

CHIEF JUSTICE FOR ADMINISTRATION AND  
MANAGEMENT OF THE TRIAL COURT

and

MIDDLESEX COUNTY SUPERIOR COURT OFFICERS  
ASSOCIATION

and

SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 254

and

SUFFOLK COUNTY SUPERIOR COURT OFFICERS  
ASSOCIATION

Case Nos. CAS-3381 and CAS-3416

34.11	statutory unit
34.71	departmental unit
34.91	accretion
35.9	judicial employees
45.1	contract bar

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## DECISION<sup>1</sup>

### Statement of the Case

On February 9, 1999, the Middlesex County Superior Court Officers Association (MCSCOA) filed a petition with the Labor Relations Commission (the Commission) in Case No. CAS-3381 seeking to accrete certain employees who perform the duties of court officers in the Middlesex Superior Court, but who are members of a bargaining unit represented by the Service Employees International Union, Local 254 (SEIU). SEIU filed a

motion to intervene in Case No. CAS-3381 on August 13, 1999, and MCSCOA and the employer, the Chief Justice for the Administration and Management of the Trial Court (the CJAM), did not oppose that motion. On August 27, 1999, SEIU filed a petition in Case No. CAS-3416, seeking to accrete certain employees who perform the duties of court officers in the departments of the Trial Court other than the Middlesex Superior Court and the Suffolk Superior Court, but who are members of another bargaining unit.<sup>2</sup> On September 23, 1999, the Suffolk County Superior Court Officers Association (SCSCOA) filed a motion to intervene in Case No. CAS-3416, and SEIU and the CJAM did not oppose the motion to intervene. On or about October 27, 1999, the Commission allowed SEIU's motion to intervene in Case No. CAS-3381 and SCSCOA's motion to intervene in Case No. CAS-3416. The Commission also consolidated Case No. CAS-3381 and Case No. CAS-3416 for hearing.

On January 18, 2000, Margaret M. Sullivan, Esq., a duly-designated Commission hearing officer (Hearing Officer), conducted a hearing at which the parties had an opportunity to be heard, to examine witnesses and to introduce evidence. All parties filed post-hearing briefs. MCSCOA, SCSCOA and the CJAM filed post-hearing briefs on or about March 10, 2000, and SEIU filed a post-hearing brief on or about March 21, 2000. The Hearing Officer issued Recommended Findings of Fact on April 5, 2002. MCSCOA and SCSCOA challenged portions of the Hearing Officer's Recommended Findings of Fact. After reviewing those challenges and the record, we adopt the Hearing Officer's recommended Findings of Fact, as modified where noted, and summarize the relevant portions below.

### Findings of Fact<sup>3</sup>

St. 1977, c. 589 amended Section 1 of M.G.L. c. 150E (the Law) to include within the definition of "employee" or "public employee" "any person employed within the ... judicial branch of government." This same statute expanded the definition of "employer" or "public employer" by providing "in the cases of judicial employees, the employer shall be the Chief Justice of the Supreme Judicial Court or any individual who is designated by him or her to represent him or her and act in his or her interest in dealing with judicial employees." The statute also amended Section 3 of the Law by adding that:

The appropriate bargaining units for judicial employees ... shall be a professional unit composed of all probation officers and court officers, and a unit composed of all non-managerial or non-confidential staff and clerical personnel employed by the judiciary; provided that court officers in the superior court departments for Suffolk and Middlesex counties shall be represented by such other bargaining units as they may elect.

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

2. As more fully discussed below, MCSCOA is the exclusive collective bargaining representative for the court officers at the Middlesex Superior Court, and the Suffolk County Superior Court Officers Association is the exclusive collective bargaining representative for the court officers at the Suffolk Superior Court.

3. The parties have not contested the Commission's jurisdiction in this matter.

On February 22, 1978, the Commission in Case No. SCR-2109 certified SEIU as the exclusive collective bargaining representative for the following unit:

All regular full-time probation officers, court officers and deputy sheriffs, duly assigned as court officers, who perform court officer duties on a regular basis for more than 50% of their regular workweek. All employees who work less than full-time, but not less than fifteen (15) hours per week and are either a probation officer, court officer or deputy sheriff, duly assigned as court officers, who perform court officer duties on a regular basis for more than 50% of their regular workweek. Excluded and not eligible to vote are all confidential and managerial employees as defined in the Act, and other employees of the Commonwealth or its counties.<sup>4</sup>

On November 24, 1978, the Commission in Case No. SCR-2122 certified SCSCOA as the exclusive collective bargaining representative for the following unit:

All regular full-time court officers employed as court officers in Suffolk County Superior Court, and all less than full-time court officers who regularly work 30 hours a week or more, excluding all chief court officers, managerial and confidential employees as defined in the Act, and all students and interns and all other employees.<sup>5</sup>

On November 30, 1978, the Commission in Case No. SCR-2123 certified MCSCOA as the exclusive collective bargaining representative for the following unit:

All regular full-time court officers employed as court officers in Middlesex County Superior Court, and all less than full-time court officers who regularly work 30 hours a week or more, excluding all chief court officers and chief deputy court officers, managerial and confidential employees as defined in the Law, and all students and interns and all other employees.<sup>6</sup>

M.G.L. c. 211B created the Trial Court of the Commonwealth of Massachusetts (the Commonwealth) and designated the CJAM as the administrative head of the Trial Court responsible for securing its proper and efficient administration. M.G.L. c. 211B, § 9 (xxii) states that the CJAM shall have the authority to manage court personnel, facilities, administration, security and court business including:

Notwithstanding any general or special law to the contrary, when necessary to ensure the proper administration of justice, transfer employees of the trial court to serve where needed, ... provided, however, that the [CJAM] may, upon reasonable notice, temporarily transfer nonjudicial personnel among the various departments, divisions and places for holding court, and in no event shall any such transfer be more than a reasonable distance from the place where such personnel is employed unless the employee so transferred shall consent thereto; provided, further, that such transfer of the employee shall not be for more than ninety days, but such transfer may be extended for three consecutive ninety-day periods, provided that notice is given to the House and Senate Committee on Ways and

Means, upon each extension, including the employee's position, duties and reason for the transfer but such transfer shall not exceed three hundred and sixty consecutive days.

M.G.L. c. 211B, § 9A refers specifically to court officers stating that:

All court officers appointed at anytime... whether appointed prior to or after January first, nineteen hundred and ninety-three, to any department of the trial court shall be employees of the [CJAM] who shall have the authority to appoint, dismiss, define the duties of, assign, transfer and discipline said court officers within the trial court as the [CJAM] deems necessary for the administration of justice and for public safety.

On September 14, 1992, the Justices of the Supreme Judicial Court declared a statewide security emergency in the Trial Court and issued an "Order Relative to the Safety and Security of the Facilities of the Trial Court" (the September 14, 1992 Security Order) in response to what the Justices perceived as an increase in violent behavior in the Commonwealth's courthouses. The September 14, 1992 Security Order stated in part that:

Whereas, the Justices of the Supreme Judicial Court have determined that the current statutory provisions for the hiring, deployment and management of court officers, including the provisions of G.L. 211B, § 9, whereby the CJAM cannot transfer a court officer without first obtaining the approval of the administrative justice or first justice of the department or division of the Trial Court from which that officer is assigned, prevent the CJAM from utilizing court officers as to alleviate the current security crisis in the Trial Court; ...

The Justices of the Supreme Judicial Court, pursuant to their constitutional, statutory and inherent powers of general superintendence of all the courts of the Commonwealth, including the specific provisions of G.L. c. 211B, § 9, hereby declare a state-wide security emergency in the courts of the Commonwealth and hereby order the CJAM to immediately assume exclusive authority for the hiring, deployment and management of all court officers in the Trial Court. This order shall remain in effect until further notice.

#### *Court Officers*

Court officers working in the various departments of the Trial Court hold the titles of court officer I<sup>7</sup> or court officer II.<sup>8</sup> All court officer I's and II's, regardless of where they work, perform the following job duties: 1) provide security for prisoners, witnesses, jurors, court personnel and the public in the courtroom and other designated areas of the courthouse; 2) take appropriate action in disruptive situations in the courtroom, including assaultive behavior where persons may be armed or unarmed; 3) subdue or apprehend escaping prisoners and provide first response in other emergency situations; 4) inspect courtrooms, lobbies and jury deliberation rooms for explosive devices; 5) protect the privacy and ensure the safety of judges; 6) ensure that a judge's guidelines

4. On March 9, 1999, SEIU and the CJAM executed a collective bargaining agreement that was in effect from July 1, 1997 through June 30, 2000.

5. On April 27, 1999, SCSCOA and the CJAM executed a collective bargaining agreement that was in effect from July 1, 1997 through June 30, 2000.

6. On May 21, 1999, MCSCOA and the CJAM executed a collective bargaining agreement that was in effect from July 1, 1997 through June 30, 2000.

7. The minimum requirements for applicants for the position of court officer I include a high school diploma or its equivalent and the demonstrated ability to work with people in a courthouse environment.

8. The minimum requirements for court officer II applicants include an associate's degree or sixty credit hours of college level courses in criminal justice or a related field and the completion of five years of experience as a court officer I.



regarding noise, food, smoking, photography and notetaking are adhered to in the courtroom; 7) provide security in the prisoner detention area and the courtroom, including monitoring, securing and feeding prisoners; 8) escort prisoners from the holding area to the courtroom or other designated areas; 9) collect, receive, maintain and transfer documents needed to accompany prisoners; 10) locate trial participants and inform participants of the court's action; 11) transport papers within the courthouse; 12) notify the judge that the session is ready to proceed, and announce the opening and closing of court sessions; 13) accept defendants into custody and hold them or release them pursuant to the direction of the court; and 14) provide routine information regarding office and court procedures to the public, witnesses, litigants and defendants. Court officer II's perform the following additional duties: 1) serve as the lead officer in certain sessions of court and in holding areas; 2) provide security for the drug testing and after hours programs as necessary; and 3) participate in the training of new security personnel and in-house training techniques and procedures. Since 1993, all newly hired court officers have received the same training regardless of their work location or bargaining unit status.<sup>9</sup>

The CJAM's director of security oversees the assignment of court officers. If a particular department of the Trial Court is short-staffed because of a court officer's illness or vacation, the Director of Security will often reassign a court officer from another court to fill in for the absent court officer even if the absent court officer is a member of another bargaining unit. For example, the director of security has ordered members of the bargaining unit represented by MCSCOA to fill in for absent court officers in the probate courts or in the various district courts, including Chelsea District Court, even though the absent court officers are members of the bargaining unit represented by SEIU.<sup>10</sup> Also, when there is a case that has garnered public or media attention, the director of security has often reassigned extra court officers to work at the courthouse where that case is proceeding. When a court officer is assigned to work at another court, that court officer reports to the chief court officer or assistant chief court officer supervising that location. The CJAM has also assigned court officers from MCSCOA's and SEIU's bargaining units, who had experience working on criminal jury trials, to the district courts, to work on criminal jury-trial cases.<sup>11</sup>

The CJAM has also assigned certain court officers to work for extended periods of time in departments of the Trial Court where

members of the respective bargaining units do not regularly work. As of February 9, 1999, four SEIU unit members had worked in the Middlesex Superior Court for extended periods of time<sup>12</sup> and eight MCSCOA unit members and ten SCSCOA unit members had worked for extended periods of time in courts where SEIU unit members regularly work. The names of those unit members, their dates of hire, their work locations and the date of assignments to these work locations are as follows:

*SEIU Members Assigned to Middlesex County Superior Court  
(MCSCOA's Bargaining Unit)*

- 1) Lisa Lamb (Lamb) was hired on April 6, 1993 and has worked at the Lowell Superior Court since 1995.
- 2) David Marks (Marks) was hired on April 6, 1993 and has worked at the Cambridge Superior Court since 1996.
- 3) John Noonan (Noonan) was hired on January 23, 1995 and has worked at the Lowell Superior Court since 1996.
- 4) James O'Connor (O'Connor) was hired on December 3, 1979 and has worked at the Cambridge Superior Court<sup>13</sup> since 1995.<sup>14</sup>

*MCSCOA Members Assigned to Locations Covered by SEIU's  
bargaining unit*

- 1) John Morrison (Morrison) was hired on July 1, 1983 and has worked at the Plymouth District Court since June 21, 1993.
- 2) James Danielson (Danielson) was hired on June 21, 1989 and has worked at the Framingham District Court since April 21, 1991.
- 3) Thomas Quinn (T. Quinn) was hired on March 6, 1978 and worked at the Fitchburg District Court from 1980 or 1981 until his death.
- 4) John Durkin (Durkin) was hired on March 31, 1986 and has worked at the Lowell District Court since January 2, 1990.
- 5) Stephen Horne (Horne) was hired on October 31, 1994 and has worked at the Cambridge Juvenile Court since 1998.
- 6) Kevin Gomez (Gomez) was hired on October 31, 1994 and has worked at the Cambridge District Court since that date.
- 7) James Quinn (J. Quinn) was hired on October 5, 1987 and has worked at the Cambridge District Court since 1998.

9. Prior to 1993, newly hired court officers did not attend a formal training program but instead received on-the-job training.

10. The collective bargaining agreements between the CJAM and MCSCOA, SEIU and SCSCOA provide a procedure for transferring employees to other courts.

11. When the Commonwealth implemented the use of the jury-of-six in the district courts, certain district court officers had no jury trial experience.

12. A fifth SEIU unit member Joseph Loughman (Loughman) worked on certain cases in the Middlesex Superior Court; however, the record does not establish that the CJAM assigned Loughman to work in the Middlesex Superior Court for extended periods of time.

13. O'Connor had previously worked at the Charlestown District Court where he suffered an occupational injury that restricted his ability to climb stairs. The CJAM assigned O'Connor to the Cambridge Superior Court because the high-rise building where that court is located contains a number of elevators.

14. In lieu of testimony, the parties submitted Joint Exhibit #13 to establish the dates when the CJAM assigned the court officers to particular courts. Joint Exhibit #13 was a compilation of the memories of various members of the CJAM's Security Department, none of whom were available to testify. Joint Exhibit #13 indicates that the CJAM assigned O'Connor to Cambridge Superior Court in 1998. However, former MCSCOA vice-president, Susan Riley (Riley) testified that the CJAM assigned O'Connor to the Cambridge Superior Court on or about 1995. Because Riley's testimony was based on her actual observations and she was subject to cross-examination, the Hearing Officer credited Riley's testimony on this point.

8) Stephen Melchin (Melchin) was hired on June 27, 1996 and has worked at the Cambridge District Court since that date.<sup>15</sup>

*SCSCOA Members Assigned to Locations Covered by SEIU's Bargaining Unit*

1) Alfred Cooper (Cooper) was hired on July 3, 1989 and has worked at the Roxbury District Court since 1994.

2) Paul Guarino (Guarino) was hired on January 14, 1976 and has worked at the Boston Municipal Court since prior to 1992.

3) Robert Johnson (Johnson) was hired in 1996 or 1997<sup>16</sup> and has worked at the Boston Housing Court since that time.<sup>17</sup>

4) Robert Leung (Leung) was hired on June 19, 1989 and has worked at the Boston Juvenile Court<sup>18</sup> since 1993 or 1994.<sup>19</sup>

5) Michael Lopes (Lopes) was hired on July 6, 1993 and has worked at the Charlestown District Court since that date.<sup>20</sup>

6) Stephen McCloud (McCloud) was hired on June 27, 1996 and has worked at the Dorchester District Court since that date.

7) Mary McGonigle (McGonigle) was hired on December 3, 1979 and has worked at the Boston Municipal Court for almost twenty years. During this time, McGonigle has worked at the Suffolk Superior Court at least one dozen times.<sup>21</sup>

8) James Parsons (Parsons) was hired on March 30, 1998 and has worked at the Roxbury District Court since that date.<sup>22</sup>

9) Patrick Ross (Ross) was hired on January 12, 1977 and has worked at the Wrentham District Court since 1996.<sup>23</sup>

10) Timothy Yee (Yee) was hired on September 3, 1985 and has worked at the Boston Juvenile Court since 1994.<sup>24</sup>

*Opinion*

*Contract Bar*

SCSCOA contends for the first time in its post-hearing brief that because SEIU's petition was not filed during the 150-180 day open period provided for in Section 14.06 of the Commission's regula-

tions, SEIU's petition should be dismissed. Section 14.06(1) of the Commission's regulations provides that:

Except for good cause shown, no petition seeking clarification or amendment of an existing bargaining unit shall be entertained during the term of an existing valid collective bargaining agreement, unless such petition is filed no more than 180 days and no fewer than 150 days prior to the termination date of said agreement, provided that a petition to alter the composition or scope of an existing unit by adding or deleting job classifications created or whose duties have been substantially changed since the effective date of the collective bargaining agreement may be entertained at other times.

The purpose of the contract bar rule is the continuation of stable labor relations during the term of a collective bargaining agreement, without the uncertainty and disruption caused by organization rivalries. *Town of Burlington*, 14 MLC 1632, 1634 (1988); *Commonwealth of Massachusetts*, 7 MLC 1825, 1829 (1981); *City of Worcester*, 1 MLC 1069 (1974). In the absence of a legislative override of the Commission's usual authority to apply contract bar principles, the Commission is free to exercise its discretion in light of the bar's purposes. *Boston Water and Sewer Commission*, 6 MLC 1601, 1604 (1979). There is no dispute that SEIU's petition was not filed between 150-180 days prior to the June 30, 2000 expiration date of the CJAM's agreement with SEIU and SCSCOA. However, we find that the unique circumstances of this case present good cause to entertain the matter.

We first note that MCSCOA has never raised the issue of the timeliness of SEIU's petition, and that SCSCOA only raised this issue after the Commission conducted a hearing at which the parties had an opportunity to be heard, to examine witnesses, to introduce evidence and to otherwise fully litigate the issues presented by those petitions. We further note that both petitions have been pending during the terms of existing collective bargaining agreements that the CJAM had executed with bargaining units who will be affected by the outcome of those petitions.<sup>25</sup> Therefore, because the Commission has already conducted a hearing to resolve the issues raised by MCSCOA's and SEIU's petitions, and to avoid further uncertainty or disruption to the bargaining units affected by those petitions by not resolving those issues now, we find that good

15. While working in the district courts, Morrison, Danielson, T. Quinn, Gomez, J. Quinn, Melchin, and Durkin sometimes worked on criminal cases in which juries of six were impaneled.

MCSCOA challenged the Hearing Officer's failure to find that Durkin worked on criminal cases in which juries of six were impaneled. Upon review of the record, we agree with MCSCOA and modify the finding accordingly.

16. Joint Exhibit #13 listed Johnson's date of hire as 1990. However, SCSCOA's vice-president, Henry Cordero (Cordero) testified that Johnson was hired in 1996 or 1997. For the reasons stated in footnote 14, the Hearing Officer credited Cordero's testimony on this point.

17. Johnson worked at least once or twice in the Suffolk Superior Court.

18. The CJAM assigned Leung to the Boston Juvenile Court pursuant to an agreement with SCSCOA.

19. Joint Exhibit #13 listed Leung's date of assignment to the Boston Juvenile Court as prior to 1992. However, Cordero testified that Leung had worked at the Boston Juvenile Court since 1993 or 1994. For the reasons stated in footnote 14, the Hearing Officer credited Cordero's testimony on this point.

The Hearing Officer found that Cordero testified that Leung had worked at the Boston Juvenile Court since he was hired as a court officer in 1989. SCSCOA challenged this footnote on the ground that Cordero had testified that Leung worked at the Boston Juvenile Court since 1993 or 1994. Upon review of the record, we agree with SCSCOA and modify this finding accordingly.

20. At certain times, Lopes also worked in the Suffolk Superior Court.

21. SCSCOA contends that this fact should have been included in the findings. We find that this fact is supported by the record and have amended the findings accordingly.

22. Occasionally, Parsons worked in the Suffolk Superior Court.

23. The CJAM assigned Ross to Wrentham District Court pursuant to an agreement with SCSCOA.

24. We amend the date of Yee's assignment to the Boston Juvenile Court from "prior to 1992" in response to SCSCOA's challenge.

25. [See next page.]



cause exists to waive the contract bar rule in this consolidated matter and reach the merits of both petitions.

#### Accretion

Section 3 of the Law provides that the appropriate bargaining units for judicial employees are a professional unit composed of all probation officers and court officers; and a unit composed of all non-managerial or non-confidential staff and clerical personnel employed by the judiciary; provided that court officers in the superior court departments for Suffolk and Middlesex counties are to be represented by such other bargaining units as they may elect. Therefore, because Section 3 of the Law establishes the appropriate bargaining units for judicial employees, the decision in this case is limited to whether the transferred court officers belong to SEIU's or MCSCOA's unit. *Chief Justice for Administration and Management of the Trial Court*, 23 MLC 9, 10 (1996). In analyzing this case, we are also mindful that M.G.L. c. 211B, Section 9 (xxii) authorizes the Chief Justice to temporarily transfer non-judicial personnel, including court officers to different courts, for up to 360 consecutive days, and the parties' collective bargaining agreements include provisions that authorize the CJAM to transfer court officers among courts.

The record reveals that the CJAM has assigned court officers to departments of the Trial Court where members of their respective bargaining units do not regularly work for periods of time extending to twenty (20) years. Overall, as of February 9, 1999, four (4) SEIU unit members had worked in the Middlesex Superior Court for extended periods of time (over 360 days), and eight (8) MCSCOA unit members and ten (10) SCSCOA unit members had worked for extended periods of time in the courts where SEIU unit members regularly work. There was also no evidence reflecting that any of those individuals had any reasonable expectation of returning to the courts to which they were originally assigned.

Moreover, in considering whether to accrete these court officers to the units represented by MCSCOA or SEIU, we note that the transferred employees function as court officers and otherwise share a community of interest with the court officers in the units into which the CJAM transferred them. Thus, the transferred court officers hold the same title and perform the same job duties as the employees currently represented by SEIU and MCSCOA. Moreover, all of the court officers, regardless of their work location, have the same minimum job requirements, receive the same job training and report to the chief court officer or assistant chief court officer of the location to which they are assigned. Thus, accreting these court officers into the bargain-

ing units comprised of court officers in the court into which they have been transferred would not interfere with the legislative mandate of Section 3, which separates probation and court officers from the remaining judicial employees for the purpose of collective bargaining. *Cf. Chief Administrative Justice of the Trial Court*, 16 MLC 1067, 1071 (1989) (declining to accrete newly transferred non-professional employees into bargaining units of probation and court officers); *Chief Justice for Administration and Management of the Trial Court*, 23 MLC at 10 (same).

#### Conclusion

For the foregoing reasons, we conclude that, where: 1) CJAM has transferred court officers for a period beyond that allowed by M.G.L. c.211B, §9(xxii) to a department in which members of different bargaining unit are regularly assigned; and 2) those transferred court officers have no reasonable expectation of returning to their original department, those transferred court officers are appropriately members of the bargaining unit in the department to which they were transferred.<sup>25</sup> Accordingly, we accrete the four (4) court officers who were transferred to the Middlesex Superior Court, which include Lamb, Marks, Noonan, and O'Connor, into the existing MCSCOA unit. We further accrete the eighteen (18) court officers who were transferred to departments of the Trial Court other than the Middlesex Superior Court and the Suffolk Superior Court, into the existing SEIU unit. These eighteen (18) individuals are Morrison, Danielson, T. Quinn, Durkin, Horne, Gomez, J. Quinn, Melchin, Cooper, Guarino, Johnson, Leung, Lopes, McCloud, McGonigle, Parsons, Ross, and Yee. However, we decline to accrete Loughman into MCSCOA's bargaining unit because there was no evidence that the CJAM had transferred him to the Middlesex Superior Court for a period of time exceeding 360 days.

SO ORDERED.

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25. SEIU filed its petition in Case No. CAS-3416 only after MCSCOA filed a timely petition seeking to accrete SEIU unit members into its bargaining unit. However, because SEIU executed a successor agreement with the CJAM on March 9, 1999, exactly one month after MCSCOA filed the original petition, seeking to accrete SEIU bargaining members, MCSCOA's petition was pending during the term of the existing collective bargaining agreement between SEIU and the CJAM. Moreover, the petition that SEIU filed on August 27, 1999, seeking to accrete those court officers who were not members of its bargaining

unit, but, had performed court officer duties in departments of the Trial Court other than Middlesex Superior Court and Suffolk Superior Court, was also filed during the terms of MCSCOA and SCSCOA's existing collective bargaining agreements with the CJAM.

26. We believe that this decision effectuates the provisions of c. 150E, 3, without interfering with the CJAM's authority under c. 211B, 9(xxii) and the parties' collective bargaining agreements.