COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE AND SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 509, SUP-3127 (8/8/89).

51.25 agents of union
52.1 breach
52.5 implementation
52.6 interpretation
54.524 evaluating job classifications
67.15 union waiver of bargaining rights
67.68 refusal to implement contract
67.8 unilateral change by employer
77. Union Bound by Acts of Its Agents
91.31 standing to file charge

Commissioners Participating:

Paul T. Edgar, Chairman
Elizabeth K. Boyer, Commissioner

Appearances:

Joseph M. Daly, Esq. - Representing the Commonwealth of Massachusetts, Commissioner of Administration and Finance

Maria C. Rota, Esq. - Representing Service Employees International Union, Local 509

DECISION

Statement of the Case

On May 20, 1987, Service Employees International Union, Local 509 (Union or Local 509) filed a charge with the Labor Relations Commission (Commission) alleging that the Commonwealth of Massachusetts (Commonwealth or Employer) had engaged in a prohibited practice within the meaning of Sections 10(a)() and (5) of M.G.L. c.150E (the Law). Pursuant to Section 11 of the Law and Section 15.04 of the Commission's Rules, the Commission investigated the Union's charge and on October 28, 987, issued a complaint of prohibited practice.

The complaint concerned the Commonwealth's implementation of a personnel reclassification plan, which had been a subject of the negotiations resulting in the 1986-89 collective bargaining Agreement (Agreement) between the Alliance, AFSCME-SEIU, AFL-CIO (Alliance) and the Commonwealth. The complaint alleged that the Commonwealth violated Sections 10(a)(1) and (5) of the Law by (1) repudiating the Agreement by refusing to implement two out of three phases of the reclassification plan; (2) failing to implement representations of its bargaining agents concerning the reclassification plan which had induced the Union to enter into the Agreement; and (3) unilaterally changing a mandatory subject of bargaining, by

refusing to process individual appeals of classifications under the Agreement and Section 49 of Chapter 30 of the General Laws.

Pursuant to notice, a formal hearing was conducted on February 24 and 25, 1988, by Hearing Officer Robert B. McCormack pursuant to Commission Rule 13.02. Briefs were filed and have been considered. Upon the evidence as a whole, we find and rule as set forth below.

Findings of Fact[1]

In November 1985, the Alliance and the Commonwealth commenced negotiations for their 1986-1989 collective bargaining Agreement.[2] The Commonwealth desired to implement a new employee reclassification plan, commonly referred to as the "Hay Study," that resulted from a study largely developed by the Commonwealth's Department of Personnel Administration (DPA). A previous attempt had been made to implement that plan legislatively, but the Legislature declined implementation because of the impact of the plan upon employees represented by various labor organizations. Thereafter the Office of Employee Relations (OER), which is the Commonwealth's designated bargaining representative, introduced the implementation of the reclassification plan as a subject for bargaining when it negotiated successor collective bargaining agreements with the various affected unions.[3]

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1 This case presents no conflict in the testimony of the witnesses concerning any material fact whose resolution would require our assessment of the demeanor of any witness. See Salem v. Massachusetts Commission Against Discrimination, 404 Mass. 170 (1989).

2 The negotiations were conducted between the Commonwealth and the Alliance, AFSCME-SEIU, AFL-CIO, a federation of employee organizations comprised of the American Federation of State, County and Municipal Employees (AFSCME) and its affiliate Council 93 (Council 93) AFL-CIO; and the Service Employees International Union (SEIU) and its affiliates Local 285, Local 254 and Local 509, AFL-CIO. The Agreement covers employees in State Bargaining Units 2, 4, 8 and 10, for which the Alliance is the certified bargaining representative. See Commonwealth of Massachusetts, 2 MLC 1322 (1976). As part of the Alliance, the Union's jurisdiction primarily includes the representation of approximately 8700 employees in State Bargaining Units 8 and 10 comprised of social and rehabilitative professionals and education professionals. 456 CMR 14.07(1).

3 At the time OER began negotiations for the 1986-1989 successor agreement with the Alliance unions, it had already concluded two bargaining agreements that included implementation of the reclassification plan, one with the National Association of Government Employees (NAGE) covering Unit 6 (administrative professionals), and another with the Massachusetts Nurses Association (MNA) covering Unit 7 (health care professionals).

Because of the many diverse and complex bargaining issues involved, the overall collective bargaining process for the 1986-1989 successor Agreement between the Alliance and the Commonwealth was divided into both subcommittee and "main table" negotiations. Joint subcommittees were formed to study and tentatively agree upon the various subjects which could be included in the new collective bargaining Agreement.[4] The subcommittees possessed the power to study, tentatively agree upon, and recommend proposals. However, final or binding acceptance of any proposal could occur only at the main table negotiations. There the subcommittees' recommendations and tentative agreements would be reported by the subcommittee chairpersons and would be accepted or rejected by the principals to the negotiations.[5] The parties also had agreed to a ground rule that there could be no final agreement on any single issue until final agreement was reached on all issues comprising the collective bargaining Agreement.

In the very early stages of contract negotiations with the Alliance, at a bargaining session attended by the entire Alliance negotiating team on or about March 13, 1986, John McKeon, then-Deputy Director of OER and chief spokesperson for the Employer,[6] proposed that the parties negotiate the implementation of the reclassification plan in State Bargaining Units 2, 4, 8 and 10. McKeon also arranged for James Hartnett, Deputy Commissioner for Management Services for DPA,

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[4] The joint subcommittees often included persons who were not members of the main negotiating group, but rather were management staff or employees of various state agencies such as the Massachusetts Rehabilitation Commission or the Department of Public Works. Some subcommittees were structured to consider certain issues as they related to a particular bargaining unit and/or a particular state agency.

[5] Joseph Bonavita is Executive Director of Council 93 and also is the Chairman of the Alliance. Since December 1985 Fred Trusten has been the President and Executive Director of Local 509, as well as the Secretary of the Alliance. Trusten identified the Alliance principals as Bonavita for Council 93, himself for Local 509, Nancy Mills for Local 285, and Fran Fanning for Local 254. Trusten explained that Council 93, as the largest component of the Alliance, selected the Chairman. Since Local 509 is the largest SEIU component of the Alliance, Trusten is selected as the second-ranking position of Secretary.

Tony Caso was designated as the chief spokesperson for the Alliance during negotiations. Trusten represented without contradiction that during the negotiations, the chief spokesperson represented the position of the principals and the negotiating team. The spokesperson had no authority to enter into agreements during negotiations except as authorized by and with the consent of the Alliance principals on the negotiating team.

[6] McKeon became the Director of OER in October 1987.

to attend and address the session.[7] Hartnett generally outlined the reclassification procedure as it had already been implemented in State Bargaining Units 6 and 7. He explained that the reclassification procedure in these units consisted of three phases. The first phase (title-to-title conversion) involved the immediate conversion of old job titles to new job titles.[8] DPA, after receiving input from OER and the Alliance, would then develop and issue official job (class) specifications for each position title. The second phase consisted of a position-by-position review of every individual position to ensure that each employee was properly reclassified and that his or her actual duties were appropriate under the job specifications developed for his or her new title. This review involved the comparison of the official job specification for each title with the individual "Form 30" for each employee's position.[9] The third or final phase of the implementation plan provided for an individual classification appeal process, whereby any employee who believed that he or she was wrongly classified might file with DPA an appeal of the propriety of their classification pursuant to G.L. c.30, §49.[10]

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7 At McKeon's request, Harnett had made essentially the same presentation to a smaller group of Alliance principals a week earlier.

8 The first phase essentially was implemented when the contract itself became effective. Phases two and three were procedures necessarily implemented later, during the term of the contract. The parties agreed upon the specifics of the title-to-title conversion during the negotiations, and the final contract specified that the new titles and assigned job groups were to be immediately implemented.

9 A Form 30 is a DPA form containing a specific description of the duties of a particular job. The DPA requires that each agency develop and keep on file a Form 30 for every position in the Commonwealth.

10 G.L. c.30, §49 provides, in pertinent part:

> Any manger or employee of the Commonwealth objecting to any provision of he classification affecting his office or position may appeal in writing to the personnel administrator [of DPA] and shall be entitled to a hearing upon such appeal. If the administrator finds that the office or position of the person appealing warrants a different position reallocation or that the class in which said position is classified should be reallocated to a higher job group, he shall report such recommendation to the budget director and the house and senate committees on ways and means in accordance with paragraph (4) of section forty-five. Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it. If said commission finds that the office or position of the person appealing

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During his presentations, as described above, Hartnett was careful to tell the Alliance representatives that this was the reclassification process that had been followed in Bargaining Units 6 and 7. He indicated that it would not necessarily be the reclassification process for the bargaining units represented by the Alliance, since that process would be determined through collective bargaining.

Following his presentation to the Alliance negotiating team, Hartnett was questioned for one to two yours by his audience. According to Trusten, who attended the meeting, one union representative asked Hartnett what would be the retroactive date for upgradings that resulted from the position-by-position reviews or from an individual classification appeal. Hartnett referred the question to McKeon, who allegedly said, "Back to the beginning of the contract."[11]

Trusten indicated that after the March 13 meeting, the Union initially rejected the Employer's proposed implementation of a reclassification plan, because

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10 (continued)

> warrants a different position reallocation or that the class in which said position is classified should be reallocated to a higher job group, it shall report such recommendation to the budget director and the house and senate committees on ways and means in accordance with paragraph (4) of section forty-five.
>
> If the personnel administrator or the civil service commission finds that the office or position of the person appealing shall warrant a different position allocation or that the class in which said position is classified shall be reallocated to a higher job group and so recommends to the budget director and the house and senate committees on ways and means in accordance with the provisions of this section, and if such permanent allocation or reallocation shall have been included in a schedule of permanent offices and positions approved by the house and senate committees on ways and means, such permanent allocation or reallocation shall be effective as of the date of appeal to the personnel administrator. (emphasis supplied)

This statutory provision is specifically listed in section 7(d), subsection (k) of the Law, and thus may be superseded by the terms of a collective bargaining agreement. It also follows that the procedure contained in C.30, §49 is subject to negotiation. See Commonwealth of Massachusetts, 14 MLC 1322 (1987), aff'd sub nom. Commonwealth v. Labor Relations Commission, 404 Mass. 124 (1989).

11 McKeon testified that he "would not have said that." The resolution of this credibility dispute, however, is not material to our disposition of this case, as discussed infra. Hartnett did not recall any question about the effective date of individual classification appeals.

it would result in an upgrade (and corresponding salary increase) only for some unit employes. The Union instead favored an across-the-board wage increase for all employees.[12] The proposed implementation of the reclassification plan was then referred to and discussed at many joint subcommittee meetings that took place between March and June 1986, when a tentative agreement was reached. It was a topic of major importance to both sides. Kevin Preston, then an Associate Director of OER, was a member of the Commonwealth's negotiating team and also served as the management chair of several subcommittees, including the subcommittees considering the reclassification plan insofar as it affected Units 8 and 10. Trusten was the union chairperson of the subcommittees in which he participated, including the Units 8 and 10 reclassification subcommittees.

Since some union representatives attending reclassification subcommittee meetings had not heard Hartnett's original presentation, Preston reiterated it at the first meeting with those subcommittees.[13] His reiteration was consistent with Hartnett's presentation, and the three basic phases were explained: a title-to-title conversion, a position-by-position review, and the process of individual classification appeals through the DPA procedure. Preston also explained that the second phase, the position-by-position review, would be based on examination of Form 30s. He described it as the equivalent of management filing an appeal on behalf of each employee, because management would initiate the position-by-position review, and look at each Form 30. Preston testified that he assumed that the Employer intended to conduct a position-by-position review as it had in Units 6 and 7.[14] Preston conceded that he told the reclassification subcommittees that the

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12 Trusten later offered contradictory testimony, during cross examination by the Employer's counsel, that at the March 13 meeting the Alliance effectively had accepted the Employer's proposal concerning the reclassification plan, including the position-by-position review and making individual appeals retroactive, because it did not voice any objection at the meeting after the Employer had presented the proposal. We reject his conclusion as inconsistent with Trusten's earlier testimony that the Union rejected the initial proposal, and the evidence that the parties later engaged in prolonged negotiations, including study and discussion during subcommittee meetings, concerning the proposed reclassification plan.

13 Trusten conceded on cross examination that in reiterating the presentation by Hartnett to the subcommittees, Preston specifically indicated that he was not describing any specific Employer proposal but only explaining how the Employer previously had implemented the reclassification plan in the other bargaining units.

14 Preston believed that his description of the position-by-position review could easily have led the Units 8 and 10 reclassification subcommittees to conclude that employees would not need to file individual appeals immediately upon assignment of their new job titles. However, Preston did not specifically represent that individual classification appeals would be retroactive to the beginning of the contract.

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three phases of the reclassification process would occur based upon his understanding of how the process was being implemented in Units 6 and 7, since he had not been informed otherwise.

Trusten and Gerry Casey, Assistant Director of Local 509, met with Preston in his OER office on a number of contract-related issues sometime in May 1986, approximately on week before the Alliance and the Employer reached a tentative agreement upon the terms of the 1986-1989 Agreement. During this meeting, Trusten asked Preston whether successful individual classification appeals, as part of the reclassification process, would be retroactive. Preston indicated that he wanted to check with McKeon. Preston then left Trusten and Casey, and went into McKeon's office. Preston asked McKeon whether individual classification appeals would be retroactive. According to Preston, McKeon responded, "I guess we'd have to."[15] Preston then relayed to Trusten and Casey the information from McKeon that individual appeals were intended to be retroactive.

In late May 1986, the Alliance and the Employer reached tentative agreement on a successor Agreement covering the period from April 1, 1986 through March 31, 1989.[16] The Agreement was subsequently ratified by the Alliance membership and executed on June 11, 1986.[17]

The Agreement contains the following provisions relative to reclassification:[18]

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14 (continued)

In Units 6 and 7 subsequent classification changes resulting from the position-by-position reviews and individual classification appeals were retroactive to the date the classification plan was implemented, that is, shortly after the effective date of the collective bargaining agreement.

15 McKeon testified that he did not recall this discussion with Preston concerning the effective date of individual appeals. However, it was undisputed that Preston conveyed this information to Trusten and Casey.

16 The record contains no evidence that the subjects of position-by-position reviews or individual classification appeals resulting from the reclassification plan ever were specifically discussed during the main table negotiations. It also was undisputed that the parties never agreed during bargaining either that individual appeals only could be filed after the job specifications were completed, or that appeals filed before January 1, 1988 could not be retroactive to the date filed.

17 There was no evidence that at the time of the ratification process, the Alliance-represented employees ever were told either that the reclassification plan under the Agreement included a position-by-position review or that all individual appeals would be retroactive to the implementation of the plan.

18 (see page 1150)

Commonwealth of Massachusetts, Commissioner of Administration and Finance and SEIU, Local 509, 16 MLC 1143

ARTICLE 17
CLASSIFICATION AND RE-CLASSIFICATION

Section 1. Class Specifications

The Employer shall provide the Union with a copy of the class specification of each title covered by the Agreement for which such a specification exists.

Section 2. Employee Access

Each employee in the bargaining units shall be permitted by the employer to have access to his/her class specification.

Section 3. Individual Appeal of Classification[19]

Individual employees shall continue to have the same right to appeal the propriety of the classification of his/her position through the Personnel Administrator or the Civil Service System which the individual enjoyed on June 30, 1976, and such appeal may not be the subject of a grievance or arbitration under Article 23A herein.

ARTICLE 17A
CLASS REALLOCATIONS

Section 1. Class reallocations may be requested by the Chairman and Secretary of the Alliance whenever they believe a reallocation is justified by the existence of an inequitable relationship between the positions covered by the reallocation request and other positions covered by this Agreement. If the Employer agrees that such an inequity exists, the Employer and the Union agree to jointly petition the General Court for such class reallocation. If, however, the parties are unable to reach agreement the matter shall not be subject to the grievance procedure.

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18 (from page 1149)
Articles 17 and 17A are identical to provisions contained in the parties' predecessor agreement, while Article 17B was a new provision in the 1986-1989 Agreement.

19
It was undisputed that this contractual provision represents the parties' agreement concerning individual classification appeals, including those filed in connection with the implementation of the reclassification plan. The parties further agreed that this provision incorporates the provisions of G.L. c.30, §49 governing individual classification appeals. See also n.10, supra. Trusten conceded that the Agreement contains no provision concerning the position-by-position review.

Section 2. The Employer and the Union agree that the procedure provided in Section 1 shall be the sole procedure for class reallocation for all classes covered by this Agreement. No other class reallocations shall be granted under any other provisions of this Agreement.

ARTICLE 17B
IMPLEMENTATION OF THE
CLASSIFICATION STUDY

Section 1. In consultation with the Office of Employee Relations and the Union, the Department of Personnel Administration shall determine:

A. job titles;

B. relationship of one classification to the others; and

C. job specifications.

Section 2. Upon the execution of this Agreement, a committee comprised of two representatives of the Office of Employee Relations, two representatives of the Department of Personnel Administration, and two representatives of the Union shall be established to review the classification of those job titles submitted to the committee by the Union. This review shall be conducted for purposes of determining the appropriateness of he job grade assigned to such titles.

If, after review of the documentation submitted in support of he Union's contention, the Office of Employee Relations agrees that a change in job grade for the classification is justified, the parties agree to jointly petition the legislature for a class reallocation under the provisions of Article 17A of this Agreement. If the parties are unable to reach agreement, the matter shall not be subject to the grievance or arbitration procedure contained in Article 23A.

Section 3. Effective June 29, 1986, the classification plan contained in Appendix F[20] shall be implemented.

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20 Appendix F (actually it is appendix E) is a multi-page list depicting the old job titles and their job grade (group) as well as the new job titles and job grade (group). The new titles and pay grades implemented effective June 29, 1986, as provided in Sections 3 through 5 of Article 17B, represent the title-to-title conversion phase of the reclassification plan. According to Trusten and Preston, the main table negotiations concerning the reclassification plan primarily focused on which titles would be changed and upgraded pursuant to this phase of the plan. This was also true of the various reclassification subcommittee meetings.

Section 4. Employees in positions as of June 28, 1986, which are scheduled to be reclassified to a lower job grade shall continue to be paid at the job group that they held as of June 28, 1986, for as long as they remain in that title. Employees hired, reinstated or reemployed on or after June 29, 1986, shall be compensated at the new rate for their position as established in Appendix F.

Section 5. Employees on the payroll as of June 28, 1986, whose positions are reclassified to a higher job grade as of June 29, 1986, shall be placed at the higher job grade at the same step at which they are placed as of that date. The anniversary date of such employees shall remain the same.

Section 6. The parties acknowledge that the reclassification plan contained herein addresses the issue of pay equity-comparable worth. The classification review contained in this Article and the class reallocation process contained in Article 17A shall be the procedures for addressing any additional pay equity/comparable worth concerns about titles within bargaining units covered by this Agreement.

Under the reclassification plan as implemented in Units 2, 4, 8 and 10 there were approximately 400 new titles covering the employees in those units.[21] After the implementation on June 29, 1986 of the new job titles and pay (job) grades under the negotiated reclassification plan (title-to-title conversion), the parties then began a series of meetings, together with DPA personnel, to review and revise the job (class) specifications DPA had drafted for the reclassified position titles.[22] These meetings occurred two or three times per week over the period July 1986 through August 1987. In these meetings the unions had substantive input into the creation of the job specifications that were discussed at the meeting.

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21 The record disclosed that the Commonwealth's overall reclassification plan for all nonmanagement positions, including Units 2, 4, 8 and 10 positions, involved the conversion of approximately 1600 old job titles to approximately 780 new titles. After the title-to-title conversion as it was implemented in Units 2, 4, 8 and 10, all former titles in those units were converted to approximately 400 of the 780 new titles. According to Hartnett's approximation, the Alliance represents between 35,000 and 40,000 Commonwealth employees.

22 After the job specifications were finalized, the Alliance unions could request a "class reallocation" appeal with OER and DPA of any generic position title, in order to argue that the job grade assigned to the position was too low. Any upgrade resulting from such an appeal would be retroactive to the date of the implementation of the reclassification plan. Trusten acknowledged that the parties' agreement concerning this aspect of the implementation of the reclassification plan is reflected in Article 17B, Section 2 of the Agreement. According to Hartnett, the Alliance appealed approximately 300 of the 400 new titles.

Trusten testified without contradiction that during job specification meetings held in July and August 1986, OER representative Lianne Shields and DPA representative David McDonald represented that a position-by-position review of individual classifications would commence once the job specifications were finalized. Shields and McDonald asked the Union to advise employees not to file individual appeals of their classifications, and assured the Union that any changes that occurred in the titles through class or individual appeals would be retroactive to the beginning of the contract.

According to McKeon, after the 1986-1989 Agreement had been concluded and before February 23, 1987, DPA informed OER that the official job specifications for the new position titles would not be completed and issued until January 1, 1988, after which those positions could be subject to individual classification appeals. DPA told McKeon that it could not resolve an individual classification appeal without having the final job specification for the title being appealed.

From this information McKeon concluded that DPA would not permit individual classification appeals relating to the reclassification plan to be filed earlier than the date when DPA issued the job specifications for the new positions. Hartnett confirmed that DPA needed a job specification in order to determine whether to reclassify an appealing employee's position, and did not want to conduct individual classification appeals for Alliance-represented employees until it had issued the job specifications. But he clarified that DPA never determined that employees could not file individual classification appeals or that the appeals could not be retroactive to the date filed, even though it would not process the appeals until it had issued the job specifications. He considered that DPA is bound by the provisions of G.L. c.30, §49 which specify that the effective date of an employee's reclassification after a successful appeal is the date the appeal was filed.[23]

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[23] Hartnett further emphasized that OER has authority to and may negotiate contractual agreements that would permit retroactivity to a date earlier than the date the individual appeal was filed. He contrasted the more limited authority of DPA, which is empowered by statute to maintain the classification system for the Commonwealth, with the broader role of OER, as the Commonwealth's designated collective bargaining representative, to determine through the process of collective bargaining all salary issues, including the pay (job) group and retroactive date of all job classifications. As already discussed in n.10 above, the procedures and retroactive date for individual classification appeals under G.L. c.30, §49, may be superseded by the terms of a collective bargaining agreement. To illustrate this distinction, Hartnett noted that under the reclassification plan negotiated in Units 6 and 7, individual appeals made were retroactive to the date the plan was implemented, even though the final job specifications were not issued in each case until more than one year later.

Sometime later, and before February 23, 1987, Council 93 requested a meeting with the Employer about a variety of subjects, including the reclassification plan implementation. Pursuant to that request McKeon and Hartnett met with Bonavita and Caso.[24] At the meeting, Bonavita and Caso were informed that the final job specifications would issue on January 1, 1988, and were assured that any class reallocations made by the Employer and the Alliance after issuance of the job specifications would be retroactive to the date of implementation of the classification plan.[25] McKeon also testified without contradiction that at this meeting Bonavita and Caso agreed with the Employer's position that employees would not be allowed to file individual classification appeals until after the job specifications issued on January 1, 1988, and that all individual appeals filed before that date would be retroactive, if successful, only to the January 1, 1988 cutoff date.

McKeon further testified that, in discussing this issue, he considered that he was dealing with Bonavita in his capacity as Chairman of the Alliance as well as Executive Director of Council 93. McKeon stated without contradiction that OER normally contacts the Chairman of the Alliance when it wants to put the Alliance on notice of any pending changes or other issues subject to bargaining. According to McKeon, when a matter affects all of the Alliance bargaining units, OER does not necessarily inform the representatives of each constituent union within the Alliance but may inform only the Alliance Chairman. He denied that the Employer has any obligation to give notice of issues affecting the entire Alliance to Trusten as well as to Bonavita: "I feel that if there's a unit I'm dealing with ... that partnership would deal with each other. I'm not my brother's keeper."

On December 15, 1986, Thomas L. Monahan, Jr. Assistant Commissioner for Human Resources in the Commonwealth's Department of Mental Health, issued a memorandum to agency management personnel informing them that DPA had notified the agency that it would not process individual classification appeals for employees in Bargaining Units 2, 4, 8, and 10[26] until the reclassification process was completed. He directed them not to conduct hearings on any appeal filed after June 29, 1986, and to "hold" the appeals "until after the reclassification process." An OER representative also informed Monahan at some point that the appeals would be conducted after the job specifications for the reclassified positions were completed.[27]

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24 McKeon identified Caso as someone who works for Bonavita. As noted above, Caso had formerly been designated as the main spokesperson for the Alliance during the negotiations for the Agreement.

25 See n.22 and accompanying text, above.

26 The memorandum also referenced State Bargaining Units, 1, 3 and 6, for reasons not disclosed by the record. Those units, as already noted, were not covered by the 1986-1989 Agreement.

27 (see page 1155)

Jeffrey Bolger, Director of Employee Relations for the Commonwealth's Department of Corrections, testified that at the time the Agreement was concluded he assumed that the Employer would conduct position-by-position reviews of all job titles and that any subsequent reclassification of the position through that review or a later individual classification appeal would be retroactive to June 26, 1986, when the title-to-title conversion had been implemented pursuant to the Agreement.[28] Based upon his belief that all individual classification appeals would be retroactive to the June 26, 1986 implementation of the reclassification plan, Bolger advised employes in bargaining units represented by the Alliance during the months after the contract was finalized not to file individual appeals of their classifications, pending the completion of the position-by-position review portion of the classification study.

However, Bolger subsequently was informed by a DPA representative that no position-by-position review would be conducted and that successful individual classification appeals relating to the reclassification would not be retroactive to the plan's implementation. By memorandum dated January 15, 1987, Bolger then informed agency management personnel that his information had been incorrect in these respects. His memorandum further stated: "in order to protect Bargaining Units 1, 2, 4, 8, and 10 employees' potential rights to retroactive pay adjustments relative to successful appeals of their initial placement in the new position classification system, I am advising you that all such employees who now or in the future feel that they are inappropriately classified should immediately file an appeal under [the DPA procedure]," since successful appeals would be considered retroactive only to the date that the appeal was filed.[29]

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27 (from page 1154)

At this point Monahan did not know that the effective date of individual appeals would be changed. Although the memorandum mentions that the agency later would receive instructions from OER and DPA concerning "the position-by-position reclassification" of positions in the units referenced in the memo, Monahan indicated that he had no definite knowledge whether the parties had negotiated for position-by-position reviews to be conducted in the Alliance-represented units; he clarified that the reference to the reviews in the memo related to Unit 6, for which such reviews had been negotiated.

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Bolger explained that his assumption resulted from his erroneous belief that the reclassification would be handled as it had been in Bargaining Units 6 and 7.

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DPA did not also advise Bolger that individual appeals would be retroactive only to January 1, 1988, even if filed earlier. Bolger testified that approximately a week or two after he issued the January 15, 1987 memorandum, McKeon informed him that his information in the memorandum did not conform to the Commonwealth's policy.

After this memorandum came to the Union's attention, Trusten asked OER for the Employer's position. On March 16 r 17, in response to his inquiry, Trusten was sent a copy of a memorandum dated February 23, 987 from Daniel J. Sullivan, then-Director of OER, and David A. Haley, Personnel Administrator of DPA, to all Cabinet Secretaries and agency heads. The memorandum read, in pertinent part, as follows:

> Over the last eighteen months the Office of Employee Relations (OER) through the collective bargaining process successfully implemented a new classification system for each bargaining unit based upon a study conducted by the Department of Personnel Administration (DPA) which will enhance the quality of the Commonwealth's personnel system.
>
> Part of the implementation includes an appeal process which allows the union to address class specification and job group allocation issues, which has been completed for units 6 and 7 and will take the balance of 1987 to complete for all remaining bargaining units. Effective January 1988, DPA will issue the official class specifications for the remaining bargaining units thus ending the implementation process.
>
> Upon receipt of the official class specification, any employee in a collective bargaining unit other than units 6 and 7 who feels that his or her position is not properly classified may file an appeal in accordance with the [standard DPA appeals process]. The effective date of any subsequent position reclassification resulting from the appeal shall be the date the appeal was filed by DPA but not earlier than January 1, 1988, the date the new class specifications become official.

When he received it, Trusten and representatives from Local 254 and 285 SEIU met with Sullivan, McKeon and other OER representatives. Trusten expressed the Union's view that the Commonwealth had "changed the rules part way through the game here, and that [it wanted the] memorandum rescinded."[30] After some discussion the Union agreed to schedule a subsequent meeting, which took place about two weeks later. Paul Murphy, an Assistant Director of OER, attended, as did Hartnett and Trusten. Trusten asserted that the Employer had represented to the Union that the reclassification process would include a position-by-position review, followed by a retroactive process for individual appeals. The Employer denied having made these representations, and the meeting concluded on an angry note. The Union filed the instant charge on May 20, 1987.

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30 McKeon testified without contradiction that at this meeting the Local 254 representative specifically stated that he had "no problem" with the procedure described in the February 23, 1987 memorandum. The Local 285 representative did not expressly concur but "had no reaction." McKeon further noted that Local 509 was the only constituent union of the Alliance to file a charge at the Commission against the Employer concerning the matter.

On June 17, 1987, Sullivan sent the following letter to Joseph Bonavita, Chairman of the Alliance:[31]

> Since the execution of our current Collective Bargaining Agreement we have engaged in a mutual process of reviewing certain job specifications in conjunction with the Department of Personnel Administration to ensure that they accurately reflect the work being performed by the employees you represent. It is our experience that this process has been beneficial for all parties.
>
> The Department of Personnel Administration has stated that final specifications will be released for your bargaining units on January 1, 1988. In order to meet this deadline and to allow the Department of Personnel Administration's staff sufficient time to incorporate the comments and suggestions we have received from your representatives, we are asking your cooperation in submitting to the appropriate Assistant Director within the next two weeks a list of those outstanding titles that you wish to review.
>
> We must conclude our joint discussions for all job specifications no later than September 5, 1987, in order to meet the January 1, 1988 deadline for release of the final specifications.
>
> Requests for class re-allocations will be accepted after the official specifications are released. Classifications for which there is mutual agreement for upgrading may then be retroactive to the initial date of the implementation of the classification plan.
>
> Individual appeals of classification may be filed after January 1, 1988. If granted, those reallocations will be effective upon the date of filing with the Department of Personnel Administration.
>
> Concerns that arise in the future about the content of job specifications will continue to be addressed as part of the ongoing maintenance of the new classification plan.
>
> We look forward to continuing to work with you on this very important project.

After the final job specifications issued, the Employer did not conduct position-by-position reviews of each employee's position. As discussed above, the Alliance unions could and did initiate class reallocation appeals of position

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[31] Trusten denied that he ever received a copy of the above, despite an indication on the letter that a courtesy copy was sent to him.

titles, which if granted by the Employer were retroactive to the initial date of implementation of the reclassification plan. After the implementation of the reclassification plan on June 26, 1986, many employees represented by the Union filed individual appeals of their classification prior to January 1, 1988. Those appeals were not processed by DPA and were later returned to the employees who had filed them. The employees were informed that they could refile them after January 1, 1988, and that, if successful, the appeals would be retroactive only to the date of filing rather than to the date of implementation of the reclassification plan.

OPINION

The Employer first defends the complaint of prohibited practice by attacking the standing of the Union under the Law to assert the collective bargaining rights of the Alliance as the exclusive bargaining representative and as the party to the collective bargaining Agreement with the Employer. Specifically, the Employer contends that since Local 509 is neither a party to the collective bargaining Agreement[32] nor the certified exclusive bargaining representative, and since the Alliance has not joined the case in its own name, Local 509 should not be permitted to enforce statutory obligations owed by the Employer only to the Alliance itself.

We do not agree with the Employer that Local 509 should not be permitted to enforce the Employer's duty to bargain with the Alliance as the exclusive bargaining representative. In so concluding we note that the Union is a member of the federation of unions that jointly comprise the Alliance, and that its jurisdiction within the Alliance includes the representation of employees in State Bargaining Units 8 and 10. There also is no showing that the Union is not the authorized or designated agent of the Alliance in the prosecution of this case. This result also is consistent with the Commission's history of allowing the constituent unions that comprise the Alliance to process charges of prohibited practice in the name of or on behalf of the Alliance in the units that they represent. See, e.g., Commonwealth of Massachusetts, 4 MLC 1869 (1978); Commonwealth of Massachusetts, 9 MLC 1387 (H.O. 1982), aff'd, 13 MLC 1645 (1987). Accordingly, in the present case we find no impediment to the Union's enforcement of the Employer's obligation to bargain with the Alliance.

Having decided that the Union in this case is the agent authorized to assert the collective bargaining rights of the Alliance, we must decide whether, as the complaint alleges, the Employer has failed to bargain in good faith with the Alliance either by (1) refusing to implement as part of the negotiated reclassification plan a position-by-position review and an individual appeal process that was

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[32] We note that in its answer to the complaint, the Employer specifically admitted that Local 509 was a party to the predecessor collective bargaining agreement with the Employer that expired on March 31, 1986.

retroactive to the effective date of the Agreement; (2) refusing to implement these two phases of the reclassification plan after inducing the Union to enter into the Agreement by misrepresenting that the plan included these phases; or (3) changing the employees' right to file individual classification appeals without having given the Union prior notice and an opportunity to bargain concerning the change. After considering all of the evidence presented at the hearing, we must conclude that the Employer did not fail to bargain in good faith with the Alliance as alleged.

We first turn to the issue of the extent of the agreement between the Employer and the Alliance concerning implementation of the reclassification plan. With respect to the allegation that the Employer repudiated an agreement to conduct a position-by-position review of each individual employee's position, and an agreement that individual classification appeals would be retroactive to the date the reclassification plan was effective, we cannot conclude that the evidence was sufficient to establish that the parties ever specifically agreed to incorporate these features into the overall implementation process. First, we note that the contractual provisions of the parties' Agreement that pertain to the reclassification plan do not mention these features. The Union acknowledged in testimony, and the evidence establishes, that the 1986-1989 Agreement contains no language reflecting any agreement by the parties to conduct position-by-position reviews as part of the implementation of the reclassification plan. With respect to the alleged agreement that individual appeals would be retroactive to the implementation of the plan, the Union acknowledged that the provisions of Article 17, Section 3 of the Agreement represented the parties' agreement concerning individual classification appeals under the reclassification plan. Those provisions, however, do not indicate that the parties agreed to make individual appeals retroactive to the date the plan was implemented. Instead Article 17, Section 3 of the Agreement, which retains the language contained in the parties' earlier agreements, gives individual employees the "same right to appeal" their position classifications as they previously had enjoyed. It was undisputed that individual classification appeals have always been retroactive only to the date of filing. In addition, it is significant that the record is devoid of evidence that during the main table negotiations, the Alliance principals or official spokesperson and the Commonwealth's negotiators ever discussed or agreed to those features as part of the implementation of the reclassification plan. In the absence of contractual language or evidence of bargaining history that establishes that the parties specifically agreed to conduct the position-by-position review or to make individual classification appeals retroactive to the beginning of the contract when the plan we implemented, we cannot conclude that the Employer's refusal to implement these aspects of the reclassification plan amounted to unlawful repudiation of an agreement with the Alliance. Boston Water and Sewer Commission, 15 MLC 1319 (1989).

The Union's argument that the Alliance and the Employer agreed to a reclassification plan that provided for a position-by-position review and fully retroactive individual appeals, however, is not premised upon any specific discussion or

agreement reached at the main table negotiations. Instead the Union contends that because the Employer never corrected representations that it intended to implement the plan with these features, as it had in Units 6 and 7, the Employer should be held to have agreed to the plan in the terms it described. This contention essentially pertains to the second allegation of the complaint, that is, that the Employer should be required to implement its representations concerning the reclassification plan because the Union was induced by those representations to enter into the 1986-1989 Agreement. Specifically, the Union points to certain representations made during the negotiations by Hartnett, McKeon and Preston before the Agreement was concluded.[33] However, we must conclude that the evidence is insufficient to establish that either the Alliance as the exclusive representative, nor the Union as an Alliance principal, was induced to enter into the Agreement by material misrepresentations made by the Employer concerning the procedures to be followed in implementing the reclassification plan.

In so concluding we first note the significant lack of any testimony by an Alliance spokesperson or principal establishing that "but for" the representations allegedly made by McKeon and Preston[34] that the reclassification plan would contain

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33 The Union also notes that even after the Agreement was reached, Employer representatives misrepresented that the reclassification plan would include a position-by-position review, and that individual appeals would be retroactive to the plan's implementation. It was uncontroverted that after the Agreement was effective, Employer representatives Shields, McDonald and Bolger clearly advised the Union as well as employees that a position-by-position review would occur, and that because appeals were fully retroactive employees need not immediately file individual appeals in order to insure full retroactivity. Because these misrepresentations occurred after the Agreement was reached, they are not material in our resolution of the complaint allegation that the Employer unlawfully failed to implement representations it made that had induced the Union to enter into the Agreement. Nor are they relevant to our disposition of the allegation that the Employer unilaterally changed the individual appeal procedure contained in the Agreement, in light of our ultimate conclusion that no unilateral change occurred because the Alliance agreed to the change.

34 Although the Union also refers to Hartnett's statements at the March 13 session, there was no evidence that Hartnett ever specifically represented that the plan for Alliance employees would include any particular features or procedures. At the March 13 session, as part of its initial proposal to the Alliance negotiating team about the reclassification plan, the Employer arranged that Hartnett explain the reclassification process as it had been implemented in Units 6 and 7 (including a position-by-position review). The evidence clearly establishes that Hartnett took pains to explain that the actual details of the reclassification plan for the Alliance employees would be determined through the process of negotiations then commencing.

these two features, the Alliance would not have entered into the Agreement. See Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 14 MLC 1501, 1508 (988). Nor is there any evidence that before the Alliance employees ratified the Agreement they ever were specifically told that the reclassification plan in the Agreement included position-by-position reviews and individual appeals that would be retroactive to the plan's implementation. Thus we are left to speculate as to whether the Union would have opposed the reclassification plan had it known that these representations were inaccurate, and as to what effect the opposition of the Union, as only one of several members of the Alliance, would have had in preventing an agreement between the Alliance and the Employer at the main table negotiations.

In addition, it is difficult for us to conclude that the Union could reasonably have relied upon any alleged misrepresentations that the reclassification plan would include a position-by-position review or greater retroactivity for individual appeals since these subjects never were discussed at the main table negotiations and the final language of the Agreement does not reflect any agreement to incorporate those features.[35] The evidence indicated that the reclassification plan was a topic of major significance during the negotiations. Moreover, the parties to the negotiations also had agreed that binding agreements could be made only at the main table negotiations between their respective chief spokespersons. Given the importance of the plan to the Union, it cannot reasonably have believed that the plan would include these critical features when the Alliance and the Employer spokespersons had never discussed or agreed to these features at the main table negotiations. The Union could not reasonably have relied upon the alleged misrepresentations in accepting the Agreement as an Alliance principal, because it clearly knew that the actual terms of the Agreement included no mention of these features in Article 17B specifying the terms of the reclassification plan. Contrast Banner Tire Company, Inc., 273 NLRB 480 (1984), cited in Wood's Hole, supra (misrepresented fact was uniquely within knowledge of misrepresenting party and not easily subject to independent verification by party that relied upon it).

In addition to the reasons just discussed, the nature and context of the particular misrepresentations at issue furnish additional support for our conclusion that the Union was not induced to enter into the Agreement because of material misrepresentations by the Employer concerning the implementation of the reclassification plan. Assuming arguendo that McKeon stated[36] at the March 13 session that upgradings resulting from position-by-position reviews or individual appeals would be retroactive to the beginning of the contract, we note that the parties were just

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35 As discussed above, the provisions of Article 17, Section 3 of the Agreement are inconsistent with the representation that individual appeals would be retroactive to the date of the implementation of the plan regardless of the date they were filed.

36 See n. 11 and accompanying text.

beginning negotiations for their successor Agreement. The Employer was for the first time broaching the reclassification plan as a subject for negotiations, and as discussed above, Harnett had just informed the parties that the actual plan to be implemented for Alliance employees would be determined during the upcoming negotiations. The plan than became the subject of thorough scrutiny and further discussion by the parties' representatives in numerous subcommittee meetings, and was required to be agreed to by the parties' official spokespersons at the main table negotiations. There was no evidence that McKeon ever repeated this representation during any subsequent main table negotiating sessions at which the plan was discussed or ultimately agreed to. Thus the context of the statement as well as the later course of the negotiations give us further cause to conclude that the statement could not have induced the Union to enter into the Agreement.

Similarly, there are additional reasons why the Union should not have relied upon the representations made by Preston about the reclassification plan.[37] It was undisputed that shortly before the contract was finalized, at the OER office, Trusten asked Preston to confirm that individual appeals would be retroactive to the beginning of the contract; after checking with McKeon, Preston then represented that McKeon had confirmed this. However, neither Preston nor Trusten had been designated an official spokesperson for the negotiations. In addition, the parties also had agreed that no agreements could be reached except at the main table negotiations. These factors further suggest that the Union could not reasonably have relied upon any representation about the plan that was not repeated at the main table and endorsed by the official spokespersons. There was no evidence that this misrepresentation ever was repeated by the Commonwealth's chief spokesperson to the Alliance's chief spokesperson during the main table negotiations.

Therefore, for the reasons detailed above, we cannot conclude that the Union was fraudulently induced to agree to the 1986-1989 Agreement because it had reasonably relied upon misrepresentations that the reclassification plan in the Agreement would include a position-by-position review and make individual appeals whenever filed retroactive to the date the plan was implemented.

Finally, we turn to the issue of whether the Employer unilaterally changed the procedure for individual appeals of classification, which is contained in Article 17, Section 3 of the Agreement, by suspending individual appeals until January 1, 1988 and, accordingly, changing the effective date of any reclassification upgrade pursuant to a successful appeal filed before January 1, 1988, from the

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37 In reclassification subcommittee meetings with Union representatives for Units 8 and 10, Preston clearly represented that the plan would essentially be the same as that followed in Units 6 and 7, including a position-by-position review of all employees' positions. However, as discussed in n. 13 above, Trusten acknowledged that Preston also had indicated that he was describing the reclassification procedures as implemented in Units 6 and 7 rather than any specific Employer proposal for the Alliance negotiations.

date of filing with DPA to January 1, 1988. The Union successfully established that the Commonwealth changed the existing procedure contained in Article 17, Section 3, by its announcement on February 23, 1987, that it would not process or make individual classification appeals retroactive before January 1, 1988. However, we find that the Commonwealth has demonstrated that Alliance Chairman Bonavita agreed to the change on behalf of the Alliance, and thus that the Alliance agreed to waive the provisions of Article 17, Section 3 concerning the effective date of individual classification appeals.

It is well-settled that a public employer violates Sections 10(a)(5) and (1) of the Law if it changes an established condition of employment or creates a new condition of employment without first bargaining either to agreement or to a good faith impasse with the union. Town of Arlington, 15 MLC 1452 (1989). The change must affect a mandatory subject of bargaining. City of Boston, 15 MLC 1191 (1988); City of Boston, 10 MLC 1189 (1983). Because the classification of a position directly affects the wages that are paid to an employee in that position, we find that the procedure for and effective date of an employee's appeal of his or her classification is a mandatory subject of bargaining.[38] Commonwealth of Massachusetts, 14 MLC 1322 (1987), aff'd sub nom. Commonwealth v. Labor Relations Commission, 404 Mass. 124 (1989).

Article 17, Section 3 of the collective bargaining Agreement provides, in part, that individual employees shall continue to have the same right to appeal the propriety of the classification of their positions which they enjoyed on June 30, 1976. This individual appeal procedure refers to the provisions of G.L. c.30, §49, which permits any employee of the Commonwealth to appeal the propriety of his or her position classification.[39] Pursuant to the contractual provision and the statutory appeal mechanism, an individual employee who desired to appeal the propriety of his or her classification after implementation of the reclassification plan would file an appeal with DPA.[40] If successful, the employee's position would

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[38] As discussed in n. 10 above, the procedures under G.L. c.30, §49 governing individual classification appeals to DPA are a mandatory subject of bargaining, and any agreement by the parties that alters the statutory procedures will prevail over the conflicting terms of the statute.

[39] As discussed in n. 19 above, the parties agreed that the rights referred to under Article 17, Section 3 are those conferred by G.L. c.30, §49.

[40] The statute provides that any employee may appeal the classification in writing to DPA and is entitled to a hearing upon the appeal. The employee then may appeal DPA's determination to the Civil Service Commission. The statute further provides that if the position is found to warrant reclassification, and the reclassification is approved by the House and Senate Committees on Ways and Means, the reclassification shall be effective as of the date of appeal to DPA.

be upgraded to a higher classification retroactive to the date the appeal was filed, thus also entitling the employee under the Agreement to retroactive payment of the higher wage rate for the higher classification.

The Employer argues, however, that after the initial implementation of the reclassification plan on June 26, 1986, individual classification appeals could not be processed until the final job specifications had been determined with the Alliance pursuant to the provisions of Article 17B, Section 1 of the Agreement. Since the job specification review meetings occurred in the period between the execution of the Agreement in June 1986 and January 1988, the Employer maintains that there could be no individual appeals until after January 1988, the deadline for release of the final specifications.

However, when the Employer implemented the reclassification plan in Bargaining Units 6 and 7, individual appeals were made retroactive to the implementation date of the plan, even though the final job specifications were not released until more than a year later.[41] The Union argues that this demonstrates that the issuance of final job specifications by the Employer is not a prerequisite to the filing of individual appeals pursuant to the appeal procedure contained in G.L. c.30, §49 and incorporated into Article 17, Section 3 of the Agreement. According to the Union, there was nothing in the procedure that prohibited the filing of individual classification appeals by employees following the effective date of the implementation of their new job titles under the plan on June 30, 1986.[42]

We agree with the Union's contention that there was insufficient evidence to support the Employer's contention that under the existing procedure, individual appeals could not be filed or given retroactive effect before the date when the final job specifications were issued. In addition to the practice followed in Units 6 and 7, we note Hartnett's uncontroverted testimony that DPA adheres to the provisions of G.L. c.30, §49 specifying that the appeal is retroactive to the date filed. Although Hartnett acknowledged that OER could reach an agreement with a union to alter the normal retroactivity of these appeals, McKeon conceded that during the negotiations for the 1986-1989 Agreement here was no discussion or agreement with the Alliance to change the procedures applicable to individual

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41 In negotiating the implementation of a reclassification plan in each of those bargaining units, the unions and the Commonwealth agreed to retroactive salary adjustments following position-by-position reviews and individual appeals of classifications. See also n. 23 above.

42 Even under the reclassification plan implemented in the Alliance units, reclassification which occurred as a result of class reallocation appeals filed by the Alliance unions after the job specifications were completed were made retroactive to the implementation of the plan. See n.22 above.

classification appeals.[43] Therefore we conclude that when OER issued the February 23, 1987 memorandum it effected a change in the existing procedure for filing and the effective date for individual classification appeals under Article 17, Section 3 of the Agreement.

In its defense, the Employer contends that prior to the issuance of the February 23, 1987 memorandum it had obtained the agreement of the Alliance as the exclusive representative to these changes and therefore that it committed no violation of Sections 10(a)(5) and (1) of the Law. Melrose School Committee, 3 MLC 1299, 1302 (1977). Specifically, it contends that McKeon secured the agreement of Joseph Bonavita, the Chairman of the Alliance, and Tony Caso, the former chief spokesperson for the Alliance during the negotiations for the Agreement, that no individual classification appeals could be filed until January 1, 1988. The Union argues, on the other hand, that the Employer's waiver by agreement defense must fail because it did not establish that either Bonavita or Caso had the requisite authority to bind the Alliance to an agreement with the Employer.[44] After consideration of the evidence presented, we must conclude that Bonavita if not Caso possessed apparent authority as Chairman of the Alliance to bind the Alliance as bargaining representative to the agreement.[45]

The Union asserts that Bonavita has authority only to bind Council 93 in any agreement with the Employer.[46] The Union further contends that because the

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[43] The parties did not alter the terms of Article 17, Section 3 concerning employees' existing right to file classification appeals. As discussed above, Section 3 incorporates the rights employees have had pursuant to G.L. c.30, §49 to challenge their classifications by filing an appeal to DPA.

Although Hartnett confirmed that DPA needed an official job specification in order to determine the merits of an individual's classification appeal, and therefore could not process such appeals without a job specification, he never asserted that employees could not file the appeal and thus secure a retroactivity date before the specifications were finalized.

[44] McKeon's testimony that he reached such an agreement with Bonavita and Caso was unrebutted.

[45] The record discloses only that during the course of contract negotiations, Caso as the chief spokesperson for the Alliance had the sole authority to enter into agreements with the Employer on behalf of the Alliance during main table negotiations. There is no evidence to clarify the authority of Caso following the completion of collective bargaining negotiations. We need not reach the question whether Caso had apparent authority to bind the Alliance to an agreement made after the conclusion of those negotiations, in view of our conclusion concerning Bonavita's apparent authority.

[46] The Union points to the fact that the December 10, 1987 letter from

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Alliance as exclusive representative is a federation of unions acting in concert, we should not assume that the representative of one constituent union has authority to bind the others absent a clear showing of agency.[47]

This contention, however, ignores the fact that Bonavita is not only the principal representative of Council 93 but also the principal officer of the Alliance. Normally, the principal officer of an employee organization, by virtue of that office, has at least apparent authority to act on behalf of the organization. Belmont School Committee, 4 MLC 1189 (H.O. 1977), aff'd, 4 MLC 1707 (1978); City of Leominster, 8 MLC 1592 (H.O. 1981), aff'd, 8 MLC 2034 (1982). Bonavita's status as Chairman of the Alliance confers upon him the apparent authority to bind that organization. It was therefore incumbent upon the Alliance or a constituent union to indicate to the Employer, if this was the case, that the Chairman of the Alliance was not actually authorized to conclude such an agreement. Absent some indication to the contrary, the Commonwealth was entitled to assume that Bonavita was acting within his authority as Alliance Chairman, and not only as Executive Director of Council 93, in agreeing with McKeon about changes in the individual appeal procedure. See Town of Ipswich, 11 MLC 1403, 1410 (1985), and Town of Ipswich, 9 MLC 1153 (H.O. 1982), aff'd, 9 MLC 1335 (1982) (in the absence of expressed limitations, designated negotiators held to have apparent authority to reach agreement). There was no specific evidence in the record suggesting that the Commonwealth should have known that there was any limitation on Bonavita's apparent authority as Chairman to bind the Alliance to a modification of the terms of the 1986-1989 Agreement.[48] Rather, McKeon offered unrebutted testimony that the

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46 (continued)
Bonavita to McKeon that references the resumption of individual appeals on January 1, 1988, was signed by Bonavita in his capacity as the Executive Director of Council 93. However, this fact alone is insufficient to demonstrate that Bonavita was not acting in his capacity as Chairman of the Alliance when he agreed to the changes in the procedure for individual classification appeals, or that the Employer was not entitled to rely upon his apparent authority as Alliance Chairman to reach the agreement he made.

47 The Union erroneously asserts that Commonwealth of Massachusetts, 4 MLC 1869 (1978), states that notice to one Alliance constituent of impending changes in existing terms of employment is not necessarily sufficient as to the others. In that case the Commission raised, but did not decide, the issue whether knowledge acquired by the representative of Council 93 on the Group Insurance Commission might constitute sufficient notice to the Alliance of a proposed change affecting employees' compensation.

48 The evidence established only that the Employer knew that Caso was the Alliance's designated spokesperson during negotiations for the 1986-1989 Agreement. As discussed in n.45 above, this may establish that Caso's apparent authority to bind the Alliance to any agreement ended when the Agreement was concluded.
(continued)

Employer normally contacts the Chairman in order to notify the Alliance of any pending changes or other issues subject to bargaining, especially when the issue affects all Alliance bargaining units.

Therefore, we must conclude that the Alliance is bound by the agreement made by Bonavita, which permitted the Employer to make certain changes in the existing contractual procedures for individual classification appeals, and therefore that the Employer did not violate Sections 10(a)(5) and (1) of the Law when it implemented those changes. Accordingly, that allegation of the complaint also must be dismissed.

CONCLUSION

For the reasons stated above, the complaint alleging that the Employer violated Sections 10(a)(5) and (1) of the Law is DISMISSED.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

ELIZABETH K. BOYER, COMMISSIONER

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48 (continued)
However, it does not suggest that Bonavita did not possess apparent authority to bind the Alliance to a subsequent modification of that Agreement.

Although the Union also points to Trusten's testimony that only by authorization from the principals of the Alliance could the Alliance spokesperson enter into agreements with the Employer during negotiations, it did not establish that the Employer had reason to know that Bonavita was not authorized by the Alliance principals to reach agreement with the Employer about the changes in the individual appeal procedure. Moreover, McKeon testified without contradiction that the Employer generally had given notice of proposed changes in employment conditions only to the Alliance Chairman.