

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	Case No.: PS-001-2011
CAMBRIDGE HEALTH ALLIANCE	*	
	*	
and	*	Date Issued: May 1, 2014
	*	
MASSACHUSETTS NURSES	*	
ASSOCIATION	*	
	*	

RULING ON REQUEST BY CAMBRIDGE HEALTH ALLIANCE FOR CERTIFICATION
OF COLLECTIVE BARGAINING PROCESS

On March 11, 2014, the Cambridge Public Health Commission d/b/a Cambridge Health Alliance (CHA) filed with the Department of Labor Relations (DLR) its Request for Certification of Collective Bargaining Process (Request). On March 14, 2014, the Massachusetts Nurses Association (MNA or Union) filed its opposition to the CHA's Request. For the reasons addressed below, I am granting the CHA's request, since it is clear to me that the collective bargaining process, including mediation and fact-finding has been completed as required by Section 9 of Massachusetts General Laws, Chapter 150E (the Law).

Background¹

The MNA and the CHA were parties to a collective bargaining agreement for the period July 1, 2007 through June 30, 2010 (2007-2010 Agreement). The parties held successor negotiation sessions on May 13, May 25, June 10, June 15 and June 24, 2010. The CHA gave the MNA its first set of proposals on May 3, 2010, including a

¹ I rely on the DLR's November 15, 2013 dismissal letter and the CERB's decisions in Case MUP-10-5888 to summarize the relevant facts here.

proposal that changed retiree health insurance benefits. The MNA rejected the proposal.

On June 25, 2010, CHA offered a "Last Best and Final Offer" package proposal that included the proposed retiree health insurance benefit changes that the MNA previously rejected on May 3, 2010. During the June 25, 2010 bargaining session, the MNA again rejected the package proposal. Later that day the Employer emailed bargaining unit members that it would implement changes in retiree health insurance benefits immediately. The following day, the Employer implemented the changes.

The Union filed its petition for mediation and fact-finding in this case on June 29, 2010.

On June 30, 2010, the Union filed a charge or prohibited practice against CHA, alleging a violation of M.G.L. c. 150E, Sections 10(a)(5) and (1) (the Law). The case (MUP-10-5888) was expedited and bifurcated because of legal issues concerning Section 9 of the Law and CHA's exigent circumstances affirmative defense.

On August 27, 2010, the Commonwealth Employment Relations Board (CERB) issued a decision concluding that the CHA had failed to establish the elements of its economic exigency affirmative defense and ordering the CHA to participate in good faith in the collective bargaining procedures set forth in Section 9 of the Law. The decision further ordered the CHA to restore all terms of the MNA retiree health insurance in effect prior to the CHA's unilateral change, make whole bargaining unit members for

economic losses suffered, if any, as a result of the unilateral change and to post a notice before August 31, 2010.²

By letter dated December 23, 2010, the CHA notified the CERB that it fully implemented the CERB's Order; including restoring all terms of the retiree health insurance benefits for MNA bargaining unit members as in effect prior to the CHA's unilateral change, making employees whole, and posting a notice. Additionally, the CHA informed the CERB that it would participate in good faith in the collective bargaining procedures, including mediation, fact-finding, or arbitration, if applicable, set forth in Section 9 of the Law.

Post-December 23, 2010 Events

The parties resumed successor negotiations in 2011. On April 22, 29, and June 30, 2011, the parties participated in DLR mediation.³ After the related Superior Court litigation concluded, the Employer emailed the MNA asking it to return to the bargaining table.

In January and February of 2013, the parties held negotiation sessions. On March 1, 2013, the parties participated in a DLR mediation session. On March 5-6, the parties participated in joint negotiation sessions with other bargaining units. On March 6, 2013, the parties signed a memorandum of agreement for the period July 1, 2010 through June 30, 2013 (March 2013 MOA) on all terms and conditions of employment,

² On October 8, 2010, the CERB issued a Compliance Order. On November 5, 2010, the CERB denied the CHA's Motion to Stay Compliance.

³ The MNA filed a Superior Court complaint regarding the Employer's proposed retiree health insurance benefit changes that was ultimately dismissed by the Appeals Court. The MNA refused to negotiate with the Employer about retiree health insurance benefits from about July of 2011 through October of 2012 because of the pending litigation.

except retiree health insurance benefits. Paragraph 5 of the MOA provides the following:

The collective bargaining negotiations between MNA and the Cambridge Hospital (TCH) will be considered closed for all purposes, including for issues concerning compensation, except that the parties will continue in mediation on the sole issue of retiree health benefits for TCH bargaining unit employees. Those matters that previously have been tentatively agreed upon in those negotiations will become a part of the MNA/TCH final agreement.

On May 7, 2013, two months after signing the March 2013 MOA, the parties participated in their second DLR mediation session of 2013.⁴ On May 16, 2013, the DLR mediator emailed the CHA that she was awaiting a response from the MNA and if there was no movement, she would send the parties to fact-finding.

In a letter dated May 24, 2013, the DLR informed the parties that because mediation had failed to resolve the impasse, it was instituting fact-finding in accordance with Chapter 150E, Section 9 of the General Laws and the Rules and Regulations of the DLR. On June 18, 2013, the DLR appointed Jim Litton as the fact-finder in this case. As mentioned above, the sole issue remaining for fact-finding was retiree health benefits.

On March 3, 2014, Litton issued his fact-finding report recommending CHA's retirement benefit changes as initially proposed.⁵ Litton's rationale rested primarily on three factors: the financial condition of CHA, internal equities including the acceptance

⁴ The details of these mediation sessions are explored in the Dismissal Letter in Case MUP-13-3156, in which the DLR Investigator rejected the MNA's claim that the CHA was bargaining in bad faith and refusing to participate in good faith in mediation in May 2013 with respect to retiree health insurance benefits.

⁵ The only modification is the effective date.

by all five non-MNA unions of a retiree health insurance benefit which is identical to that which CHA proposed to the MNA, and the lack of a similar retiree health insurance benefit in the collective bargaining agreements of any comparable bargaining unit.

On March 11, 2014, CHA filed its Request. On March 14, 2014, the MNA filed its objection to the Request.

The DLR mediator conducted an additional mediation session on April 13, 2014. During the mediation, the CHA agreed to modify its last best final offer. The MNA rejected that proposal.

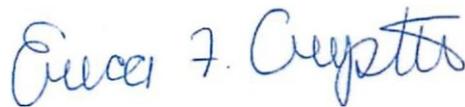
In an e-mail to the parties dated April 16, 2014, the mediator informed the MNA that the April 13 offer was still available and told the MNA to let her know by the end of April 16, whether the MNA wanted to accept the offer. The mediator also informed the MNA that she would be reporting this case to the Director the next day, and it was likely that the Director would certify that the collective bargaining process was complete (Certification). The MNA immediately responded in its own e-mail and objected to Certification. Rather, the MNA claimed that it had other thoughts and if necessary, new proposals to share. The MNA further claimed that the CHA was violating 150E by mediating in bad faith when it allegedly made multiple offers conditioned on a term that would violate the Law and/or force the Union to breach its duty of fair representation.

RULING

There can be no doubt that the parties have completed the collective bargaining process, including mediation and fact-finding. The journey was long and raised important issues. After the Employer remedied its unlawful implementation, the parties returned to the bargaining table and though they were able to reach agreement on all

other terms, they reached impasse on the Employer's proposed changes in retirement health benefits. The parties attempted to break this impasse using Section 9 procedures, but mediation, fact-finding and post fact-finding mediation simply failed. Despite the MNA's contention that it has other proposals to make and that it objects to certification, the MNA had years and many opportunities to make its proposals. The parties will simply not be able to agree in this case. The DLR does not lightly declare impasse, but in these circumstances, where there was only one issue left to resolve and despite all the Section 9 processes available the parties could not reach agreement, the journey is over. I certify that the collective bargaining process is completed.

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Handwritten signature of Erica F. Crystal in blue ink.

ERICA F. CRYSTAL, ESQ.
DIRECTOR