

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
CHELSEA SCHOOL COMMITTEE *
*
and * Case No.: MUP-15-4751
*
UNITED STEELWORKERS, LOCAL 9427 * Date issued:
*
***** November 12, 2015

Hearing Officer:

Zachary T. See, Esq.

Appearances:

Alan S. Miller, Esq. - Representing the Chelsea School
Committee

Alfred Gordon O'Connell, Esq. - Representing the United Steelworkers,
Local 9427

HEARING OFFICER'S RULING ON MOTIONS FOR SUMMARY DECISION

Summary

The issue before me is whether to allow the United Steelworkers, Local 9427's (Union) or the Chelsea School Committee's (School Committee) motion for summary decision in the present case. For the reasons discussed below, I grant the Union's motion for summary decision and deny the School Committee's cross-motion for summary decision.

Statement of the Case

On August 4, 2015, the Union filed a charge of prohibited practice with the Department of Labor Relations (DLR), alleging that the School Committee

violated Section 10(a)(5) and Section 10(a)(1) of Massachusetts General Law Chapter 150E (the Law). On August 19, 2015, a DLR investigator investigated the matter. The investigator issued a Complaint of Prohibited Practice on August 24, 2015, alleging that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: a) withdrawing recognition of the Union as the collective bargaining representative of the school nurse and school nurses' aide positions (Count I), and b) changing employee payment procedures; vacation, sick, and personal leave; wages and wage enhancements; hours of work; and standards for discharge without giving the Union prior notice and an opportunity to bargain to resolution or impasse about the decision to change these employee benefits and working conditions and the impacts of that decision on employees' terms and conditions of employment (Count II).¹ The School Committee filed its answer on August 31, 2015.

On September 11, 2015, the Union filed a motion for summary decision seeking an order that the School Committee take the following actions: (1) recognize the Union, (2) return to the status quo ante; (3) make the affected employees whole for any losses suffered due to their changed working conditions; (4) give the Union notice and an opportunity to bargain to the extent required by the Law prior to making any other changes in conditions of employment, and (5) post an appropriate notice to the bargaining unit. The School Committee filed its cross-motion for summary decision and opposition to

¹ The investigator dismissed an allegation that the School Committee independently violated Section 10(a)(1) of the Law. The Union did not file a request for review pursuant to 456 CMR 15.04(3) of the portion of its charge that the investigator had dismissed.

the Union's motion on September 25, 2015, and the Union filed its opposition to the School Committee's cross-motion for summary decision on October 13, 2015.² The following material facts are based on the Complaint of Prohibited Practice, the School Committee's Answer to the Complaint, and the parties' motions and Joint Prehearing Memorandum.

Facts

The City of Chelsea (City) is a public employer within the meaning of Section 1 of the Law. The School Committee is the collective bargaining representative of the City for the purpose of dealing with school employees. The Union is an employee organization within the meaning of Section 1 of the Law. The Union and the City are parties to a collective bargaining agreement (Agreement) that is in effect between July 1, 2013 and June 30, 2016. The Recognition Clause of the Agreement provides that the City recognizes the Union as the exclusive representative of the employees listed in Appendix A of the Agreement, which includes the nurse and nurses' aide positions that work in the Chelsea Public Schools.³ It is undisputed that the nurses are professional employees and the nurses' aides are non-professional employees.

² The DLR granted the School Committee and Union's unopposed requests for extensions of time to reply to each other's motions.

³ The DLR issued a Certification of Representatives in case number MCR-4481 on December 16, 1996, certifying the Union as the exclusive bargaining representative for a bargaining unit which includes both nurses and nurses' aides. The secret ballot election conducted on November 19, 1996 asked eligible employees if they desired to be included in an overall collective bargaining unit consisting of professional and nonprofessional employees, which resulted in 31 yes votes and 2 no votes.

Prior to June 12, 2015, the City controlled and managed the nursing program in the Chelsea Public Schools and employed the employees in the school nurse and nurses' aide positions. Chelsea Public Schools funded the nursing program, including the salary expenses for the school nurses and nurses' aides. By Executive Order dated June 12, 2015, the City eliminated the Chelsea Public Schools nursing program from the City's control and management. Effective August, 2015, the School Committee assumed the management and operation of the school nursing program.

By letter dated May 8, 2015, School Committee attorney Alan Miller (Miller) advised Union attorney Alfred Gordon O'Connell that the Union "...is not the representative of any employees of the Chelsea Public Schools." Miller's May 8, 2015 letter referred to the school nurse and nurses' aide positions in the Agreement's Recognition Clause. On or about August 4, 2015, School Superintendent Dr. Mary Bourque and School Human Resources Director Tina Sullivan advised the school nurses that they were not represented by a union.

Prior to August 24, 2015, the school nurses and school nurses' aides received, among others, the following employment benefits: weekly paychecks during the calendar year, 15 sick days, 3 personal days, a longevity bonus, and a "just cause" standard for discharge. Effective August 24, 2015, the School Committee changed the employment benefits as follows: biweekly paychecks during the school year, 10 sick days, 2 personal days, no longevity bonus, and no "just cause" standard for discharge. Also effective August 24, 2015, the School Committee took the following actions: increased the wages of the school

nurse and nurses' aide positions, increased and changed their hours of work from 8:00 a.m. - 2:30 p.m. to 7:45 a.m. - 2:45 p.m., eliminated one vacation day from senior nurse positions, and required the nurses to attend monthly "Professional Learning Meetings" after work hours. The School Committee did not give the Union prior notice and an opportunity to bargain to resolution or impasse about the decision to change these employee benefits and working conditions and the impacts of that decision on employees' terms and conditions of employment.

Arguments

The Union argues that the School Committee has admitted sufficient facts to find that it has failed to recognize and bargain with the Union as the exclusive representative of the school nurses and nurses' aides working in the Chelsea Public Schools. The Union also argues that the School Committee is the same municipal employer as the City and is therefore bound to recognize the Union. Furthermore, the Union argues that even were the School Committee a separate employer from the City, it would still be bound to recognize the Union as a successor employer of the nurses and aides. Additionally, the Union argues that the School Committee, as the bargaining agent for the City, failed to bargain in good faith when it changed terms and conditions of employment for school nurses and nurses' aides without giving the Union notice and opportunity to bargain to resolution or impasse as required by Law. In response to the School Committee's cross-motion for summary decision, the Union argues that there is

no requirement of a self-determination election or Globe ballot⁴ regarding a unit comprised of both professional and non-professional employees because there is no question concerning representation. Lastly, the Union argues that there are no genuine issues of material fact and therefore this matter may be resolved as a matter of law.

The School Committee makes opposing arguments: it moves for summary decision arguing that the bargaining unit is not appropriate as a matter of law; and it argues that an evidentiary hearing is necessary to determine the appropriateness of the bargaining unit, and the status of the School Committee and the Union as employer and bargaining representative respectively. On one hand, the School Committee argues that this prohibited practice complaint should be dismissed without a hearing because the professional school nurses have not voted to be included in the bargaining unit with non-professional nurses' aides, in violation of Section 3 of the Law. On the other hand, the School Committee also argues that an evidentiary hearing is necessary to determine whether the bargaining unit of school nurses and school nurses' aides is appropriate under the law, as well as the School Committee's status as an employer and Union's status as bargaining representative for the school nurses and nurses' aides. Furthermore, the School Committee argues that whether the City and the School

⁴ Section 3 of the Law allows for a self-determination election, or Globe ballot, to provide professional employees with the opportunity to decide whether they desire to be included in a bargaining unit that includes both professional and non-professional employees. See also, Globe Machine & Stamping Co., 3 NLRB 294 (1937).

Committee are a single employer or the School Committee is a successor employer is a matter of fact requiring the production of evidence at a hearing.

Ruling

I grant the Union's Motion for Summary Decision and find that the City and School Committee are a single employer, and that the School Committee withdrew recognition and unilaterally changed working conditions in violation of Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law.

Summary Judgment

Summary judgment is appropriate when there are no material facts in dispute and the moving parties are entitled to judgment as a matter of law. City of Cambridge, 4 MLC 1044, 1050, MUP-2659 (June 13, 1977).⁵ When considering cross-motions for summary judgment, the moving parties may satisfy their burden of demonstrating the absence of a triable issue either by submitting evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of the case at hearing. Boston School Committee, 39 MLC 366, 369, MUP-09-5549 (June 6, 2013); Flesner v. Technical Communications Corp., 410 Mass. 805, 809 (1991).

Summary judgment and decision is appropriate here because the School Committee admits to withdrawing recognition of the Union and changing

⁵ Both parties have moved for "summary decision" prior to hearing pursuant to 456 C.M.R. § 13.02(1)(b), claiming in part that there are no genuine issues of material fact and that this matter may be resolved as a matter of law. I apply the "summary judgment" standard, pursuant to Massachusetts Civil Procedure Rule 56, to determine whether there are material facts in dispute and if the matter may

employee benefits and working conditions. There is also no dispute that professional nurses and non-professional nurses' aides are included in the same bargaining unit. The School Committee never identified factual disputes requiring a hearing, just legal questions. The issue of whether the City and School Committee are a single employer is a matter of law. Whether the nurses and nurses' aide positions form an inappropriate bargaining unit because a second self-determination election has not been conducted, excluding the positions from collective bargaining rights under the Law, is also a matter of law. Furthermore, the School Committee presents no factual disputes that the Union is not the exclusive bargaining representative of the nurses and nurses' aide positions, rather they present a legal argument that the unit is inappropriate and violates the Law. Because the School Committee has identified no material facts in dispute, summary decision is appropriate in this case.

Single Employer

The City and School Committee are a single employer within the meaning of the Law. Section 1 of the Law defines "employer" as:

. . . any county, city, town, district, or other political subdivision acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees . . . In the case of school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives.

The School Committee, therefore, is not a separate municipal employer but the City and the School Committee are a single employing entity under Chapter

be resolved as a matter of law. See City of Cambridge, 4 MLC at 1050 (applying Rule 56 and Summary Judgment).

150E and jointly share responsibility for making and fulfilling contractual commitments and bargaining obligations. City of Malden, 23 MLC 181, 183, MUP-9312, 9313 (February 20, 1997); See also, Anderson v. Town of Wrentham, 406 Mass. 508, 512 n.7 (1990) (the Town's bargaining agent is the school committee or its representative); Lawrence School Committee, 19 MLC 1167, 1170 n.4, MUP-7363 (August 12, 1992); Town of Brookline, 20 MLC 1570, 1598 n.22, MUP-8426, 8478, 8479 (May 20, 1994). Accordingly, when a municipality proposes changes that affect the terms and conditions of employment of its school employees, it has an obligation to allow its representative to meet its obligation before the municipality implements its proposed change. City of Malden, 23 MLC at 183-84.

While the School Committee here denies that it is a single employing entity with the City under the Law, and asserts that the cases cited above were incorrectly decided, it presents no other legal or factual argument to show that the School Committee is not a single employer with the City.⁶ The School Committee also fails to show that it is not obligated to recognize the Union as the bargaining representative of bargaining unit positions that were previously managed by the City.

Count I – Withdrawal of Recognition

The School Committee admits that it advised the Union that it is not the representative of the nurses and nurses' aides positions included in the

⁶ Because I find that the Law establishes the School Committee and City as a single employer, I do not address the Union's alternative argument that the School Committee is a successor employer of the nurses and aides.

Recognition Clause of the City and Union's Agreement, and advised these employees that they were not represented by a union. "In general, where parties agree to be bound by a recognition clause of a collective bargaining agreement, it is unlawful for an employer to unilaterally withdraw recognition from any employees covered by that agreement and to cease applying the terms of that agreement." Town of Greenfield, 32 MLC 133, 149, MUP-04-4178 (February 8, 2006); City of Boston, 12 MLC 1690, 1694, MUP-5312 (April 9, 1986). Having established that the School Committee and City are a single employer and jointly share responsibility for making and fulfilling contractual commitments, the School Committee has an obligation to recognize the Union as the exclusive bargaining representative of the nurses and nurses' aides positions which are bargaining unit positions pursuant to the City's Agreement with the Union.

Because the School Committee admits that it failed to recognize the Union as the representative of these bargaining unit positions, I find that the School Committee violated the Law as alleged.

Count II – Changed Benefits and Working Conditions

The School Committee also admits that prior to August 24, 2015, the nurses and aides received: weekly paychecks during the calendar year; 15 sick days; 3 personal days; a longevity bonus; and a "just cause" standard for discharge. The School Committee admits that effective August 24, 2015, it changed the nurses' and aides' employment benefits so they received: biweekly paychecks during the school year; 10 sick days; 2 personal days; no longevity bonus; and no "just cause" standard for discharge. Furthermore, on August 24,

2015, the School Committee admittedly: increased the wages of the nurse and nurses' aide positions; increased and changed their hours of work from 8:00 a.m. – 2:30 p.m. to 7:45 – 2:45 p.m.; eliminated one vacation day from senior nurse positions; and required the nurses to attend monthly “Professional Learning Meetings” after work hours. There is no dispute that the Union had neither prior notice nor an opportunity to bargain to impasse or resolution about the changes to their benefits and working conditions. Because the City and the School Committee are a single employer, the School Committee is obligated to provide the Union with prior notice and an opportunity to bargain to resolution or impasse about the decision to change these employee benefits and working conditions and the impacts of that decision on employees' terms and conditions of employment. Because it admittedly failed to do so, I find that the School Committee violated Section 10(a)(5) and derivatively Section 10(a)(1) of the Law as alleged.

Appropriate Bargaining Unit

When making determinations regarding appropriate bargaining units, Section 3 of the Law gives professional employees the right to determine whether they wish to be included in a bargaining unit containing non-professional employees. City of Boston, 36 MLC 29, 37, MCR-06-5205 (September 9, 2009). Here, the DLR has already determined that a bargaining unit consisting of professional nurses and non-professional aides is appropriate, and the DLR already conducted a self-determination election in which the professional employee nurses elected to be included in a unit with the non-professional

nurses' aide positions. As a result, the Union is the exclusive bargaining representative of the nurses and aides in the same bargaining unit. Therefore, there is no question of representation requiring a subsequent election at this time.

Furthermore, the School Committee's argument that the bargaining unit of professional nurses and non-professional nurses' aides positions is inappropriate and unlawful does not justify withdrawing recognition of the Union and unilaterally changing employee benefits and working conditions. Professional and non-professional employees are not excluded from Section 2 collective bargaining rights under the Law merely because they are in the same bargaining unit. There is no evidence or argument that the nurse or nurses' aide positions should be excluded from a bargaining unit and deprived of collective bargaining rights under the Law. The Law's coverage extends to all individuals employed by a public employer except those specifically excluded by Section 1. City of Gloucester, 26 MLC 128, 130, MUP-2180 (March 1, 2000); City of Fitchburg, 2 MLC 1123, MUP-2002, 2004, 2005, 2006 (September 23, 1975). While the Commonwealth Employment Relations Board (CERB) has excluded positions that satisfy the managerial or confidential criteria found in Section 1 of the Law notwithstanding a party's prior agreement to include the positions in the unit, Town of Montague, 31 MLC 171, 178, MCR-04-5108 (May 19, 2005), citing Fall River School Committee, 27 MLC 37, 40, CAS-3363 (October 23, 2000), the School Committee here makes no such argument. Consequently, the School Committee's argument that it did not violate the Law by depriving collective

bargaining rights to employees who are otherwise not excluded, because the bargaining unit inappropriately consists of professional and nonprofessional employees, has no legal merit.

Conclusion

The Union's motion for summary decision is allowed, and the School Committee's motion for summary decision is denied. Accordingly, I conclude that the School Committee has failed to bargain in good faith by withdrawing recognition of the Union as the collective bargaining representative (Count I) and changing employee benefits and working conditions (Count II) in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. No hearing is required for this matter and the following order shall issue:

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the School Committee shall:

1. Cease and desist from:
 - a) Failing to bargain in good faith by withdrawing recognition of the Union as the collective bargaining representative of the school nurse and school nurses' aide positions;
 - b) Failing to bargain in good faith over the decision to change employee payment procedures; vacation, sick, and personal leave; wages and wage enhancements; hours of work; and standards for discharge, and the impacts of that decision; and
 - c) In any like or related manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.
2. Take the following actions that will effectuate the purposes of the Law:
 - a) Recognize the Union as the exclusive bargaining representative of the school nurse and nurses' aide positions.

- b) Return the school nurses' and nurses' aides' benefits and working conditions to those established prior to August 24, 2015, specifically: weekly paychecks during the calendar year; 15 sick days; 3 personal days; a longevity bonus; and a "just cause" standard for discharge; wages; work hours from 8:00 a.m. – 2:30 p.m.; restore one vacation day from senior nurse positions; and no requirement for nurses to attend monthly "Professional Learning Meetings" after work hours.
- c) Make affected employees whole for any economic losses suffered as a result of the School Committee's unlawful failure to bargain over the decision and the impacts of the decision to change working conditions, plus interest on any sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly.
- d) Bargain in good faith with the Union to resolution or impasse over the decision and impacts of the decision before changing bargaining unit members': payment procedures; vacation, sick, and personal leave; wages; hours of work; and standards for discharge.
- e) Sign and post immediately in conspicuous places employees usually congregate or where notices to employees are usually posted, including electronically, if the School Committee customarily communicates to its employees via intranet or email, and maintain for a period of thirty (30) consecutive days thereafter signed copies of the attached Notice to Employees.
- f) Notify the DLR within ten (10) days after the date of service of this decision and order of the steps taken to comply with its terms.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

ZACHARY T. SEE
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 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.