 6 securing a job opening with the employer).

7 Conclusion

8 Based on the record and for the reasons stated above, we conclude that the
 9 Association did not violate Section 10(b)(1) of the Law. Accordingly, we dismiss the
 10 complaint of prohibited practice.

COMMONWEALTH OF MASSACHUSETTS
 DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT
 RELATIONS BOARD


 MARJORIE F. WITTNER, CHAIR


 ELIZABETH NEUMEIER, BOARD MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c.150E, Section 11, decisions of the Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.