COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of		
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 93, LOCAL 1700		Case No.: MUPL-07-4581
and		Date Issued: November 30, 2011
JUSTIN B. CHASE		

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Joseph L. DeLorey, Esq. – Representing AFSCME, Council 93

Michael F. Drywa, Jr., Esq. – Representing Justin B. Chase

HEARING OFFICER'S DECISION

Summary

The issue is whether the American Federation of State, County and Municipal Employees, Council 93, Local 1700 (Union) breached its duty of fair representation to Justin B. Chase (Chase) by failing to file a grievance on behalf of Chase in response to his November 30, 2006 request for assistance and failing to investigate his layoff[1] and displacement rights under Section 4.6 of the collective bargaining agreement in violation

[1] Although the Complaint alleges that the Union violated the Law by failing to investigate Chase's displacement rights, the parties fully litigated the issue of whether the Union similarly violated the Law by its handling of Chase's layoff grievance, and this issue relates to the general subject matter of the Complaint. See City of Worcester, 5 MLC 1397, 1398 (1978).

of Section 10(b)(1) of Massachusetts General Laws Chapter 150E (the Law). Based on the record, and for the reasons explained below, I conclude that the Union breached its duty of fair representation when it failed to file a grievance on behalf of Chase in response to his November 30, 2006 request for assistance and failed to investigate his layoff and displacement rights under Section 4.6 of the collective bargaining agreement in violation of Section 10(b)(1) of the Law.

Statement of the Case

On April 2, 2007, Chase filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR)[2] alleging that the Union violated Sections 10(b)(1) and 10(b)(3) of the Law. On July 15, 2009, the Commonwealth Employment Relations Board (Board) issued a Complaint of Prohibited Practice and Order of Dismissal (Complaint), alleging that the Union interfered with, restrained and coerced Chase in the exercise of his rights under Section 2 of the Law in violation of Section 10(b)(1).[3] On July 24, 2009, the Union filed its Answer and on September 30, 2009, the DLR issued a Notice of Hearing. I conducted a hearing on May 6 and 10, 2010. The parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence. On the first day of hearing, the Union elected to bifurcate the hearing and present evidence regarding the merits of the grievance at a subsequent

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[2] Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations is now the DLR. Pursuant to Chapter 145 of the Acts of 2007, the DLR was given "all of the legal powers, authorities, responsibilities, duties, rights and obligations previously conferred on the labor relations commission."

[3] In its Complaint, the Board dismissed Chase's Section 10(b)(3) allegation due to lack of standing.

proceeding, if necessary.[4] On July 12 and August 9, 2010, Chase and the Union filed their post-hearing briefs, respectively. On the entire record, I make the following findings of fact and render the following decision.

Admissions of Fact

The Union admitted to the following facts:[5]

1. The Union is an employee organization within the meaning of Section 1 of the Law.

2. The Union is the exclusive bargaining representative for certain employees employed by the Town of Rockland (Town) at the Highway Department (Department).

3. At all relevant times, Chase was a member of the bargaining unit described in paragraph 2.

4. The Town and the Union are parties to a collective bargaining agreement (Agreement) for the period July 1, 2004 – June 30, 2007.

5. Section 4.6 of the Agreement states:

> The Employer shall prepare and maintain a list of employees according to seniority dates. The rights of employees under this layoff and recall provision shall be determined in accordance with the employee's position on the seniority list. The term layoff shall mean a reduction in the number of employees in a job title within the bargaining unit because of a lack of work in such job or where a Town meeting fails to vote to provide the necessary funds to perform the work. The following situations shall not constitute a layoff and accordingly shall not be governed by the layoff provisions of this section.
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> a. A change in the place of performance of the work from Department or work area to another.

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[4] See Quincy City Employees Union, H.L.P.E, 15 MLC 1340, 1355 (1989), aff'd sub nom., Pattison v. Labor Relations Commission, 30 Mass. App. Ct. 9 (1991), further rev. den'd, 409 Mass. 1104 (1991); see also United Rubber, Cork, Linoleum and Plastic Workers Of America, Local 250, AFL-CIO, 290 NLRB 817, 820-21 (1988).

[5] In its Answer, the Union made full and partial admissions of fact. This section of my decision reflects the Union's full admissions of fact, only.

b. A change whereby work performed on a shift is to be performed on a different shift or schedule.

The Town shall process an employee's layoff rights as follows:

STEP 1: The least senior employee in the affected job title may displace the less senior employee in the next lowest job title within his own Department in which he has proved satisfactory recorded work experience of ninety (90) work days with the Town or upon notification of his displacement rights, he may exercise the option to apply for any job title in the same or lower salary grade occupied by a less senior employee in another department provided he has previous satisfactory qualifying experience of at least ninety (90) working days within the last five (5) continuous years of service.

STEP 2: The employee may displace the least senior employee in his own unit in the Labor classification. An employee must have the ability and qualifications in accordance with Town standards to perform the work of the displaced employee and an employee may not displace any employee in a job, which he had previously been removed for just cause. Any employee affected by the layoff may elect, at any point in the displacement process not to displace another employee. In such an event, the employee shall receive his present pay or the nearest lower step in his new wage scale, but in no case more than his current pay or the maximum of the new lower wage scale. Recall to fill a position to which the employee on a layoff status has rights, shall be in order of seniority not withstanding other provisions of this Agreement....Any deviation from this layoff and recall procedure may be made by mutual written agreement between the Town, the Union and the affected employee.

6. Robert Corvi, Jr. (Corvi) is the Department's Highway Superintendent.

7. Albert Giannini (Giannini) is a foreman in the Department and Union Steward.

8. During the meeting on October 12, 2006, Chase was asked to sign a letter that stated:

> Due to the budget crisis in the Town of Rockland the Highway [Department] may possibly have to cut one position-Laborer if the override does not pass. I am giving you this notice to prepare you for this situation and to uphold the contract as my 60 days notice.

Sincerely,

Robert Corvi Jr.
Highway Superintendent.

9. On November 8, 2006, the Town rejected an override for the purpose of funding the Police, Fire and School Departments for the year 2006.

10. On or about November 30, 2006, Marie Chase (Mrs. Chase)[6] contacted the Union in order to file a grievance on behalf of Chase. Union representative Karen Hathaway (Hathaway) told Mrs. Chase that she would "look over" her son's contract and get back to her.

11. By letter dated December 7, 2006, Corvi issued a letter to Chase stating that Chase's "separation from employment was the result of a lay off due to the failure of the Town Meeting to appropriate the funds necessary for" Chase's position and that Chase's termination was justified under Section 4.6 of the Agreement.

Findings of Fact

Background

The City and the Union were parties to collective bargaining agreements (Agreements) effective from July 1, 2001 to June 30, 2004 (2001 – 2004 Agreement) and, July 1, 2004 to June 30, 2007 (2004 – 2007 Agreement). The 2001– 2004 Agreement was effective at the time that the Department hired Chase and the 2004 – 2007 Agreement was effective at the time that the Department terminated Chase.

Article IV, Section 4.12 of both Agreements states:

> The Town shall meet with the Union to discuss any impending layoffs at least thirty (30) days prior to such layoff. In the event difficulties arise in the scheduling of such meeting, notice to the Union with at least three (3) available times that the Town is able to meet within the thirty (30) day time frame shall constitute compliance with this section.

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[6] Mrs. Chase is Chase's mother.

Article VI, Section 6.0 of the 2001– 2004 Agreement states:[7]

Effective July 1, 2003, there shall be a general wage increase of three (3) percent; the pay schedule to be as follows:

	START	**3-months**	**6-months**	**12-months**
Foreman/Working Forman	716.41	746.85	804.32	883.44
Heavy Equipment Operator	663.85	698.00	732.06	766.17
Equipment Operator	640.07	674.17	708.26	742.39
Assistant Foreman	687.99	722.09	767.88	825.30
Truck Driver/Laborer				
Class II	598.22	632.38	666.44	701.22
Class III	566.89	600.97	635.09	669.16
Clerk Laborer	566.89	600.97	635.09	669.16
Laborer	535.68	569.78	603.86	638.02
Special Laborer	550.93	584.01	618.70	653.94
Tree Department Laborer	550.93	584.01	618.70	653.94

Article VI, Section 6.0 of the 2004 – 2007 Agreement states:[8]

Effective July 1, 2004, there shall be no increase; the pay schedule to be as follows:

[Table A]

	START	**3-months**	**6-months**	**12-months**
Foreman/Working Forman	716.41	746.85	804.32	883.44

[7] Page 9 of this Agreement was omitted from the document and/or was missing from the record upon submission. Page 10 shows a pay schedule table that reflects a general wage increase of three percent effective on July 1, 2003.

[8] This portion of the Agreement that is included in the record contains handwriting in the margins of the document; I do not consider this handwritten information as part of my decision.

Heavy Equipment Operator	663.85	698.00	732.06	715.24[9]
Equipment Operator	640.07	674.17	708.26	742.39
Assistant Foreman	687.99	722.09	767.88	825.30
Truck Driver/Laborer				
Class II	598.22	632.38	666.44	701.22
Class III	566.89	600.97	635.09	669.16
Clerk Laborer	566.89	600.97	635.09	669.16
Laborer	535.68	569.78	603.86	638.02
Special Laborer	550.93	584.01	618.70	653.94
Tree Department Laborer	550.93	584.01	618.70	653.94

Effective July 1, 2005, there shall be a general wage increase of four (4) percent; the pay schedule to be as follows:

[Table B]

	START	**3-months**	**6-months**	**12-months**
Foreman/Working Forman	745.07	776.72	836.49	918.78
Heavy Equipment Operator	690.40	725.92	761.34	743.85
Equipment Operator	665.67	701.14	736.59	772.09
Assistant Foreman	715.51	750.97	798.60	858.31
Truck Driver/Laborer				
Class II	622.15	657.68	693.10	729.27
Class III	589.57	625.01	660.49	695.93
Clerk Laborer	589.57	625.01	660.49	695.93
Laborer	557.11	592.57	628.01	663.54

[9] The parties did not offer evidence to reconcile the pay difference between Article VI, Section 6.0 of the 2001 -2004 agreement reflecting the 12-month increase for the position of Heavy Equipment Operator and the same position and step in Table A, Article VI, Section 6.0 of the 2004-2007 Agreement.

Special Laborer	572.97	607.37	643.45	680.10
Tree Department Laborer	572.97	607.37	643.45	680.10

Effective July 1, 2006, there shall be a general wage increase of four (4) percent; the pay schedule to be as follows:

[Table C]

	START	**3-months**	**6-months**	**12-months**
Foreman/Working Forman	774.87	807.79	869.95	955.53
Heavy Equipment Operator	718.02	754.96	791.79	828.69
Equipment Operator	692.30	729.19	766.05	802.97
Assistant Foreman	744.13	781.01	830.54	892.64
Truck Driver/Laborer				
Class II	647.04	683.99	720.82	758.44
Class III	613.15	650.01	686.91	723.77
Clerk Laborer	613.15	650.01	686.91	723.77
Laborer	579.39	616.27	653.13	690.08
Special Laborer	595.89	631.66	669.19	707.30
Tree Department Laborer	595.89	631.66	669.19	707.30

Step increase of 5% at beginning of fourth year.

Article VIII, Section 8.0 of both Agreements states, in part, "STEP 1: The employee with or without the Union Steward shall present to his Department Head within five (5) working days after the occurrence of the situation, condition, or action-giving rise to the grievance."

Chase's employment (2004 – 2005)

On February 10, 2004, Chase applied at the Department for the position of "Laborer/Class III." Mrs. Chase completed this application on Chase's behalf because

of his limited capacity to represent himself.[10] By letter dated February 23, 2004, Corvi informed Chase that the Department awarded him "the position" and the job started on March 1, 2004 at 6:30 a.m.[11] Also, on February 23, 2004, Corvi authorized a Payroll/Status Change Notice for Chase in the position of Laborer/Class III at a rate of $566.89 per week pursuant to Article VI, Section 6.0 of the 2001 – 2004 Agreement. By form dated March 4, 2004, Mrs. Chase, on behalf of Chase, submitted notice to the Plymouth County Retirement Board (PCRB) of Chase's employment as a Department "Laborer/Class III" with a rate of regular compensation at "$566.89."[12] On June 22, 2004, Corvi authorized a second Payroll/Status Change Notice for Chase and granted him a Laborer/Class III, three-month step increase from $566.89 to $600.97 pursuant to Article VI, Section 6.0 of the 2001 – 2004 Agreement; however, on this Payroll/Status Change Notice, Corvi listed Chase's job title as "Laborer."[13]

Sometime between June 30 and October 6, 2004, Chase informed Mrs. Chase that the Department had hired another employee. After this conversation, Mrs. Chase

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[10] Mrs. Chase and Daniel Del Prete (Del Prete) both testified that Chase has learning disabilities and a limited capacity for self-representation, and that the Union is aware of these limitations. The Union does not dispute this testimony. Del Prete is a brother to Mrs. Chase and an uncle to Chase. Del Prete is employed by the Town in the Fire Department and is a member of Rockland Firefighters, Local 1602. Del Prete testified that his family and Corvi's family "have been friends for a long time." Del Prete also testified that he inquired about possible employment at the Department for Chase and that Corvi gave him an application for Chase to complete.

[11] In this letter, Corvi did not specify "the position;" however, Corvi testified that the Department hired Chase to replace employee Mr. Mahoney (Mahoney) who was employed as a Truck Driver/ Laborer prior to leaving the Department.

[12] Mrs. Chase testified that she completed Chase's application forms because his "handwriting is not that legible."

[13] Pursuant to Section 6.0 of the 2001 – 2004 Agreement, starting compensation for the position of "Laborer" is $535.68 with a three-month step increase at $569.78.

spoke with Corvi and inquired about her son's employment at the Department.[14] During this conversation Corvi confirmed that the Department had hired Thomas J. Riordan (Riordan) as a temporary employee.[15] On November 5, 2004, Corvi authorized a third Payroll/Status Change Notice for Chase that included a six-month step increase at $603.86 for the position of "Laborer."[16] On this document, Town Administrator Bradley A. Plante (Plante) attached a handwritten post-it note, informing "Jane" that "this is an adjustment – they were paying [Chase] the wrong amount."[17]

Chase's employment (2006)

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[14] Mrs. Chase also testified that on or about October 6, 2004, Jane Barker (Mrs. Barker) informed her that the Department was going to layoff Chase. Mrs. Chase testified further that Mrs. Barker is the grandmother of an enrollee at Mrs. Chase's daycare and is married to Bob Barker (Barker) who is a Department employee. Mr. and Mrs. Barker did not testify at the hearing.

[15] Corvi testified that he never had a conversation with Mrs. Chase about Riordan, but only with Del Prete. Del Prete did not testify that he had a conversation with Corvi about Riordan or any other new hire. Instead, Del Prete testified that he spoke with Corvi after Chase was hired and inquired about whether Chase was having "some problems" at the Department. Based on the totality of the evidence presented, including the testimony of Mrs. Chase and Del Prete, I credit the testimony of Mrs. Chase on this point.

[16] Pursuant to Article IV, Section 6.0 of the 2004 – 2007 Agreement, a six-month step increase for the position of "Class III/Laborer" would have been $635.09. Corvi admitted to co-authorizing the change to Chase's job title, along with Town Administrator Bradley A. Plante (Plante), and testified that it was Secretary Betty Parker (Parker) who informed Chase that his pay classification had been downgraded; however, neither Plante nor Parker testified at the hearing. Corvi testified that Chase should have been hired as a "Laborer" and not a "Class III/Laborer" because the Town Clerk stamps all job advertisements with the correct job title; however, neither party submitted into evidence the stamped advertisement for Chase's position. The Town Clerk did not testify at the hearing.

[17] Neither party clarified the identification of "Jane" from Plante's handwritten post-it note.

By letter dated October 12, 2006, Corvi informed Chase that "[d]ue to the budget crisis in the Town of Rockland the Highway [Department] may possibly have to cut one position-Laborer if the override does not pass. I am giving you this notice to prepare you for this situation and to uphold the contract as my 60 days notice."[18] The signatories to this letter were Chase, Corvi, Giannini and Union Foreman Ralph Tanzi, Jr. (Tanzi).[19] Chase testified that while he did not understand the letter upon signing it, he did not ask for clarification from Corvi, Giannini or Tanzi. Chase testified further that he did not ask Giannini for direct assistance because he was afraid of Giannini based on prior threats.[20]

On November 7, 2006, the Town voted on a ballot for State Election, "Question 4," over whether the Town should "be allowed to assess an additional $1,300,000 in real estate and personal property taxes for the purpose of funding the Police Department, Fire Department and School Department for the fiscal year beginning July first, two

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[18] Corvi testified that he did not notify Giannini about this letter until a "couple of days before" presenting it to Chase. Corvi also testified that while the Town failed to meet with the Union at least 30 days prior to Chase's layoff, as required by Section 4.12 of the Agreements, Giannini never requested such a meeting to discuss Chase's layoff. Corvi testified further that Giannini never notified the Department that the grounds for Chase's layoff were premature under Section 4.6 of the Agreements.

[19] Giannini testified that when he signed the October 12, 2006 letter he was not aware of a contract violation and, therefore, did not protest the letter. However, in his testimony, Giannini later conceded that the October 12, 2006 letter was a violation of Section 4.6 of the Agreements. Giannini also conceded that contrary to the October 12, 2006 letter, there is no "60-days notice provision" in the Agreements. Giannini conceded further that the Department laid-off Chase five days before the necessary Town vote required by Section 4.6 of the Agreements.

[20] Chase filed separate litigation against Giannini based on these alleged prior threats.

thousand and six?"[21] By letter dated November 8, 2006, Corvi informed Chase that "due to the override not passing your last day of employment will be November 30, 2006."[22] On November 21, 2006, Corvi authorized a fourth and final Payroll/Status Change Notice for Chase, effective December 1, 2006, which indicated a "layoff" status but failed to indicate the affected job title or position.

By voicemail on November 30, 2006, Mrs. Chase complained to Union representative Hathaway that her "son [wa]s being let go because of a less senior employee," and informed Hathaway that she wanted to file a grievance on behalf of Chase.[23] Hathaway first investigated the matter by contacting Corvi and Plante, who

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[21] In his testimony, Corvi conceded that the Town did not mention the Highway Department in Question 4 and that no other ballot question (or vote) related, specifically, to funding for the Department. Corvi also conceded that as of November 7, 2006, the Town had not yet voted to reduce the Highway Department's budget and that the vote was actually taken on December 4, 2006.

[22] Although Giannini was a signatory to this letter, he testified that after, approximately, seven consecutive years as the Union Steward the Union never gave him any formal instruction and that he remained unaware of his exact duties and responsibilities in this position. Giannini also testified that while he was involved in negotiating, signing and enforcing the Agreements, including Section 4.6, he did not know "all of it." Giannini testified further that while he negotiated the layoff requirements for Section 4.6, he admitted that he was unsure whether the Town had satisfied these requirements prior to Chase's termination. Additionally, Union Representative Hathaway testified that Corvi's November 8, 2006 letter was a "horrible" layoff letter.

[23] Hathaway testified that during her grievance investigation she did not request from the Town the names or job titles of Department employees other than for Chase and Riordan. Hathaway also testified that she relied solely on Mrs. Chase's description of Chase as a "Laborer" and Riordan as a "Truck Driver" prior to making her decision not to pursue Chase's grievance. However, Mrs. Chase testified that she never told Hathaway that Chase was a "Laborer" or that Riordan was a "Truck Driver." Instead, Mrs. Chase testified that when she complained to Hathaway on November 30, 2006, she stated that her "son [wa]s being let go because of a less senior employee." Based on the totality of the evidence presented, including the job application and PCRB forms, I find that Mrs. Chase informed Hathaway that Chase was a "Class III/Laborer," but, I do

both confirmed that Riordan was a truck driver with less seniority than Chase. Hathaway then spoke with Town Labor Counsel Michelle McNulty (McNulty) who told her that the Town laid-off a "laborer versus a truck driver." During her investigation, Hathaway attempted to contact Giannini but was unsuccessful.[24] Next, Hathaway contacted her supervisor Norman Pratt (Pratt) and Union representative Michael Medeiros (Medeiros) from the New Bedford, Massachusetts office. Relying exclusively on Hathaway's explanation of the matter, and without reviewing any documentary evidence, Medeiros confirmed the Town's right to layoff Chase based on job title. On December 1, 2006, Hathaway called Mrs. Chase and informed her that based on her investigation Chase did not have a viable grievance.[25]

On December 4, 2006, the Town conducted a "Special Town Meeting" and voted to reduce the Fiscal Year 2007 departmental operating budget for the Department by

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not find that Mrs. Chase informed Hathaway of Riordan's job title only that Riordan was a "less senior employee."

[24] Relying on an affidavit submitted for another proceeding, Hathaway testified that after she spoke with Mrs. Chase on November 30, 2006, she contacted Giannini about Chase's layoff. Hathaway also testified that "when an employee feels their rights have been violated or they've been wronged...[t]heir first line of contact is their shop steward...their next line of contact is me." Chase testified that he did not contact Giannini or Hathaway but that Mrs. Chase contacted Hathaway on his behalf. Mrs. Chase testified that she did not contact Giannini but contacted Hathaway by telephone on November 30, 2006. Giannini testified that he never spoke to Hathaway after Chase was laid off. Based on the evidence presented, including testimony from Mrs. Chase, Chase and Giannini, I conclude that Hathaway did not successfully contact Giannini prior to denying Chase's grievance.

[25] Hathaway conceded that after speaking with Mrs. Chase on November 30, 2006, she was not sure if the Town had satisfied Section 4.6 of the Agreements. Hathaway also conceded that she never mentioned to Mrs. Chase (or Chase) that Chase's grievance was untimely pursuant to Article VIII, Section 8.0 of Agreements.

$40,870.00.[26] By letter dated December 7, 2006, Corvi clarified the reasons for Chase's layoff, stating, in part:

> The following information is intended as a clarification of the information Previously [sic] presented to you in my letters dated October 12 and November 12, 2006.
>
> By letter dated October 12, 2006, I informed you that due to the severe budgetary Shortfall [sic] facing the Town, it may be necessary to reduce the work force at the Highway Department by one Laborer's position. Although the Town was being presented with a Proposition 2 ½ Over Ride Vote [sic] failed, the reduction in force would be required. The reduction of the one Laborer's position would result in your lay off from your employment with the Town of Rockland. My October 12, 2006 letter was intended to provide you with 60 days notice of this possibility.
>
> As you know, the Over Ride vote failed and it became necessary to reduce the Highway Department budget. By letter dated November 8, 2006 I informed you of that fact and that your last day of employment was November 30, 2006.
>
> In order to clarify matters, please be advised that your separation from employment was the result of a lay off due to the failure of the Town Meeting to appropriate the funds necessary for your position. The Collective bargaining [sic] Agreement between the Town and your Union, AFSCME, Council 93, Local 1700 recognizes this as a justifiable basis for layoff at Section 4.6 [sic] The Collective Bargaining Agreement at Section 4.6 sets forth certain "bumping" and "recall" rights available to unit members. Although the bumping provisions of the Agreement are inapplicable to your situation, you do have the right to be recalled to employment pursuant to the provisions of Section 4.6 [sic] A copy of Section 4.6 is enclosed herewith.

On December 13, 2006, the Town produced its "Reports/ FY07 Budget Reductions" showing three line items, "Labor, Uniforms and Materials/Hired Equipment."

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[26] Pursuant to the Agreements, the Town is required to take a Section 4.6 vote before terminating a unit member's position. As mentioned above, the Department sent Chase a termination letter on November 8, 2006, twenty-six days before this December 4, 2006 Town vote occurred.

This report reflects the Department's expenditures for those three categories: (1) Labor expended $117,423.81 with $0 remaining; (2) Uniforms expended $629.67 with $0 remaining; and, (3) Materials/Hired Equipment expended $68,423.65 with $40,870.00 remaining.[27] On December 16, 2006, Mrs. Chase, Del Prete and Chase attended a Union Executive Board meeting; also in attendance were Hathaway and Union Vice President Mark Smith (Smith). At this meeting, Del Prete presented Chase's case and was told by the Board that they would take the case under advisement.

Riordan's employment

On January 2, 2004, Riordan submitted an employment application to the Department for an unspecified position.[28] By letter dated June 30, 2004, Department employee Erik Sepeck (Sepeck) notified Corvi that the United States Military had instructed him to report for active duty on July 26, 2004. By letter dated July 8, 2004, Corvi advertised that the Department was accepting applications for a "Laborer" who possessed a "Class II License," with a start-date of August 2, 2004. On July 14, 2004, Corvi authorized a Payroll/Status Change Notice for Sepeck, listing him as a "Truck Driver Laborer" and granting him a leave of absence for "Military Active Duty." On July 28, 2004, Corvi authorized a Payroll/Status Change for Riordan granting him the

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[27] Corvi testified that instead of expending the $40,870 to restore Chase's position, he chose to retain the remaining amount and ensure against any unforeseen emergencies, such as potholes or other repairs.

[28] On his application, Riordan listed over ten years of driving experience; however, he failed to indicate the position for which he was applying. Riordan also listed Giannini and Steve Costa (Costa) as references. Riordan testified that he learned about the job directly through Corvi and not through a job posting or advertisement. Riordan also testified that he is a friend of Giannini. Corvi testified that he was aware of the friendship between Riordan and Giannini. Corvi also testified that he has hunted with Giannini but, since Riordan was hired, has hunted only with Riordan.

position of "Truck Driver Laborer," starting at $566.89 per week.[29] Sometime after July 28, 2004, but prior to February 28, 2005, Corvi received Sepeck's notice of return from active duty, effective on February 28, 2005.[30] On May 9, 2005, the Town conducted an "Annual Town Meeting" and "voted to pass over raising and appropriating Forty Thousand Dollars ($40,000.00) to hire another employee for the Highway Department."

Opinion

Grievance was not clearly frivolous

Where the union has breached its duty of fair representation with regard to the processing of an employee's grievance, the charging party bears the initial burden of establishing that the grievance was not clearly frivolous. National Association of Government Employees (NAGE), 20 MLC 1105, 1111 (1993), aff'd sub nom. 38 Mass. App. Ct. 611 (1995) (citing Quincy City Employees Union, H.L.P.E., 15 MLC 1340, 1375 (1989), aff'd sub nom., Pattison v. Labor Relations Commission, 30 Mass. App. Ct. 9 (1991), further rev. den'd, 409 Mass. 1104 (1991)); Bellingham Teachers Association, 9 MLC 1536, 1540 (1982). See also Berkley Employees Association, 19 MLC 1647, 1650 (1993) (termination from employment, allegedly without just cause, coupled with the possibility that the grievance contesting that termination is substantively arbitrable under the contract, generally satisfies the "not clearly frivolous" test).

Chase's employment

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[29] Approximately seven months after submitting his application, the Department authorized Corvi to hire Riordan to replace Sepeck.

[30] Corvi testified that he mistakenly believed that Sepeck would remain on leave for a "couple of years."

The Union also argues that it conducted a thorough investigation of Chase's displacement rights and concluded that at the time of his layoff he was classified as a "Laborer," not a "Truck Driver/Class III Laborer;" and, therefore, had no displacement rights under Section 4.6 of the Agreements to "bump" someone in a higher title. While the Union points to the different job titles of Chase and Riordan as one of the primary grounds for deciding against Chase's grievance, the Union failed to reconcile the discrepancy between the Department's hiring, downgrade and termination of Chase. Specifically, the facts show that: (1) on February 10, 2004, Chase applied at the Department for the position of Class III/Laborer; (2) on February 23, 2004, the Department hired Chase to permanently replace Mahoney as a Class III/Laborer and paid Chase in accordance with the Class III/Laborer pay schedule under Article VI, Section 6.0 of the 2001 – 2004 Agreement; but, (3) on June 22 and November 5, 2004, the Department downgraded Chase's job title and pay status, respectively, to correct an earlier administrative mistake. The Union argues that the Department's downgrade of Chase's job title and pay status was justified by a job advertisement that was posted for the position of Laborer and stamped by the Town Clerk at the time of Chase's application; however, neither party submitted the disputed job advertisement into evidence. The only evidence presented that confirms Chase's job title at the time of his hire was his job application and PCRB form, both indicating his position as a Class III/Laborer.

Riordan's employment

The Union was also unable to reconcile the discrepancy between Riordan's application and his subsequent employment at the Department. Specifically, the facts

show that: (1) after learning about an unspecified job opening from Corvi, Riordan applied at the Department for an unspecified position on January 2, 2004; (2) on June 30, 2004, Sepeck notified the Department that he was requesting a leave of absence from his general position of "Truck Driver/Laborer" pursuant to his Military Active Duty, which was granted on July 14, 2004; (3) on July 8, 2004, the Department advertised for the specific position of Laborer with a Class II license; (4) on July 28, 2004, the Department hired Riordan as a Truck Driver/ Laborer; (6) after Riordan was hired, Sepeck notified the Department of his return from Military Active Duty on February 28, 2005; and, (7) on May 9, 2005, the Town denied the Department necessary funding to hire an additional employee. While the Union concedes that Riordan was a less senior employee than Chase, it contends that the Department's reason for hiring Riorden (i.e., to replace Sepeck) is irrelevant because at the time of Chase's layoff, Riordan and Chase were in different job titles; and, therefore, Chase had no effective displacement rights. In determining the weight of Chase's grievance, I find that the Department's reason for hiring Riordan is relevant to determine whether Riordan was hired temporarily or permanently as a general Truck Driver/Laborer, a Class III/Laborer or a Laborer; whether the Department made accommodations for Sepeck on his return from Military Active Duty; and, whether the Department took any actions after the Town denied its request for funding to hire an additional employee.

Timeliness of the grievance

The Union argues that Chase failed to file a timely grievance because Article VIII, Section 8.0 of the Agreements require that the employee "with or without the Union Steward" shall present to the Department Head within five working days of the action

giving rise to the grievance. The Union contends that the Department notified Chase about his termination by letter on November 8, 2006, but Chase waited until November 30, 2006 to contact the Union. Chase argues that his grievance was timely filed because he was terminated on November 30, 2006 and complained to the Union on the same day. While Article VIII, Section 8.0 of the Agreements requires Chase to present his grievance within five days of "the action giving rise to the grievance," it is not clear whether the "action" in this case is the November 8, 2006 termination letter or the actual termination on November 30, 2006. The evidence presented shows that Corvi and Giannini were aware of Chase's limited capability of self-representation when it presented the November 8, 2006 letter for signature. The evidence also shows that Chase had reasonable belief that Giannini would not assist him when he signed the November 8, 2006 letter based on allegations of prior threats by Giannini and based on Giannini's admitted lack of knowledge of the Agreements. Further, the evidence shows that Hathaway failed to inform Chase that his grievance was untimely on November 30, 2006 when she agreed to investigate his complaint, and failed to notify him again when she denied his grievance on the following day.

For these reasons, I conclude that Chase satisfied his burden of establishing that his grievance was "not clearly frivolous" based on the possibilities that his termination from employment at the Department was allegedly without just cause and that his grievance contesting that termination is substantively arbitrable under the contract. See NAGE, 20 MLC at 1111; see also Berkley Employees Association, 19 MLC at 1650.

Union's Duty of Fair Representation

Once a union acquires the right to act for and negotiate agreements on behalf of employees in a bargaining unit, Section 5 of the Law imposes on that union an obligation to represent all bargaining unit members without discrimination and without regard to employee organization membership. Quincy City Employees Union, H.L.P.E, 15 MLC at 1355. A union breaches its statutory responsibility to bargaining unit members if its actions toward an employee during the performance of its duties as the exclusive collective bargaining representative are unlawfully motivated, arbitrary, perfunctory, or reflective of inexcusable neglect. Shaugnessy v. American Federation of State, County and Municipal Employees (AFSCME), Council 93, Local 1700, 35 MLC 12, 16 (2008). A union also breaches its duty of fair representation when it ignores a grievance, inexplicably fails to take some required step, or treats a grievance in a cursory fashion. Mulvaney v. NAGE, 28 MLC 218, 224-25 (2002) (citing Independent Public Employees Association (IPEA), Local 195, 12 MLC 1558, 1565 (1986)); see also, Schwerman Trucking Co., 668 F.2d 1204, 1207 (11th Cir. 1982). Similarly, if a union fails to investigate, evaluate, or pursue an arguably meritorious grievance without explanation, it breaches its duty of fair representation. Id. (citing AFSCME, Council 93, 23 MLC 279, 281 (1997)).

The Board gives a union considerable discretion in determining whether to file a grievance and whether to pursue it through all levels of the contractual grievance-arbitration procedure. Mulvaney, 28 MLC at 225 (citing NAGE, 20 MLC at 1113). The Board and the courts have held consistently that a union exercising poor judgment in handling a grievance does not necessarily violate the duty of fair representation, provided that there is a reasonable basis for the union's decision. AFSCME, Council

93, 27 MLC 113, 116 (2001); See also Service Employees International Union (SEIU), Local 285, 9 MLC 1760 (1983); Baker v. AFSCME, Council 93, Local 2977, 25 Mass. App. Ct. 439, 441-42 (1988) (It is not enough for the employee to show that the union made a judgmental error). Nor is it enough for an employee to complain that he disagrees with the union's assessment of his grievance or even that the union made a mistake in judgment which adversely affected his interests. AFSCME, 27 MLC at 116; SEIU, Local 285, 9 MLC at 1760. Absent evidence to establish that the union was unlawfully motivated, acting in bad faith or inexcusably negligent, the Board will not decide whether the union's determination was sound, nor will it substitute its judgment for that of the union when dealing with its members. NAGE, 26 MLC 57, 58 (1999). Rather, the Board's role is to inquire into the union's motives and to review its decision-making procedures to ensure that it acted within the scope of its duty of fair representation. Fitchburg School Committee, 9 MLC 1399, 1415 (1982).

Perfunctory handling of Chase's grievance

A union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion. Mulvaney, 28 MLC at 224. A union's action is perfunctory if it is done without interest or zeal, as a matter of routine. IPEA, Local 195, 12 MLC at 1565 (citing, Mitchell v. Hercules, Inc., 410 F.Supp. 560, 568 (S.D. Ga. 1976)). Rather, a union is required to gather sufficient information concerning the merits of a grievant's claim, investigate the grievance and make a reasoned judgment in deciding whether to pursue or to abandon the grievance. Mulvaney, 28 MLC at 224 (citing SEIU, Local 285, 9 MLC at 1764; SEIU, Local 509, 8 MLC 1173 (1981)).

Here, the Union argues that its handling of Chase's investigation was not perfunctory because after speaking with several persons from the Town and the Union it determined that Chase did not have a viable, meritorious or timely grievance. The Union contends that Chase's grievance was not viable or meritorious because when the Department terminated his employment he was employed as a "Laborer" not as a "Truck Driver" and, therefore, had no displacement rights under the Agreements. The Union contends that Chase's grievance was not timely because although Mrs. Chase complained to the Union on November 30, 2006, the contractual deadline to file a grievance had expired five days after Corvi issued the November 8, 2006 letter. Further, the Union argues that while it relied on the Town to provide information about Chase during its investigation, there was no legal presumption that compelled the Union to presume that the information provided by the Town was "disingenuous." On raising several objections at the hearing, the Union asserts that much of the witness testimony is irrelevant because: (1) it pertained to Chase's employment background but not his actual job title at the time of his layoff; and, (2) it was beyond the scope of the Complaint. I overruled the Union's objections and found that this testimony was relevant to determine motive of the Union's decision. See AFSCME, Council 93, Local 24, 18 MLC 1125, 1141 (1991); see also Fitchburg School Committee, 9 MLC at 1415.

In support of its arguments, the Union relies on New England Water Resource Professionals. 25 MLC 135 (1999). In that case, the union and the city negotiated terms for a successor bargaining agreement, which included elimination of the unit member's position based on seniority. The union scheduled a membership meeting to discuss terms of the unit member's layoff and to ratify the proposed

successor agreement. The union ratified the agreement and the city subsequently notified the unit member of his termination. After making several unsuccessful attempts to contact the union and file a grievance, the unit member complained that the union had a duty to: (1) respond to his request for assistance in filing a grievance about his layoff; (2) represent him; and, (3) contact him after learning about his layoff. Id., at 136. The Board found that the unit member's arguments were "unpersuasive" because the union was unaware of his requests for assistance and dismissed his complaint. The Union contends that based on New England Water Resource Professionals it was not obligated to file a grievance on behalf of Chase because it remained unaware of his layoff until November 30, 2006 when Mrs. Chase contacted Hathaway and requested assistance. The Union contends further it was not obligated to initiate contact with Chase or process a grievance on his behalf because his request for assistance, made by Mrs. Chase, was untimely. Id., at 136.

New England Water Resource Professionals is distinguished for several reasons. First, Chase does not allege that the Union failed to initiate contact with him. Instead, he alleges that the Union failed to investigate his layoff and displacement rights and file a grievance on his behalf after Mrs. Chase contacted Hathaway on November 30, 2006. Next, there was no formal bargaining between the Department and the Union over the elimination of Chase's position. Instead, Corvi informally notified Giannini "a couple of days before" issuing the October 12, 2006 letter that Chase was facing a possible termination, and formally notified Giannini on November 8, 2006, when Corvi issued the actual termination letter on the same day. Although Corvi, Giannini and Chase met on October 12, 2006 and November 8, 2006 to sign these letters, there is no evidence that

the Union and the Town bargained over Chase's termination on these days or any other day, in direct contravention of the parties' Agreements. Further, Giannini conceded that he did not possess sufficient knowledge of the Agreements—even as he signed the October 12 and November 8, 2006 letters.

It is well-settled that unions must know their own policies and contractual procedures. Goncalves v. Labor Relations Commission, 43 Mass.App.Ct. 289, 297 (1997); Amherst Police League, 35 MLC 239, 251 (2009). The evidence shows, and the Union does not dispute, that the Town was required to take a Section 4.6 vote before terminating a unit member's position; however, the Department terminated Chase twenty-six days before the required vote occurred. In fact, both Giannini and Hathaway admitted that they were not sure whether the required Section 4.6 vote had occurred at the time of Chase's layoff. Although Hathaway conceded that Giannini is the first contact person to whom grieving unit members must refer and that Chase never contacted Giannini, Hathaway also failed to contact Giannini prior to denying Chase's grievance. Further, Giannini admitted that after several years as a Union Steward he remained unaware of his exact duties and responsibilities in that position and while he was involved in negotiating, signing and enforcing the Agreements, including Section 4.6, he did not know "all of it." While the function of interpreting the meaning of contracts lies with the contracting parties, when a union asserts that it has abandoned a grievance because it lacked merit, the Board may test that assertion by examining the union's investigation of the merits of the grievance to confirm that the decision was not ill-motivated. See Salem Teachers Union, Local 1258, 35 MLC 225, 228 (2009); see also AFSCME, 18 MLC at 1141. The exact nature of the required investigation will vary

according to the circumstances of each case. Teamsters, Local 437, 10 MLC 1467, 1475 (1984). Here, the circumstances reveal that the Union acknowledged negotiating with the Town over the terms and conditions for termination, but later admitted that it was unsure whether the Town had satisfied its contractual requirements prior to terminating Chase. Accordingly, I find that the Union acted perfunctorily in failing to take the required steps to ensure that Chase's Section 4.6 contractual rights had been satisfied prior to his layoff. I also find that the Union acted perfunctorily in its response to Chase's November 30, 2006 request for assistance and in its subsequent denial of his grievance. Specifically, the evidence pointing to: the Union's continued unawareness of its own policies and contractual procedures under Section 4.6 of the Agreements; the Union's personal knowledge of Chase's limited capabilities of comprehension and self-representation; and, Hathaway's failure to contact Giannini as Steward prior to denying Chase's grievance support my findings. See Mulvaney, 28 MLC at 224-25; see also IPEA, Local 195, 12 MLC at 1565. This prejudicial error by the Union constitutes grossly negligent conduct. Goncalves, 43 Mass. App. Ct. at 297.

Collusion

Collusion is defined as "an agreement between two or more persons to defraud a person of his rights by the forms of law....It implies the existence of fraud of some kind, the employment of fraudulent means or of lawful means for the accomplishment of an unlawful purpose." Dickerman v. Northern Trust Co., 176 U.S. 181, 190 (1900); Town of Hanover, 457 Mass. 248, 263 (2010). Allegations, standing alone, are insufficient to show fraud or collusion. See Selectmen of Town of Watertown, 279 Mass. 22, 27 (1932) (The mere allegation of a relationship between parties, without more, is

insufficient to raise a presumption of impropriety). The charging party bears the burden of proving improper motivation by a preponderance of the evidence. Medford Teachers Association, 7 MLC 1640 (1980); Alliance, AFSCME/SEIU, 6 MLC 1170 (1979); Shirley Police Union, Communications Workers of America, 7 MLC 1243 (1981).

Chase argues that through the relationships among Corvi, Giannini and Riordan, the Town and the Union colluded against him after the Town downgraded his pay status in 2004 from Laborer/Class III to Laborer, and subsequently terminated his employment in November of 2006. The evidence presented shows that on January 2, 2004, Riordan applied for an unspecified position in the Department. On February 10, 2004, Chase applied for a specific position of Laborer/Class III with the Department. Corvi approved Chase's Laborer/Class III job title and hired Chase to replace Mahoney who was employed as a Truck Driver/ Laborer prior to leaving the Department. On February 23, 2004, Corvi authorized a Payroll/Status Change Notice for Chase in the position of Laborer/Class III at a rate of $566.89. On July 8, 2004, Corvi advertised Sepeck's position, seeking a "Laborer" who possessed a "Class II License." On July 14, 2004, Corvi listed Sepeck as a "Truck Driver/Laborer" and granted him a leave of absence for "Military Active Duty." On July 28, 2004, Corvi hired Riordan as a "Truck Driver/Laborer," starting at $566.89 per week. Corvi continued to grant Chase step increases within the Laborer/Class III pay grade until November 5, 2004, when Corvi decreased Chase's rate of pay to Laborer. Sepeck remained on military leave for approximate seven months and informed Corvi that his expected return date was on February 28, 2005. On May 9, 2005, the Town voted to pass over raising and appropriating $40,000.00 to hire another employee for the Department.

Chase argues that the Town colluded with the Union against him based on: (1) the friendship among Corvi, Giannini and Riordan; (2) Corvi's hunting trips with Riordan after Riordan was hired; (3) Giannini's alleged threats against Chase; and, (4) Corvi and Giannini's general awareness of Chase's limited abilities of comprehension and self-representation. Specifically, Chase contends that evidence of collusion is apparent where the Town: (1) downgraded his pay status in 2004 without notice; (2) kept Riordan in the same pay grade even after Sepeck's notice of return in February of 2005; and, (3) terminated Chase's employment in favor of retaining Riordan after learning that the Town would not fund an additional position in the Department. While the evidence shows that Corvi authorized changes to Chase's job title and pay status on June 22, and November 5, 2004, respectively, these changes occurred six to eleven months before the Town's May 9, 2005 appropriation vote. While the evidence presented shows that Corvi and Riordan maintained a mutual friendship while both were employed by the Department, the evidence does not reveal that the Union (namely Giannini) participated in their mutual friendship. Instead, the evidence shows that with regarding the Corvi's hunting trips, Corvi ceased hunting with Giannini once Riordan was hired. Without more, bare allegations of friendship among Corvi, Giannini and Riordan, and the alleged threats made by Giannini against Chase, standing alone, are insufficient to show fraud or collusion. See Selectmen of Town of Watertown, 279 Mass. at 27. Accordingly, I find that the evidence presented is too attenuated to show that the Union and the Town unlawfully colluded against Chase.

Conclusion

For the reasons discussed, I conclude that the Union breached its duty of fair representation to Chase in violation of Section 10(b)(1) of the Law.

Remedy

The Board traditionally orders unions that breach the duty of fair representation to take any and all steps necessary to have the grievance resolved or to make the charging party whole for the damage sustained as a result of the union's unlawful conduct. See NAGE, 20 MLC at 1114-15. Here, the Union caused harm to Chase by failing to investigate his layoff and displacement rights pursuant to the Agreements and refusing to file a grievance; therefore, I first direct the Union to attempt to remedy the harm to Chase by taking all steps necessary to resolve Chase's grievance. These steps include, at a minimum, the Union submitting a written request to the Town either to process Chase's grievance, including an offer by the Union to pay the full costs of arbitration, if arbitrated, or to provide Chase the grievance remedy that would have been sought from an arbitrator (i.e., reinstatement to his former, or substantially equivalent, position with full back pay). If the Town does not agree to arbitrate or otherwise fully resolve Chase's grievance, the Union shall be liable for the wages and contractual benefits that Chase lost because the Union failed to file a grievance on his behalf, plus interest, from the date of his termination until he is reinstated by the Town or obtains substantially equivalent employment unless, as described below, the Union

elects to return to the DLR for a further hearing and the DLR determines that Chase's grievance has no merit.

According to the procedure described in Quincy City Employees Union, H.L.P.E., the Union explicitly elected to postpone its introduction of evidence designed to rebut Chase's case concerning the merits of his grievance. Id., 15 MLC at 1376 n. 67. Therefore, if the Union is unable to resolve the grievance with the Town, the Union may return to the DLR for a compliance hearing to limit its liability by proving that Chase's grievance would have been lost for reasons not attributable to the Union's misconduct. In addition, the Union shall post the attached Notice to Employees in conspicuous places at its business office and meeting hall and in places where Union notices are customarily posted to employees of the Department to assure employees that the Union will not violate the Law.

Order

WHEREFORE, based on the foregoing, it is hereby ordered that the Union shall:

1. Cease and desist from:

    a) Perfunctory and negligent investigation of unit members' grievances.

    b) otherwise interfering with, restraining, or coercing any employee in the exercise of any right guaranteed under the Law.

2. Take the following affirmative action necessary to effectuate the purposes of the Law:

    a) Request in writing that the Town of Rockland offer Chase reinstatement to his former position at the Highway Department, or if that position no longer exits, to a substantially equivalent position.

b.) If the Town of Rockland declines to offer Chase reinstatement with full back pay, the Union shall request in writing that the Town waive any time limits that may bar further processing and arbitration of Chase's grievance, and the Union shall offer to pay the cost of arbitration. If the Town agrees to waive any applicable time limits and to arbitrate the merits of Chase's grievance, the Union shall process the grievance to conclusion in good faith and with all due diligence if the Town accepts its offer to do so.

c) If the Town does not agree to arbitrate or otherwise fully resolve Chase's grievance, the Union shall make Chase whole for loss of compensation that he suffered as a direct result of his termination from the Highway Department effective on November 30, 2006. The Union's obligation to make Chase whole includes the obligation to pay Chase interest on all money due at the rate specified in G.L. c. 231, Sec. 6B.

d) Immediately post signed copies of the attached Notice to Employees in conspicuous places where notices to bargaining unit employees are customarily posted, including all places in the Town, including electronic postings if the Union customarily communicates to members via intranet or e-mail. The Notice to Employees shall be signed by a responsible elected Union Officer and shall be maintained for a period of at least thirty (30) consecutive days thereafter. Reasonable steps shall be taken by the Union to ensure that the Notices are not altered, defaced or covered by any other material. If the Union is unable to post copies of the Notice in all places where notices to bargaining unit employees are customarily posted in the Town, the Union shall immediately notify the Executive Secretary of the DLR in writing, so the DLR can request the Town to permit the posting.

e) Notify the Board in writing within thirty (30) days from the date of the Order of the steps taken by the Union to comply with the Order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

Kendrah Davis, 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 has held that the American Federation of State, County and Municipal Employees, Council 93, Local 1700 (Union) violated Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) by breaching its duty of fair representation to unit member Justin B. Chase (Chase). The Union posts this Notice in compliance with the Hearing Officer's Order.

Section 2 of the Law 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 properly process grievances for employees who are covered by our collective bargaining agreement with the Town of Rockland (Town).

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

WE WILL request the Town to offer Chase reinstatement to his former position at the Highway Department (Department), or if that position no longer exists, to a substantially equivalent position with full back pay. If the Town declines to offer Chase reinstatement to his former or substantially equivalent position, WE WILL ask the Town to arbitrate the grievance concerning Chase's termination. If the Town agrees to waive any applicable time limits and to arbitrate Chase's grievance, WE WILL represent him in the arbitration. If the Town declines to arbitrate the grievance, WE WILL make Chase whole for any loss of compensation that he may have suffered as a direct result of our unlawful conduct, plus interest.

_____ _____

For the Union 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, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).