



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued May 15, 2019

Department of Labor Relations

For the period July 1, 2016 through June 30, 2018





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May 15, 2019

Mr. Philip Roberts, Director
Department of Labor Relations
19 Staniford Street, First Floor
Boston, MA 02114

Dear Mr. Roberts:

I am pleased to provide this performance audit of the Department of Labor Relations. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2016 through June 30, 2018. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Labor Relations for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

cc: Rosalin Acosta, Secretary, Executive Office of Labor and Workforce Development

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LIST OF ABBREVIATIONS

| | |
|------|--|
| CERB | Commonwealth Employment Relations Board |
| COSO | Committee of Sponsoring Organizations of the Treadway Commission |
| CTR | Office of the Comptroller of the Commonwealth |
| DLR | Department of Labor Relations |
| ERM | enterprise risk management |
| ICP | internal control plan |
| JLMC | Joint Labor Management Committee |

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Labor Relations (DLR) for the period July 1, 2016 through June 30, 2018. In this performance audit, we examined DLR's administration of its dispute resolution case management activities.

Below is a summary of our findings and recommendations, with links to each page listed.

| | |
|--|---|
| Finding 1 Page 10 | DLR did not have time standards for processing all cases. |
| Recommendations Page 11 | <ol style="list-style-type: none">1. DLR should reexamine its case workflows and, where practicable, establish time standards for the processing of case phases and overall case life cycles. For cases where it is not feasible to establish time standards, DLR should establish check-in points to facilitate processing.2. DLR should establish monitoring procedures to ensure that cases adequately progress to closure or settlement. |
| Finding 2 Page 12 | DLR did not always meet its established time standards for completing certain case types. |
| Recommendation Page 15 | DLR should develop monitoring controls regarding the completion of case phases and life cycles. |
| Finding 3 Page 16 | DLR did not submit at least one required annual report to the Legislature within the established timeframe. |
| Recommendation Page 16 | DLR should develop policies and procedures to ensure that it files its annual report within 120 days of the close of its fiscal year. |
| Finding 4 Page 17 | There were deficiencies in DLR's internal control plan (ICP). |
| Recommendations Page 18 | <ol style="list-style-type: none">1. DLR should take the measures necessary to ensure that its ICP complies with the Office of the Comptroller of the Commonwealth's <i>Internal Control Guide</i>.2. DLR should establish policies and procedures for the annual review of its ICP as well as monitoring controls to ensure that these policies and procedures are adhered to. |

OVERVIEW OF AUDITED ENTITY

The Department of Labor Relations¹ (DLR) was established in November 2007 pursuant to Chapter 145 of the Acts of 2007. This legislation formally merged the former Labor Relations Commission and Board of Conciliation and Arbitration. Section 90 of Chapter 23 of the Massachusetts General Laws established DLR within, but not subject to the jurisdiction of, the Executive Office of Labor and Workforce Development. DLR is administered by a director, appointed by the Governor, whose duties are set forth in Sections 9R(c) and (d) of Chapter 23 of the General Laws.

The majority of DLR's work is dedicated to adjudicating charges² of prohibited practices under Chapters 150A (the Private Sector Collective Bargaining Law) and 150E (the Public Employee Collective Bargaining Law) of the General Laws, which were enacted in 1973. Prohibited practices include employer discrimination or retaliation against employees engaged in activities protected by the law, failure of an employer or employee organization to collectively bargain³ in good faith, and failure of an employee organization to properly represent a member of the bargaining unit.⁴

To ensure prompt and fair resolution of labor disputes, DLR conducts investigative reviews and hearings on labor grievance charges or petitions filed with the agency, renders decisions, and litigates case decisions appealed to the Appeals Court. Conciliation efforts by DLR often result in voluntary resolution of cases instead of litigation.

DLR's main office, located at 19 Staniford Street in Boston, serves eastern Massachusetts; its field office, at 436 Dwight Street in Springfield, serves western Massachusetts. As of June 30, 2018, DLR had 15 full-time and 10 part-time employees. DLR also had two per-diem members who served as members of the Commonwealth Employment Relations Board (CERB) and another per-diem member to serve as the chair of the Joint Labor Management Committee (JLMC) during the audit period. Staff members assigned to the field office perform the same functions as those in the main office, except for processing case intakes and conducting hearings, which are done only at the main office. According to Section 11 of

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1. Sections 17 and 34 of Chapter 3 of the Acts of 2011 changed the agency's name from Division of Labor Relations to Department of Labor Relations.
 2. A charge, in this context, is a written allegation of behavior submitted to DLR.
 3. According to *A Guide to the Massachusetts Public Employee Collective Bargaining Law*, "Collective bargaining is the mutual obligation of employers and employees' representatives to meet at reasonable times and confer in good faith with respect to wages, hours, standards of productivity and performance, and other terms and conditions of employment. This includes the mutual obligation to negotiate an agreement and bargain over questions arising under an agreement."
 4. A bargaining unit is a group of employees who share a community of interest (e.g., common working conditions, job requirements, supervision) and are represented by a union in negotiations or discussions with management.

Chapter 150E of the General Laws, these staff members are responsible for conducting investigations and hearings.

DLR received state appropriations of \$2,333,049 and \$2,374,663 for fiscal years 2017 and 2018, respectively. As of June 30, 2018, DLR had 422 open cases, which had been open for an average of 42 weeks.

DLR's Organizational Structure

DLR comprises three active working groups.

Dispute Resolution Office

According to Section 9P of Chapter 23 of the General Laws,

The dispute resolution office shall consist of hearing officers, mediators, arbitrators, investigators, and other skilled professionals who shall attempt, through the use of pre-hearing investigative conferences, expedited hearings, mediation, deferral to arbitration, and other dispute resolution procedures, to resolve any labor dispute brought to the attention of [DLR].

CERB

CERB is a three-member appellate body within DLR that was created during the 2007 reorganization of certain Commonwealth agencies in accordance with Section 9R of Chapter 23 of the General Laws. CERB has one full-time chair and two per-diem members, who are all appointed by the Governor. It is primarily responsible for issuing decisions and final orders on appeals of Unfair Labor Practice cases. In addition, CERB is occasionally involved in resolving Representation cases, Clarification/Amendment Petition cases, and Written Majority Authorization cases.

JLMC

JLMC is responsible for overseeing police and firefighter labor contract negotiations. According to its website, "JLMC may, at its discretion, take jurisdiction in any dispute over the negotiation of the terms of a collective bargaining agreement involving municipal firefighters or police officers." JLMC consists of 12 members appointed by the Governor, plus a chair who is nominated by the members.

DLR Case Management System

During the audit period, DLR used Time Matters from LexisNexis as its case management system for managing all nine of its case types and their related workflows. The system also allows DLR to run queries against its data on an ad hoc, monthly, and year-to-date basis to obtain all of its case management metrics and generate operational reports.

According to DLR's 2018 annual report and its October 2017 document *A Guide to the Massachusetts Public Employee Collective Bargaining Law* (known as the Green Book), the agency handles the following case types:

1. **Unfair Labor Practice:** These cases, which represent most of the cases DLR handles, involve charges of prohibited practices listed in Chapter 150A (for the private sector) or 150E (for the public sector) of the General Laws. These charges may include, among others, allegations that an employer retaliated against an employee for participating in activities protected by law, that an employer did not bargain in good faith, or that a union did not properly represent one of its members.
2. **Grievance Arbitration:**⁵ In these cases, a petition is filed with DLR by an employer or by a public-employee union representative requesting arbitration services. DLR facilitates meetings between the parties with the goal of settling disputed matters. If the parties cannot reach a settlement, DLR arbitrators conduct evidentiary hearings, hear oral arguments, and accept written briefs. The record is closed after the hearing and submission of briefs, and the DLR arbitrator subsequently issues an award.
3. **Clarification/Amendment Petition:** According to the Green Book, these petitions are filed with DLR by a party to an existing bargaining relationship (i.e., an employer or employee union) to clarify "whether particular employees are included in or excluded from an existing bargaining unit."
4. **Contract Mediation:** In these cases, employer and employee union representatives from the public or private sector submit petitions to DLR to resolve contract negotiation disputes through a neutral third party. Accordingly, DLR provides the parties with a mediator who then coordinates meetings between them until the case is resolved.
5. **JLMC:** In these cases, a petition has been filed with JLMC to exercise jurisdiction in prohibited-practice matters or assistance in collective bargaining discussions related only to unions representing municipal police and firefighting personnel.
6. **Representation:** These cases involve matters related to petitions that may be filed by employees or employers regarding representation. This process is used by employees to select or reject

5. A grievance is a complaint to management resulting from actions taken by management that may have violated the rights of an employee as set out in a collective agreement or a law. Arbitration is a dispute resolution process in which disputing parties agree to have one or more people make a decision on a dispute by issuing an award rather than having the matter decided by a court.

representation by a particular union for collective bargaining purposes. Employers may also use the petition process to determine which union represents the most employees within a certain worker classification. An employer can also use it to clarify which employees fall within a designated union worker classification.

7. Written Majority Authorization: The Green Book defines this process as follows:

A majority of employees in a petitioned-for, appropriate bargaining unit may designate an employee organization as their exclusive representative by signing authorization cards, petitions, or other suitable written evidence.

8. Outside Grievance Mediation: These cases represent requests by parties to a collective bargaining agreement for DLR's assistance in resolving grievances through mediation.

9. Other: This category represents all other case types that are administered by DLR. These cases occur infrequently and include the following:

- Requests for Binding Arbitration: These relate to instances where, according to the Green Book,

DLR orders the parties to a written collective bargaining agreement to submit an unresolved grievance to arbitration if the parties' collective bargaining agreement does not contain a final and binding arbitration procedure.

- Strike Investigations: These are prompted by petitions filed with DLR by public employers for investigation of legally prohibited work stoppages by public employees.
- Requests for Advisory Rulings: These are addressed by CERB, which, according to the Green Book, "issues an advisory ruling when a party to collective bargaining negotiations challenges the negotiability of a written proposal submitted to it by the opposing party."

DLR Case Management Intake

DLR processes all submissions related to labor matters (e.g., charges or petitions) through its main office. These submissions are received via email, postal mail, or fax. Intake staff members record the receipt of each submission in DLR's handwritten list of all cases (i.e., its docket log). DLR's intake staff enters submission details in the agency's Time Matters case management system. A DLR hearing officer accepts the case in Time Matters and, if applicable, assigns it a priority level⁶ (I or II) for further processing. The system automatically assigns a case number and notifies intake staff members of the approved case, and they update the docket log with the assigned case number. For submissions not in accordance with Chapter 150A or 150E of the General Laws, the submitting party is notified that the submission has been dismissed because DLR lacks jurisdiction.

6. According to section II(A)(1)(g) of the Green Book, level I cases should be processed first because in these cases, "resolution of the dispute has the greatest urgency" (e.g., involves permanent loss of employment). All other cases are assigned level II.

Case Workflows

The Green Book is available in electronic format on DLR’s website. It provides background information about the agency, cites relevant case law, and describes the ways the various case types are processed and their anticipated processing times. The following is a description of what occurs after the case intake process for Unfair Labor Practice, Grievance Arbitration, and Clarification/Amendment Petition cases, based on the processes described in the Green Book that have identifiable phase and case life cycle⁷ time standards.

Unfair Labor Practice Complaint Process⁸

DLR schedules and conducts an investigation to determine whether there is probable cause⁹ to proceed. If the investigation is concluded with a finding of probable cause, the investigator prepares a complaint and schedules a hearing. At the conclusion of the hearing, after receiving all pertinent information, a hearing officer issues a written decision to the parties involved. The case is subsequently closed unless the hearing officer’s decision is appealed. Before a decision is issued, the parties may continue to mediate among themselves and are encouraged to do so, because it could result in the withdrawal or settlement of a case.

Grievance Arbitration Process

DLR schedules a hearing with the parties to the arbitration but encourages them to try to reach a settlement before it begins. For those that do not settle, a DLR arbitrator conducts evidentiary hearings, hears arguments, and accepts briefs. After the close of the hearing and submission of any briefs, the arbitrator issues an award and the case is closed.

Clarification/Amendment Petition Process

DLR assigns a hearing officer to investigate the petition and sends a letter to the parties involved, giving them two options¹⁰ for case processing. According to the Green Book, under the traditional approach, “Parties must schedule a conference at the DLR for mediation and investigation.” Before

7. For the purpose of case management, a case life cycle represents the total time from the opening to the closing of a case. Phases represent the elapsed time for segments or portions of the case life cycle.

8. For Unfair Labor Practice cases, the narrative assumes that the case has not been appealed to CERB or to a district court.

9. Probable cause is found when an investigation has determined that there are sufficient details supporting an alleged violation of law.

10. Only DLR’s “Option 1—Traditional Approach” is described here. “Option 2—Expedited Hearing” is a substantially abbreviated version of the process and is less commonly used.

the conference, the parties are required to confer and electronically submit documentation (e.g., sworn affidavits, job descriptions, and/or collective bargaining agreements). Once the conference has been conducted, the Green Book states,

If the Hearing Officer determines that there are no disputed facts, the Hearing Officer issues a notice [show cause letter] to the parties to show cause why the case should not be decided based on the parties' submissions. . . .

The CERB reviews the show cause responses and either issues a decision based on the parties' written submissions or directs the Hearing Officer to hold a hearing to resolve any material disputed fact.

The Green Book also provides details regarding the phase and life cycle time standards for Unfair Labor Practice, Grievance Arbitration, and Clarification/Amendment Petition cases.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Department of Labor Relations (DLR) for the period July 1, 2016 through June 30, 2018.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer, the conclusion we reached regarding each objective, and where each objective is discussed in the audit findings.

| Objective | Conclusion |
|---|--|
| 1. Did DLR have case flow management time standards for the processing of all types of cases? | No; see Findings <u>1</u> and <u>4</u> |
| 2. Did DLR meet the time standards it has established for the processing of cases? | No; see Findings <u>2</u> and <u>3</u> |

To achieve our audit objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives by interviewing DLR management and evaluating the controls' effectiveness. In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address our audit objectives.

- We obtained and reviewed applicable laws, regulations, and other authoritative guidance.
- We evaluated DLR's internal control plan for compliance with the Office of the Comptroller of the Commonwealth's guidance.
- We reviewed the Massachusetts House and Senate Journals (which list reports received from state agencies) from July 3, 2017 through October 31, 2017 and January 17, 2019, respectively, for receipt of DLR's annual reports for fiscal years 2017 and 2018.
- We obtained case data for all nine case types and their related case event activity by date (e.g., case filings, probable cause determinations, and hearing officer decisions) for 100% of the 1,704

cases¹¹ that were either opened or closed during our audit period, or still pending as of June 30, 2018, directly from DLR's Time Matters case management system and performed the following procedures:

- For case types that we reviewed and found not to have the time standards required by DLR's October 2017 document *A Guide to the Massachusetts Public Employee Collective Bargaining Law* (the Green Book), we identified 100% of the population from our audit period and calculated the number and percentage of cases.
- For case types that did have the time standards established in the Green Book, we identified 100% of the population from our audit period for Unfair Labor Practice, Grievance Arbitration, and Clarification/Amendment Petition cases that exceeded established time standards and calculated the number and percentage of cases by case type.

To determine the reliability of the information obtained from Time Matters, we evaluated information security by conducting interviews, examining supporting documentation, and performing observations. Additionally, we performed validity and integrity tests of the data, which included (1) testing for missing data elements (e.g., case opening date), (2) scanning for duplicate records, (3) tracing a sample of cases to source documents, and (4) comparing summarized case data to case opening and closing statistics in DLR's annual reports. We determined that the information was sufficiently reliable for audit testing.

11. This figure includes all case types (e.g., Unfair Labor Practice charges and petitions).

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Department of Labor Relations did not have time standards for processing all cases.

The Department of Labor Relations (DLR) has not established time standards for completing each phase of a case or an entire case life cycle for six of its nine case types: Contract Mediation, Joint Labor Management Committee (JLMC), Representation, Written Majority Authorization, Outside Grievance Mediation, and Other. These six case types accounted for 487 (28.58%) of the 1,704 cases that were administered during the audit period, as shown below.

Analysis of Case Types without Established Time Standards

| Case Type | Number of Cases | Percentage of Total Cases |
|--------------------------------|-------------------|---------------------------|
| Contract Mediation | 194 | 11.38% |
| JLMC | 179 | 10.50% |
| Representation | 66 | 3.87% |
| Written Majority Authorization | 29 | 1.70% |
| Outside Grievance Mediation | 18 | 1.06% |
| Other | 1 | 0.07%* |
| Total | <u>487</u> | <u>28.58%</u> |

* Discrepancy in total is due to rounding.

Without time standards, DLR cannot ensure that these case types are resolved promptly.

Authoritative Guidance

The Massachusetts Superior Court's "Standing Order 1-88: Time Standards" states,

In an effort to "secure the just, speedy and inexpensive determination of every action," . . . the Justices of the Superior Court . . . hereby adopt these time standards as a standing order of the Superior Court ("Standing Order"). The Court recognizes that the litigation process is memory dependent. To the extent that memory dims or becomes unreliable over prolonged periods of time, a just determination may be jeopardized. The concept of early and continuous judicial supervision and control is intended to enhance the quality of litigation and ensure that justice is fairly rendered.

Although DLR is not required to adhere to this guidance, we believe it represents a best practice established by a Massachusetts court system that uses a case management system to process cases.

In addition, Section 90 of Chapter 23 of the Massachusetts General Laws states,

It is hereby declared to be the public policy of the commonwealth that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; and it shall be the responsibility and objective of [DLR] to take such steps as will most effectively and expeditiously encourage the parties to a labor dispute to agree on the terms of a settlement or to agree on the method and procedure which shall be used to resolve a dispute.

To effect prompt resolution of labor disputes, DLR should have adequate controls in place, including time standards, to establish accountability and facilitate the processing of disputes.

Reason for Lack of Established Standards

DLR officials stated that they have no control over how long it takes the external parties involved in these six case types to complete their tasks and therefore it is difficult for DLR to establish time standards. However, DLR also stated that time standards could be established for some of the six case types and that check-in points (i.e., milestones) could be established for other case types that do not lend themselves to time standards in order to ensure that the cases are not delayed.

Recommendations

1. DLR should reexamine its case workflows and, where practicable, establish time standards for the processing of case phases and overall case life cycles. For cases where it is not feasible to establish time standards, DLR should establish check-in points to facilitate processing.
2. DLR should establish monitoring procedures to ensure that cases adequately progress to closure or settlement.

Auditee's Response

The Department of Labor Relations (DLR) has established time standards for the types of cases where timely processing is within the DLR's control and does not conflict with other statutory goals. For those types of cases where the resolution is dependent on the actions of the parties involved, such as reaching a mutually agreeable resolution of the dispute, time standards have not historically been imposed. For example, time standards are imposed in Unfair Labor Practice and Grievance Arbitration cases because DLR employees are the final decision-makers in these cases. By contrast, successful disposition of Contract Mediation and Grievance Mediation cases depends upon the mutual agreement of the parties to the dispute. In such cases, imposition of time standards would tend to interfere with the mediation process and hamper the DLR's ability to successfully resolve these cases.

DLR will review the workflow processes of all case types and determine the appropriateness of establishing time standards. Where appropriate, DLR will establish time standards for case processing phases and overall case life cycles. Where time standards are not appropriate, DLR

will establish case-processing procedures whereby DLR agents monitor case processing, periodically check in with parties, and document delays in case processing, in order to ensure progress toward case closure.

Auditor’s Reply

Based on its response, DLR is taking measures to address our concerns in this area.

2. DLR did not always meet its established time standards for completing certain case types.

DLR did not always meet standards for the overall completion of the three case types for which it has established time standards: Unfair Labor Practice, Grievance Arbitration, and Clarification/Amendment Petition cases. For example, as detailed in the table below, 88% of the Level I Unfair Labor Practice cases that were completed during our audit period were not processed within the established time standard but rather were 164 days to 1,085 days late.

Analysis of Completed Cases by Case Type

| Case Type | Standard Days to Complete | Completed Cases | Cases Exceeding Time Standard | Average Days Exceeding Time Standard | Maximum Days Exceeding Time Standard | Minimum Days Exceeding Time Standard |
|--|---------------------------|-----------------|-------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| Unfair Labor Practice | | | | | | |
| Level I | 315 | 8 | 7 | 475 | 1,085 | 164 |
| Level II | 630 | 33 | 28 | 802 | 2,903 | 85 |
| Grievance Arbitration | | | | | | |
| Level I | 120 | 35 | 17 | 252 | 876 | 29 |
| Level II | 270 | 68 | 32 | 592 | 2,334 | 1 |
| Clarification/Amendment Petition* | | | | | | |
| | 210 | 35 | 10 | 202 | 609 | 8 |

* These cases are not assigned priority levels.

In addition, DLR did not consistently meet time standards it had established for different phases of each type of case. For example, 419 out of the 519 Unfair Labor Practice case phases (81%) that were completed during our audit period exceeded established time standards. We also noted that DLR did not record phase activity consistently with DLR guidance for Grievance Arbitration and Clarification/Amendment Petition cases in its case management system. Without time standards to help

it monitor case phase and life cycle activity, DLR management cannot identify and address any problems in the case resolution process in a timely manner, which could result in cases becoming backlogged and public employees suffering economic losses because of delays in case processing.

Authoritative Guidance

DLR’s October 2017 document *A Guide to the Massachusetts Public Employee Collective Bargaining Law* (known as the Green Book) establishes the following time standards:

Phase and Life Cycle Time Standards by Case Type, in Days¹²

Unfair Labor Practice

| Phases | Level I Duration | Level II Duration |
|--|-------------------|-------------------|
| “Case Filed” to “Probable Cause Determination” | 45 | 90 |
| “Probable Cause Determination” to “Hearing Conducted” | 180 | 360 |
| “Hearing Conducted” to “Hearing Officer Decision Issued” | 90 | 180 |
| Case Life Cycle Total | <u>315</u> | <u>630</u> |

Grievance Arbitration

| Phases | Level I Duration | Level II Duration |
|--|-------------------|-------------------|
| “Petition Filed” to “Hearing Conducted” | 90 | 180 |
| “Hearing Conducted” to “Decision Issued” | 30 | 90 |
| Case Life Cycle Total | <u>120</u> | <u>270</u> |

Clarification/Amendment Petition*

| Phases | Duration |
|---|-------------------|
| “Petition Filed” to “Conference Conducted” | 90 |
| “Conference Conducted” to “‘Show Cause’ Letter Sent” | 60 |
| “‘Show Cause’ Letter Sent” to “‘Show Cause’ Response Received” | 30 |
| “‘Show Cause’ Response Received” to “Commonwealth Employment Relations Board (CERB) Issues Decision” | 30 |
| Case Life Cycle Total | <u>210</u> |

* These cases are not assigned priority levels.

12. For all authoritative references citing months and quarters, we used a 30-day month or 90-day quarter as an assumption in our analyses.

More specifically, the Green Book contains the following language:

A. *Unfair Labor Practice Procedures*

1. *Initiation of Unfair Labor Practice Cases. . . .*

f. *Case Docketing. . . .*

*The DLR will give the parties **30 days** to respond to the show cause letter. [Emphasis added.] . . .*

2. *The Investigation. . . .*

k. *Expected Timing of Probable Cause Determination*

*The Hearing Officer issues a determination following the Impact Analysis guidelines. Cases where resolution of the dispute has the greatest urgency are classified as Level I cases and generally are completed within **14 to 45 days** of filing the Charge, depending on the level of urgency. Level II cases with less urgency will generally be investigated and completed between **30 and 90 days** from the date the investigation is completed. [Emphasis added.] . . .*

3. *Complaint Litigation*

a. *Pre-hearing*

1) *Classification of the Complaint . . .*

*The DLR schedules Level I hearings within **three to six months** from when the Complaint issues, depending on the level of urgency, and the decision typically issues within **three months** from when the record is closed. The DLR schedules Level II hearings within **six months to a year** from when the Complaint issues and the decision typically issues within **six months** from when the record is closed. [Emphasis added.] . . .*

B. *Representation Case Procedures. . . .*

7. *Clarification/Amendment Petitions. . . .*

d. *Procedure. . . .*

1) *Option 1—Traditional Approach*

*Parties must schedule a conference at the DLR for mediation and investigation. Parties must confer and provide three dates in the **quarter** provided from which the DLR picks the conference date. [Emphasis added.] . . .*

*If the Hearing Officer determines that there are no disputed facts, the Hearing Officer issues a notice to the parties to show cause why the case should not be decided based on the parties' submissions. This show cause letter generally is sent to the parties within **two months** of the conference. [Emphasis added.]*

*The CERB reviews the show cause responses and either issues a decision based on the parties' written submissions or directs the Hearing Officer to hold a hearing to resolve any material disputed fact. Generally the CERB issues its decision within **one month** of receiving the show cause responses. [Emphasis added.]*

C. Arbitration and Mediation Services. . . .

3. Grievance Arbitration Services. . . .

d. Classification of the Petition. . . .

*Arbitration Impact I cases. . . . are scheduled for hearing within **one to three months**, depending on the level of urgency, and it is anticipated that the decision generally issues within **one month** from the date that the parties' briefs are received. The remaining cases are classified as Impact II, and are scheduled within **three to six months**. It is anticipated that the decision generally issues within **three months** from the time that the parties' briefs are received. [Emphasis added.]*

Reasons for Issue

DLR has not established monitoring controls to ensure that its established time standards are adhered to.

Recommendation

DLR should develop monitoring controls regarding the completion of case phases and life cycles.

Auditee's Response

The time standards set forth in the DLR's "Guide to Massachusetts Public Employee Collective Bargaining Law" (the Green Book) were not based on any historical data and were understood to be aspirational challenge goals. Furthermore, a significant contributor to the failure to meet time standards were instances where the DLR acquiesced to joint requests by the parties for delays and postponements. Nevertheless, DLR will:

- 1. Review the workflow processes*
- 2. Analyze why time standards were not met*
- 3. Evaluate resources available for case processing*

4. *Consult with stakeholders, including the DLR Advisory Council, to develop appropriate time standards*
5. *Adjust workflow processes and time standards, as appropriate based on staffing and resource availability*
6. *Develop monitoring controls to ensure time standards are met*

3. DLR did not submit at least one required annual report to the Legislature within the established timeframe.

DLR did not submit its fiscal year 2018 annual report¹³ to the Legislature by the October 28 deadline. We verified that the report was received by the Legislature on January 16, 2019, which was 80 days after the deadline. Further, we could not substantiate when DLR submitted its fiscal year 2017 annual report to the Legislature. Because DLR did not submit this information when required, the Legislature may not have had sufficient information to assess DLR's performance or provide it with sufficient resources for the following fiscal year.

Authoritative Guidance

According to Section 9U of Chapter 23 of the General Laws,

[DLR] shall, within 120 days of the close of each fiscal year, make a detailed report in writing to the [Legislature], including without limitation: the number and types of cases filed with the division, including elections, and the disposition of all such cases; statistics regarding the number of decisions it has rendered and unresolved cases, and the timeliness of the division's decisions; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the division; and an account of all moneys it has disbursed.

Reason for Lack of Timely Filing

DLR has not established policies and procedures for the filing of its annual reports to ensure that it is completed on time.

Recommendation

DLR should develop policies and procedures to ensure that it files its annual report within 120 days of the close of its fiscal year.

13. This document details business and other pertinent information for the fiscal year up to the date it was prepared, as well as a spending plan for the next fiscal year.

Auditee's Response

The DLR timely completed the required annual report, however, it did not submit it to the Legislature within the established timeframe. A copy of the Annual Report in question was supplied to the Office of the State Auditor as part of their information request at the beginning of the audit process and the report has since been filed with the Legislature.

DLR will work with [the Executive Office of Labor and Workforce Development] to develop protocols to ensure that annual reports are submitted to the Legislature within 120 days of the close of the fiscal year.

4. There were deficiencies in DLR's internal control plan.

DLR did not annually update its internal control plan (ICP), an agency-wide document that summarizes risks and controls for all of its business processes. DLR's ICP was last updated in June 2015. In addition, the ICP does not consider, or adequately address, three critical components of enterprise risk management (ERM) as required by the Office of the Comptroller of the Commonwealth (CTR): (1) control activities, (2) information and communication, and (3) monitoring. The ICP did not identify specific control activities associated with DLR's program for resolving cases managed by the department, which it should do in order to address risks identified, and did not address information and communication or monitoring and evaluating the effectiveness of controls. Without an adequately documented system of internal controls, DLR risks not meeting all of its operational objectives economically and efficiently or complying with state laws, regulations, and other authoritative guidance.

Authoritative Guidance

Under Chapter 647 of the Acts of 1989, every executive agency must review its ICP annually, update it as necessary, and ensure that it conforms to CTR guidelines.

In addition, the CTR *Internal Control Guide* issued in June 2015 states,

Departments are obligated to revise their ICPs whenever significant changes occur in objectives, risks, management structure, program scope, etc. At the very least, the ICP must be reviewed and updated annually. . . .

To be considered compliant, a department's Internal Control Plan must contain the eight components of [the Committee of Sponsoring Organizations of the Treadway Commission's] ERM Framework:

Internal Environment

1. *Objective Setting*
2. *Event Identification*
3. *Risk Assessment*
4. *Risk Response*
5. *Control Activities*
6. *Information and Communication*
7. *Monitoring. . . .*

Each department's internal control plan will be unique; however, it must be based on the ERM framework.

In its 2017 document *Enterprise Risk Management—Integrating with Strategy and Performance*, the Committee of Sponsoring Organizations of the Treadway Commission¹⁴ (COSO) defines ERM as follows:

The culture, capabilities, and practices that organizations integrate with strategy-setting and apply when they carry out that strategy, with a purpose of managing risk in creating, preserving, and realizing value.

COSO guidance states that all components of an internal control system must be present, functioning properly, and operating together in an integrated manner to be effective.

Reasons for Noncompliance

DLR's acting director indicated that he was aware of, and considered, the risks associated with DLR's activities but did not document them in the ICP. In addition, DLR does not have any policies and procedures related to the annual review of its ICP that would establish, among other things, how it conducts and documents the process, what is the timeline for completing it, and which staff members are responsible for performing it.

Recommendations

1. DLR should take the measures necessary to ensure that its ICP complies with CTR's *Internal Control Guide*.

14. According to the COSO.org website, the committee is "a joint initiative of . . . five private sector organizations . . . dedicated to providing thought leadership through the development of frameworks and guidance on enterprise risk management, internal control and fraud deterrence."

2. DLR should establish policies and procedures for the annual review of its ICP as well as monitoring controls to ensure that these policies and procedures are adhered to.

Auditee's Response

DLR is currently working with the [Executive Office of Labor and Workforce Development's] Department of Internal Control and Security to ensure its ICP complies with the Office of the Comptroller of the Commonwealth's Internal Control Guide. The DLR will review and update the ICP on an annual basis in conjunction with the completion of the Comptroller's annual Internal Control Questionnaire and certification, or more frequently if required by operational changes.