

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
COMMONWEALTH OF MASSACHUSETTS/ *
COMMISSION OF ADMINISTRATION *
AND FINANCE *
*
and *
*
MASSACHUSETTS CORRECTION *
OFFICERS FEDERATED UNION AND *
COALITION OF PUBLIC SAFETY *

Date Issued: January 31, 2014

Case Number:
SUP-10-5612
SUP-10-5593

Hearing Officer:

Timothy Hatfield, Esq.

Appearances:

- Michele Heffernan, Esq. - Representing the Commonwealth of Massachusetts/
Commission of Administration and Finance

- Jun Lim, Esq. - Representing Coalition of Public Safety

- Stephen Pfaff, Esq. - Representing Massachusetts Correction Officers
Federated Union

HEARING OFFICER'S DECISION

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Summary

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The issue in this case is whether the Commonwealth of Massachusetts
(Commonwealth), acting through the Commissioner of Administration and Finance, Jay
Gonzalez (Gonzalez), violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
Massachusetts General Laws, Chapter 150E (the Law) by breaching the statutory duty

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1 to support collectively bargained agreements with the Coalition of Public Safety (COPS)
2 and the Massachusetts Correction Officers Federated Union (MCOFU) in violation of its
3 duty to bargain in good faith. I find that the Commonwealth violated the Law as alleged.

4 Statement of the Case

5 On June 16, 2010, COPS filed a prohibited practice charge with the Department
6 of Labor Relations (Department) alleging that the Commonwealth violated Section
7 10(a)(5) and 10(a)(1) of the Law. An in-person investigation was conducted on August
8 25, 2010. On September 13, 2010, MCOFU filed a prohibited practice charge alleging
9 the same violations by the Commonwealth. On September 24, 2010, MCOFU filed a
10 Motion to Consolidate, and the Department granted the motion. The Department issued
11 a complaint of prohibited practice on October 25, 2010. The Commonwealth filed its
12 Answer on October 29, 2010. On February 18, 2011, the Department allowed the
13 parties to waive a hearing, pursuant to Section 11 of the Law. On February 13, 2012,
14 COPS filed its post-hearing brief. MCOFU filed its brief on May 4, 2012, and the
15 Commonwealth filed its brief on April 13, 2012.

Facts From Exhibits and Relevant Statutes

1 A) Gonzalez's June 9, 2010 letter to the House of Representatives¹ and Senate²
2 Committees on Ways and Means, which referenced "Additional FY11
3 collective bargaining items," states in pertinent part:

4 In addition to previous requests, I am fulfilling my statutory obligation to
5 ask your consideration of the attached additional collective bargaining
6 items in Section 2 of H.2, the Governor's fiscal year 2011 budget proposal.
7 These items fund collective bargaining agreements negotiated some time
8 ago with the Massachusetts Correction Officers Federated Union (Unit 4)
9 and the Coalition of Public Safety (Unit 5). We are submitting them now
10 because their costs first occur in fiscal year 2011.

11 These line items provide for collective bargaining salary increases similar
12 to contracts that were not funded during calendar year 2009. We have
13 worked with the MCOFU and COPS leadership to reach agreement on
14 contracts similar to those signed by other unions for this fiscal year and
15 have failed to reach an agreement. Funding of these items will trigger a
16 reopener in collective bargaining agreements that the Legislature recently
17 did fund only because they contained delays in the salary increases.

18 My staff and I are ready to respond to any questions. Thank you for your
19 consideration.
20

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22 B) Massachusetts General Laws, Chapter 150E, Section 7(b):
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24 The employer, other than the board of higher education or the board of
25 trustees of the University of Massachusetts, the chief justice for
26 administration and management, a county sheriff, the PCA quality home
27 care workforce council, the alcoholic beverage control commission, or the
28 state lottery commission, shall submit to the appropriate legislative body
29 within thirty days after the date on which the agreement is executed by the
30

¹ Gonzalez's letter was addressed to Charles Murphy, Chair House Committee on Ways and Means.

² Gonzalez's letter was addressed to Steven C. Panagiotakos, Chair Senate Committee on Ways and Means.

1 parties, a request for an appropriation necessary to fund the cost items
2 contained therein; provided, that if the general court is not in session at
3 that time, such request shall be submitted at the next session thereof. If
4 the appropriate legislative body duly rejects the request for an
5 appropriation necessary to fund the cost items, such cost items shall be
6 returned to the parties for further bargaining. The provisions of the
7 preceding two sentences shall not apply to agreements reached by school
8 committees in cities and towns in which the provisions of section thirty-four
9 of chapter seventy-one are operative.

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11 C) Massachusetts General Laws, Chapter 29, Section 3

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13 Every officer having charge of any state agency which receives a periodic
14 appropriation from the commonwealth, including all periodic appropriations
15 to be met from state revenues shall annually, on or before a date set by
16 the commissioner submit to the budget director statements (1) showing in
17 detail the amounts appropriated for the preceding and the current fiscal
18 years; (2) the interchanges during the preceding fiscal year between the
19 subsidiary accounts prescribed in accordance with section twenty-seven;
20 (3) the deficiencies and overdrafts, if any, in appropriations for the latest
21 complete fiscal year and for the current fiscal year; (4) estimates of the
22 amounts required for ordinary maintenance for the ensuing fiscal year,
23 with an explanation of any increased appropriations recommended and
24 with citations of the statutes relating thereto, a statement indicating the
25 priorities assigned to each program by said officer; (5) and statements
26 showing in detail the revenue of the state agency in his charge for the
27 latest complete fiscal year, and the revenue and estimated revenue
28 thereof for the current fiscal year, and his estimated revenue from the
29 same or any additional sources for the ensuing fiscal year, with his
30 recommendations as to any changes in the management, practices, rules,
31 regulations or laws governing such state agency which would effect an
32 increase or cause a decrease in revenue from operations, fees, taxes or
33 other sources, or which would facilitate the collection thereof; (6) together
34 with such other information on the expenditures, revenues, activities,
35 output or performance of any such state agency as may be required by
36 rule or regulation of the commissioner, and any other information,
37 including the priorities assigned to each program by said officer, required
38 at any time by the budget director. Every such officer shall also submit to
39 the budget director a statement showing in detail the number of
40 permanent, temporary, and part-time positions authorized for the state
41 agency in his charge and the volume of work performed in the latest

1 complete fiscal year, and justifying his request for permanent, temporary
2 and part-time positions in the ensuing fiscal year in relation to the volume
3 of work expected to be performed by the state agency.

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5 All such statements, recommendations and estimates shall, to the fullest
6 possible extent, conform with the programs of the state agency as defined
7 by the commissioner, with the advice of the officers responsible for the
8 administration thereof and the officer making the submission to the budget
9 director. The said estimates shall not include any estimate for any new or
10 special purpose or object not authorized by statute.

11
12 Copies of all such statements, recommendations, and estimates as they
13 pertain to space rentals and maintenance and construction or repair of
14 capital facilities shall be submitted on or before the aforementioned date to
15 the commissioner of capital asset management and maintenance. They
16 shall include a report detailing the current condition of the using agency's
17 buildings, broken down into individual structural or mechanical
18 components, as defined by rule or regulation of the commissioner. Such
19 report shall specify those individual maintenance and repair items for
20 which monies requested in the operating budget shall be used. The
21 commissioner shall review them and submit his evaluation of the priority,
22 necessity, and feasibility of the request contained therein to the officer
23 making such statements, recommendations, and estimates, the budget
24 director, the house and senate committees on ways and means, and the
25 secretary, if any, having charge of such state agency.

26
27 Before any such statements, estimates, recommendations or other
28 information relating to a state agency shall be so submitted, they shall be
29 submitted to the house and senate committees on ways and means. In
30 addition, each state agency shall submit such statements, estimates,
31 recommendations, and other information to the secretary having charge of
32 such state agency, if any, who shall review the same and make such
33 additions thereto, deletions therefrom and modifications therein as such
34 secretary deems appropriate; provided, however, that prior to making any
35 such additions, deletions or modifications, such secretary shall conduct
36 public hearings, for which he shall give five days' public notice prior
37 thereto, on all items for which he shall submit a recommendation for
38 appropriations to the governor. Said secretaries shall furnish, to the house
39 and senate committees on ways and means and the house and senate
40 committees on post audit and oversight copies of all such statements,

1 estimates, recommendations, and other information and of all such
2 additions, deletions, and modifications.
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4 D) Massachusetts General Laws, Chapter 29, Section 3A

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6 Any officer having charge of any state agency which receives a periodic
7 appropriation from the commonwealth, or any officer of a state authority or
8 commission, shall upon the request of any standing committee of the
9 house or senate, or of any joint standing committee of the general court,
10 furnish in writing to such committee, in a format prescribed by such
11 committee, any information requested by such committee that is
12 necessary for the committee to perform its duties. The information shall
13 include, but not be limited to, historical, current or proposed operational
14 costs funded through any appropriation, capital accounts, federal grants,
15 trust funds or other funding sources, the officer's estimate of the cost of
16 proposed legislation affecting activities which are or would be under his
17 supervision, estimates of and reasons for any supplemental funding that is
18 projected to be needed during the fiscal year, estimates of revenue
19 collections, estimates of proposed changes in fees or taxes, and any other
20 such information as may be required by the committee. Such estimates
21 shall be provided to such committee within 10 days of the receipt of such a
22 request by the officer. If the officer fails to respond within 10 days, the
23 matter shall be referred to the house or senate committee on post audit
24 and oversight which shall, in conjunction with the committee that originally
25 requested the information, determine if further action is necessary.
26

27 Stipulations of Fact

- 28
- 29 1. The Commonwealth is a public employer within the meaning of Section 1
30 of the Law.
 - 31 2. MCOFU and COPS (collectively "the Union") are employee organizations
32 within the meaning of Section 1 of the Law.
 - 33 3. Both Unions are the exclusive bargaining representatives for certain
34 employees employed by the Employer.
 - 35 4. COPS and the Commonwealth are parties to a collective bargaining
36 agreement for the period of July 1, 2007 through June 30, 2009.
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1 M.G.L. c. 150E, Section 1 defines "'public employer" as "the commonwealth,
2 acting through the commissioner of administration." All employer obligations created by
3 the act of reaching an agreement, during collective bargaining, fall to the commissioner
4 of administration and finance in his statutory role of "public employer". The duty to
5 bargain in good faith obligates a party to a negotiated agreement to take necessary
6 steps to support and secure funding for the agreement. See e.g., Town of Rockland, 16
7 MLC 1001, 1005 (1989); Town of Belmont, 22 MLC 1636, 1639 (1996); Local 1652, Int'l
8 Assoc. of Firefighters v. Town of Framingham, 442 Mass. 463 (2004). Once an
9 agreement has been reached, the employer's obligation to seek funding is
10 unconditional, and its failure to take all necessary steps to support and to secure
11 funding for the agreement violates its duty to bargain in good faith and constitutes
12 repudiation of the agreement. Town of Belmont, 22 MLC 1636, 1639 (1996); Town of
13 Rockland, 16 MLC 1001,1005 (1989); City of Chelsea, 13 MLC 1144, 1149 (1986). The
14 obligation to seek funding for a negotiated agreement applies during the term of an
15 agreement as well as at the outset. Lawrence School Committee, 19 MLC 1167 (1992).
16 In the present matter, the Commissioner upon reaching an agreement with the Unions
17 became obligated to seek funding unconditionally, and to take all necessary steps to
18 support and to secure funding for the agreements.

19 An employer's obligation to seek funding for an agreement goes beyond the
20 ministerial act of submitting a funding article to the legislative body and includes an
21 obligation to support the funding request. See Town of Rockland, supra. Here, the

1 Unions argue that Gonzalez's letter fails to meet the standards of unconditional support.
2 In particular, Gonzalez's letter fails to show any support for or attempts to persuade the
3 Legislature to fund the agreement. Upon review of Gonzalez's letter, I agree. A plain
4 reading of the letter shows that Gonzalez highlights the reasons that the Legislature
5 should reject the agreement. He goes out of his way to tell the Legislature that he had
6 failed in his attempt to get the Unions to approve salary increases similar to the
7 contracts the Commonwealth had with other unions, and then goes on to warn the
8 Legislature that approving of the funding would trigger a reopener clause and would
9 require new rounds of negotiation with the other unions.

10 The Commonwealth argues that the Governor and executive branch officials,
11 acting on his behalf, should not be held to the same standard as municipal public
12 employers in the application of M.G.L. c. 150E because there are vast differences in the
13 the sovereignty of the Governor as opposed to municipal public employers. In their
14 governmental function, cities and towns only exercise the sovereignty which has been
15 delegated to them by the legislature. City of Cambridge v. Commissioner of Public
16 Welfare, 183, 186 (1970). Under the Constitution of the Commonwealth of
17 Massachusetts, the Governor serves as the "supreme executive magistrate" of the
18 Commonwealth. Opinion of the Justices to the Senate, 375 Mass. 827, 833
19 (1978)(citing Mass. Const., Part II, c. 2, section 1, art. 1.) In this role, the Governor has
20 administrative oversight of the collection of taxes and expenditures from the treasury,
21 and has a duty to exercise discretion with regard to applying the resources of the

1 Commonwealth. Opinion of the Justices, 211 Mass. 632, 634 (1912); Opinion of the
2 Justices, 375 Mass at 832.

3 The Commonwealth's argument that M.G.L. c. 150E, Section 7(b)'s requirement
4 of unconditional support for funding an agreement reached during collective bargaining
5 infringes on the Governor's role as supreme executive magistrate is unfounded. The
6 Governor is entrusted with the power to veto bills sent to him by the legislature. The
7 requirement that Gonzalez, as Secretary of Administration and Finance, unconditionally
8 support funding for an agreement he signed on behalf of the Commonwealth does not
9 infringe on the Governor's ultimate power to "exercise discretion with regard to applying
10 resources of the Commonwealth", because the Governor may simply exercise his
11 authority to veto the legislation authorizing the funding. See Alliance v. Secretary of
12 Administration, 413 Mass. 377, 383 (1992) (request for legislative action is not a
13 substitute for exercise of the Governor's independent prerogatives.)

14 The Commonwealth also argues that M.G.L. c. 29 Section 3 and Section 3A
15 require the executive branch to provide exactly the type of information contained in
16 Gonzalez's letter. I find no such requirement in the language of either statute. Section 3
17 requires specific information, such as the amounts appropriated for the preceding and
18 current fiscal years, estimates of the amounts required for ordinary maintenance for the
19 ensuing fiscal year, and the revenue and estimated revenue for the current fiscal year.
20 Nothing in Section 3 requires the Commissioner of Administration and Finance to inform
21 the Legislature of the parties' bargaining history, future bargaining obligations, or

1 previous funding requests. Section 3A requires any officer in charge of any state agency
2 which receives periodic appropriations to provide any information requested by any
3 standing committee of the House and Senate that is necessary for the committee to
4 perform its duties. There is no evidence that the legislature requested any additional
5 information from the Commonwealth. Therefore, I am not persuaded that the language
6 of M.G.L. c. 29 Section 3 and Section 3A require the executive branch to provide the
7 information contained in Gonzalez's letter.

8 Remedy

9 Section 11 of the Law grants the Commonwealth Employment Relations Board
10 (CERB) broad authority and discretion to fashion appropriate orders to remedy unlawful
11 conduct. Labor Relations Commission v. City of Everett, 7 Mass. App. Ct. 826 (1979).
12 Remedies should be fashioned to place charging parties in the position they would have
13 been in but for the unfair labor practice. Commonwealth of Massachusetts, 29 MLC
14 132, 133 (2003). Here, MCOFU seeks a make-whole remedy for wages lost by
15 employees as a result of the Commonwealth's failure to support the agreements.
16 However, an order requiring specific performance of the economic terms of the
17 collective bargaining agreement is not an appropriate remedy here because Section
18 7(b) of the Law imposes a funding contingency. To satisfy this funding contingency, the
19 appropriate legislative body must approve funding for the cost items of a collective
20 bargaining agreement. If the legislative body declines funding, the cost items would be
21 returned to the parties for further bargaining. It is well established that no cost item in a

1 collective bargaining agreement between a public employer and an employee
2 organization can assume any monetary significance until there is a legislatively
3 established appropriation from which the item can be paid. See County of Suffolk v.
4 Labor Relations Commission, 15 Mass. App.Ct. 127, 132 (1983). Accordingly, I decline
5 to order the make whole remedy sought by MCOFU.

6 The Commonwealth's argument that the CERB cannot require the resubmission
7 of the appropriation request is misplaced. The CERB is not ordering the Governor to
8 approve the appropriation request, but only that the statutory employer, the
9 Commissioner of Administration and Finance submit a funding request that does not
10 violate the Law. The Governor is free to exercise his discretion to apply resources of
11 the Commonwealth however he sees fit should he be presented with legislation
12 authorizing the funding. See Alliance v. Secretary of Administration, 413 Mass. 377,
13 383 (1992) (The Governor was not required to sign the appropriations bills nor could he
14 have been since the act of signing is a constitutionally granted discretionary power.)

15 Order

16 WHEREFORE, based on the foregoing, it is hereby ordered that the
17 Commonwealth shall:

- 18 1. Cease and desist from:
- 19 a. Failing and refusing to take all necessary and appropriate steps to
20 support the collective bargaining agreements.
 - 21 b. In any similar manner, interfering with, restraining, or coercing
22 employees in the exercise of their rights guaranteed under the Law.

1 2. Take the following affirmative action that will effectuate the purposes of the

2 Law:

3 a. Submit to the Legislature a request for an appropriation to fund
4 the cost items and take all appropriate steps to support the
5 7/1/10 – 6/30/13 collective bargaining agreement with COPS.

6
7 b. Submit to the Legislature a request for an appropriation to fund
8 the cost items and take all appropriate steps to support the
9 7/1/10 – 6/30/13 collective bargaining agreement with MCOFU.

10
11 c. Post immediately in all conspicuous places where members of
12 the COPS bargaining unit usually congregate and where notices
13 to these employees are usually posted, including electronically, if
14 the Commonwealth customarily communicates with these unit
15 members via intranet or email, and display for a period of thirty
16 (30) days thereafter, signed copies of the attached Notice to
17 Employees.

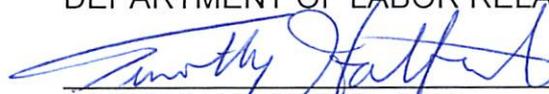
18
19 d. Post immediately in all conspicuous places where members of
20 the MCOFU bargaining unit usually congregate and where
21 notices to these employees are usually posted, including
22 electronically, if the Commonwealth customarily communicates
23 with these unit members via intranet or email, and display for a
24 period of thirty (30) days thereafter, signed copies of the attached
25 Notice to Employees.

26

1 e. Notify the Department within thirty (30) days after the date of
2 service of this decision and order of the steps taken to comply
3 with its terms.

4 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



TIMOTHY HATFIELD, ESQ.
HEARING OFFICER

APPEAL RIGHTS

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



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

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

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the Commonwealth of Massachusetts/Commission of Administration and Finance (Commonwealth) violated Section 10(a)(5) and, derivatively, 10(a)(1) of the Law by breaching the statutory duty to support collectively bargained agreements with the Coalition of Public Safety (COPS) and the Massachusetts Correction Officers Federated Union (MCOFU) in violation of its duty to bargain in good faith.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:
to engage in self-organization to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT fail to bargain in good faith by not taking all necessary and appropriate steps to support the collective bargaining agreements.

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

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

1. Submit to the Legislature a request for an appropriation to fund the cost items and take all appropriate steps to support the 7/1/10 – 6/30/13 collective bargaining agreement with COPS.
2. Submit to the Legislature a request for an appropriation to fund the cost items and take all appropriate steps to support the 7/1/10 – 6/30/13 collective bargaining agreement with MCOFU.

Commonwealth of Massachusetts/
Commission of Administration and
Finance

Date

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

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