

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
UNIVERSITY OF MASSACHUSETTS *
MEDICAL SCHOOL *
*
*
and *
*
NATIONAL ASSOCIATION OF *
GOVERNMENT EMPLOYEES *
*

Case No. SUP-11-5662

Date Issued: January 14, 2014

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

Katharine A. Crawford, Esq. - Representing the University of Massachusetts
Medical School

Richard E. Waring, Esq. - Representing National Association of
Government Employees

HEARING OFFICER'S DECISION

1 SUMMARY

2 The issue in this case is whether the University of Massachusetts Medical School
3 (Employer or UMass) violated Sections 10(a)(5) and derivatively, Section 10(a)(1) of
4 Massachusetts General Laws, Chapter 150E (the Law) by laying off employees without
5 bargaining with the National Association of Government Employees (Union or NAGE)
6 to impasse over the impacts of the decision to achieve a reduction in force by layoffs on

1 employees' terms and condition of employment. I find that the Employer did not violate
2 the Law as alleged.

3 STATEMENT OF THE CASE

4 On April 25, 2011, NAGE filed a Charge of Prohibited Practice with the
5 Department of Labor Relations (DLR) alleging that the Employer had violated Section
6 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. A DLR Investigator investigated
7 the Charge and issued a Complaint of Prohibited Practice (Complaint) on December 5,
8 2011 alleging that the Employer implemented layoffs for bargaining unit members
9 without giving the Union an opportunity to bargain to resolution or impasse over the
10 impacts of a decision to achieve a reduction in force by layoffs on employees' terms and
11 condition of employment. The Investigator dismissed the allegation that the Employer
12 violated the Law by failing to bargain to resolution or impasse about the decision to
13 layoff the unit members, and the Union did not request review of the dismissal. The
14 Employer filed an Answer to the Complaint on December 14, 2011.

15 I conducted a hearing on March 12 and July 31, 2013 at which both parties had
16 an opportunity to be heard, to examine witnesses and to introduce evidence. The
17 Employer and the Union filed timely post-hearing briefs on or about October 18, 2013.
18 Based on the record, which includes witness testimony, my observations of the
19 witness's demeanor, stipulations of fact, and documentary exhibits, and in consideration
20 of the parties' arguments, I make the following findings of fact and render the following
21 opinion.

22 STIPULATIONS OF FACT

23 1. The University of Massachusetts ("UMass") and the National Association of
24 Government Employees ("NAGE") are parties to a collective bargaining agreement ("CBA").

- 1 The CBA applicable to this matter expired on June 30, 2010. On or about March 29, 2011,
2 the parties confirmed their agreement to uphold the contract past the expiration date while
3 a successor agreement was negotiated.
4
- 5 2. NAGE is the exclusive bargaining representative for Supervisors, Coordinators,
6 Specialists, and Assistants in UMass's Public Provider Reimbursement ("PPR") Unit within
7 the Center of Healthcare Financing. The informal titles for the employees affected by the
8 layoff at issue in this matter were PPR Supervisors and PPR Assistants.
9
- 10 3. UMass's Public Provider Reimbursement Unit performs and manages medical billing and
11 related services on behalf of eleven state agencies within the Executive Office of Health
12 and Human Services to obtain reimbursement for the cost of health care and other
13 services.
14
- 15 4. Pursuant to the CBA (Article 3, Statement of Commitment for Career Pathways), the parties
16 agreed that UMass would undertake a job classifications analysis.
17
- 18 5. In Summer 2010, UMass conducted the job classifications analysis.
19
- 20 6. On November 5, 2010, UMass notified NAGE that it intended to lay off six members of the
21 bargaining unit effective January 7, 2011 for lack of work.
22
- 23 7. Five of the employees (1 supervisor, 4 assistants) worked at the Chelsea Soldier's Home
24 location; one employee (supervisor) worked at UMass's Harrison Avenue location.
25
- 26 8. The parties met to discuss and bargain impact issues on November 30, 2010, December 10,
27 2010, December 16, 2010, January 4, 2011, and at the end of January 2011. After the first
28 meeting, UMass agreed to postpone the layoffs scheduled for January 7, 2011.
29
- 30 9. On February 14, 2011, UMass provided notice to the six impacted employees of the
31 impending layoff:
32
- 33 a. Lorraine Spinella was offered and accepted a full time position at UMass's
34 Chelsea location at the Specialist level.
 - 35 b. Bette Fay was offered and accepted a half-time position at UMass's Chelsea
36 location in her current role as Assistant.
 - 37 c. Marie Santana was offered temporary work related to the Flu vaccine
38 reimbursement program through April 30, 2011 but declined. Her layoff was
39 effective March 18, 2011 and she received 8 weeks [of] severance [pay].
 - 40 d. Toby Vasconcellos, Richard Palma, and Jean Patti were laid off effective
41 March 18, 2011 and received 8 weeks [of] severance [pay]. Ms. Patti filed
42 retirement papers thereafter.
43
- 44 10. The layoffs went into effect March 18, 2011.
45

1 11. NAGE filed a charge of prohibited practice with the Massachusetts Department of Labor
2 Relations on or about April 25, 2011.

3
4 12. The Benefits Coordination and Recovery Unit [(BCR)] and the Public Provider
5 Reimbursement Department [(PPR)] (f/k/a the Facility and Community Reimbursement
6 Department) are separate departments within the Center for Health Care Financing.
7 The Center for Health Care Financing is a subdivision of Commonwealth Medicine, and
8 Commonwealth Medicine is a division within the UMass Medical School.

9
10 13. PPR and BCR have contracts (Interagency Service Agreements) with EOHHS
11 agencies to provide services to maximize revenue for the Commonwealth of
12 Massachusetts. In the PPR Department, revenue is obtained from private, state and
13 federal resources to reimburse the Commonwealth for the costs of health care and
14 related services provided by public institutions and community based programs. BCR's
15 services range from program analysis and consultation to hands-on claims preparation.

16
17 14. The BCR Unit and PPR Department were previously part of the Revenue
18 Operations Program, but the Revenue Operations Program ceased to exist in 2009.

19
20 15. The six employees at issue in this case could have applied for the following open
21 positions between November 5, 2010 and March 18, 2011: 2 Revenue Operations
22 Specialist positions in the BCR Unit at the Schrafft Center, 1 Revenue Operations
23 Specialist position in the PPR unit in Palmer, and 1 Revenue Operations Coordinator
24 position in the PPR Unit at the Chelsea [Soldiers] Home. This position was reclassified
25 to a Revenue Operation Specialist position.¹

26
27 FINDINGS OF FACT

28 **Background and Commonwealth Medicine Work Sites**

29 In 2010, NAGE, Local 300 represented approximately 80 employees who had
30 been previously employed by the Commonwealth of Massachusetts and transferred to
31 the UMass Medical School in 2004 through an interagency agreement between 11 state
32 agencies, the University of Massachusetts, and the Executive Office of Health and
33 Human Services. These bargaining unit members worked in the PPR Department and

¹ UMass created an additional .5 FTE position at some point prior to the March 2011 layoffs. Although the record does not describe how or when UMass created this additional part-time position, it is clear that UMass hired one of the CSH employees slated for layoff into this position.

1 the BCR Unit. The employees at issue in this case worked in the PPR Department,
2 which in general, seeks reimbursement from various state, federal and private entities
3 for the cost of health care services rendered by public providers.

4 Employees in the PPR unit work in 23 different locations across the
5 Commonwealth. Most work at various Commonwealth of Massachusetts human
6 service agencies, i.e. the Department of Mental Health (DMH), the Department of Public
7 Health (DPH), and the Department of Developmental Services (DDS), and others work
8 at UMass locations. At most PPR work sites, the employees seek reimbursement for
9 the services that are provided at the site, or for the agency, where the employee works.²
10 However, there are other PPR worksites that handle claim and reimbursement work for
11 services rendered at another location. For example, PPR bargaining unit members who
12 work in Westborough in space previously occupied by the now-closed Westborough
13 State Hospital, seek reimbursement for services provided by DMH in Boston.

14 Chelsea Soldiers Home

15 One PPR work location is the Chelsea Soldiers Home (CSH), a health care
16 facility for veterans. Prior to 2006, the CSH operated an acute care hospital generating
17 \$1M in Medicare revenue, and an outpatient clinic. By 2010, both the hospital and the
18 clinic were completely closed, and most of the services previously provided had been
19 outsourced to private companies. Only residential care for veterans and skilled nursing

² Certain agencies prefer to work with PPR employees who are on site rather than PPR employees at a remote location. The need to transfer protected health information is also a consideration in whether reimbursement work is performed at the service site or at a remote location.

1 services remained. Between 2005 and 2010, Medicare revenue from the CSH had
2 declined from \$1M to \$200,000.

3 The PPR employees who worked at the CSH handled claims and reimbursement
4 only for services performed at the CSH and from only one payer - Medicare. For
5 reasons not disclosed on the record, the Commonwealth of Massachusetts maintains a
6 security firewall at CSH that prevents CSH employees from accessing information from
7 outside CSH, including the UMass intranet cite.

8 Harrison Ave.

9 Another PPR work location is the headquarters for the Department of
10 Developmental Services which is located on and known as Harrison Ave. Off-site staff
11 handle the preparation work for DDS claims, but pursuant to the preferences of the DDS
12 Chief Financial Officer, the claim work is completed at that site. Bargaining unit
13 employees Toby Vasconcellos (Vasconcellos) and Hong Nguyen (Nguyen) worked at
14 Harrison Ave. and held supervisory titles even though they did not perform supervisory
15 work.

16 Westborough State Hospital, Quincy Mental Health Center, Shattuck Hospital,
17 and Fuller Hospital

18
19 The Quincy Mental Health Center and the Westborough State Hospital closed in
20 2009 and 2010, respectively, and the PPR employees who worked at those facilities
21 were slated for layoff. At the time that those two facilities were closing, the Employer
22 bid for a contract to handle reimbursement work for services involving Shattuck Hospital

1 (Shattuck contract) and Fuller Hospital (Fuller contract).³ In May of 2010, when UMass
2 learned that it had been awarded the \$5M Fuller Contract, it retained all of the
3 Westborough and Quincy employees to work on that contract, and still needed four
4 additional employees to complete the work. The Employer had a six-week window to
5 implement the contract, and it needed to quickly hire employees who were already
6 familiar with mental health benefits, Medicaid, and direct pay, as well as Medicare, so
7 as not to jeopardize recovery of the \$5M in contractual revenue. UMass posted the four
8 open positions internally in August and September and filled them in October with
9 applicants who had worked with the prior vendor and knew the operations.⁴ UMass did
10 not receive the Shattuck Hospital contract until FY2013 and implemented it in January
11 of 2013.

12 Monson Developmental Center (Palmer)

13 The Monson Developmental Center was a DDS intermediate health care facility
14 located in Palmer that served people with physical and mental disabilities. Monson
15 closed at some undisclosed point, and the PPR employees working there transferred to
16 a location in Springfield. At the time of the events in this case, there was a vacancy in
17 the Springfield office for a PPR specialist level position, which the parties referred to as
18 "Palmer."

19 The Schrafft Center

³ The Fuller Contract involved Fuller Hospital and five additional programs: Massachusetts Mental Health Center, Fuller Mental Health Center, two community programs, and a skilled nursing facility.

⁴ The Fuller Contract work was more complex than the work at CSH because it involved Medicare, Medicaid, direct pay and mental health benefits, while CSH work only involved Medicare.

1 Bargaining unit members in the BCR unit work at the Schrafft Center in
2 Charlestown, but their work is different from the work that PPR Department employees
3 perform. The Schrafft Center does not provide health services, and BCR employees do
4 not work for the public providers. BCR employees perform work for MassHealth, which
5 receives claims from public and private service providers all across the state (including
6 the PPR) and tries to be the “payer of last resort.”

7 **The Reclassification Study**

8 Pursuant to Article 3 of the collective bargaining agreement between NAGE and
9 UMass, the parties agreed that UMass would undertake a job classification analysis. UMass
10 conducted the job classification analysis in the summer of 2010. The purpose of the analysis was
11 to ensure that UMass had the right positions in the right salary ranges and that the employees’
12 duties and activities conformed to their job descriptions. PPR Program Director Rose Christie
13 (Christie) started the process by reviewing and revising the job descriptions for each of the four
14 positions: Supervisor, Coordinator, Specialist, and Assistant. She then reviewed each
15 employee to see if their job aligned with the job descriptions to confirm whether they were in the
16 right position or should be placed in a different position.⁵

17 After completing this process, Christie saw that service delivery at CSH had dramatically
18 declined, and there was very little work being performed at that site. There were four assistants
19 and one supervisor working at CSH submitting claims for \$2.5M in revenue, while five PPR
20 employees working elsewhere generated \$30M in revenue. When Christie evaluated the work of
21 the Harrison Ave. employees, she found that Vasconcellos had little work because his past

⁵ Christie described this process as creating a bucket for each of the four positions and a bucket for the “outliers” who did not fit in any of the four buckets. As she reviewed each employee, she figuratively placed them in the appropriate bucket.

1 duties had migrated to the service agency or become obsolete due to operational changes.
2 Although Vasconcellos and Nguyen both had supervisory positions, neither performed
3 supervisory duties. Nguyen had a unique position in which she functioned as a data analyst.

4 As a result of the job classification analysis, UMass decided to reorganize the work at
5 CSH by consolidating it into 1 FTE,⁶ assigning supervisory work to the regional senior manager,
6 and eliminating the five positions held by bargaining unit members Richard Palma (Palma), Jean
7 Patti (Patti), Elizabeth Fay (Fay), Maria Elena Santana (Santana), and Lorraine Spinella.
8 (Spinella). UMass also decided to eliminate Vasconcellos's position at Harrison Ave. and to
9 retain Nguyen as a data analyst. At that point, Christie asked senior managers and supervisory
10 staff to evaluate the job descriptions and brainstorm ways to avoid laying off the employees
11 whose positions were eliminated. Ultimately, UMass decided to layoff Palma, Patti, Fay,
12 Santana, Spinella and Vasconcellos.

13 UMass scheduled a meeting with NAGE representatives on November 5, 2010 to
14 discuss the results of the reclassification analysis and the resulting changes. UMass did not
15 notify NAGE of the proposed layoffs prior to the November 5, 2010 meeting.

16 **Meetings and Bargaining Sessions**

17 November 5, 2010

18 On November 5, 2010, Christie, then Director of Labor and Employee Relations Ethan
19 Mutschler (Mutschler), BCR unit head Jeannette Lynch (Lynch) and Compensation Specialist
20 Sue Murray (Murray) met with NAGE representative Bernard Loughnane, Jr., (Loughnane) and

⁶ As noted in footnote 1, UMass later decided to create an additional .5 FTE position at the CSH.

1 Local President Carol Fitzpatrick (Fitzpatrick).⁷ Mutschler began the meeting by distributing the
2 new job descriptions and announcing that there would be a reduction in force within the
3 bargaining unit. He explained that five positions would be eliminated at CSH and one at
4 Harrison Ave., identified the individuals who would be laid off, and explained the layoff
5 procedures.⁸ UMass representatives explained the reason for the layoffs and asked
6 Loughnane and Fitzpatrick if they wished to participate in meetings that UMass intended
7 to hold with each affected employee. Loughnane and Fitzpatrick declined to attend the
8 meetings. Fitzpatrick asked if the layoffs would occur prior to the upcoming holidays,
9 and Christie said no; at that time the layoffs were slated to take effect on January 7,
10 2011. Loughnane asked if the Employer would consider allowing the affected
11 employees to bump other employees out of their positions, and the parties discussed
12 this request. The parties did not discuss other results of the classification study at that
13 meeting.

14 Following the November 5 meeting, Loughnane telephoned NAGE State Director
15 Kevin Preston (Preston) and told him about the meeting and the layoffs. Preston
16 directed Loughnane to file a demand to bargain which he did. Loughnane's demand to
17 bargain read as follows:

18 I have been informed that members of Local 300 have either received notice of
19 layoff or have been told that they will be laid off. Pursuant to M.G.L. Chapter
20 150E, it is incumbent upon UMass to first notify the exclusive bargaining agent,
21 and then to bargain the impact upon the members of Local 300. This has not

⁷ Other UMass representatives may have attended this meeting and the bargaining sessions that followed it, however, the record does not clearly state which other representatives attended which sessions.

⁸ At some point during the negotiations, UMass advised the Union of the severance policy. The record does not disclose the date of that discussion.

1 been done and the Union is demanding that UMass rescind the layoff of any
2 member of Local 300 and that you will contact the NAGE to bargain this issue....

3

4 The parties subsequently scheduled a meeting for November 30, 2010.

5 Meetings with Individual Employees

6 Christie subsequently met with each employee who was slated for layoff. The
7 Union did not attend the meetings. One employee, Patti, stated at the meeting that she
8 would retire on the date of her layoff, and she subsequently filed her retirement papers.

9 November 30, 2010⁹

10 Preston attended the November 30 bargaining session along with Loughnane,
11 Fitzpatrick, Christie, Mutschler, Lynch and Murray. Because the collective bargaining
12 agreement between UMass and NAGE contained a Management Rights clause that
13 gave UMass the right to “exercise complete control and discretion over its organization
14 and operations including but not limited to the determination of the level ...of service
15 and the relief from duty of its employees because of lack of work or for other legitimate
16 reasons...,” Preston initially questioned the UMass representatives about the reason for
17 the layoffs so that the Union could understand whether a lack of work or other legitimate
18 reason motivated them. UMass explained that it was laying off Vasconcellos because
19 he was a supervisor, but had no supervisory responsibilities at Harrison Ave., and they
20 did not need a supervisor there. It told the Union that it was laying off the CSH
21 employees because there was not enough work for them at the CSH; that the work did
22 not match the number of employees dedicated to it. Christie explained that CSH was
23 one of the locations that only handles reimbursement claims for services provided at the

⁹ The sequence of the conversations at each bargaining session is not completely clear from the record.

1 CSH, that PPR is paid 1.25% of the revenue that they bring in, and that when the CSH
2 Medicare revenue declined from \$1M to \$200,000, they were expending \$250,000 in
3 payroll costs but receiving only \$15,000 to \$13,000 through an interagency service
4 agreement. The parties spent a significant portion of the meeting discussing the
5 rationale for the layoffs.

6 The Union representatives asked questions regarding the work at issue, the
7 positions at issue, and positions that the Employer had recently filled for the Fuller
8 Contract. The Union requested a variety of information, including demographic
9 information regarding the employees slated for layoff,¹⁰ and data on the revenue
10 reduction at the CSH.¹¹ After discussing the rationale for the layoff decision and the
11 Union's information requests, the Union made a number of proposals, specifically; 1)
12 delay the layoffs; 2) facilitate a Union meeting with the affected employees on work time
13 at the CSH; 3) process claims at the CSH for services rendered at a different location;
14 4) enable the employees targeted for layoff to bump junior employees in other
15 bargaining unit positions;¹² and 5) solicit voluntary layoffs rather than laying off the
16 individuals identified.¹³ All of the proposals throughout the negotiations were verbal.

¹⁰ The Union understood from its members that many of the individuals slated for layoff were long term employees.

¹¹ The Employer provided all of the information that the Union requested throughout the negotiations.

¹² The collective bargaining agreement between NAGE and UMass does not contain a bumping procedure. NAGE had proposed a bumping procedure at some point in the initial contract negotiations, but UMass had rejected the proposal at that time.

¹³ Mutschler testified that the Employer spend a lot of time in caucus discussing the merits of the Union's proposals, but did not explain when these caucuses occurred. I credit this testimony because the Union's witnesses did not deny it.

1 The Proposals

2 **Delay the Layoffs and Meet with Employees**

3 The Employer agreed to facilitate the meeting between the Union and the
4 affected employees, and it subsequently did so. At some point following the November
5 30 bargaining session, UMass agreed to delay the layoffs. On December 9, 2010,
6 Christie emailed the affected employees and advised them that the January 7, 2011
7 effective date of the layoffs was temporarily on hold as a result of the discussions with
8 NAGE. UMass did not have a target layoff date at that point.

9 **Transfer Work to CSH**

10 The Employer responded to the Union's proposal to transfer reimbursement work
11 for services performed somewhere else to CSH by explaining there was no work being
12 performed at another location that they could transfer to CSH. The Union understood
13 that CSH employees had been performing reimbursement and claim work only for
14 services provided at that location. After the Employer explained that the security firewall
15 at CSH would prevent employees from doing such work, the Union asked if the security
16 firewall could be lowered. When the Employer agreed to consider lowering the firewall,
17 Preston offered to speak to the CSH Commandant to offer the Union's help.¹⁴

18 **Bump Other Employees**

19 The Union did not offer a specific bumping proposal, but indicated that it was
20 open to anything that would facilitate recognition of an employee's seniority. Mutschler

¹⁴ Preston understood the security firewall issue since NAGE represents the professional IT employees employed by the Commonwealth of Massachusetts. Preston did not discuss this issue with the Commandant because UMass later advised the Union that it had decided not to try to lower the firewall.

1 asked how that process would work, questioning the logistics of bumping where there
2 are numerous position levels and work locations. Citing contracts that he knew of
3 through other employers, Mutschler raised complications that he saw in the bumping
4 proposal. The Union did not refine its proposal in response to Mutschler's questions and
5 concerns, nor did the Employer offer any counterproposal. When the Union made the
6 bumping proposal, it specifically mentioned the Fuller Contract positions that UMass
7 had filled in October 2010. The Employer responded to the Union's Fuller Contract
8 reference by stating that Fuller did not want its work transferred to CSH, the Fuller
9 Contract employees were already hired, and UMass did not intend to displace them.
10 Ultimately, the Employer advised the Union that it would not agree to a bumping
11 procedure.

12 **Seek Voluntary Layoffs**

13 The Union did not make a specific voluntary layoff proposal but explained to
14 UMass how voluntary layoffs work at the state level, and said that they could handle
15 voluntary layoffs however UMass wanted to do it. UMass did not know how the
16 voluntary layoff process would work logistically, and it expressed its concerns to the
17 Union.¹⁵ The Union did not offer a specific voluntary layoff proposal to apply in this
18 situation. The Employer advised the Union that it did not wish to pursue voluntary
19 layoffs, and it did not counter propose anything on that subject.

¹⁵ I do not credit Preston's testimony that UMass and the Union did not discuss how the voluntary layoff process would work. Preston testified that at the state level, NAGE works with agencies to solicit volunteers for layoff, and he admitted that Mutschler asked how the bumping process would work. Because UMass's representatives were as confused about the logistics of the voluntary layoff process as they were about the bumping process, I find it more likely that UMass asked questions about the voluntary layoff process.

1 December 10, 2010

2 Following the November 30 meeting, UMass considered and discussed whether
3 to seek to lower the firewall at CSH to permit employees there to handle claim work for
4 services provided at other locations. When the parties met on December 10, UMass
5 discussed this issue with the Union. UMass said that it had decided not to inquire about
6 lowering the security firewall at CSH, it did not want to “go in the direction” of having
7 CSH handle reimbursement work for services provided at other locations, and did not
8 think it would be good for the operation of the program. UMass then indicated that while
9 it had heard the Union’s proposals, it had decided to proceed with the layoffs:

10 At that point, UMass told the Union that the affected employees could apply for
11 other open bargaining unit positions and described the following available jobs: 1) the¹⁶
12 remaining position at the CSH; 2) two positions in the BCR unit in the Schrafft center; 3)
13 a PPR revenue specialist in “Palmer”; and 4) temporary work on a vaccine program.
14 Because the Schrafft Center work was different from the PRR work that the CSH
15 employees had been performing, the parties discussed retraining, and the Employer
16 agreed to provide training to any CSH employee who was selected for a position at the
17 Schrafft Center. By that time, the Employer had closed the on-going interview process
18 for one of the Schrafft positions. However, it advised the Union that it would reopen the
19 deadline, and accept late applications and hold interviews for the CSH employees.¹⁷

¹⁶ The record does not disclose when the parties discussed the second part-time position at the CSH.

¹⁷ Lynch conducted first and second interviews with the 3 CSH employees who applied for the Schrafft positions, but did not hire any of the CSH employees. Spinella, Fay, Santana, and Palma all applied for the two remaining positions at CSH. UMass interviewed all four employees, and eventually selected Spinella and Fay.

1 When the parties discussed the open position in Palmer, the Union said that it was too
2 distant for anyone to consider. At the Union's request, the Employer also gave the
3 Union information about the temporary vaccine program work.

4 The Union then asked if Vasconcellos could work as a non-supervisor at
5 Harrison Ave. or transfer to a location in Wrentham where he had previously worked.
6 The Employer stated that it would not agree to that proposal because there was no
7 open position in Wrentham, they did not need an additional supervisor, and it did not
8 wish to pay Vasconcellos as a supervisor to perform non-supervisory work.

9 The Employer's representatives also explained that it had submitted a bid to
10 perform work for Shattuck Hospital but it did not know whether it would be awarded the
11 work. The Union offered political assistance if the Employer would agree to give
12 contract work to the CSH employees slated for layoff. The Employer indicated that it
13 was open to transferring CSH employees to perform Shattuck Contract work and would
14 encourage them to apply as internal candidates,¹⁸ but would not simply place them in
15 Shattuck Contract positions. The Union requested information on the Shattuck
16 Contract, and the Employer supplied it.

17 December 16, 2010

18 The parties met again on December 16, 2010. They did not discuss any new
19 proposals but in Preston's words, merely rehashed the same proposals previously
20 discussed. The Union continued to argue that because there was no reduction in the

¹⁸ I credit Christie's testimony that she advised the Union that UMass would consider the CSH employees as internal candidates if they subsequently applied for Shattuck Contract work, because that was UMass's policy at the time. Also, the layoff letters that Christie sent to the laid off employees on February 14, 2011, stated that they would be considered as internal candidates for one year following their last day of employment.

1 amount of work that existed system-wide, the Employer should transfer some of the
2 work to the CSH employees who were to be laid off. The Employer continued to reject
3 that proposal, having decided not to seek to lower the CSH firewall, and because it had
4 no specific work to transfer to the CSH employees who were slated for layoff.

5 January 4, 2011

6 The parties continued rehashing old proposals on their meeting on January 4,
7 2011. By this time, the meetings had become increasingly repetitive. The Employer
8 continued to give the Union the same responses, and Preston believed then that the
9 Union was not “getting any traction.” The Employer updated the Union on the process
10 of interviewing the employees slated for layoff for existing positions. Because the
11 number of open positions approximated the number of employees who were slated for
12 layoff, the Union decided to focus on seeing which employees were selected for the
13 open positions.

14 January 19, 2011

15 Preston viewed the January 19, 2011 meeting as a continued deterioration of the
16 conversation. The Union did not know what to propose at that point. At some point,
17 Mutschler advised the Union that UMass could not hold up the layoffs indefinitely and
18 needed to start “rolling out” the elimination of positions and implementing the other parts
19 of the reclassification. Preston then accused UMass of surface bargaining and stated
20 that “the Union would do what it needed to do, and UMass should do what it needed to
21 do.” The Union never asked UMass to hold another bargaining session. At the time that
22 this meeting concluded, the Employer did not have a date certain for the layoffs.

1 Because the Employer did not know which employees would be hired into the open
2 positions, it did not know which employees it would be laying off.

3 **February 11, 2011 Email**

4 By email on February 11, 2011, Mutschler advised Preston as follows:

5 I will send formal notice of our implementation of the reductions next week in
6 hard copy. I have attached the letters to be distributed on Monday to staff
7 affected by the program reduction at the Chelsea Soldiers home and the
8 reduction and restructuring of program activities in the PPR unit.
9

10 In brief we will be extending a full time position to Lorraine Spinella at the
11 Chelsea location at a specialist level. Bette Fay will be extended a .5 position at
12 the Chelsea location in her current role as an assistant. Maria Santana will be
13 provided notice of layoff effective in March however her work with Flu Vaccine
14 reimbursement can continue into April if she so chooses.
15

16 Tobias Vasconcellos, Richard Palma and Jean Patti will all be given notice of
17 layoff to take effect March 18th[2011]...
18

19 The Union did not request another meeting to discuss layoffs after this February 11
20 email, nor did the Union raise the issue of layoffs again prior to March 18, 2011, when
21 the layoffs took effect.¹⁹

22 **OPINION**

23 The duty to bargain in good faith requires parties to enter into negotiations with a
24 sincere desire to reach agreement and to make reasonable efforts to compromise their
25 differences. City of Marlborough, 34 MLC 72, 77 (2008). The term “good faith” implies
26 an open and fair mind as well as a sincere effort to reach a common ground. Taunton
27 School Committee, 28 MLC 376, 391 (2002). However, the Law does not require either
28 party to agree to a proposal or make a concession, see G.L. c.150E, s.6. Where a party

¹⁹ In early March of 2011, Preston and Mutschler were corresponding regarding the status of the collective bargaining agreement in the wake of the Supreme Judicial Court’s decision in Boston Housing Authority, 458 Mass.155 (2010).

1 is determined to maintain a set position, it must approach the subject with an open mind
2 by allowing the other side to explain the reasons for the proposal and by fully
3 articulating its own reasons for rejecting the proposal. City of Marlborough, 34 MLC at
4 77.

5 Impasse in negotiations occurs only when both parties have negotiated in good
6 faith on all bargainable issues to the point where it is clear that further negotiations
7 would be fruitless because the parties are deadlocked. City of Boston, 29 MLC 6, 9
8 (2002) (citing Town of Plymouth, 26 MLC 220, 223 (2000)). To determine whether the
9 parties have reached impasse, the Commonwealth Employment Relations Board
10 (CERB) considers the bargaining history, the good faith of the parties, the length of the
11 negotiations, the importance of the issues to which there is disagreement, and the
12 contemporaneous understanding of the parties concerning the state of the negotiations.
13 Town of Westborough, 25 MLC 81, 88 (1997). The ultimate test is whether there is a
14 likelihood of further movement by either side, and whether the parties have exhausted
15 all possibility of compromise. City of Boston, 28 MLC 175,184 (2001).

16 The issue in this case is whether UMass failed to bargain in good faith over the
17 impact of its decision to layoff PPR bargaining unit employees for a lack of work.²⁰
18 UMass argues that the evidence shows that it engaged in good faith bargaining and
19 reached impasse. It entered into the negotiations with an open mind to resolving the

²⁰ Although in some cases an employer is obligated to bargain over whether to achieve a reduction in force by means of a layoff or by alternative methods, the Complaint in this case alleges a failure to bargain over the impact of the layoff decision. As the Union noted in its brief, the DLR dismissed the allegation that UMass failed to bargain over the decision to lay employees off. As previously noted, the Union requested bargaining over the impact of the layoff.

1 Union's concerns about the impact of the layoff decision on the six affected employees.
2 It provided all requested information, postponed the layoffs at the Union's request, gave
3 the employees preferential treatment in interviewing for open positions, entertained
4 every issue that the Union raised, and fully articulated why the Union's proposals were
5 not operationally feasible. Preston's description of the last bargaining sessions as a
6 repetitive rehashing of the same issues and a continuing deterioration of the
7 conversations conclusively establishes that the parties reached impasse.

8 Conversely, the Union argues that the parties did not reach impasse because the
9 Employer never negotiated in good faith.²¹ There could be no deadlock, the Union
10 contends, where UMass never actively engaged in the discussion. Although UMass
11 attended the bargaining sessions and made a few minor accommodations, it never
12 made a counterproposal, and it implemented the original plan, essentially unchanged. I
13 am not persuaded by the Union's arguments. Based on the totality of the
14 circumstances, I find that the Employer bargained in good faith to impasse.

15 **The Employer Bargained in Good Faith**

16 I first examine whether the Employer participated in the impact negotiations with
17 an open and fair mind, a sincere purpose to reach agreement, and a willingness to
18 make reasonable efforts to compromise differences. The evidence establishes that
19 UMass listened to the Union's proposals, asked questions, discussed the issues,
20 explained its confusion and concerns, and articulated its reasons for rejecting the
21 Union's proposals. UMass agreed after the first bargaining session to postpone the

²¹ The Union argued in its opening statement that UMass engaged in unlawful surface bargaining. Although the Complaint does not contain that specific allegation, the good faith of the participants is a factor in whether the parties reached impasse.

1 layoffs and so notified the affected employees on December 9, prior to the second
2 bargaining session. The fact that UMass did not set another layoff date until February of
3 2011, after Mutschler advised Preston at the fifth bargaining session that the Employer
4 needed to start implementing the reclassifications, shows that the Employer was impact
5 bargaining with an open mind and an intent to reach an agreement.

6 Additionally, UMass thoroughly explained the reduced claim work at CSH which
7 prompted the layoff decision, answered the Union's questions about the CSH work and
8 provided data to illustrate the problem. The Employer agreed to facilitate a Union
9 meeting on work time and subsequently did so. It initially agreed to consider seeking to
10 lower the CSH firewall to permit CSH employees to perform non-CSH claim work. It
11 advised the Union of available positions, negotiated over necessary training for selected
12 employees, agreed to re-open the closed application process for one position, and
13 discussed the employees' status as internal candidates for the potential Shattuck
14 Contract work. These efforts further illustrate the Employer's good faith efforts to reach
15 agreement over the impact of its layoff decision.

16 The Union does not argue that the negotiations stalled because it did not
17 understand UMass's position. Rather, it accuses UMass of surface bargaining for
18 failing to counter propose a bumping or voluntary layoff procedure to retain the CSH
19 employees, and for maintaining an organizational structure that limited CSH claim work
20 to CSH operations. However, the Employer's failure to agree to or make counter
21 proposals in response to the Union's bumping, voluntary layoff and work transfer
22 proposals does not evince a failure to bargain in good faith. City of Marlborough, 34 at
23 72. It is undisputed that the Employer had more employees than claim work at the

1 CSH, and that Vasconcellos's work at Harrison Ave. no longer existed. Although the
2 Union argued that the Employer could and should have transferred work from other
3 entities to CSH or employed Vasconcellos in another capacity or location, the decision
4 not to restructure its operations as the Union proposed does not show a lack of good
5 faith. See Town of Braintree, 8 MLC 1193, 1197 (1981) (neither party required to
6 compromise a strongly felt position). UMass was not required to formulate a bumping
7 procedure to retain the CSH employees slated for layoff, or allow the targeted CSH
8 employees to displace recently hired Fuller Contract employees who had broader
9 experience with different payers. Id. Nevertheless, it listened to the Union's bumping,
10 transfer, and voluntary layoff proposals, Mutschler explained his concerns over the
11 logistics of bumping/voluntary layoffs in a workplace comprised of multiple positions and
12 locations, and the Union did not present a specific proposal that alleviated his concerns.
13 The Employer did not deny that it had a bargaining obligation, see Taunton School
14 Committee, supra, refuse to discuss an issue or listen to the Union's proposals, see
15 Town of Braintree, supra, (union violated the Law by its unwillingness to fully discuss
16 many of the town's "take-away" proposals), categorically reject each proposal while
17 insisting on implementing the layoffs on the originally scheduled date, see Revere
18 School Committee, 10 MLC 1245 (1983), or refuse to schedule requested bargaining
19 sessions. See Town of Plymouth, supra. The Law does not require parties to reach
20 agreement on a particular proposal – only to bargain in good faith, City of Worcester,
21 40 MLC 87, 90 (2013), and the Employer did so here.

22 **The Employer bargained to Impasse**

1 The Union focuses its argument on the Employer's engagement in the
2 negotiations and does not contend that any further movement in the parties' positions
3 was likely or possible at the final bargaining session. However, it is clear from the state
4 of the proposals and Preston's perspective that the parties had exhausted all possibility
5 of compromise. The parties disagreed on two fundamental issues: whether to
6 restructure the Employer's operations to allow CSH employees to perform work for
7 other providers, and whether to allow the laid off employees to displace other
8 employees in some manner. The Union sought a process to respect the seniority of the
9 CSH employees slated for layoff, while the Employer believed that it should layoff the
10 individuals who had no more work. Here, as in City of Boston, 29 MLC at 9, the parties
11 simply continued to disagree over pivotal issues and were deadlocked in good faith.
12 See also, City of Boston, 28 MLC at 185 (impasse reached where, at the end of the
13 negotiations, parties had diametrically opposing interests in a take-home vehicle policy.)

14 Despite the fact that the parties were rehashing the same proposals by
15 December 16, 2010, they met again on January 4 and January 19, 2011. At that point,
16 the Union's proposals were - in its view - gaining no traction, and the Union had no new
17 ideas to propose. Because the number of open positions approximated the number of
18 layoffs, the Union focused on whether the employees would be retained in different
19 positions. However, once Mutschler notified Preston which employees would not be
20 hired, the Union did not ask to reopen the negotiations.

21 Impasse existed at this point. The parties had met five times, and the Employer
22 explained the precipitating circumstances and explored the Union's proposals. Early on,
23 the parties discussed additional work, open positions, re-opening the application

1 process for one position, training, and potential future work on the Shattuck Contract.
2 However, they made no further movement on or after December 16, 2010. There were
3 no changes in the parties' perspectives that could have generated new avenues of
4 discussion; see Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 14
5 MLC 1518 (1988), no new potential created by the passage of time; see City of
6 Lawrence, 3 MLC 1304 (1976), no outstanding proposals awaiting a response from
7 either side, see City of Boston, supra, and no evidence that the Union wanted to
8 continue the negotiations or had anything else to propose. See City of Boston, 21 MLC
9 1350 (1994). There were no outstanding information requests, the Shattuck Contract
10 work was speculative at that point, the Employer had selected candidates for the open
11 positions, and advised the Union accordingly, and the Union had told the Employer that
12 the Palmer position was too far away for anyone to consider. The Union advised the
13 Employer at the last session on January 19 that the "the Union would do what it needed
14 to do, and UMass should do what it needed to do." Here, as in Town of Marlborough,
15 supra, the Employer sent the final layoff notices to the affected employees after the
16 conclusion of the negotiations. The totality of the evidence shows no possibility that
17 either party would or could present a proposal that would move them toward resolution
18 and therefore, the Employer did not violate the Law by implementing the layoffs.

19 CONCLUSION

20 Based on the record and for the reasons explained above, I conclude that the
21 Employer bargain in good faith to impasse and therefore did not violated Sections
22 10(a)(5) and (a)(1) as alleged. The complaint is dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

SUSAN L. ATWATER, 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.

