

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

In the Matter of: *

COMMONWEALTH OF MASSACHUSETTS, *
COMMISSIONER OF ADMINISTRATION *
AND FINANCE *

Case No. SUP-07D-5371

and *

NEW ENGLAND POLICE BENEVOLENT *
ASSOCIATION, LOCAL 200 *

Date Issued:

December 31, 2008

Board members participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member

Appearances:

Jeffrey S. Bolger - Representing the Commonwealth of Massachusetts,
Commissioner of Administration and Finance

Kevin E. Buck, Esq. - Representing the New England Police Benevolent
Association, Local 200

ORDER ON RECONSIDERATION OF INVESTIGATOR'S ORDER OF DISMISSAL

Statement of the Case

1
2 The Commonwealth Employment Relations Board (Board) has reviewed the
3 order of dismissal that Investigator Ann T. Moriarty, Esq. (Investigator) issued in the
4 above-captioned case on February 26, 2008, and has decided to overturn that portion of
5 the order dismissing the first count of the above-referenced charge as untimely. On
6 December 5, 2007, the New England Police Benevolent Association, Local 200 (Union)
7 filed a charge of prohibited practice with the Division of Labor Relations (Division),

1 alleging that the Commonwealth of Massachusetts, Commissioner of Administration and
2 Finance (Commonwealth) had violated Section 10(a)(5) and, derivatively, Section
3 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: 1) unilaterally
4 implementing a procedure to audit rounds in two units of the correction facilities; and 2)
5 failing to bargain in good faith with the Union about the mandatory subjects of
6 bargaining impacted by the decision to audit rounds in two units of the correction
7 facilities.

8 Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of
9 2007, and Section 15.04 of the Division's rules, the Investigator conducted an in-person
10 investigation of these allegations on January 18, 2008. The parties filed additional
11 materials and legal argument with the Division on or before January 25, 2008. On
12 February 26, 2008, the Investigator dismissed that portion of the Union's charge
13 alleging an unlawful unilateral change on the ground that it was untimely. The
14 Investigator also dismissed for lack of probable cause the Union's claim that the
15 Commonwealth had refused to bargain post-implementation. On March 10, 2008, the
16 Union filed a timely request for reconsideration of the Hearing Officer's dismissal of the
17 unilateral change claim under Division Rule 456 CMR 15.04(3).¹

18 On reconsideration, the Union does not dispute that it filed the instant charge six
19 months after it "knew or should have known" of the alleged prohibited practice, which

¹ The Union did not seek review of the Investigator's dismissal of the second count of its charge, alleging a post-implementation refusal to bargain. Consequently, that issue is not before us.

1 concerned certain changes to the Department of Correction's (DOC) audit procedure.²
2 Instead, it notes that at some point before June 14, 2007, Ronald Duval (Duval),
3 Associate Commissioner of the DOC and an agent of the Commonwealth, told the
4 Union that the DOC would not raise timeliness as a procedural matter if the Union were
5 to file a charge of prohibited practice challenging the audit procedure. During the
6 bargaining session held on July 18, 2007, Duval again agreed to waive timeliness as an
7 affirmative defense, if the Union filed a charge. Based on these facts, the Union argues
8 that the Board should create an exception to the six-month limitation rule where the
9 parties agree to extend the time to file a charge of prohibited practice. The Union
10 alternatively argues that the parties' agreement constitutes good cause to excuse the
11 late filing under Section 15.03.

12 Consequently, this case squarely presents the issue of whether the Board would
13 agree to adopt a parties' agreement to waive the six-month period of limitations set forth
14 in Section 15.03, where that agreement was made before a charge was filed and before
15 the six-month period elapsed. The Board has not previously been faced with this
16 precise issue, which requires us to consider the nature of the Board's period of
17 limitations.

18 In recent years, the Board, relying on the Supreme Judicial Court's (SJC's)
19 observation that 456 CMR 15.03 is "phrased somewhat in the nature of a jurisdictional
20 test," has treated the timeliness of a charge as purely jurisdictional, requiring dismissal
21 of the charge in the absence of good cause shown. See Town of Raynham, 30 MLC

² Division Rule 456 CMR 15.03 (Section 15.03) states: "[e]xcept for good cause shown, no charge will be entertained by the Division based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Division."

1 56, 57 (2003), citing Boston Police Superior Officers Federation v. Labor Relations
2 Commission, 410 Mass. 890, 891, n. 1 (1991). See also National Association of
3 Government Employees, 33 MLC 162, 164-165 (2007); and City of Boston, 32 MLC
4 131, 132 (2006). However, this construction of Section 15.03 must be viewed in
5 conjunction with the line of Board decisions, issued both before and after the Boston
6 Police Superior Officers Federation decision, that treats timeliness as an affirmative
7 defense. See, e.g., Commonwealth of Massachusetts, 29 MLC 43, 46 (2002); Peabody
8 School Committee, 28 MLC 19, 20 (2001); City of Boston, 26 MLC 177, 181 (2000); and
9 Town of Wayland, 5 MLC 1738, 1741 (1979). In fact, less than one year after issuing
10 the Boston Police Superior Officers Federation decision, the SJC, in dicta,
11 acknowledged a respondent's burden of "pleading and proving an affirmative statute of
12 limitations defense before the Commission." Diane McCormick v. Labor Relations
13 Commission, et. al., 412 Mass. 164, 171, n. 13 (1992).

14 In light of the two lines of Board and judicial precedent described above, and
15 noting the more recent Board decisions that treat timeliness as strictly jurisdictional,
16 where a respondent raises the issue of timeliness as a defense to a charge, we will
17 require the respondent to prove that claim by a preponderance of the evidence. That
18 Section 15.03 may be phrased "somewhat in the nature of" a jurisdictional prerequisite
19 is not enough, in our opinion, to depart from this otherwise long-standing precedent,
20 particularly where the legal nature of the period of limitations was not at issue in Boston
21 Police Superior Officers Federation v. Labor Relations Commission. Cf. Zipes v. Trans
22 World Airlines, Inc., 455 U.S. 385, 395 (1982) (fact that earlier Supreme Court decisions
23 had deemed the timely filing of EEOC charges as a jurisdictional prerequisite to filing a

1 claim in District Court did not prevent the Court from concluding that the requirement
2 was not jurisdictional, where it was consistent with other case law and where the legal
3 nature of the requirement was not at issue in those cases referring to the requirement
4 as jurisdictional). Treating Section 15.03 as more in the nature of a statute of
5 limitations, subject to waiver, estoppel and equitable tolling, and not purely jurisdictional,
6 allows the Board, among other things, to give effect to good faith agreements to waive
7 the six-month period of limitations or other like agreements concerning the methods and
8 procedures used to resolve a dispute, consistent with the Division's statutory mission
9 set forth in M.G.L c. 23, §90. That section of the Law requires the Division to "take
10 such steps as will most effectively and expeditiously encourage the parties to a labor
11 dispute to agree on the terms of a settlement or to agree on the method of procedure
12 which shall be used to resolve a dispute" and further recognizes that a "constructive and
13 harmonious long-term collective bargaining relationship is the most positive way to
14 avoid labor disputes."

15 In deciding this case, however, we must also recognize the public policy
16 articulated in M.G.L. c. 23, §90, that "the best interest of the people of the state are
17 served by the prevention or prompt settlement of labor disputes" and that the purpose of
18 Section 15.03's period of limitations is to avoid stale claims. See Miller v. Labor
19 Relations Commission, 33 Mass. App. Ct. 404, 408 (1992). Accordingly, where, as
20 here, an employer or union expressly agrees not to raise the six-month period of
21 limitations as an affirmative defense, and where such agreement was made before the
22 charge was filed, we will generally give effect to that agreement. Under those
23 circumstances, the risks attendant with stale or less than prompt adjudication of claims,

1 are, as a matter of policy, outweighed by the benefits of giving effect to parties' express
2 agreements regarding the method and procedure to resolve their labor dispute.

3 However, if, in the course of investigating a charge of prohibited practice, there is
4 reason to believe a charge is untimely, the issue may be raised with the parties. The
5 Board's duty to ensure prompt resolution of labor disputes and avoid litigation of stale
6 claims requires no less. See M.G.L. c. 23, §90; Miller v. Labor Relations Commission,
7 supra. See also, M.G.L. c. 150E, §11, as amended by Section 7(b) of Chapter 145 of
8 the Acts of 2007 (requiring investigators to "promptly meet with the parties" to "clarify
9 and narrow the issues" before a complaint is forwarded to hearing).

10 Consequently, our holding in this case is limited to the narrow set of
11 circumstances where a potential respondent to a prohibited practice knowingly and
12 expressly agrees not to raise the period of limitations as a defense to a charge in
13 advance of the charge being filed. If these facts are adduced during the course of an
14 investigation, the Board will give effect to that agreement where, as here, concerns
15 about staleness are not present.³

16 We therefore reverse the Investigator's dismissal of the first count of the charge
17 and remand this matter to the Investigator to decide whether the evidence is sufficient to
18 establish probable cause that the Commonwealth unilaterally implemented a procedure

³ In so holding, we do not find that the agreement between the parties constitutes "good cause" to treat the charge as timely. At the time the Commonwealth agreed to waive timeliness as an affirmative defense, the Union knew or should have known that the Board was treating the period of limitations as a jurisdictional prerequisite to agency action. See City of Boston, 32 MLC 131, 132 (2006); Town of Raynham, 30 MLC 56 (2003). It is well-established that a charging party's ignorance of its rights under the Law does not constitute good cause to excuse the untimely filing of a charge. Miller v. Labor Relations Commission, 33 Mass. App. Ct. at 408.

- 1 to audit rounds in two units of the corrections facilities, in violation of Sections 10(a)(5)
- 2 and, derivatively, Section 10(a)(1) of the Law.
- 3 **SO ORDERED**

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD


MARJORIE F. WITTNER, CHAIR


ELIZABETH NEUMEIER, BOARD MEMBER

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of M.G.L. c.150E, §11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L. c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision.** No Notice of Appeal need be filed with the Appeals Court.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS

In the Matter of:

COMMONWEALTH OF MASSACHUSETTS,
COMMISSIONER OF ADMINISTRATION

and

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION, LOCAL 200

*
*
*
*
*
*
*
*

Case No. SUP-07D-5371

Date Issued:

February 26, 2008

Investigator:

Ann T. Moriarty, Esq.

Appearances:

Jeffrey S. Bolger - Representing the Commonwealth of Massachusetts,
Commissioner of Administration

Kevin E. Buck, Esq. - Representing the New England Police Benevolent
Association, Local 200

ORDER OF DISMISSAL

On December 5, 2007, the New England Police Benevolent Association, Local 200 (Union) filed a charge of prohibited practice with the Division of Labor Relations (Division), alleging that the Commonwealth of Massachusetts, Commissioner of Administration (Commonwealth) had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: 1) unilaterally implementing a procedure to audit rounds in two units of the correction facilities; and 2) failing to bargain in good faith with the Union about the mandatory subjects of bargaining impacted by the decision to audit rounds in two units of the correction facilities.

Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.04 of the Division's rules, I conducted an in-person investigation of these allegations on January 18, 2008. The parties filed additional materials and legal argument with the Division on or before January 25, 2008. Based on the evidence adduced during the investigation, I have decided to dismiss the charge for the reasons explained below.

The Union is the exclusive representative for all captains employed by the Commonwealth in its Department of Correction (DOC). William Ryan (Ryan) and Shawn Dewey (Dewey) are correction officers employed by the Commonwealth's DOC. Both Ryan and Dewey hold the rank of captain. Ryan is the Union's President, and Dewey is the Union's Vice-President. Ronald Duval (Duval) is an Associate Commissioner of the DOC and an agent of the Commonwealth.

In or about July of 2006, the DOC contracted with a vendor to review its policies and procedures concerning suicide prevention in its facilities. On January 31, 2007, the vendor issued its report. On February 12, 2007, the DOC issued a corrective action plan that addressed the recommendations contained in the report. The report and the DOC's plan included a recommendation that correction officers conduct and document thirty-minute rounds of certain housing units and fifteen-minute rounds of health services units. The report and the plan also recommended that the DOC conduct frequent audits of the identified units to ensure that the correction officers conducted the rounds.

On or about April 18, 2007, the DOC's Souza Baranowski Correctional Center (Correctional Center) issued a written direction to its staff for auditing and reporting

mandatory security rounds in the special management unit and the health services unit (Audit Procedure). Dewey is a captain at the Correctional Center and received the Audit Procedure on or about April 18, 2007. About twelve other major DOC facilities issued and distributed the same or a substantially similar written audit procedure before the end of April 2007.

Under the Audit Procedure, the Director of Security (DOS) at the Correctional Center weekly obtains the video surveillance tapes and the unit activity logs for a four-hour timeframe for each shift for the two specified units on a specified day of the week. The Audit Procedure next provides that a captain or above shall review and match the information on the video surveillance tapes and the entries in the unit activity logs. The audit's purposes are to confirm that the correction officers conducted the rounds within the required time frames in the two units, and that the time of the rounds on the video tape clock corresponds with the time entered by the correction officers in the unit activity logs. The Audit Procedure also requires the captain to complete a security round audit form that the captain sends to the DOS with a cover letter stating whether there are discrepancies between the tapes and the logs. If there are discrepancies, the DOS assigns a captain to investigate. If the DOC facility does not have video surveillance cameras, the audit procedure requires a captain to personally monitor the correction officers performing the rounds and making the requisite activity log entries for four hours on each shift in each of the two units on a weekly basis.

Captains began performing the above-described weekly audit work at some of the DOC facilities, including the Correctional Center, at the end of April of 2007. Prior to implementing the audit procedure described above, the DOC did not have a formal

procedure for auditing the rounds in these two units. Prior to the end of April of 2007, captains did not weekly review about twenty-four hours of video surveillance tape and compare that information with the printed activity log entries. Further, prior to the end of April of 2007, captains who worked in a correction facility that did not have video surveillance cameras did not personally monitor the correction officers performing the requisite rounds for four hours on each shift in each of the two units on a weekly basis.

Before the end of April of 2007, the captains regularly and routinely visited the two units included in the audit procedure during their respective shifts. However, unless a lieutenant or sergeant, who primarily oversee the correction officers conducting the rounds in these two units, brought an issue to their attention for action, the captains did not regularly and routinely review the two units' activity logs. It takes a captain about five hours a week to complete the audit in those facilities where there are video surveillance cameras. The DOC has issued a letter of reprimand to a captain for failing to complete the audits as prescribed after April of 2007.

By letter dated June 14, 2007 from Ryan to Duval, the Union demanded that the DOC rescind the audit procedure and bargain with the Union concerning the change. In addition to this written demand to bargain, the Union discussed the audit procedure with Duval either shortly before or shortly after June 14, 2007. During this meeting, the Union told Duval that the audit work was taking about four to five hours to complete, and that the work fell more within the duties of a lieutenant or a sergeant. Duval was receptive to the Union's points and told the Union that he would discuss the issue with the command staff. The DOC did not change the audit procedure in response to the Union's request, and the captains continue to perform the audit work described above.

Subsequently, the Union and the DOC met and bargained over the implementation of the audit procedure on at least two other occasions: July 18, 2007 and October 3, 2007. During the meetings, the Union proposed that all captains report for duty one-half hour before the beginning of their shift, and that the DOC pay the captains at the negotiated overtime rate of pay for these additional 2.5 hours each week. If the DOC agreed to this proposal, the Union stated that it would drop its objections to the audit procedure. The DOC rejected that proposal. The Union has not submitted any other bargaining proposals to the DOC and has not requested other dates from the Commonwealth for the purposes of continued negotiation over this issue.

During a telephone conversation between Duval and Ryan that occurred before June 14, 2007, Duval told the Union that the DOC would not raise timeliness as a procedural matter, if the Union were to file a charge of prohibited practice challenging the audit procedure. During the bargaining session held on July 18, 2007, Duval agreed to waive timeliness as an affirmative defense, if the Union were to file a charge.

Unilateral Change

Section 15.03 of the Division's rules provides that: "[e]xcept for good cause shown, no charge will be entertained by the Division based upon any prohibited practice occurring more than six months prior to the filing of a charge with the Division." The six-month limitation period begins to run from the date the charging party knew or should have known of the alleged unlawful conduct. Felton v. Labor Relations Commission, 33 Mass. App. Ct. 926 (1992). In Town of Raynham, 30 MLC 56 (2003), the

Commonwealth Employment Relations Board (Board)¹ stated:

Limitations periods can be treated as “affirmative defenses” or as jurisdictional predicates to agency action. The “no charge shall be entertained” part of regulation provides notice that 15.03 is jurisdictional. That reading is confirmed by the Supreme Judicial Court, which notes that 15.03 is “phrased somewhat in the nature of a jurisdictional test.”²

Following the Raynham decision, the Board has treated the timely filing of a charge of prohibited practice under Division Rule 15.03 as a jurisdictional prerequisite to agency action. National Association of Government Employees, 33 MLC 162, 164-165 (2007); City of Boston, 32 MLC 131, 132 (2006).

Adherence to the established Board precedent requires me to dismiss the Union’s unilateral change allegation as untimely filed. The Board has determined that the six-month period of limitations begins to run when the adversely affected party receives actual or constructive notice of the conduct alleged to be an unfair labor practice. Town of Lenox, 29 MLC 51, 52 (2002). The facts establish that the Union had actual notice of the audit procedures on or about April 18, 2007, and that some captains started performing the audits at the end of April of 2007. Although the DOC agreed not to raise timeliness as an affirmative defense, Division Rule 15.03 is a jurisdictional test

¹ Pursuant to Chapter 145 of the Acts of 2007, the Division “shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission.” References in this dismissal order to the Board include the former Labor Relations Commission (Commission).

² Boston Police Superior Officers Federation v. Labor Relations Commission, 410 Mass. 890, 891 n. 1 (1991).

that cannot be waived by the parties' agreement.³ Even viewing the DOC waiver as a knowing and unequivocal oral agreement to toll the six-month limitations period, the outcome would not be different. Because the Union filed this charge alleging a unilateral change in bargaining unit members' terms and conditions of employment on December 5, 2007, over six months after the Union had actual notice of the alleged change, this allegation is time-barred, unless there exists good cause to excuse the late filing.

The Union next argues that its reliance on the DOC's agreement to waive the time limits to the filing of a charge falls within the good cause exception to Division Rule 15.03. The Union asserts that the DOC agreement may act to equitably toll the limitations period because, but for the parties' agreement, the Union would have timely filed its charge. "Equitable tolling is used only sparingly and is generally limited to specified exceptions," like excusable ignorance or where the defendant has affirmatively misled the plaintiff. Shafnacker v. Raymond James & Associates, Inc., 425 Mass. 724, 728 (1997) (citations omitted).

Here, even assuming that claims arising under the Law are subject to equitable tolling, the information does not establish that the Commonwealth engaged in any conduct that tricked or deceived the Union into failing to timely filing a charge. Further,

³ My research of published Board precedent did not locate a decision that addressed whether, and under what circumstances, the Board would adopt the parties' agreement and waive the jurisdictional prerequisite for agency action. See, Division Rule 15.03. On this specific procedural issue, I decline to craft an exception to the strict application of the jurisdictional test at the investigatory stage of the case, because that action would not be subject to Board review until after the Division and the parties expended resources litigating the underlying claim. My determination here is subject to direct review by the Board.

a charging party's ignorance of their rights under the Law does not constitute good cause to excuse the untimely filing of a charge. Miller v. Labor Relations Commission, 33 Mass. App. Ct. 404 (1992) (lack of knowledge of a potential remedy does not excuse a procedural misstep); see also, Wakefield School Committee, 27 MLC 9 (2000) (union's decision to wait until final denial of a grievance did not constitute good cause for late filing of prohibited practice charge). By extension, a party's lack of knowledge that the timely filing of a charge of prohibited practice under Division Rule 15.03 is a jurisdictional prerequisite to agency action does not constitute good cause to excuse the untimely filing of a charge. See, City of Boston, 32 MLC at 132 (ignorance of the Board and its rules does not excuse the untimely charge). Therefore, the Union's reliance on the Commonwealth's waiver of the time limits for the filing of this unilateral change claim does not constitute good cause to excuse the untimely filing, and it is dismissed as time-barred.⁴

Refusal to Bargain Post-Implementation

Section 6 of the Law requires a public employer and a union to meet at reasonable times to negotiate in good faith over wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but does not compel either party to agree to a proposal or to make a concession. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983). The Board examines the totality of the parties' conduct, including acts away from the bargaining table, to

⁴ Because the Union's unilateral change allegation is untimely filed, it is unnecessary to decide whether the evidence is sufficient to establish probable cause to believe that the alleged unlawful conduct violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

assess whether a public employer or a union has bargained in good faith pursuant to Section 10(a)(5) of the Law. Higher Education Coordinating Council, 25 MLC 69 (1998), citing, King Phillip Regional School Committee, 2 MLC 1393 (1976). The duty to bargain in good faith requires the parties to enter into negotiations with an open mind and a sincere desire to reach an agreement and to make reasonable efforts to compromise their differences. Boston School Committee, 25 MLC 181, 187 (1999). The Board has decided that an increase or change in employees' job duties, Town of Somerset, 31 MLC 47, 48 (2004); Peabody Municipal Light Department, 28 MLC 88, 89 (2001) (citations omitted), and workload, Commonwealth of Massachusetts, 27 MLC 70, 72 (2000), are mandatory subjects of bargaining. Further, Section 6 of the Law requires public employers to negotiate with their employees' exclusive bargaining representatives over standards of productivity and performance. See, e.g., Commonwealth of Massachusetts, 18 MLC 1161, 1165 (1991) (performance evaluation criteria is a mandatory subject of bargaining).

Here, the facts demonstrate that, on or about June 14, 2007, the Union demanded that the Commonwealth bargain over the mandatory subjects of bargaining impacted by the Commonwealth's decision to audit rounds in two units of its correction facilities. The facts also establish that the Commonwealth responded affirmatively to the Union's demand, and the parties met and bargained over the implementation of the audit procedure on at least two occasions. Although the Commonwealth did not accede to the Union's singular monetary proposal during either session, there is no evidence that the Commonwealth's stance on this one Union proposal, without more, constitutes bad faith bargaining in violation of the Law. It is undisputed that the Union has not

submitted any other proposals to the Commonwealth, or that the Union has requested more bargaining sessions and the Commonwealth has refused to meet at reasonable times and places. Therefore, the evidence is insufficient to establish probable cause to believe that the Commonwealth has refused to bargain in good faith in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law, and that portion of the Union's charge is also dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF LABOR RELATIONS



ANN T. MORIARTY, INVESTIGATOR

*The charging party may, within ten (10) days of receipt of this order seek a review of the dismissal by filing a request with the Commonwealth Employment Relations Board, pursuant to Division Rule 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. Within seven (7) days of receipt of the charging party's request for review, the respondent may file a response to the charging party's request.