

PEABODY SCHOOL COMMITTEE AND PEABODY FEDERATION OF TEACHERS, LOCAL 1289, AFT,  
AFL-CIO, MUP-5626 (12/11/86).

54.5841 workload  
54.8 mandatory subjects  
54.5861 class size  
67. Refusal to Bargain  
67.14 management rights

Commissioners participating:

Paul T. Edgar, Chairman  
Maria C. Walsh, Commissioner

Appearances:

Daniel B. Kulak	- Representing the Peabody School Committee
Deborah L. McCutcheon	- Representing the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO

DECISION AND ORDER

Statement of the Case

On June 6, 1984, the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO (Federation) filed a charge with the Labor Relations Commission (Commission) alleging that the Peabody School Committee (School Committee) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of M.G.L. c.150E (the Law). Pursuant to Section 11 of the Law and Commission Rule 402 CMR 15.04, the Commission investigated the charge and on October 15, 1984, issued its own complaint, alleging that the School Committee had refused to bargain in good faith over a condition of employment affecting a mandatory subject of bargaining in violation of Section (a)(5) and, derivatively, Section 10(a)(1).

On December 12, 1984 and February 5, 7 and 8, 1985, the Commission conducted a formal hearing at which both parties were represented by counsel and had full opportunity to present evidence and to examine and cross-examine witnesses. In addition to the testimony of witnesses for each side, the parties submitted extensive stipulations of fact. Following the close of the hearing the parties submitted written briefs.

Findings of Fact<sup>1</sup>

The facts of this case are largely undisputed. The pleadings demonstrate that the School Committee and the Federation were parties to a collective bargaining

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<sup>1</sup> Neither party contests the Commission's jurisdiction in the case and the pleadings state sufficient facts for the Commission to assert jurisdiction.



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

agreement which was effective from September 1, 1982 through August 31, 1984. That contract, like all collective bargaining agreements between these parties since 1977, contained the following provisions, establishing the maximum number of students that would be assigned to any one class:

- (1) The system-wide class size average in grades kindergarten through six shall not exceed 23 pupils per teacher. No kindergarten through sixth grade class shall exceed 28 pupils. Such class size average is defined as the total number of regular classroom students divided by the total number of regular classroom teachers.

Two consecutive grades in a building may be combined provided that (a) the enrollment assignments for each class do not violate the preceding paragraph, (b) only volunteers may participate in regrouping of classes, and (c) no teacher shall be required to participate in any such regrouping of classes. If such regroupings occur, they shall not be used as a precedent to circumvent the preceding paragraph.

- (2) In grades seven, eight and nine no more than ten percent (10%) of the academic classes shall exceed twenty-eight (28) pupils and no class shall exceed thirty-five (35) pupils.
- (3) No class shall be established in the high school having less than ten (10) pupils and no class shall exceed thirty-five (35) pupils.
- (4) English classes are to be established at a maximum of twenty-eight (28) pupils per teaching period, but not to exceed a total of one hundred twenty-five (125) pupils per English teacher...[and]
- (9) Exceptions to the foregoing class size maximum shall be allowed for areas normally considered large group activity.

During the 1981-82 and 1982-83 school years, the School Committee assigned an excessive number of students to several classes. The Federation grieved these assignments as violative of the then-existing collective bargaining agreement. In December, 1982, an arbitrator ruled in favor of the Federation, and the School Committee corrected existing class size violations.

During February and March of 1983, the School Committee held a series of budget meetings at which it discussed the monetary savings that would result from expansions in class sizes. On March 22, 1983, the School Committee gave initial approval to changes in class size provisions pursuant to the following vote:

WHEREAS, during the course of the budget deliberations of the Committee for development of its Fiscal Year 1984 Budget, the Mayor has detailed the limited ability of the City to raise revenue under Chapter 580 of the acts of 1980, commonly known as "Proposition 2 1/2" and



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

WHEREAS, as a result of that limited ability, the Mayor has imposed financial limitations upon the Committee whereby he will not authorize a total budget increase for said Fiscal Year of more than \$858,284 above the budgeted amount of the Fiscal Year 1983 and

WHEREAS, in the opinion of the majority of the Committee said imposed financial limitation is necessary and demonstrates sound fiscal management and

WHEREAS in order for the Committee to comply with the fiscal limitation so set and to provide for the best education to its students within such limitations, it is necessary, as matters of fiscal and educational policy, to ignore the Class Size provisions contained in the Collective Bargaining Agreement with the Peabody Federation of Teachers.

THEREFORE the Peabody School Committee does hereby establish a new educational policy as concerning Class Size as follows:

1. The educational policy as to the class size of elementary grades (kindergarten through grade 7) is hereby altered from the present "system-wide average" of 23 pupils per teacher, with a maximum of 28 pupils to "the maximum class size for all elementary grades (kindergarten through grade 7) shall be 32 students." However, it is the goal of the Committee to maintain a system-wide average of 25, if possible.
2. The educational policy as to the class size for grades 8 and 9 is hereby altered from the present "no more than 10% of academic classes shall exceed 28 pupils and no class shall exceed 35 pupils" to "in grades 8 and 9 no class shall exceed 35 pupils."
3. The educational policy as to the class size in the high school is hereby altered from the present "No class shall be established in the high school having less than ten pupils and no class shall exceed 35 pupils" and "English classes are to be established at a maximum of 28 pupils per teaching period, but not to exceed a total of 125 pupils per English teacher" to "No academic class, including English classes, shall exceed a maximum of 35 pupils."
4. Exceptions to the foregoing class size policy shall be allowed for commercial, home economic, language and science labs; Industrial Arts shops; and areas normally considered large group activity.

On March 29, 1983, the Federation was notified of the impending changes.<sup>2</sup> On April 12, 1983, the School Committee voted final approval for the changes. On April 25,

<sup>2</sup>The proposed changes in class size required a second reading and approval at a School Committee meeting prior to taking effect.



## MASSACHUSETTS LABOR CASES

CITE AS 13 MLC 1316

Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

1983, the Federation responded that the changes were in violation of the collective bargaining agreement, and that the Federation was prepared to negotiate the changes. The School Committee agreed to bargain over the impacts of the changes only,<sup>3</sup> contending that the changes themselves were managerial prerogatives; however, the Federation reserved impact bargaining and proceeded to seek Superior Court enforcement of the December, 1982 arbitration award. On December 28, 1984, the court confirmed the arbitrator's award, but declined to enforce the contract provisions, holding that whether the changes were the result of changes in educational policy was a question of fact that remained to be determined.

In the spring of 1984, the parties began negotiations for a successor contract. During those negotiations the Federation submitted a proposal seeking to establish new maximum class sizes. On May 24, 1984, the School Committee informed the Federation that: 1) the School Committee was deleting all class size provisions from the successor contract; 2) the School Committee would not bargain over the maximum number of students assigned to any one class; and 3) the School Committee considered the class size provisions in the then-current contract to have been deleted by operation of law, pursuant to Boston Teachers Union, Local 66 v. School Committee of Boston, 386 Mass. 197 (1982). The School Committee also advised the Federation that it was willing to bargain over the impacts of the decision to alter class sizes on mandatory subjects of bargaining.<sup>4</sup> On May 31, 1984, the Federation responded by letter to the School Committee's attorney, stating that:

...class size restrictions are clearly mandatory subjects of bargaining over which the School Committee has an obligation to bargain. See Boston Teachers Union, Local 66 v. School Committee of Boston, 370 Mass. 455 (1976). Unless you notify [the Federation] that the School Committee has changed its mind and intends to bargain over class size, we will proceed to file a charge of refusal to bargain at the Massachusetts Labor Relations Commission.

Subsequently, the School Committee repeated its position that it would not bargain over class size.

The parties also produced witnesses who testified to various facts which the parties contend indicate either that class size is or is not a mandatory subject of bargaining. The Federation presented five teachers from the Peabody school system who testified about their basic duties and the effect of class size on teachers and

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<sup>3</sup>See School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 563 (1983) (impacts on mandatory subjects of bargaining of a decision that is a managerial prerogative must be bargained over on demand, prior to implementation of the decision).

<sup>4</sup>All facts recited to this point are pleaded in the Commission's complaint and admitted by the School Committee.



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

students.<sup>5</sup> The Federation also presented an expert witness, Paul B. Warren, Dean of Boston University's School of Education, who testified regarding the effect of class size on student achievement and on a school system's staffing needs. The School Committee presented Gregory Theokas, Assistant Superintendent of Schools in Peabody, who described what the School Committee expects of teachers and how the School Committee determines its staffing needs.

There is no dispute that class size by definition affects teacher workload. Teachers in Peabody perform various instructional and administrative duties. Many of the duties require that the teacher perform additional work as the number of students in a class is increased.<sup>6</sup> Such duties include:<sup>7</sup> taking attendance; reviewing homework; reviewing students' in-class work; issuing warning notices and report cards; and grading students' exams, papers and projects.<sup>8</sup> Duties that do not require more time to perform as the number of students in a class increases include: presentation of new material and supervision of recess, lunch and homeroom periods.

The number of students in a class also affects teachers in other ways. It becomes more difficult for teachers to observe and evaluate their students as the size of the class increases. Student behavior is more likely to be a problem in larger classes.<sup>9</sup> Teachers of larger classes must work harder to overcome these obstacles.

Teachers may also encounter difficulty in achieving curriculum goals if they have too many students. The School Committee prescribes the curriculum to be followed throughout the school system, generally identifying topics to be covered while leaving the specifics to the school principals and teachers. Too many students in a class can inhibit a teacher's ability to cover all the material with that class.

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<sup>5</sup> The testimony of one of the teachers, Annmarie DuBois, was lost in the transcription process; however, the School Committee and the Federation have stipulated to the content of her testimony.

<sup>6</sup> Some of the witnesses testified that they performed this additional work in school; others testified that they did so at home, after the school day.

<sup>7</sup> Each of the teachers testified to performing generally the same duties. These duties were also cited by Theokas as duties which each teacher in the system is expected to perform.

<sup>8</sup> These tasks require anywhere from a few seconds per student to 35 minutes per student.

<sup>9</sup> Student behavior is also affected by factors such as the level of students' ability or the level of the parents' involvement.



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

The School Committee requires teachers to use their best efforts to meet curriculum objectives and a teacher's failure to meet those objectives could result in a negative evaluation of that teacher.<sup>10</sup>

There is some controversy regarding the effect of class size on students' academic achievement. Two of the teachers called by the Federation specifically addressed the effect of class size on student achievement. Spereos Zakas testified that there is a direct relationship between the number of students in a class and the quality of the educational product delivered to the students. According to Zakas, the quality of the product declines as the size of the class increases, because the teacher is unable to provide the students with appropriate attention and is also unable to cover as much material. Geraldine Potash testified that quality education cannot be delivered in overcrowded classrooms.<sup>11</sup> She agreed with Zakas that a student's ability to learn increases as the size of the class decreases.

In contrast, the Federation's expert witness, Warren, testified that class size is not necessarily an important criterion for determining student achievement and that other variables are more significant. He conceded that some studies have indicated a positive correlation between class size and student achievement, but stated a preference for other studies that dispute the existence and/or significance of that correlation. He supported his opinion, that class size does not significantly affect student achievement, with a reference to considerable evidence that teachers do not modify their behavior as a result of class size. We note, however, that Zakas testified that he varies the attention he gives a student based on the size of his class.

Class size is a significant factor in a school committee's determination of the number of teachers it requires, but it is not controlling. Other factors include:<sup>12</sup> personnel needs in administration and support services; curriculum objectives; number of teaching periods per teacher per day; courses to be offered; length of academic year; summer programming; graduation requirements; teacher salaries; textbook/supply costs; transportation costs; special education costs; use of self-contained classrooms or modular scheduling; and use of aides, tutors and volunteers to augment teaching staff.

The Peabody School Committee considers several of these factors, as well as others, when determining its teaching personnel needs. It starts with a standard

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<sup>10</sup> While it is undisputed that a teacher's failure to attain curriculum objectives can be the basis of a negative evaluation, there is no evidence that this has ever occurred. Furthermore, no teacher has ever been disciplined for failure to meet curriculum objectives.

<sup>11</sup> Potash did not define "overcrowded" but the inference is that she considers the School Committee's new levels too high.

<sup>12</sup> These factors were identified by the Federation's expert as being common to school committees in general. Specific factors which are considered by the Peabody School Committee are discussed below.



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

formula of projecting its student enrollment (per class/grade) and dividing that by the maximum number of students allowed in each class. The resulting number is the number of classes that must be taught. The School Committee applies assumptions to this formula, such as that all classes will be offered within a self-contained classroom structure and that each teacher can teach a certain number of class periods each day. Other needs such as the need to offer special elective classes and the need to offer classes sufficient to enable students to fulfill graduation requirements, can also alter the School Committee's formula. After factoring in the various assumptions and needs, the School Committee is able to project the total number of teachers necessary to staff the schools.

The School Committee then calculates its budget from, inter alia, the projected number of teachers whom it will employ. It compares its initial proposed budget with a spending cap established by the mayor, then it balances its projected teaching personnel needs against other costs to develop a final budget. Other costs include the cost of support programs, maintenance costs, and the cost of curriculum changes. Through this process of weighing non-teaching personnel costs against teaching personnel costs within the parameters of the spending cap, the School Committee makes its final decision on the number of teachers it will employ for the school year.

### Opinion

There is no dispute that the School Committee refuses to bargain over the maximum number of students to be assigned to a class. The School Committee defends its refusal to bargain over changes in class size by arguing that such changes are within the Committee's exclusive prerogative to determine matters of educational policy and hence are beyond the scope of collective bargaining. The issue presented in this case, therefore, is whether class size is a mandatory subject of bargaining, or whether it is instead a core matter of educational policy which the courts have held ought be reserved to the exclusive policy-making authority of school committees.<sup>13</sup> School Committee of Boston v. Boston Teachers Union, Local 66, 378 Mass. 65, 72 (1979). We find, on this record, that class size is not a core matter of educational policy, but is instead a mandatory subject of bargaining because of its effect upon teachers' workloads. Therefore, we hold that class size is a mandatory subject of bargaining and that the School Committee violated Sections 10(a)(5) and, derivatively, (1) of the Law by its refusal to bargain concerning proposed changes in class sizes.

We begin by noting that class size is not per se a matter of educational policy. While certain School Committee decisions may be so laced with educational policy as to be beyond the reach of collective bargaining,<sup>14</sup> the Supreme Judicial Court has stated that the size of a class is a condition of employment and a proper

<sup>13</sup> The School Committee does not dispute that the impact of a change in class size on mandatory subjects of bargaining is subject to the duty to bargain.

<sup>14</sup> See, School Committee of Boston v. Boston Teachers Union, Local 66, 378 Mass. 65, 72 (1979) and cases cited therein.



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

subject for collective bargaining. Boston Teachers Union v. School Committee of Boston, 370 Mass. 455, 462 (1976). However, a School Committee may enter into a collective bargaining agreement concerning class size and teaching load only if enforcement of the terms of the agreement would not intrude improperly into an area reserved for the judgment of the School Committee. Id. at 463 (the terms of a collective bargaining agreement were enforceable where the facts showed that educational policy was not involved in the school committee's repudiation of the agreement).

The School Committee initially argues that its determination of class size in this case was a matter of educational policy and as such is excluded from collective bargaining. This analysis requires the School Committee to demonstrate that, "the ingredient of public policy in the issue subject to dispute is so comparatively heavy that collective bargaining....is, as a matter of law, to be denied effect."<sup>15</sup> School Committee of Boston v. Boston Teachers Union, Local 66, 378 Mass. at 71. The evidence presented does not establish that the School Committee was motivated by such policy considerations.

The Committee argues from the testimony of the Union's witnesses that class size inherently affects academic achievement and involves issues concerning the delivery of educational instruction and the nature of the educational "product" delivered to the students. Hence, the argument continues, the determination of class size involves the determination of fundamental educational policy. While we do not doubt that a decision to establish particular class sizes may involve such fundamental educational policy considerations, we do not believe that such considerations were involved in the School Committee's decision to alter class size or refuse to bargain over class size in this case. While the Federation's witnesses agreed that larger classes may impair the quality of the educational services provided<sup>16</sup> and the student's achievement, there is no evidence suggesting that these considerations were factors in the School Committee's decision. The record shows only that the School Committee was motivated by its desire to cut costs in order to bring its expenses within the budget proposed by the Mayor.<sup>17</sup> The mere fact that the School

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<sup>15</sup> We have previously discussed educational policy decisions as those which "determine the level of public services to be delivered by the governmental body rather than the means by which the services shall be delivered." Town of Dennis, 12 MLC 1027, 1030 n.4 (1985).

<sup>16</sup> We note that the testimony of this point was mixed. For example, Dean Warren testified that studies have disputed the existence of a correlation between class size and student achievement, and that it was his opinion that class size has only a minimal effect on the quality of education. The two teachers, however, opined that the size of the class did affect student learning.

<sup>17</sup> This is not an instance where the School Committee is excused from bargaining by the unavailability of funds. Cf. Boston Teachers Union, Local 66 v. School Committee of Boston, 370 Mass. 197, 211-212 (1976) (contractual provisions may be enforced where funds are available to implement the decision). The School Committee has not offered any evidence that funds were unavailable; only that it accepted,

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Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

Committee labeled its conduct as undertaken as a matter of "educational policy" does not convert a financial decision into one affecting educational policy. Since the School Committee did not consider the educational effects of class size when it refused to bargain, it may not now rely on them to legitimize that refusal as an educational policy decision.

The School Committee also contends that since it is precluded, as a core matter of educational policy within its managerial prerogative, from delegating to the collective bargaining process decisions regarding the size of its workforce,<sup>17</sup> it similarly may not bargain away its control over class size, which it argues is determinative of the size of the teaching staff. We need not consider the accuracy of the School Committee's legal analysis, because it has not demonstrated that class size alone determines the number of teachers to be employed.

The School Committee's witness, Theokas, testified that the first step in determining the number of teachers needed for the next school year is to project the number of students and divide that by the maximum number allowed per class. If this was the whole process we might agree that the determination of class size appears to be influenced only by educational policy or, conversely that the establishment of class size is the sole determinant of workforce. We have found, however, that the School Committee also considers factors such as administrative costs, capital expenditures, and curriculum in determining how many teachers to employ. Theokas also agreed with Warren that other variables, such as the number of instructional periods assigned to a teacher each day, must be included in the equation. Changes in any of these factors can have as great an impact on the size of the workforce as does class size. Therefore we do not consider class size determinative of the size of the teaching workforce.

Having found that class size is not *per se* a matter of educational policy or the exercise of exclusive managerial authority to determine the size of the teaching staff, we now consider whether it is a mandatory or permissive subject of bargaining. On the record before us we have no difficulty deciding that class size is a mandatory subject of bargaining. The evidence demonstrates the direct and substantial relationship between the size of a class and the workload of the teacher, while presenting little, if any, justification for viewing class size as a "core governmental decision which has only a marginal impact on employees' terms and conditions of employment." *Town of Danvers*, 3 MLC 1559, 1571 (1977). Applying the *Danvers* balance to these facts, we hold that class size is a mandatory subject of bargaining.

The Federation has presented uncontradicted testimony that the greater the size of a class, the greater the amount of time that must be expended by the teacher

<sup>17</sup> (continued)  
apparently without argument, a smaller increase over the previous year's budget than it may have preferred.

<sup>18</sup> See generally, *Boston Teachers Union, Local 66 v. School Committee of Boston*, 386 Mass. 197, 212 (1982).



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

of that class. Larger classes require a teacher to commit more time to review and critique students' assignments. This increased time requirement can be as high as 35 minutes for each additional student in a class, per assignment.<sup>19</sup>

The Federation has also produced un rebutted testimony that the greater the number of students in a class, the greater concentration that the teacher must devote to student discipline and behavior. At least two of the Federation's witnesses testified that in larger classes, they had to be more attentive to each student in class to ensure that they were performing their school work. While this does not necessarily require the expenditure of additional time, we accept the testimony of teacher Daryl Mazzaglia, that "It requires more energy from me at that time."

In contrast to the weight of evidence connecting class size to a teacher's workload, there is no evidence that the School Committee's decision regarding class size involved any "governmental decision which should be reserved for the sole discretion of the elected representatives of all citizens." Town of Danvers, 3 MLC 1559, 1573 (1977).<sup>20</sup> Although the School Committee argued in its brief that class size was determinative of the size of the teaching staff, we have found on this record that the size of the teaching staff is affected by other variables and that the determination of class size is not tantamount to a determination of the size of the teaching staff. Rather we find that the School Committee changed class size in response to budgetary concerns. The means of achieving cost savings through changes in employee working conditions is appropriately the subject of collective bargaining. See School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 563 (1983).

On these facts, we have balanced the School Committee's concerns in the areas of core educational policy-making against the teachers' legitimate concerns about workload and working conditions and have concluded that no policy-making prerogatives of the School Committee outweigh the statutory duty to bargain about teacher working conditions. Therefore, the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it refused to bargain with the Federation over class sizes.

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<sup>19</sup> Under the School Committee's April 12, 1983, vote on class size, the number of students in a high school English class could be increased by as many as 7, potentially requiring their teacher to work an additional half-day merely to review one assignment.

<sup>20</sup> We note also that the School Committee does not contend that class size is a "level of services" decision, see Town of Dennis, 12 MLC 1027 (1985) (level of services decisions are permissive subjects of bargaining), or that class size determines the curriculum to be offered, see Groton School Committee, 1 MLC 1224 (1974) (curriculum decisions are permissive subjects of bargaining).



Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

#### Remedy

We have found that the School Committee has refused to bargain in good faith over a mandatory subject of bargaining, class size, in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. It remains only to structure an appropriate remedy for the violation. This case involves a refusal to bargain in response to a specific request to do so; the complaint did not allege any unilateral change and the parties did not litigate such an allegation. Therefore the appropriate remedy is an order that the School Committee cease and desist from violating the Law and bargain on demand over class size. City of Springfield, 7 MLC 1832 (1981).

#### Conclusion

We find that the School Committee has refused to bargain in good faith by refusing to negotiate with the Federation over the maximum number of students to be assigned to a class, a mandatory subject of bargaining. The School Committee's refusal was not the result of educational policy decisions, and so violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

#### Order

WHEREFORE, based upon the above, it is hereby ordered that the School Committee shall:

1. Cease and desist from:
  - a) refusing to bargain in good faith with the Federation over the maximum number of students to be assigned to each class.
  - b) in like and similar manner, interfering with, restraining and corecing its employees in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action, which will effectuate the policies of the Law:
  - a) upon demand by the Federation, bargain in good faith over the maximum number of students to be assigned to each class, to resolution or impasse.
  - b) immediately post the attached Notice to Employees in conspicuous places where notices to teachers are usually posted or where teachers usually congregate, and leave posted for a period of thirty (30) days thereafter.



# MASSACHUSETTS LABOR CASES

CITE AS 13 MLC 1324

Peabody School Committee and Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO,  
13 MLC 1313

- c) notify the Commission in writing within thirty (30) days of receipt of this Decision and Order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN  
MARIA C. WALSH, COMMISSIONER

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF  
THE MASSACHUSETTS LABOR RELATIONS COMMISSION  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Labor Relations Commission has determined that the Peabody School Committee has violated Section 10(a)(5)(1) of G.L. c.150E by refusing to bargain with the Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO over the maximum number of students assigned to each class.

WE WILL NOT refuse to bargain in good faith with the Federation either about the maximum number of teachers assigned to each class, or about other mandatory subjects of bargaining.

WE WILL NOT in any like manner, interfere with, restrain, or coerce our employees in the exercise of their rights under G.L. c.150E.

WE WILL upon demand by the Federation, bargain in good faith over the maximum number of students assigned to each class.

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Chairperson  
Peabody School Committee

