

# Commonwealth of Massachusetts Department of Labor Relations

## **FY2012 ANNUAL REPORT:**



*July 1, 2011 - June 30, 2012*

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## **TABLE OF CONTENTS**

|                                                               |    |
|---------------------------------------------------------------|----|
| EXECUTIVE SUMMARY .....                                       | 3  |
| OVERVIEW OF DLR SERVICES .....                                | 5  |
| 1. Processing Prohibited Practice Charges.....                | 5  |
| 2. Hearings and Appeals .....                                 | 5  |
| 3. Representation Issues .....                                | 6  |
| 4. Labor Dispute Mediation .....                              | 7  |
| 5. Grievance Arbitration .....                                | 8  |
| 6. Investigation, Prevention and Termination of Strikes ..... | 9  |
| 7. Litigation.....                                            | 9  |
| 8. Other Responsibilities.....                                | 9  |
| SELECTED CERB DECISIONS JULY 1, 2011 TO JUNE 30, 2012.....    | 11 |
| STATISTICAL REPORTS .....                                     | 15 |
| STAFF LIST .....                                              | 19 |
| ADVISORY COUNCIL.....                                         | 20 |
| BUDGET.....                                                   | 21 |
| FISCAL YEAR 2013 GOALS .....                                  | 22 |

## **EXECUTIVE SUMMARY**

On November 14, 2007, pursuant to [Chapter 145 of the Acts of 2007](#), the legislature reorganized the Commonwealth's neutral labor relations agencies into the Department of Labor Relations (DLR). On March 11, 2011, under Chapter 3 of the Acts of 2011, "An Act Reorganizing the Executive Office of Labor and Workforce Development," the DLR's name was changed from the Division of Labor Relations to the Department of Labor Relations.

The DLR protects employees' rights to organize and choose bargaining representation and ensure that employers and unions benefit from, and comply with, the Commonwealth's collective bargaining statutes. To carry out this mission, the DLR conducts elections, hears representation cases, investigates and hears unfair labor practice cases, resolves labor disputes through mediation and arbitration, and issues orders for cases that parties are unable to resolve through alternative dispute resolution methods. The DLR includes 1) hearing officers, mediators and support staff, and 2) the Commonwealth Employment Relations Board (CERB), the appellate body responsible for reviewing hearing officer orders and issuing final decisions, and 3) the Joint Labor Management Committee (JLMC), a committee including labor and management representatives, which uses its procedures to encourage municipalities and their police officers and fire fighters to agree directly on terms to resolve their collective bargaining disputes or on a procedure to resolve these disputes.

As reflected in the charts found later in this report, during the past fiscal year, the DLR opened 871 new cases and closed 963 cases. The majority of those cases are unfair labor practice cases. Using the DLR's previous case processing management system, it was impossible for the DLR to track important data concerning these cases as they progressed through the agency. During this past year, the DLR introduced its new case management software system, allowing it to identify where case delays are occurring and the DLR is responding to this data with additional staff, working in a targeted and defined role.

Starting at the end of the fiscal year, the DLR began hiring Counsel I hearing officers to handle all probable cause investigations. Previously all DLR Counsel II hearing officers were expected to process unfair labor practice cases at each stage. Unfortunately this use of staff led to considerable delay because hearing officers were unable to spend needed time on hearing officer decisions while attempting to quickly process probable cause determinations. Now, the Counsel II hearing officers are able to more efficiently schedule hearings and write decisions, while the Counsel I hearing officers issue probable cause determinations within four weeks and often within two weeks of investigation. In next year's report, the DLR will be able to identify with precision how much more efficiently this division of labor works.

The DLR also gained increased efficiency in its mediation services during the past fiscal year by using the same mediators for its municipal police and fire JLMC cases and its other contract mediation cases. Thus generally the same mediators are facilitating settlements in the same geographic locations, thereby saving travel and related expenses and establishing

relationships in the Commonwealth's cities and towns with the goal of intervening in labor disputes before they become DLR cases.

During this past year, the DLR has required of its stake holders that they use the DLR resources more carefully by implementing stricter postponement procedures in investigations, mediations and hearings. This has greatly increased the DLR's case handling efficiency.

During the past fiscal year, the CERB published 20 final decisions and rulings and decided 31 requests for review of Investigator pre-hearing dismissals.

During the past fiscal year, there were 63 JLMC cases filed.

The DLR offers a myriad of services to accomplish its mission, including those listed below.

- 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

In FY 2013 the DLR plans to introduce a new case handling impact analysis system to further increase the DLR's case-handling efficiency. This new case processing system allows the DLR to differentiate cases based upon their relative impact to the public. Cases where resolution of the dispute has the greatest urgency will be processed more quickly than those with less urgency for investigation and then for hearing. The DLR will also require parties to engage in mandatory mediation for all high impact cases. The DLR also plans to introduce electronic filing in FY 2013 to further increase the DLR's efficiency.

## **OVERVIEW OF DLR SERVICES**

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

### **1. Prohibited Practice Charges Initial Processing and Investigation**

As mentioned above, the majority of DLR cases are unfair labor practice cases filed pursuant to G.L. c. 150A or G.L. c. 150E. Charges of prohibited practice may include various allegations, including for example, allegations that an employer 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.

After an initial review to determine if the case is properly before the DLR and that it meets the DLR filing requirements, the Director will first determine whether the case be deferred to the parties' own contractual grievance procedure. If the Director determines that the case is properly before the DLR, she will order that an investigation take place to determine whether the charge is supported by probable cause.

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 expect the parties to present evidence from individuals with first-hand knowledge during the probable cause investigation. 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.

After the record is closed, the investigator will issue the probable cause determination, which is generally a written dismissal or a Complaint of Prohibited Practice. The investigator could direct the charge to an alternative dispute resolution mechanism (including deferral to the parties' grievance/arbitration procedure). 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 probable cause determination is a Complaint of Prohibited Practice, 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 DLR 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.

### **2. Hearings and Appeals**

After a Complaint of Prohibited Practice is issued, the parties schedule a hearing before a DLR-designated Hearing Officer. The DLR requires that the parties file a Joint Pre-Hearing

Memorandum and requests that the parties attend a Pre-Hearing Conference in order to clarify the issues for hearing.

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 a 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 file briefs with the CERB in support of their respective positions. After review of the record and consideration of the issues, the CERB then issues its decision. Once the CERB issues its decision, the decision is final and can be appealed to the Massachusetts Appeals Court.

The DLR attorneys are authorized by statute to defend the CERB decisions at the Appeals Court.

### **3. Representation Issues**

In all cases that involve representation issues, i.e. representation (or decertification) petitions, written majority authorization petitions, and unit clarification cases, the DLR 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 DLR assists and encourages the parties to reach agreement concerning an appropriate unit. In FY12, the DLR resolved approximately 85% of its representation cases through voluntary agreement over the scope of the bargaining unit. When no agreement is reached, however, a DLR hearing officer conducts a hearing after which the hearing officer issues a written decision either dismissing the petition or defining the bargaining unit and directing an election. These decisions can be appealed to the CERB but there is no court appeal.

#### **a. Representation Petitions and Elections**

The DLR 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 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 accompanied by an adequate showing of interest, alleging that a substantial number of employees wish to be represented by the petitioner; or 3) an individual files a petition accompanied by an adequate showing of interest, 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 DLR conducts elections either on location or by mail ballot.

In FY12, the DLR docketed 46 representation petitions and conducted 18 elections, involving 2,367 voters. A graph detailing these representation elections is available in the Case Statistic section of the Report. On two occasions in FY12, the DLR, through the CERB, issued decisions concerning whether charges of prohibited practice blocked an election in the petitioned for bargaining unit.

**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 DLR (or a designated neutral) with proof of majority support (50% plus one) of an appropriate bargaining unit will be certified by the DLR as that bargaining unit’s exclusive bargaining representative without an election. The DLR 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 DLR seeks to work with the parties to expedite all WMA petitions.

In FY12, 19 written majority authorization petitions were filed. The DLR issued certifications in 13 of those petitions. A graph detailing the written majority authorization certifications issued in FY12 is 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 DLR seeking to clarify or amend an existing bargaining unit or a DLR certification. Currently, the DLR investigates such petitions through a written investigation procedure and the CERB 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 FY12, the DLR received fourteen (14) CAS petitions.

**4. Labor Dispute Mediation**

One of the most important services offered by the DLR is labor dispute mediation in both the public and the private sectors. The DLR’s mediation services can be categorized as follows:

**a. Interest Mediation**

Interest mediation is contract negotiation mediation. 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, though contract disputes involving municipal police and fire fighters are mediated through the procedures and rules adopted by the JLMC. 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. The laws the DLR enforces provide a roadmap of what occurs if negotiations breakdown. In all public sector cases, except those involving police and fire, the next step is fact finding and the DLR maintains a panel of private neutrals to provide fact-finding services. In JLMC cases, the next step is arbitration and the JLMC maintains a panel of private neutrals to provide private arbitration services.

**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, the JLMC and the LRC. Since the reorganization, the DLR affords the parties numerous opportunities, both formal and informal, to avail themselves of the DLR's mediation services.

**c. Grievance Mediation**

The DLR provides mediation services to parties who desire to mediate grievances arising out 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.

**5. 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 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 issues an award.

## **6. 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 DLR for an investigation. The DLR immediately schedules and investigation of the allegations contained in the petition and the CERB decides whether an unlawful strike has occurred or is about to occur. If the CERB finds unlawful strike activity, the CERB issues a decision directing the striking employees to return to work. The CERB may issue additional orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the CERB'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.

## **7. Litigation**

As noted above, parties in prohibited practice cases issued by the DLR 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 the DLR's Chief Counsel defends the CERB decision on appeal. Although a rare occurrence, M.G.L. c.150E also authorizes the DLR to seek judicial enforcement of its final orders in the Appeals Court or of its interim orders in strike cases in Superior Court. DLR attorneys represent the DLR and the CERB in all litigation activities.

## **8. 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 DLR to order grievance arbitration. These "Requests for Binding Arbitration" (RBA) are processed quickly by the DLR to assist the parties to resolve their grievances.

### **b. Information on Employee Organizations**

Pursuant to M.G.L. c. 150E, §§ 13 and 14, the DLR 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 DLR 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 its officers. Although M.G.L. c. 150E authorizes the DLR to enforce these annual filings by commencing an action in the Superior Court, the DLR's current resources prohibit such action. Instead, by regulation, the DLR 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 DLR 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 DLR'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 DLR makes formal and informal presentations before various bar associations, union meetings, and employer association groups.

**Selected CERB Decisions**  
**July 1, 2011 – July 1, 2012**

**Section 10(a)(5) – Duty to Bargain**

City of Somerville and Somerville School Committee, and Somerville Teachers Association, et. al.,<sup>1</sup> MUP-09-5613, MUP-09-5614, MUP-09-5735, MUP-10-5765, MUP-10-5766, MUP-10-5833, 38 MLC 91 (October 19, 2011).

The CERB decided this case in this first instance on a stipulated record. The issue was the extent of the City of Somerville's obligation to bargain before unilaterally reducing its contribution rate to retiree health insurance plan premiums. Because the future retirement benefits of existing bargaining unit members are mandatory subjects of bargaining, the CERB concluded that the City violated M.G.L. c. 150E, §10(a)(5) when it implemented these changes without first bargaining with the unions to resolution or impasse. The CERB rejected the Employer's contention that, under M.G.L. c. 32B, retiree health insurance contribution rates must be determined at the local government level and bargaining would usurp the local process. The CERB reasoned that although Chapter 32B may make bargaining more complex, in the absence of a clear conflict between Chapter 32B and Chapter 150E, the bargaining obligation is not superseded. The CERB found no such conflict here because nothing in the statute precluded the City from first bargaining with its unions over its decision to increase or decrease the existing premium, as long as it continued to pay at least 50%. Judicial appeal pending.

City of Taunton and Public Employees Local Union, 1144(a) of the Laborer's International Union of North America, MUP-06-4836 and MUP-08-5150, 37 MLC 205 (May 19, 2011), *aff'd* 38 MLC 96 (November 2, 2011).

The CERB affirmed the Hearing Officer's conclusion that the City of Taunton had unlawfully failed to bargain to resolution or impasse before implementing a time clock and surveillance camera system in the DLR of Public Works' (DPW) garage. The CERB also affirmed that the City had a duty to impact bargain before requiring employees to execute CORI releases as a condition of continued employment.

The Hearing Officer's findings revealed that the City had not previously required DPW employees to punch a time clock or record their arrival and departure times while being observed by surveillance cameras. Furthermore, the system's implementation was accompanied by standards that, among other things, imposed discipline for anyone found tampering with the equipment or punching in for other employees. Under these circumstances, the CERB held that, in contrast to the facts in Duxbury School Committee, 25 MLC 22 (1998), the new time clock and surveillance system constituted an actual change affecting terms and conditions of employment, and not merely a more efficient means of monitoring employee arrival and departure times. With respect to CORI, the CERB determined that, although the City had been authorized to receive CORI information about current employees, it was still required to bargain

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<sup>1</sup> Somerville Administrators Association, Somerville Municipal Employees Association, Somerville Police Superior Officers Federation.

about the means it would use to obtain releases from employees and how it will use the information.

City of New Bedford and AFSCME, Council 93, AFL-CIO, MUP-09-5581, MUP-09-5599, 39 MLC 117 (November 17, 2011), *aff'd* 38 MLC 239 (April 3, 2012).

On cross-appeals from the City of New Bedford and AFSCME, Council 93, the CERB affirmed in part and reversed in part, the Hearing Officer's decision. This dispute began when AFSCME Council 93 (Union) brought charges alleging that the City of New Bedford (City) violated its statutory duty to bargain in good faith by implementing layoffs and furloughs in the wake of municipal budgetary shortfalls and statewide cuts in local aid that first arose in fiscal years 2009 and 2010.

The CERB affirmed the Hearing Officer's dismissal of Counts I and II, finding that the City did not repudiate a 2008 settlement agreement or unlawfully refuse to bargain when it implemented February 2009 layoffs. The CERB partially affirmed and partially reversed her conclusions as to Count III. In particular, the CERB reversed that aspect of the Hearing Officer's decision determining that, pursuant to Boston Housing Authority v. National Conference of Firemen and Oilers, Local 3 (BHA), 458 Mass. 155 (2010), the collective bargaining agreement was not in effect when the City failed to provide the Union with notice and opportunity to bargain before implementing half-day furloughs in August 2009. The CERB disagreed with the Hearing Officer's conclusion that BHA had retroactive effect. It therefore proceeded to analyze whether the management rights and other clauses permitted the City to implement the furloughs without bargaining. The CERB affirmed the Hearing Officer's conclusion that they did not. As to the City's other affirmative defenses, the CERB affirmed the Hearing Officer's conclusion that, although the decision to close City offices to the public one-half day per week was a level of services decision that did not require bargaining, the City remained obligated to bargain over the means and methods by which it sought to achieve the change. The CERB rejected the City's economic exigency defense on grounds that the City had not met its burden of demonstrating that it gave the Union advance notice of a deadline for negotiating about the proposed furlough or a commitment to fully maximize the time available for negotiations. The CERB finally affirmed the Hearing Officers' ruling as to Count IV, that the City violated its obligations under Section 10(a)(6) of the Law by implementing the furloughs while a Section 9 petition was pending. Judicial cross-appeals pending.

### **Duty of Fair Representation**

American Federation of State, County and Municipal Employees, Council 93, Local 1700 and Justin B. Chase, MUPL-07-4581, 38 MLC 146 (November 30, 2011), *aff'd* 38 MLC 280 (May 18, 2012).

The CERB affirmed in part and reversed in part a Hearing Officer decision holding that the Union violated its duty of fair representation by failing to file a grievance on behalf of the charging party in response to his request for assistance and by failing to investigate of the circumstances of his layoff and contractual displacement rights. The Board reversed that portion of the decision concluding that the Union had breached its duty of fair representation with

respect to any actions take prior to his request for assistance. Absent improper motivation or disparate treatment, a union does not violate its duty of fair representation to its members when it fails to independently investigate potential contract violations in the absence of a request to do so. The CERB further reversed that portion of the decision holding that the Union's investigation of the charging party's contractual bumping/displacement rights was either perfunctory or grossly negligent. The CERB held that the union's inquiries to both labor and management representatives was sufficient to determine the Charging Party's title and relative seniority. The CERB affirmed the Hearing Officer's determination that the Union acted perfunctorily in its response to the Charging Party's November 30, 2006 request for assistance when, without first conducting an investigation into whether the contractual conditions precedent for laying him off had been met, i.e., a vote at town meeting not to fund the position, the union representative told the Charging Party's mother that her son had no viable layoff grievance. Judicial cross-appeals pending.

### **Representation and Unit Clarification Matters**

Town of Bourne and International Association of Firefighters, Local 1717, CAS-10-3756, 38 MLC 25 (July 22, 2011). The CERB dismissed a unit clarification petition filed by the Town of Bourne seeking to sever the fire DLR's lieutenants and deputy chiefs (Officers) from the existing firefighter unit. The parties did not dispute that there had been no significant changes to the disputed titles' duties or the fire DLR's structure or operations in over forty years. The Town argued, however, that the Officers' continued presence in the unit created actual and potential intra-unit conflicts. The Town further alleged that the Officers were abrogating their oversight responsibilities. Noting that under M.G.L. c. 150E, §3, the Officers could not be excluded from bargaining units on the ground that they were professional, confidential, administrative or managerial employees, the CERB concluded that, in the absence of material change, the evidence presented was insufficient to render the existing unit inappropriate as a matter of Law.

Town of Tyngsborough and Local 888, SEIU, CAS-11-3762, 38 MLC 140 (November 23, 2011)

The issue before the CERB was whether to grant the Town of Tyngsborough's petition to sever the Town Accountant and Town Treasurer from a "mid-management" bargaining unit. The Town asserted that the incumbents in both positions developed and recommended financial and budgetary policy and should be excluded from its unit as managerial and/or confidential employees. The Town further claimed that the disputed titles' continued membership in the bargaining unit impeded the Town from using their financial expertise to the full extent necessary to cost out collective bargaining proposals and to analyze related confidential collective bargaining information.

The CERB dismissed the petition. The CERB concluded that the incumbents were not managerial or confidential employees within the meaning of M.G.L. c. 150E, §1. Although both employees prepared financial analyses, there was no evidence that they formulated fiscal or health insurance policy. The evidence did not show that either the Town Accountant or the Town Treasurer had access to the Town's bargaining proposals in advance of the union or that they costed out the Town's bargaining proposals. Rather the Town Administrator had performed this duty since 2004, when the Town voluntarily recognized the mid-management bargaining

unit that included both disputed titles. In the absence of evidence that the disputed employees were currently performing managerial or confidential duties, the CERB dismissed the petition.

City of Boston, Boston Police Detective Benevolent Society (BPDBS), SEIU, Local 888 and Antonios S. Eliopoulos (Eliopoulos), MCR-06-5205, 39 MLC 157 (December 27, 2011).

The petitioner, a Forensic Video Analyst (FVA) employed by the City of Boston in its Police DLR and a member of SEIU's city-wide bargaining unit, sought inclusion in a professional unit of civilian employees represented by the Boston Police Detectives Benevolent Society. That unit, which was comprised of employees with criminalist and forensics titles, was certified by the DLR in 2009, after hearing and election. See City of Boston, 36 MLC 29 (2009). The CERB treated the petitioner's request as a motion for reinvestigation of certification pursuant to 456 CMR 14.15 and conducted a hearing. The sole issue for hearing was whether the petitioner was a professional employee within the meaning of Section 1 of the Law. The petitioner argued that he met the requisite statutory criteria. The other parties disagreed.

The CERB's analysis focused on the fourth element of the professional status test, which requires advanced and specialized studies in a field of higher learning. Although the FVA job description required a specialized Bachelor's degree, the petitioner, the title's sole incumbent, did not possess a Bachelor's degree in a specialized field. Where there was no evidence that the petitioner's job performance had been impeded by failure to meet the job's stated requirements, the CERB was unable to conclude that the petitioner was performing work that required at least three years of higher education leading to a specialized degree. Instead, the CERB concluded that the petitioner met the criteria for a technical employee, set forth in Massachusetts Turnpike Authority, 31 MLC 87, 108 (2004, i.e., performing important skilled work of an intellectual character requiring discretion, specialized training and knowledge but not requiring the same level of education required of professional employees.

### **Timeliness**

Town of East Bridgewater and East Bridgewater School Committee and East Bridgewater Education Association, MUP-07D-5095, 5115. 38 MLC 52 (August 18, 2011), *aff'd* 38 MLC 164 (2012)

On appeal from a hearing officer decision concluding that the Town failed to bargain in good faith before unilaterally increasing health insurance copayments, the CERB clarified that, in cases where a union is not presented with a fait accompli, the union makes a timely demand to bargain and the parties subsequently bargain, the six month period of limitations set forth in 456 CMR 15.03 begins to run on the date the union has actual or constructive knowledge that the change will be implemented prior to the parties having bargained to resolution or impasse. Judicial appeal pending.

**DEPARTMENT OF LABOR RELATIONS**  
**FY2012 CASES RECEIVED**  
 JULY 1, 2011 – JUNE 30, 2012  
 MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

**CASES OPENED**

| CASE TYPE                | JUL.      | AUG.      | SEPT.     | OCT.      | NOV.      | DEC.      | JAN.      | FEB.      | MAR.       | APR.       | MAY       | JUN.      | TOTAL      | AVG          | % YTD          |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|-----------|-----------|------------|--------------|----------------|
|                          |           |           |           |           |           |           |           |           |            |            |           |           |            |              |                |
| Unfair Labor Practice    | 57        | 33        | 43        | 33        | 35        | 40        | 40        | 32        | 78         | 76         | 37        | 44        | 548        | 45.67        | 62.92%         |
| Representation Cases     | 5         | 4         | 1         | 5         | 1         | 4         | 12        | 3         | 4          | 1          | 2         | 4         | 46         | 3.83         | 5.28%          |
| Unit Clarification (CAS) | 6         | 1         |           |           | 2         | 2         | 2         |           | 2          | 3          | 1         | 5         | 24         | 2.00         | 2.76%          |
| Other (SI, AO, RBA)      | 1         |           |           |           |           |           |           |           |            |            |           |           | 1          | 0.08         | 0.11%          |
| Grievance Arbitration    | 8         | 5         | 6         | 9         | 3         | 11        | 9         | 5         | 4          | 7          | 5         | 6         | 78         | 6.50         | 8.96%          |
| Grievance Mediation      | 2         | 3         | 1         | 4         | 2         |           | 3         | 2         | 2          | 5          | 5         | 6         | 35         | 2.92         | 4.02%          |
| Contract Mediation       | 14        | 4         | 5         | 11        | 13        | 14        | 13        | 13        | 16         | 10         | 11        | 10        | 134        | 11.17        | 15.38%         |
| EPRS, RA, CBT            | 3         |           | 2         |           |           |           |           |           |            |            |           |           | 5          | 0.42         | 0.57%          |
|                          |           |           |           |           |           |           |           |           |            |            |           |           |            |              |                |
| <b>TOTAL</b>             | <b>96</b> | <b>50</b> | <b>58</b> | <b>62</b> | <b>56</b> | <b>71</b> | <b>79</b> | <b>55</b> | <b>106</b> | <b>102</b> | <b>61</b> | <b>75</b> | <b>871</b> | <b>72.58</b> | <b>100.00%</b> |

**DEPARTMENT OF LABOR RELATIONS**  
**FY2012 CASES CLOSED**  
 JULY 1, 2011 – JUNE 30, 2012  
 MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

**CASES CLOSED**

| CASE TYPE                | JUL.      | AUG.      | SEPT.     | OCT.      | NOV.      | DEC.      | JAN.      | FEB.      | MAR.      | APR.      | MAY        | JUN.       | TOTAL      | AVG          | % YTD          |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|------------|--------------|----------------|
| Unfair Labor Practice    | 35        | 52        | 46        | 47        | 53        | 51        | 51        | 43        | 49        | 39        | 60         | 59         | 585        | 48.75        | 60.75%         |
| Representation Cases     | 3         | 4         | 6         | 1         | 1         | 4         | 2         | 4         | 5         | 14        | 6          | 6          | 56         | 4.67         | 5.82%          |
| Unit Clarification (CAS) | 1         | 1         | 1         |           | 3         |           | 3         | 1         | 1         | 1         | 5          | 3          | 20         | 1.67         | 2.08%          |
| Other (SI, AO, RBA)      |           |           |           |           |           |           |           |           |           |           |            |            |            |              |                |
| Grievance Arbitration    | 3         | 5         | 12        | 9         | 8         | 9         | 11        | 11        | 7         | 8         | 14         | 6          | 103        | 8.58         | 10.70%         |
| Grievance Mediation      |           |           |           |           |           |           | 5         | 1         |           | 2         | 7          | 1          | 16         | 1.33         | 1.66%          |
| Contract Mediation       | 6         | 8         | 22        | 9         | 13        | 21        | 13        | 19        | 21        | 4         | 14         | 31         | 181        | 15.08        | 18.80%         |
| EPRS, RA, CBT            |           |           |           |           |           |           |           |           | 2         |           |            |            | 2          | 0.17         | 0.21%          |
| <b>TOTAL</b>             | <b>48</b> | <b>70</b> | <b>87</b> | <b>66</b> | <b>78</b> | <b>85</b> | <b>85</b> | <b>79</b> | <b>85</b> | <b>68</b> | <b>106</b> | <b>106</b> | <b>963</b> | <b>80.25</b> | <b>100.00%</b> |

**FY 2012 REPRESENTATION ELECTIONS\***  
**(EXCLUSIVE OF WRITTEN MAJORITY AUTHORIZATION PETITIONS)**

| Unit Size    | Municipal        |               | State            |               | Private          |               | Total            |               |
|--------------|------------------|---------------|------------------|---------------|------------------|---------------|------------------|---------------|
|              | No. of Elections | No. of Voters |
| <10          | 1                | 17            |                  |               |                  |               | 1                | 17            |
| 10-24        | 7                | 130           |                  |               |                  |               | 7                | 130           |
| 25-49        | 2                | 77            | 5                | 146           |                  |               | 7                | 223           |
| 50-74        |                  |               |                  |               |                  |               |                  |               |
| 75-99        |                  |               |                  |               |                  |               |                  |               |
| 100-149      |                  |               |                  |               |                  |               |                  |               |
| 150-199      |                  |               | 1                | 159           |                  |               | 1                | 159           |
| 200-499      |                  |               | 1                | 266           |                  |               | 1                | 266           |
| Above 500    |                  |               | 1                | 1572          |                  |               | 1                | 1572          |
| <b>Total</b> | <b>10</b>        | <b>224</b>    | <b>8</b>         | <b>2143</b>   |                  |               | <b>18</b>        | <b>2367</b>   |

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\* NOTE: In FY 2012, parties filed 46 Representation petitions. The above chart contains information only on elections conducted by the DLR in FY2012.

**FY 2012  
WRITTEN MAJORITY AUTHORIZATION  
CERTIFICATIONS\***

| Size of Unit | Municipal |            | State |       | Private |       | Total     |            |
|--------------|-----------|------------|-------|-------|---------|-------|-----------|------------|
|              | CERTS     | CARDS      | CERTS | CARDS | CERTS   | CARDS | CERTS     | CARDS      |
| Under 10     | 6         | 34         |       |       |         |       | 6         | 34         |
| 10-24        | 5         | 86         |       |       |         |       | 5         | 86         |
| 25-49        |           |            |       |       |         |       |           |            |
| 50-74        |           |            |       |       |         |       |           |            |
| 75-99        | 2         | 157        |       |       |         |       | 2         | 157        |
| 100-149      |           |            |       |       |         |       |           |            |
| 150-199      |           |            |       |       |         |       |           |            |
| 200-499      |           |            |       |       |         |       |           |            |
| <b>Total</b> | <b>13</b> | <b>277</b> |       |       |         |       | <b>13</b> | <b>277</b> |

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\* Note: The number of certifications represents the number of petitions filed that resulted in the Department issuance of a certification. In FY 2012 a total of 19 written majority authorization petitions were filed. The DLR did not issue a certification in 6 cases either because the DLR dismissed the petition or the petitioner withdrew the petition.

## DEPARTMENT OF LABOR RELATIONS STAFF LIST

### EMPLOYEES, FUNCTIONAL TITLES AND PAYROLL TITLES

| <b>Last Name</b> | <b>First Name</b> | <b>Functional Title</b>             | <b>Payroll Title</b>                   | <b>FTE</b> |
|------------------|-------------------|-------------------------------------|----------------------------------------|------------|
| Atwater          | Susan             | Hearing Officer/Arbitrator/Mediator | Counsel II                             | 1.00       |
| Bevilacqua       | Heather           | Mediator                            | Program Manager V                      | 1.00       |
| Bonner           | Kerry             | Hearing Officer/Arbitrator/Mediator | Counsel II                             | 1.00       |
| Bowler           | Helen             | Hearing Officer/Arbitrator/Mediator | Counsel II                             |            |
| Crystal          | Erica             | Director                            | Administrator IX                       | 1.00       |
| Charton          | Sandra            | Sr. Staff Rep., Management - JLMC   | Program Manager VII                    |            |
| Davis            | Kendrah           | Hearing Officer/Arbitrator/Mediator | Counsel II                             | 1.00       |
| Eustace          | Kimberly          | Program Coordinator                 | Program Coordinator III                | 0.92       |
| Freeman          | Harris            | Board Member, CERB                  | Per Diem                               |            |
| Goodberlet       | Kathleen          | Hearing Officer/Arbitrator/Mediator | Counsel II                             | 1.00       |
| Gookin           | Carol             | Mediator                            | Program Manager V                      | 1.00       |
| Harrington       | Brian             | Hearing Officer/Arbitrator/Mediator | Program Manager V                      | 1.00       |
| Hatfield         | Timothy           | Mediator/Arbitrator                 | Program Manager VII                    | 1.00       |
| Neumeier         | Elizabeth         | Board Member, CERB                  | Per Diem                               |            |
| Reilly           | Richard           | Chair, JLMC                         | Per Diem                               |            |
| Siciliano        | Shirley           | Election Specialist                 | Collective Bargaining, Elect. Spec. II | 0.40       |
| Slattery         | Julia             | Sr. Staff Rep., Labor - JLMC        | Program Manager VII                    | 1.00       |
| Smith            | Jennifer          | Hearing Officer/Arbitrator/Mediator | Counsel II                             | 1.00       |
| Srednicki        | Edward            | Executive Secretary                 | Administrator VII                      | 1.00       |
| Sullivan         | Margaret          | Hearing Officer/Arbitrator/Mediator | Counsel II                             | 1.00       |
| Wittner          | Marjorie          | Chair, CERB                         | Administrator IX                       | 1.00       |

## **DLR ADVISORY COUNCIL**

*There shall be an advisory council to advise the DLR concerning policies, practices, and specific actions that the DLR 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., Chair | Sandulli, Grace PC                 |
| Ira Sills, Esq.           | Segal, Roitman LLP                 |
| Jen Springer, Esq.        | SEIU, Local 888                    |
| Ira Fader, Esq.           | Massachusetts Teachers Association |

#### **Management**

|                         |                                                                           |
|-------------------------|---------------------------------------------------------------------------|
| Peter Berry, Esq.       | Deutsch Williams Brooks DeRensis & Holland, P.C.                          |
| Jim Hardy               | Field Director – Policy<br>Massachusetts Association of School Committees |
| Nicholas Anastasopoulos | Mirick, O'Connell, DeMallie & Lougee, LLP                                 |
| Mark D'Angelo           | Director - Commonwealth of Massachusetts<br>Office of Employee Relations  |
| John Dunlap             | Director - City of Boston - Office of Labor Relations                     |

#### **Neutrals**

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

**DEPARTMENT OF LABOR RELATIONS**  
**BUDGET**

**HISTORICAL BUDGET LEVELS (\$000)**

| <i>ACCOUNT</i> |                                     | FY2008       | FY2009       | FY2010       | FY2011       | FY2012       |
|----------------|-------------------------------------|--------------|--------------|--------------|--------------|--------------|
|                |                                     | GAA          | GAA          | GAA          | GAA          | GAA          |
| 7002-0600      | Labor Relations Commission          | 954          | 0            | 0            |              |              |
| 7002-0700      | Joint Labor-Management Comm.        | 538          | 0            | 0            |              |              |
| 7002-0800      | Board of Conciliation & Arbitration | 792          | 0            | 0            |              |              |
| 7002-0900      | Department of Labor Relations       | 0            | 2,329        | 1,839        | 1,839        | 1,806        |
| <b>TOTAL</b>   |                                     | <b>2,283</b> | <b>2,329</b> | <b>1,839</b> | <b>1,839</b> | <b>1,806</b> |

**FY 2012 APPROPRIATION SUMMARY**

|                                            |             |
|--------------------------------------------|-------------|
| Governor's Budget Recommendation - House 1 | \$1,820,289 |
| General Appropriation Act                  | \$1,805,890 |
| 9C Reductions and Planned Savings          | \$0         |
| Total Available                            | \$1,805,890 |
| Expenditures                               | \$1,753,813 |
| Reversion                                  | \$52,077    |

**FY 2011 EXPENDITURES**

|                        |                                                      |                    |
|------------------------|------------------------------------------------------|--------------------|
| <b>Total Available</b> |                                                      | <b>\$1,805,890</b> |
| AA                     | Employee Compensation                                | \$1,467,980        |
| BB                     | Employee Travel Reimbursement                        | \$32,709           |
| DD                     | Medicare, Unemployment, Univ. Health, Workers. Comp. | \$28,777           |
| EE                     | Administrative Expenses                              | \$41,893           |
| FF                     | Facility Operational Expenses                        | \$40,298           |
| GG                     | Space Rental                                         | \$7,774            |
| HH                     | Consultant Service Contracts                         | \$127              |
| JJ                     | Programmatic Operational Services                    | \$40,284           |
| LL                     | Equipment Lease, Maintenance, Repair Expenses        | \$5,457            |
| NN                     | Construction, Maintenance & Repair Expenses          | \$61               |
| UU                     | Information Technology                               | \$88,452           |
| <b>Total Expended</b>  |                                                      | <b>\$1,753,813</b> |
| <b>Reversion</b>       |                                                      | <b>\$52,077</b>    |

## **FISCAL YEAR 2013 GOALS**

In FY 2013 the DLR plans to introduce a new case handling impact analysis system to further increase the DLR's case-handling efficiency. This new case processing system will allow the DLR to differentiate cases based upon their relative impact to the public. Cases where resolution of the dispute has the greatest urgency will be processed more quickly than those with less urgency for investigation and then for hearing. The DLR will also require parties to engage in mandatory mediation for all high impact cases. The DLR also plans to introduce electronic filing in FY 2013 to further increase the DLR's efficiency.