COMMONWEALTH OF MASSACHUSETTS
BEFORE THE DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	
MAHAR TEACHERS ASSOCIATION	*	Case Nos.: ASF-14-3675
	*	MUPL-14-3671
and	*	
	*	
MICHAEL MAGEE	*	Date Issued: June 29, 2016
	*	

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Amy Laura Davidson, Esq.	-	Representing the Mahar Teachers Association
Michael Magee	-	Pro Se

HEARING OFFICER DECISION

Summary

The issue before me is whether the Mahar Teachers Association (Association) violated Sections 12 and 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) by demanding an invalid agency service fee (service fee) from Michael Magee (Magee or the Charging Party). I find that the Association did not violate the Law in the manner alleged.

Statement of the Case

On May 6, 2014, Magee filed charges with the DLR in Case Nos. ASF-14-3675 and MUPL-14-3671 alleging that the Association violated Sections 12 and 10(b)(1) of the Law. A DLR hearing officer conducted an investigation on June 25, 2014. On July

7, 2014, the investigator issued a complaint alleging that the Association had violated Sections 12 and 10(b)(1) of the Law by demanding that Magee pay agency service fees (service fees) to the Massachusetts Teachers Association (MTA) and the National Education Association (NEA) when the Association did not demand that Magee pay a service fee to the Association and the service fee provision of the collective bargaining agreement between the Ralph C. Mahar Regional School Committee (School Committee) and the Association only provides for payment of a service fee to the Association.[1] The Association filed its answer on July 15, 2014.

I conducted a hearing on February 18, 2016. Both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. Magee made an oral argument at the close of the hearing, while the Association submitted its post-hearing brief on March 15, 2016. Upon review of the entire record, including the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

[1] The investigator dismissed certain other allegations, specifically that the Association's demand violated Section 12 because: a) the contract ratification vote was not held at a reasonable time and place as 456 CMR 17.03(2) requires; b) the Association voted to amend its by-laws using a procedure that violated the notice provision of the by-laws; and c) the Association's by laws prohibited Magee from voting in the contract ratification vote. Also, the investigator dismissed allegations that the Association violated Section 10(b)(1) of the Law by: a) the conduct of then Association President Greg Scotland (Scotland) on September 4 and 6, 2013; and b) the conduct of Association Executive Board member Matthew Parsons (Parsons) in May 2014. Pursuant to 456 CMR 15.04(3), Magee filed a request for review of the portions of the charges that the investigator dismissed. On November 13, 2014, the Commonwealth Employment Relations Board (CERB) affirmed the investigator's prior dismissal of those allegations, and Magee did not file a judicial appeal pursuant to Section 11 of the Law.

Findings of Fact[2]

The School Committee oversees the education of students in grades seven through twelve, who attend either its middle school or high school. The Mahar Teachers Association (Association) represents a bargaining unit of non-professional employees and a bargaining unit of professional employees, commonly referred to as the teacher's bargaining unit, which is the subject of the present case.

History of the Association

The Association has been a long-time affiliate of the Massachusetts Teachers Association (MTA) and the National Education Association (NEA), its so-called parent unions. The Association referenced that affiliation on forms that the Association submitted to various state agencies in the early to mid-1970's. For example, in a Form FR-Annual Financial Report that the Association filed with the Department of Labor and Industries in December 1974, the Association notes that its membership dues of $86.00, included dues for the Association, dues for the MTA and dues for the NEA. At all times relevant to the present case, the Association held tax-exempt status as part of the MTA's group tax exemption, which the MTA held pursuant to its designation as a Section 501(c)(5) labor union by the Internal Revenue Service (IRS).[3]

[2] The DLR's jurisdiction in this matter is uncontested.

[3] In a September 17, 1982 letter, John D. Johnson, acting IRS district director, approved a change in the MTA's tax exempt status from a Section 501(c)(6) business league to a section 501(c)(5) labor union and noted that:

> Examination of your activities discloses that you act as the central organization for approximately four hundred (400) separate subordinate organizations throughout the Commonwealth. The Regional Offices operate with field representatives who service the labor needs of your

The MTA's 2013-2014 Bylaws, Standing Rules and Regulations (2013-2014 Bylaws) require as a condition of affiliation that local unions include in their individual bylaws a provision for unification of the local union, the MTA and the NEA memberships. As an affiliate of the MTA and NEA, the Association is the collection agent for the dues that its union members pay and the service fees that bargaining unit members who decline to join the Association (fee payers) pay.[4] The MTA and NEA do not collect dues or service fees directly from employees. Instead, the MTA and the NEA bill the local unions monthly for dues and service fees. Article IV, Section 3 of the 2013-2014 Bylaws states in pertinent part:

> Payment of Dues
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> Each local association shall remit per capita annual dues at the rate established in Sections 1 and 2.
>
> Annual dues shall be payable in full on or before December 31 unless the local association is on a payroll deduction plan and notice of said plan is filed with the Association.
>
> Payments shall be made in accordance with the schedule agreed upon with the Association. Payment in full shall be made no later than sixty (60) days following the final date in said schedule.
>
> Local associations that fail to complete payments in accordance with this section shall be assessed an interest charge on the overdue unpaid balance.

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subordinate organizations. These services include review of grievances, work standards and conditions, arbitration and related labor problems.

[4] The MTA's 2013-2014 Bylaws, Standing Rules and Regulations require as a condition of affiliation that local unions remit the prescribed dues and that the local unions include in their bylaws a provision for unification of the local union, the MTA and the NEA's memberships.

> Any local association that has an agency service fee provision shall prorate and remit said fee. The amount remitted to the Association and the NEA shall be remitted in the same ratio as for active members.

When an employee seeks to join a local union, including the Association, which is affiliated with the MTA and the NEA, the employee is asked to complete a membership application that bears the MTA/NEA logo in the upper left-hand corner.[5] The membership application seeks certain personal information from the employee as well as information about the employee's local union, employer and the bargaining unit. The application also contains a payroll deduction authorization that permits an employer each year to deduct from the employee's salary the current dues of the local union, the MTA and the NEA, notwithstanding any future increases or decreases in the dues amounts.

When an employee declines to join a local union that is affiliated with the MTA or NEA, the employee is asked to complete an agency fee application. The agency fee application seeks certain personnel information from the employee as well as information about the employee's local union, employer and the bargaining unit. The agency fee application also contains a payroll deduction authorization and a continuing cash authorization. Similar to the payroll deduction authorization that union members execute, the payroll deduction authorization for fee payers permits an employer to deduct from the employee's pay the current fees of the local union, the MTA and the NEA, notwithstanding any future increases or decreases in the fee amounts. By executing the continuing cash authorization, the employee consents to having the treasurer of the local union bill the employee annually for the current fees of the local

[5] The membership application also contains the MTA's and the NEA's email addresses as well as the MTA's address and telephone number.

union, the MTA and the NEA, notwithstanding any increases or decreases in such fees in the future. If the employee has not paid the current fees by December 31st, the continuing cash authorization also permits his/her employer to deduct the current fee in ten equal amounts from the employee's salary.

Charging Party

Magee has been a School Committee employee for approximately seventeen years and currently is a history teacher. Prior to late August or September 2013, Magee had been a dues-paying member of the Association. On or about August or September 2013, Magee resigned his membership in the Association. The Association did not give Magee an agency service application to complete at that time.[6] As of 2013-2014, Magee was the only bargaining unit member who was not a member of the Association.

2013-2016 Collective Bargaining Agreement

On or about December 2013, the School Committee and the Association agreed upon a tentative successor collective bargaining agreement for the teacher's bargaining unit, which was subsequently ratified. On Friday, January 17, 2014, Melissa Messing (Messing), the Association's elected secretary, sent the following email message to bargaining unit members:

> Hello folks, this is just an update notice from the president of your Mahar Teachers Association. It appears that we did not ratify the contract correctly last time we voted on it because we needed some additional paperwork filled out. We seem to have that in order now. What that means is, that we will re-vote the contract that is currently in place. We will first try to meet after the February faculty meeting for a

[6] Magee also did not believe that he completed a membership application when he joined the Association seventeen years before, and the Association did not put any membership application for him into evidence.

> few minutes to fill you in on the details (there are no new changes to the contract) but we also need to put a few things into the Mahar Teaches Association bylaws which requires a vote by the Mahar Teachers. We will try to do this bylaws vote on Monday February 3rd 2014, right after the faculty meeting. The voting on the contract will occur on Tuesday, February 4th, same as we have always done it by having people stop by the library and placing their ballot into the box. Sorry for any confusion but this whole thing is just another formality in trying to get the contract signed, sealed and delivered correctly.

Attached to the email was a notice dated January 17, 2014 that invited all members of the teachers' bargaining unit to attend a Monday, February 3, 2014 informational meeting. The subject matter of the informational meeting was the proposed collective bargaining agreement for 2013-2016 (2013-2016 Agreement) that was scheduled for a ratification vote on Tuesday, February 4, 2014. The January 17, 2014 notice also stated in pertinent part:

> The proposed agreement contains a provision for an agency service fee. If the proposed settlement is ratified by the members of the bargaining unit and by the School Committee, the agreement will require the payment of an agency service fee. The agency service fee for 2013-2014 was $390.60.
>
> You are hereby informed that:
>
> A. All members of the teachers' bargaining unit are eligible to vote on the proposed agreement; and
>
> B. The Mahar Teachers' Association's most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements for the previous financial year is available for inspection.
>
> C. The Mahar Teachers' Association is an affiliate of the Massachusetts Teachers Association and the National Education Association.

On February 4, 2014, Messing sent an email message to all bargaining unit members stating in relevant part:

> Reminder-Voting to ratify the Mahar Teacher's Contract is happening in the library today. Until the Biology MCAS testing is complete, please be sure to use the AV entrance in the back of the library.

On that date, bargaining unit members voted to ratify a collective bargaining agreement between the School Committee and the Association that, by its terms, was in effect for the period between July 1, 2013 and June 30, 2016 (2013-2016 Agreement). Article XX of the 2013-2016 Agreement stated in relevant part:

> The Committee agrees to require as a condition of employment that all teachers, except those certified as members to the Committee by the Association, pay annually or by dues deduction to the Association as of the thirtieth (30th) day subsequent to each employment, or the thirtieth day (30) subsequent to the effective date of this Agreement, whichever is later, an agency service fee which shall be commensurate with the cost of collective bargaining and contract administration as determined solely by the Association and which amount shall be at one hundred percent (100%) of the Association dues.

Association's Amended Bylaws

On February 3 or 4, 2014, Association members voted to approve amended bylaws (Association bylaws) that included a rebate procedure for fee payers. Relevant portions of the Association's bylaws include:

> Article III
>
> Section 1 (in part): Active members of the Association shall be members of the Massachusetts Teachers Association and the National Education Association.
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> Article V
>
> Section 1: No person shall be admitted to or be continued as an active member in the Association who is not also a member of the Massachusetts Teachers Association and the National Education Association.
>
> Article X

> Section II: Each local association which has a provision in its contract requiring payment of an agency service fee shall serve a written demand for payment of such service fee upon each member who has not become a member of the Association. The demand shall comply in all respects with 456 CMR 17.04. The Mahar Teachers Association shall forward to the non-member employee all information required by law …
>
> Section III: A non-member who objects to the amount of the agency service fee demanded by the Mahar Teachers Association shall file a written objection within thirty (30) days of receipt of the material set forth in Section II above. Such objection shall be mailed or otherwise delivered to the Treasurer of the Mahar Teachers Association representing the bargaining unit of which the employee is a member.
>
> Section IV: Upon receipt of an objection filed pursuant to Section III above, the objecting non-member shall jointly establish and administer an escrow account with the Mahar Teachers Association into which the objecting non-member shall deposit the full amount of the agency service fee demanded by the [A]ssociation.
>
> Section V: Promptly after expiration of that time period within which objections may be filed, the MTA shall petition the AAA [American Arbitration Association] to appoint an independent arbitrator to decide the amount of the fee. The arbitration proceeding shall be conducted in accordance with the "AAA Rules for Impartial Determination of Union Fees" except as otherwise provided herein.

Service Fee Demand

On March 27, 2014,[7] the Association sent Magee a letter stating in pertinent part:

> According to our records, you have not become a member of the Mahar Teachers Association/Massachusetts Teachers Association ("MTA")/National Education Association ("NEA") or paid a service fee required by Article XX of the collective bargaining agreement with the Ralph C. Mahar School Committee. The prorated service fee for the 2013-2014 school year is as follows:
>
> MTA $158.01

[7] Pursuant to Sections 13 and 14 of the Law, the Association previously had filed a completed employee information report (Form 1) and a completed employee financial report (Form 2) with the DLR on September 10, 2013, a little more than six months prior to the issuance of the service fee demands to Magee.

NEA $31.58

Total $189.59

> The amount for this year was calculated after a review of the most recent financial reports available to the Mahar Teaches Association, MTA and NEA. A detailed explanation of the way the MTA and NEA portions of the agency fee were calculated as enclosed, including the MTA and NEA audits. The amounts of the NEA and MTA agency fee have been prorated based on the clarification date of the Mahar Teachers Association contract and a detailed explanation is included.
>
> You are hereby notified that the Mahar Teachers Association has established a rebate procedure through which you may challenge the agency fee demand in this letter. A copy of the rebate procedure is included in the *MTA/NEA Combined Agency Fee Explanation for 2013-2014* at Part J. Note that any challenge under this procedure must be filed with the Treasurer of the Local within thirty (30) days of your receipt of this demand.
>
> Pursuant to 456 CMR 17.05 of the rules and regulations of the Labor Relations Commission, the Association hereby demands that you pay the total amount due as shown above for the year in question. The fee should be paid to the Mahar Teacher's Association and sent to Karen Willard, Treasurer, at 76 Harrison Avenue, Orange, MA 01364.
>
> Under our contract, it is a condition of employment to pay the agency service fee which shall be enforced by the Mahar Teachers Association, MTA and NEA.
>
> The rules and regulations of the Labor Relations Commission pertaining to agency service fees are included in the *MTA/NEA Combined Agency Fee Explanation for 2013-2014 at Part 1.*

The Association enclosed the following two documents with the March 27, 2016 letter: "MTA and NEA Combined Agency Fee Explanation for 2013-2014" (Combined Agency Fee Explanation) and "MTA and NEA Prorated Agency Fee Explanation for

2013-2014" (Prorated Agency Fee Explanation).[8] The "MTA and NEA Prorated Agency Fee Explanation for 2013-2014 stated:

> Under Article XII of the Mahar Teachers Association Bylaws, the membership year for the Mahar Teachers Association is from August 1 through July 31.
>
> The full 2013-2014 agency fee for the MTA and NEA are listed as follows:
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> MTA $325.84[9]
> NEA $64.76[10]
>
> The Contract Between the Ralph C. Mahar Regional School Committee and the Mahar Teachers Association dated July 1, 2013 through June 30, 2016 was ratified on February 4, 2014.
>
> Based on the date of the February 4, 2014 ratification, 177 days remain in the 2013-2014 membership year. The agency fee for the MTA and the NEA have been prorated based on the 177 days left in the membership year resulting in the following:
>
> MTA $158.01
> NEA $31.58
> Total $189.59

The Association did not demand that Magee pay a fee to it, because the Association did not have the requisite audit report. The Association declined to have an audit done because of the cost.

[8] The Association previously sent Magee an identical letter on March 18, 2014. However, although the Association in the March 18, 2014 letter referenced the Combined Agency Fee Explanation and the Prorated Agency Fee Explanation as enclosed, the documents were not actually enclosed.

[9] The MTA's fee of $325.84 equals 67.045% of the $486.000 in dues that professional, full-time local union affiliate members, including Association members, pay to the MTA.

[10] The NEA's fee of $64.76 equals 36.180% of the $182.00 in dues that professional, full-time local union affiliate members, including Association members, pay to the NEA, minus $3.00, which union members contribute to an NEA special fund whose stated purpose is "to advance the goal of great public schools for all students."

Upon receipt of the service fee demand, Magee notified the Association that he was going to challenge the service fee demand and that he wanted to open an escrow account with the Association to deposit the amount of the fee payment. Magee and the Association subsequently opened that escrow account. On May 5, 2014, Magee filed a prohibited practice with the DLR challenging the service fees.

Opinion

Section 12 of the Law, as limited by the First Amendment to the United States Constitution, permits public sector unions to collect service fees from non-members to cover their pro rata share of the costs of collective bargaining and contract administration. Belhumeur v. Labor Relations Commission (Belhumeur), 432 Mass. 458 (2000); Lyons v. Labor Relations Commission, 397 Mass. 498, 501 (1986). Section 12 of the Law states in pertinent part:

> The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting. …

A union demanding a service fee from non-members must satisfy certain constitutional and statutory requirements. First, the union must provide an escrow procedure for all amounts charged and a rebate procedure, at the time the fee is demanded that provides for prompt adjudication before a neutral arbitrator. Also, the service fee demand must conform to Sections 17.03 and 17.05 of the DLR's regulations

and must be accompanied by sufficient information to allow the fee payer to determine whether to challenge the fee. Finally, the amount of the fee must be calculated correctly based on chargeable expenses. Wareham Education Association, 24 MLC 23, 29, ASF-2097, 2098, 2055, 2056, 2057 and 3015 (October 19, 1997), aff'd sub nom. Wareham Education Association, 430 Mass. 81 (1999) (Wareham); School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70 (1982).

Here, on March 27, 2014, the Association demanded a prorated service fee from the Charging Party in the amount of $189.59, of which $158.01 was payable to the MTA and $31.58 was payable to the NEA. No portion of the service fee was payable to the Association for expenses that it incurred as the exclusive bargaining representative for the teacher's bargaining unit. Magee contends that the March 27, 2014 demand is invalid for several reasons that I will discuss in seriatim.

First, Magee contends that the demand is invalid because no portion of it was for the Association's expenses. Although Section 12 of the Law permits the Association as the exclusive bargaining representative to charge Magee a pro rata share for expenses that it incurred as the exclusive bargaining representative, it does not compel the Association to do so. However, as contemplated in the 2013-2014 Bylaws, the Association still needed to act as the collection agent for the MTA and NEA because the MTA and NEA had no vehicle to seek payment of fees from Magee absent a service fee demand from the Association as the exclusive bargaining representative. Furthermore, while Section 12 of the Law and Article XX of the 2013-2016 Agreement between the Association and the Employer authorize the Association to demand a service fee, those provisions do not mandate how the Association must apportion the service fee, i.e. that

the Association must apportion monies to itself in order to seek fees on behalf of its parent unions, the MTA and NEA.

Next, I must consider whether the Association's failure to provide an audit report of its expenses with the March 27, 2014 demand rendered the demand invalid. In Wareham, the Supreme Judicial Court ruled that a local union, no matter the size, must provide an independently audited verification of its major expenses when seeking a service fee for those expenses. 430 Mass. at 89. The purpose of the audit report is to provide potential fee objectors with sufficient information about the service fee demand to gauge its propriety. See Harrison v. Massachusetts Soc. of Professors /Faculty Staff, 405 Mass. 56, 64 (1989). However, the present matter can be distinguished from the Wareham case because the Association did not charge Magee for any share of its expenses as collective bargaining representative but solely sought monies on behalf of the MTA and NEA. Because the Association did not charge Magee for any of its expenses, there are no expenses to challenge and thus, no need for an audit report from the Association. In terms of the MTA and NEA fees, the Association did attach independently audited financial statements from its parent unions to the demand. Thus, Magee had sufficient financial information for him to decide whether to challenge the MTA and NEA fees.

Additionally, Magee contends that the March 27, 2014 demand was invalid because Article XX of the 2013-2016 Agreement only referenced unit members' obligation to pay a service fee to the Association. Magee is correct that Article XX

makes no mention of an obligation to pay fees to the MTA or the NEA.[11] However, the Supreme Court previously has ruled that public sector unions, including those with unified membership structures, may charge objecting bargaining unit members for the pro rata share of the costs associated with otherwise chargeable activities of its parent unions. See Lehnert v. Ferris Faculty Ass'n, 500 U.S. 507, 522-523 (1991); see generally Locke v. Karass, 555 U.S. 207, 217-218 (2009) (setting forth a two-part standard to determine whether the costs of litigation activities, which benefit other locals or the national union and are included in an affiliation fee that the local union pays to its national union, are chargeable to fee payers). Although Magee understandably is concerned about having to pay fees to the MTA and NEA as those unions are not specifically enumerated in Article XX, any reference to the Association in Article XX also incorporates the MTA and NEA because the Association is an affiliate of the parent unions and all three unions have a unified membership structure. Furthermore, the Association reminded unit members of its affiliation with the MTA and NEA in the January 17, 2014 email message announcing that the another ratification vote would take place on the proposed 2013-2016 Agreement on February 4, 2014 and that there was an agency service fee provision contained therein.

Conclusion

Based on the record and for the reasons stated above, I conclude that the

[11] The Charging Party also notes that although Article XX states that the amount of the service fee "shall be at one hundred percent of the Association dues," the March 27, 2014 demand was not for that amount. However, because the complaint in the case before me does not concern a challenge to the amount of the March 27, 2014 demand, I need not decide this issue.

Association did not violate Sections 12 and 10(b)(1) of the Law by demanding an invalid service fee from Magee.[12]

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

_____
MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11, 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 ten days, the decision shall become final and binding on the parties.

[12] This decision resolves the need for the parties to continue to hold Magee's spring 2014 service fee payment (2014 payment) in escrow, and the 2014 payment should be released to the Association for remittance to the MTA and NEA.