

fessional employees or the College’s students. Their work routinely requires them to interact with staff and faculty and, significantly, to engage with college students who use the Child Center as a learning environment for course credit. *See Boston School Committee*, 2 MLC 1557, 1565 (1976) (identifying interchange and work contact as factors establishing community of interest). This is not unlike other APA unit members who have administrative and teaching obligations as part of their job duties, yet are plainly not eligible for membership in the faculty/librarian bargaining unit. The Petitioner specifically identifies lab instructors in the APA unit whose jobs require supervision of student lab work and even testing and grading of students.

We also find that the employees in the disputed positions perform job functions not unlike other similarly educated, early childhood specialists already in the bargaining unit. The job duties of the petitioned-for-positions at Bridgewater State present significant overlap in function with the job duties of the Salem State day care center’s Director and Assistant Director, whose functional titles are, respectively, “Coordinator of the Child Care Center” and “Supervising Head Teacher.” The Coordinator position is responsible for “overall administration and supervision” of the preschool program as well as supervisory responsibilities for teaching staff and student interns. The Bridgewater position, Lead Teacher, is “responsible for developing and implementing” the early childhood program and also supervises teachers and assists in the training of student teachers. The Supervising Head Teacher (or Staff Associate) at the Salem State day care center also is responsible for “planning and implementing” an appropriate curriculum, as well as sharing in the supervision of teaching staff and student interns. At Bridgewater, the job duties of the disputed positions are not dissimilar. The Preschool Teacher position “is responsible for assisting with the development and implementation” of the program and also is assigned to supervise, train and evaluate assistant teachers, student teachers and other students who may be utilizing the day care center to complete required college course work.

Notably, the College does not contest these facts except to point out that the two preschool facilities are not in all respects similarly situated, as the Salem State facility is somewhat larger and its professional employees supervise a large number of non-union student teachers. Size aside, the fact that Salem College includes professional employees working at their child care center in the APA unit lends support to conclusion that the Bridgewater preschool employees share a community of interest with others in the APA unit.

Conclusion

The factors discussed above are more than sufficient to permit accretion of the disputed positions into the APA unit. As the Board has often stated, community of interest does not require an identity of interest. *University of Massachusetts*, 4 MLC 1384, 1392 (1977). Given the absence of any identifiable, inevitable conflict, we accrete the positions into the multi-campus APA unit.

SO ORDERED.

* * * * *

In the Matter of BOSTON SCHOOL COMMITTEE

and

BOSTON TEACHERS UNION

Case No. MUPL-06-4570

76. *refusal to bargain in good faith*

May 23, 2011

Marjorie F. Wittner, Chair

Elizabeth Neumeier, Board Member

Harris Freeman, Board Member

Peter S. Berry, Esq.

Representing the Boston School Committee

Matthew S. Dwyer, Esq.

Representing the Boston Teachers Union

DECISION

Summary

This dispute presents the issue of whether the Boston Teachers Union (Union or BTU) violated Section 10(a)(5) of MGL c. 150E by unilaterally imposing preconditions on the Boston Public Schools before implementing a collectively-bargained Pilot School waiver voting provision and by failing to abide by a secret ballot vote to convert to a Pilot School. The Commonwealth Employment Relations Board (Board) concludes that the Union did not fail to comply with a collectively-bargained waiver voting provision. The Board further concludes that the Union did violate its duty to bargain in good faith by refusing to abide by the results of a secret ballot Pilot School Conversion vote and by unilaterally imposing conditions on Whole School Pilot School conversion procedures beyond those contained in the parties’ collective bargaining agreement and the existing practice implementing those procedures.

Statement of the Case

On November 22, 2006, the Boston School Committee (Employer or School Committee) filed a charge with the former Labor Relations Commission (Commission)¹ alleging that BTU had engaged in prohibited practices within the meaning of Sections 10(b)(2) and 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law). Following an investigation, the Board issued a complaint of prohibited practice on November 4, 2009, alleging that the Union had violated Section 10(b)(2), and derivatively, Section 10(b)(1) of the Law by unilaterally imposing a pre-condition on the Em-

1. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) “shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission.” Pursuant to Chapter 3 of the Acts of 2011, the Division has been renamed the Department of Labor Relations (Department). The Board is the body within the Department charged with deciding adjudicatory matters. References to the Board include the former Labor Relations Commission.

ployer before implementing a collectively-bargained waiver voting provision and by failing to abide by a vote to determine whether to convert to a pilot school. The Union filed its answer on November 25, 2009.

On May 6, and 10, 2010, Board Chair Marjorie F. Wittner conducted a hearing for the purpose of making recommended findings of fact to the Board.² Both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. The BTU and the School Committee submitted post-hearing briefs on July 26 and July 28, 2010, respectively. The Hearing Officer issued Recommended Findings of Fact on February 4, 2011. Neither party filed challenges to the Hearing Officer's Findings of Fact. The Board has reviewed the record and adopts the findings in their entirety.

Findings of Fact³

Background

The Union is the exclusive collective bargaining representative for teachers, nurses and certain other professional employees employed by the School Committee. From at least 1995 to June 2003, Edward J. Doherty (Doherty) served as BTU President. Richard Stutman (Stutman) assumed the presidency in June 2003.

Since 1989, the parties have negotiated a series of collective bargaining agreements, each of which contain provisions regarding school-based management, shared decision-making and procedures for waiving collective bargaining agreement (CBA) provisions. The substance of these provisions and pertinent changes to them through the parties' 2006-2010 CBA, are set forth below. They include all CBA provisions relating to Pilot Schools and the June 1994 Overview and Request for Proposals for Pilot Schools. The Union's 1995 and 2006 Pilot School membership policies, and the parties' experience with Pilot School conversions, particularly, the Thomas Gardner School and John F. Kennedy School conversions, are also described below.

School Based Management 1989-1992

The parties first negotiated contract language governing school-based management in Article III of their 1989-1992 collective bargaining agreement, titled "School Based Management and Shared Decision-Making." Article III(A), which sets forth the "Governing Philosophy" of School-Based Management, states in part:

The Boston Teachers Union, the School Committee of the City of Boston and the Superintendent of Schools agree that shared decision making at the school level is a goal to be achieved in the Boston Public School during the implementation of this collective bargaining agreement.

Shared decision making is a process in which all members of the education community at the school level collaborate in identifying

problems, defining goals, formulating policy and implementing programs.

* * *

The parties realize that in order to achieve shared decision making at the school level a significant restructuring of schools must occur and the parties agree to work cooperatively in an effort to bring about these necessary changes. Significant changes in the governance of school organization, instructional practices, staff roles and community involvement will take time; they will not be accomplished in a single year; and the task will require a sustained commitment from the leadership of the Union, the School Committee and the Superintendent of Schools.

The 1989-1992 CBA did not mandate the adoption of School-Based management. Rather, Article III(D), allowed individual schools to adopt school based management "whenever the Principal/Headmaster and 60% of the teachers at the school so agree."

Articles III(B)(1) and III(B)(2) established a joint Union School Department Steering Committee and a School-Based Management Committee (SBMC) to oversee and facilitate the adoption of School-Based management policies and guidelines. Article III(B)(1) states:

A joint Union/School Department Steering Committee will be established to oversee the formation of all other committees established under this Agreement to further school reform and improvement, including the School Based Management Committee . . . This Steering Committee shall be composed of the Superintendent of Schools and the President of the Boston Teachers Union, assisted by up to five additional members each. Decisions of the Steering Committee shall require the concurrence of the Superintendent and the President of the Union.

Under Article III(B)(2), the SBMC was comprised of up to five members appointed by the Superintendent and five members appointed by the Union President, to "develop policies and guidelines on school-based management and to oversee their implementation" subject to Steering Committee approval.

The 1989-1992 CBA also contains the first mention of School Site Councils, whose role, as described in Article III(E)(2), and continuing to date, is to manage all school operational matters. From 1989-1992, all schools that adopted School Based Management, pursuant to Article III(D), were obligated to elect representatives to the School Site Council, which was comprised of the Principal/Headmaster and a prescribed number of parents, teachers, and students, depending on the size and type of school.

From the outset, the parties recognized that implementation of school-based management might necessitate waiving certain rules, regulations and CBA provisions. To that end, the 1989-1992 CBA described the process by which the School Site Councils could seek waivers of certain provisions of the CBA and/or other

2. This charge was filed before November 14, 2007. Therefore, pursuant to Department Rule 1.07, 456 CMR 1.07, this matter is covered by the Labor Relations Commission's rules and regulations in effect before that date. Pursuant to Rule 13.02, the Board has designated this matter as one that it will decide in the first instance.

3. At hearing, factual stipulations together with exhibits were introduced into the record. The findings of fact are based on these stipulations as well as all testimonial and documentary evidence introduced during the course of the hearing. To the extent practicable, these findings reflect the language employed by the parties in their stipulations.

governing rules and regulations. With respect to waiver of CBA provisions, Article III(G)(3) states:

To the extent allowed by law, a School Site Council may seek a waiver of any provision of the [CBA] provided that 60% of the affected group covered under this Agreement vote in favor of seeking such a favor. Such waivers must be approved by a majority vote at a union membership meeting and by a majority vote of the School Committee if required.

Under Article III(G)(4), the School Based Management Committee was charged with “developing a process for facilitating requests for waivers.”

There were no Pilot Schools in the Boston Public School system when the parties negotiated Articles III(A)-(G) of the 1989-1992 CBA.

School-Based Management: 1993-1994 CBA

The 1993-1994 CBA modified many of the school-based management provisions described above. First, to comply with the Education Reform Act of 1993,⁴ Article III(B)(1) was modified. The decision to elect a School Site Council was no longer optional; rather, all Boston Public Schools that had not previously done so were required to hold School Site Council elections. The 1993-1994 CBA also eliminated the SBMC, and, in a new Article II titled “Developing and Maintaining Effective Working Relationships,” expanded the role of the Joint Steering Committee to “develop and implement policies and guidelines and generally oversee the implementation and operation of school-based management/shared decision-making and all other joint committees established under this Agreement.” Pursuant to Article II(B)(2), which has remained in effect in each of the parties’ successor CBAs to date, the Joint Steering Committee continued to be comprised of the Superintendent and President of the Union, who served as co-chairs of the Joint Steering Committee, and up to five additional members. Moreover, all Joint Steering Committee decisions continued to require the concurrence of both co-chairs, in effect granting veto power to either the Superintendent or the Union President over all Steering Committee decisions. Finally, Article II(B)(2) authorized the Joint Steering Committee to “otherwise adopt whatever procedures further its smooth, effective and efficient operations.”⁵

The 1993-1994 CBA also included a new Article III(C), “Shared Decision Making,” which expanded upon the School Site Council’s obligations and relationship with the Steering Committee. For example, Article III(C)(4)(a) requires that the actions of a School Site Council must:

[A]dhere to the standard of sound educational policy equitably applied to all students. Consistent with her or his statutory responsibilities, it is ultimately up to the Superintendent, in consultation with the Steering Committee, to determine what is inequitable or clearly beyond the bounds of sound educational policy.

This section serves to limit the application of sections (b) through (d) below. Any decision under this section to disallow the action of a School Site Council shall be reported to the Steering Committee.

The 1993-1994 CBA addressed the issue of waivers of rules, regulations and CBA provisions in much greater detail than the previous CBA. In addition to requiring Principal/Headmaster approval of all School Site Council votes to waive CBA provisions, Article III(C)(4)(d)(3) now required that:

(3) At least 66 2/3% of the members of the bargaining unit who work more than 50% of their work week at that school and who are present and voting approve the waiver; such vote shall be conducted by the Union representative using a secret ballot after five (5) days notice to all those eligible to vote.⁶

The remainder of Article III(C)(4)(d) delineates the subjects that could and could not be the subject of a waiver vote. Article III(C)(4)(d)(4) prohibits waiver votes from altering “any bargaining unit member’s salary and benefits, seniority rights involving transfer, excessing or layoff procedures, due process rights, or right to file a grievance, nor the Union’s jurisdiction.” Permissive waiver vote topics included: school day scheduling, timing and length of school day, teaching time, class size, curriculum, testing, attendance policies, graduation requirements, student discipline codes and “any other provision, policy or regulation whose waiver is approved by the Steering Committee.”

Article III(C)(4)(d)(6) further required schools seeking CBA waivers to notify the Steering Committee in writing within five (5) days of their adoption. Article III(C)(4)(d) remained in effect, virtually unchanged, over the course of the parties’ next five successor CBAs.

Article III(D) introduced the concept of “Explorer Schools,” which the 1993-1994 CBA “envisioned” as having “greatly increased decision-making authority, including freedom from all Union work rules.” Pursuant to Article III(D), the actual establishment of Explorer Schools would require agreement in a successor CBA. The parties further agreed that no “Requests for Proposals for such schools shall be issued until an agreement for their establishment is reached.”

Pilot Schools - 1994-1997 Contract and RFP

In their September 1, 1994 through August 25, 1997 CBA, the BTU and School Committee, for the first time, negotiated new language governing Pilot Schools, which they incorporated into Article III(D), immediately following Article III(C)(4)(d)’s waiver provisions, described above.⁷ Negotiations for the 1994-1997 CBA occurred during the passage of the Education Reform Act of 1993, which established charter schools. According to Michael Contompasis (Contompasis), former Boston Schools Chief Operating Officer and Superintendent,⁸ Pilot Schools were intended to

4. See generally, St. 1993, c. 71.

5. Article II and III of the 1993-1994 CBA are reprinted in their entirety in Appendix A.

6. According to Article (V)(1) of the Union’s by-laws, which are appended to the parties’ 1989-1992, 1997-2000, 2000-2003, 2003-2006 and 2006-2010 CBAs, “Building or group representatives shall serve as a liaison between the Officers and the Executive Board and the building or group they represent.”

7. Article III(D) is reprinted in its entirety in Appendix B.

be a competitive alternative to charter schools, insofar as they allowed funds to remain within the Boston school system but nonetheless embraced the school-based management principles set forth in the parties' prior two CBAs.

Article III(D) states in pertinent part:

The Boston Public Schools and the Boston Teachers Union are sponsoring the establishment of innovative pilot schools within the Boston Public School system. The purpose of establishing pilot schools is to provide models of educational excellence that will help to foster widespread education reform throughout all of Boston Public Schools. The parties hope to improve dramatically the educational learning environment and thereby improve student performance.

There will be up to six pilot schools in the 1995-1996 school year and in subsequent years, unless both parties agree to establish more.

Pilot Schools will be open to students in accordance with the Boston Public Schools controlled choice plan. Pilot Schools will operate with an average school-based per pupil budget, plus a start-up supplement, and will have greatly increased decision-making authority, including exemptions from all Union and School Committee work rules. The actual establishment of such schools will be pursuant to the issuing of Requests for Proposals (RFP). The RFP will be developed and reviewed by the BPS/BTU Steering Committee.

Teachers, paraprofessionals, nurses, guidance counselors, substitutes, and all other employees at pilot schools who fall under the jurisdiction of the BTU contract throughout the school system will be members of the appropriate BTU bargaining unit. These employees shall accrue seniority in the system and shall receive, at a minimum, the salary and benefits established in the BTU contract.

* * *

The specification for the RFP on Pilot Schools is agreed to by the parties and is hereby incorporated by reference.

June 1994 Overview and Request for Proposals for Pilot Schools

The RFP specifications referenced in Article III(D) were issued in a document dated June 30, 1994 and titled "Overview and Request for Proposals for Pilot Schools" (Overview/RFP). As its name suggests, this document contains both an Overview and the actual Request for Proposals (RFP). The Overview's first section, "Purpose and Definition," states in part:

As a result of a recent contractual agreement, the Boston Public Schools and Boston Teachers Union are supporting the establishment of innovative Pilot Schools within the Boston Public School system. The purpose of Pilot Schools is to provide models of educational excellence which will help to foster widespread educational reform throughout all of the Boston Public Schools.

The Overview describes the three types of Pilot Schools for which RFPs would be accepted: New School Pilot Schools, A School

Within a School Pilot Schools and a Whole School Pilot School. A Whole Schools Pilot School is one that has been converted from an existing Boston public school. Section III(C) of the Overview sets forth the following application process for a Whole School Pilot School:

[P]lanning Teams⁹ may apply to establish a ["Whole School Pilot School" in an existing Boston Public School. Whole School Pilot Schools must have the support of the Site Council and two-thirds of the BTU members who work more than 50% of their week at the school in order to apply as a Whole School Pilot Schools.

Similarly, Section III(D) of the RFP, "Type of Pilot Schools," requires a Whole School Pilot School proposal to include the signatures of "at least two-thirds to [sic] the BTU members who work more than 50% of their time at that school and School Site Council members' signatures."¹⁰ Neither the Overview nor RFP expressly require a BTU vote as a means of ascertaining or demonstrating the requisite two-thirds BTU membership support.

The Overview/RFP does not require that applications for the other two types of Pilot Schools—a New School or a School Within a School—to demonstrate any level of BTU membership support. After an application is submitted however, the selection/approval process described in the Overview is the same for all three Pilot School types; the Superintendent, after consultation with the Steering Committee, recommends the proposals to be selected each year to the School Committee, which then makes the final selection. *See Overview*, Section XI. In practice and pursuant to CBA Article II(B)(2) and more recently, Article III(D) of the 2003-2006 CBA,¹¹ this has meant that the RFP will not go forward if vetoed by either Superintendent or the Union President.

Both the Overview and RFP describe in broad terms the extent to which Pilot Schools would be self-governing and free from certain Union and School Committee work rules. For example, the Overview's first section sets forth the following nine "major characteristics" of Pilot Schools:

- Models of Innovation;
- Systemwide Replicability;
- Student and Staff Diversity;
- Dedicated Staff; Fiscal Autonomy;
- Collaborative Pilot Schools;
- Community Learning Centers;
- A Three Year Contract.

The "Dedicated Staff" section states, "Pilot Schools will be able to select their own staff from inside or outside of the Boston Public Schools without regard to seniority. Participation by Boston Public Schools teachers is voluntary." The "Freedom from Regula-

8. Contompasis served for 42 years in the Boston Public Schools. In 1988-1989, Contompasis, then the Boston Latin School's headmaster, sat on the negotiating committee for the 1989-1992 CBA. He served as Boston School Superintendent from July 2006 until he retired at the end of September 2007.

9. Section II of the Overview allows "BPS administrators, staff and other interested parties to submit proposals to establish Pilot Schools." The parties submitting the proposals comprise the Planning Team, which must be led by BPS administrators and/or teachers.

10. The first section of the RFP titled "Guidelines for Pilot School Proposals," states, "The Boston Public School system requests proposals for Pilot Schools in accordance with the conditions stipulated in the Pilot Schools Overview."

11. Article III(D) of the 2003-2006 CBA clarified, consistent with Article XI of the Overview, that "no pilot school shall be established without the joint approval of the Joint BTU/BPS Steering Committee and the School Committee."

tion” section states, “Pilot Schools will be able to develop innovative curricula and programs free from Boston Public School and Boston Teacher Union regulations, provided that they still comply with all federal and state laws and regulations and court orders.”

Similarly, *Overview* Section IV, “Pilot School Operational Guidelines,” allow Pilot Schools to:

- A. select its own staff from inside or outside the Boston Public Schools without regard to seniority;
- B. formulate job descriptions for and have managerial control extended to all staff members;
- C. determine administrative, teaching and other school staffing levels and structures;
- D. allocate funds from the school site budget;
- E seek outside funding;
- F. establish evaluation instruments and procedures;
- G. existing BTU members may be excessed without regard to seniority, but subject to due process.

Thus, a vote to convert to a Pilot School affects the contractual transfer, reassignment, layoff rights and recall of bargaining unit members in both Pilot and non-Pilot schools. Pilot School teachers are not covered under the contractual grievance procedure. A conversion vote affects those rights as well.¹²

Post-Overview/RFP Events

After the RFP issued, five Pilot Schools were established in 1995, four of which were start-ups. The fifth, the Fenway School, was a conversion from an existing public school that occurred after a membership vote.¹³

On November 29, 1995, after the deadline for proposals to create Pilot Schools in the 1995 and 1996 schools years expired,¹⁴ the following motion passed at a BTU Executive Board meeting:

To support the establishment of additional pilot schools through an RFP process provided:

- 1) that any “whole school” or “school within a school” pilot proposal¹⁵ is supported by 2/3’s of the bargaining unit members

who work more than 50% of their work week at that school and who are present and vote to approve the proposal; said vote being conducted by the Union representative by secret ballot after five days’ notice to those eligible to vote, and

2) that any existing charter school or alternative school or program in Boston may submit a proposal for “new school” pilot school status, and

3) that any proposal which is to be submitted to the School Committee for final approval must first be approved by the Joint Union/School Department Steering Committee.

According to Stutman, who attended the meeting, the motion’s purpose was to give guidance to membership and the Steering Committee on how and when to convert to pilot schools.

Between 1996 and 2006, a number of existing Boston public schools converted to Pilot School status after a vote by at least 2/3 of the BTU membership who spent more than 50% of their time at that school, followed by Steering Committee approval.¹⁶ These schools including the Boston Community Leadership Academy (2002); Baldwin Early Learning Center (2003); the Samuel Mason School (2003); Another Course to College (2003) and the Thomas Gardner Elementary School (2007), whose conversion is described below. There were also at least a dozen schools that voted not to become Pilot Schools.¹⁷ Some of the schools that conducted conversion votes contacted BTU leadership in advance of their vote but others did not.

The Thomas Gardner School Conversion

The Thomas Gardner School is a K-5 elementary school located in Allston. In or around June 2003, when Stutman became Union president, he promised to try to stop the establishment of any new Pilot Schools until he could negotiate a cap on the number of additional hours a Pilot School teacher could work without compensation. At some point before June 2005, Stutman learned from Gardner School teachers that the school was preparing a Whole School Pilot School application. Stutman visited the Gardner School before the teachers voted on whether to submit their proposal and spoke to them about the pros and cons of Pilot Schools. Stutman also made clear that, to gain bargaining leverage on the Union’s outstanding Pilot School proposals, he would veto any

12. As of the 2000-2003 CBA, Article III(D) requires each Pilot School’s Governing Board to “develop an internal appeals process to allow any staff member to raise issues, concerns or problems.” The internal appeals process was subject to Steering Committee approval and had to be submitted in writing to all BTU staff members. Issues that were not resolved at the school level could go to mediation, as set forth in Article X(C) of the Agreement, with final resolution by the School Superintendent and BTU president.

13. The Hearing Officer credited Contompasis’ testimony that the Fenway School converted to a Whole School Pilot School after a BTU membership vote. Contompasis’ testimony was clear and consistent on this point through repeated questioning by both attorneys and was not refuted by Stutman, who, on cross examination testified he could not recall whether Fenway was a Whole School conversion. Neither Stutman nor Contompasis knew whether BTU membership had contacted BTU leadership in advance of the Fenway conversion vote.

14. The RFP required applicants who were interested in establishing Pilot Schools by September 1995 to submit their full application by September 16, 1994. Applicants interested in establishing Pilot Schools for the 1996/1997 school year were required to submit their applications by April 15, 1995.

15. The record contains no evidence that any School within a School Pilot Schools were ever established pursuant to this process. Contompasis testified that in or around 1994-1995, while he was the Boston Latin School’s headmaster, he tried to develop a School Within a School in the seventh grade but the “vote” did not pass. Contompasis did not provide further details regarding the Boston Latin School vote, i.e. how, when or where it was conducted. However, his understanding with respect to the Whole School conversion vote process was that it required School Site Council support, following by a two-third vote of staff that spent more than 50% of their time at the school. Once the vote was taken, the RFP was submitted to the Joint Steering Committee for approval.

16. The record contains few details about the actual mechanics of the votes conducted at the schools that converted to Whole School status. However, neither party disputes that the schools’ proposals received Steering Committee approval after receiving the requisite 2/3 support from eligible membership pursuant to a vote.

17. The record does not indicate the schools’ names or the date of the vote.

vote to convert. A vote was held and passed and Stutman vetoed it, as promised.

Approximately two years later, after the BTU and School Committee negotiated a new Pilot School contract provision, Article III(E), described below, the Gardner School staff held a second conversion vote. The vote passed, and the Steering Committee approved the RFP. The Gardner School was established as a Whole School Pilot School sometime in 2007.

2003-2006 Negotiations and CBA

On February 15, 2006, the parties negotiated the first major changes to their Pilot School CBA provisions since the 1994-1997 CBA.¹⁸ Stutman and Contompassis, then serving as Boston Schools' COO, participated in these negotiations. The resulting "Pilot School Agreement" (PSA) was executed in February 2006 and incorporated as new Article III(E) in the 2006-2010 CBA. Among other things, the PSA provided for up to seven additional Pilot Schools to be established by 2009; set forth the maximum number of uncompensated hours a Pilot School teacher could work for each of the years of the CBA; allowed teachers to vote, by a two-thirds majority, whether to override the Pilot School Governing Board proposed schedule for each school year; eliminated the right of the Pilot School Governing Bodies from making changes to teachers' schedules during the school year; allowed for arbitration of teachers' schedules; and established an intervention process for pilot schools.¹⁹

May 2006 BTU Membership Pilot School Resolution

At its May 2006 membership meeting,²⁰ the BTU's membership voted to adopt the following policy:

Before scheduling a vote on whether or not to convert to a pilot school, a school must schedule a staff meeting with union leadership for an explanation of the ramifications of conversion.

The Union did not tell the Employer that it had voted to adopt this new policy until in or around the last week October 2006, when a dispute arose over the John F. Kennedy School's vote to convert to Pilot School status. The Union did not make any proposals and the parties had no discussions concerning the Pilot School conversion process, including the procedure described in the new membership policy, during the Article III(E) negotiations discussed above.

The John F. Kennedy (JFK) Elementary School

The JFK School is a K-5 elementary school located in Jamaica Plain. Eileen Morales (Morales) has been the JFK School's princi-

pal of the school since 2002. In or around fall 2005, Morales, faced with budget cuts and a declining student population, attended an information session on Pilot Schools. Morales subsequently spoke with the JFK's School Site Council and staff about possible Pilot School conversion. She held a number of meetings that were open to all staff members to discuss what the school's overall vision might be. After several meetings, the participants formed a planning team that agreed on a school vision involving the arts. This idea was presented to the JFK School Site Council and, in or around May 2006, the Faculty Senate was asked to vote on whether to prepare an RFP to convert to a Pilot School. The JFK School's two BTU building representatives, Marie Sweatt²¹ and Xotichtl Perez-Castillo ran the vote and the Faculty Senate voted in favor of pursuing the project. The planning team then applied for and received a Boston Foundation grant to fund stipends for a design team to work on a written RFP over the summer of 2006. The twelve-person Design Team consisted of Morales, BTU Building Representative Sweatt, four grade school teachers, the school nurse, Technology Coordinator Ed Kelley (Kelley), a reading specialist and the Physical Education teacher.

The Design Team met on seven occasions from June to September 2006 including three times in September. The September meeting minutes contain a calendar reflecting the Design Team's intention to submit the Pilot School Proposal for staff review on Monday, October 16, followed by a staff vote on Friday, October 20.²² The calendar called for the proposal to be submitted to the Joint Steering Committee on October 23.

The Design Team completed the twenty-two page "Proposal to Transition to Pilot School Status" sometime during the first two weeks of October. It was unsigned.

On October 16, Kelley e-mailed a copy of the proposal to staff using the school and home email addresses he had on record. Copies of the proposals were also placed in teacher's mailboxes and in the teachers' room. The same day, Design Team members held question and answer sessions with staff members both before and after school regarding the proposal. Morales did not attend those meetings, but during the course of the day, she discussed the proposal with faculty members who approached her with suggestions.²³

Sweatt was responsible for creating the ballots, which were supposed to be distributed in-hand to staff members and returned to the BTU representatives. Morales was at a meeting until about 11:00 a.m. on October 20. Shortly after she returned, Sweatt came into Morales' office and told her that she had collected all the bal-

18. The negotiations were conducted apart from the parties' on-going successor negotiations for the 2003-2006 CBA. Former Senate President Thomas Birmingham mediated the negotiations on behalf of Mayor Menino.

19. The School Committee rejected the Union's proposal to restore the contractual grievance procedure to Pilot School teachers.

20. The record does not reflect the actual meeting date.

21. Sweatt teaches kindergarten at the JFK School.

22. Morales believed that this constituted 5-days notice.

23. The Hearing Officer credited Morales' testimony, as refreshed by an email that was not entered into evidence, that the Proposal was distributed to staff members on October 16, 2006, and not October 9, 2006, as stated in an affidavit that Morales submitted during the pre-probable cause investigation. Although Kelley did not testify, the Hearing Officer also found that the document was distributed to BTU members via email and hard copy. Even in the absence of the actual distribution list, Morales' testimony regarding the method by which the Proposal was distributed was detailed and consistent. The Union has not argued or offered any evidence that staff members did not receive the proposal. There is no basis to doubt that Kelley, who reports to Morales and was a Design Team member and Technology Coordinator and therefore familiar with the School's email system and internal distribution list, distributed the Proposal in the manner Morales described.

lots. Sweatt also asked Morales to vote. Morales agreed to cast a ballot, but told Sweatt not to count her vote—it would be symbolic only. Sweatt then told Morales that she and Karen Perakas (Perakas), the second BTU representative²⁴ would count the ballots.

At the end of the day, Sweatt reported to Morales that there had been a very high vote in favor of the proposal.²⁵ Morales then made an announcement to that effect over the school’s PA system and posted the results on a whiteboard. Morales saw the clear plastic container in which the ballots were held, but did not examine, count or retain them.

Stutman did not learn that the JFK School had taken a conversion vote until October 25, when some teachers contacted him expressing concerns that the proposal had not been adequately explained to them, that they had not been given adequate advance notice and that some substitute teachers may have voted.²⁶ They asked Stutman to visit the JFK School.

Stutman visited the JFK School on October 30 and spoke with Morales. He also spoke separately with approximately ten to twelve bargaining unit members, who told him they were confused about what had happened. Stutman decided to schedule a larger meeting with the entire faculty.

Around the same time, Stutman spoke to Contompasis and told him that he would not honor the October 20 vote because the BTU had not had the opportunity to meet with staff before the vote was taken in accord with the May 2006 membership policy.²⁷ Contompasis insisted the vote was valid and objected to the fact that the Union had unilaterally passed the policy and contended that there was nothing in the parties’ CBA or pilot school protocol that allowed the Union to call for a second vote. Rather, the purpose of the Steering Committee was to give Stutman the option of vetoing the RFP if he objected to the way the vote had been conducted or other conditions. Stutman told Contompasis that he would not attend a Steering Committee meeting if the JFK School were made an agenda item. Contompasis told Stutman that he would move the matter forward to the Steering Committee and placed the proposal on the November 9 meeting agenda.

On November 1, Stutman went back to the JFK School along with BTU Executive Vice President Patrick Connolly and BTU Elementary Field Representative Michael McLaughlin. Various School Department representatives including Morales, Deputy Superintendent Mary Nash, and Chief Financial Officer James McIntire (McIntire) attended the meeting. Stutman told those

present at the meeting that the vote had taken place without BTU staff having an opportunity to visit the JFK School and answer questions about the proposal. McIntire stated that the school had provided the requisite five day notice and had given the BTU members an opportunity to discuss the proposals.

Stutman subsequently received a call from another faculty member inviting him to speak a second time. He went back to the school for a third time on November 6 and spoke to about 20 BTU members. No School Department employees were present at this meeting. After this meeting, the BTU membership conducted a second vote on Pilot School conversation. Stutman was present for a part of this meeting. On November 7, 2006, Sweatt informed Stutman that the vote had failed.²⁸

November 9, 2006

The Joint Steering Committee was scheduled to meet on November 9, 2006. The JFK Pilot School was originally listed as an action item on the November 9 agenda, but Contompasis moved it to an “information” item after Stutman told Contompasis that he would not attend the meeting if the JFK vote were discussed. The November 9 minutes reflect that the Contompasis tabled the scheduled discussion on the JFK School. The Joint Steering Committee never voted on the JFK Pilot School proposal.

November 22, 2006 e-Bulletin

On November 22, 2006, the BTU’s “e-Bulletin” contained the following article about the JFK Pilot School vote.²⁹

The Pilot School Vote at the J.F. Kennedy Elementary School

In mid-October, the staff at the J.F. Kennedy elementary school voted to become a pilot school. The vote was flawed in two ways. On the one hand, long term substitute teachers were inadvertently allowed to vote. On the other hand, the vote violated a BTU membership policy adopted in May, 2006. The policy follows:

“Before scheduling a vote on whether or not to convert to a pilot school, a school must schedule a staff meeting with union leadership for an explanation of the ramifications of conversion.”

Neither flaw was purposeful and no one is to blame; it just happened. Once this was called to staff’s attention, the staff quickly invited union leadership to the building to go over a variety of options. The pilot school vote was subsequently retaken and reversed. As this now has become a public issue Boston Herald (See *article*),³⁰ we offer the following update.

(By way of background, Once a staff vote is taken, the pilot proposal goes to the Steering Committee, at which point, by contract, the union president and the superintendent can each exercise veto power over any school’s vote to become a pilot school. Member-

24. Perakas replaced Perez-Castillo who passed away before the school year began.

25. Sweatt did not testify. These findings are based on Morales’ testimony as to what Sweatt told her, which were not admitted for the truth of the statements therein.

26. The evidence reflects that at least one but not more than two substitute teachers voted in the election.

27. It was during these conversations that Contompasis first learned about the May 2006 BTU membership policy.

28. As described below, the November 22 e-bulletin reported that “[t]he 2nd vote was 19-15 in favor, falling short of the 2/3 required.”

29. The e-Bulletin is published on the BTU’s website. The parties submitted a hard copy of the November 22, 2006 e-Bulletin as Joint Exhibit (JX) 9. The article is reprinted above in its entirety.

30. JX-9 did not include the Boston Herald article, which appears to have been a hyperlink in the on-line article.

ship policy, which is binding on the union president, places a further condition; Before a vote is taken at the school, there must be a meeting with the union leadership to insure that staff receive full information and full disclosure on the ramifications of the vote to convert to a pilot school. The membership policy was crafted, debated, and approved in order to have full transparency at the school level as any vote to become a pilot school is irrevocable.)

The JFK staff scheduled a preliminary meeting (10/30) with the union president to discuss options. The meeting was open to all who wished to attend. Another meeting, specifically in response to the needs of the membership motion (above), was scheduled to 11/1 in the interest of resolving the procedural flaw and moving forward, this meeting, too, was open to all who wished to attend. Many Court Street administrators showed up, as did other observers. All were allowed to speak at what turned to be a healthy give-and-take session. It was noted at this 11/1 meeting that the union was allowing non-union people into the meeting, although it was not required to. Many JFK staff wanted still more information, and asked that the union come back a third time on 11/6. This meeting was closed to the general public and only union members were allowed to attend. Another healthy give-and-take session took place.

The original flawed 30-7 vote in favor garnered the necessary 2/3rd required. The 2nd vote was 19-15 in favor, falling short of the 2/3rd required.³¹

Some have suggested (see the *Boston Herald*) that something mysterious must have happened in our meetings with staff to get the vote to change as drastically as it did. To take that posture is insulting as it implies that our members cannot make up their own mind after receiving a variety of often-conflicting information. People can certainly make up their own mind, and whether an outside observer likes it or not, people have a right to full disclosure before taking a vote. That is membership policy and that is what we will enforce.

Opinion

The complaint in this case alleges that the Union violated Section 10(b)(2) of the Law by unilaterally imposing pre-conditions on the Town before implementing a collectively bargained waiver voting provision and by failing to abide by a secret ballot vote by JFK School bargaining unit members to convert to a Pilot School.

In general, a union's obligation to bargain in good faith under Section 10(b)(2) mirrors an employer's good faith bargaining obligation under Section 10(a)(5) of the Law. *North Middlesex Regional School District Teachers Association*, 28 MLC 160, 163 (2001) (citing *Town of Hudson*, 25 MLC 143, 147 (1999)).

As a preliminary matter, the School Committee concedes and we agree that the waiver procedures set forth in Article III(C)(4)(d) do not apply to Whole School Pilot School conversions. As set forth above, converting to a Pilot School alters bargaining unit members' CBA rights with respect to both layoff and grievance proce-

dures and Article III(C)(4)(d)(4) prohibits waiver votes over these subjects. Accordingly, to the extent that the complaint alleges that the Union unlawfully failed to abide by the collectively-bargained "waiver" voting provision, we dismiss that aspect of the complaint.

Our inquiry does not end there, however. Reading CBA Article II(B)(2) and the Overview/RFP together, we find that the parties agreed jointly, either through bargaining or by delegation to the Joint Steering Committee, to oversee the implementation and operation of school-based management/shared decision-making. Since all CBAs beginning with the 1994-1997 CBA have incorporated the Overview/RFP by reference, it follows: 1) that the parties were obligated to comply with the procedures contained therein, as they would any other contractual procedure; and 2) that neither party could make unilateral changes to those procedures. The Overview/RFP provides that an application for a Whole School Pilot School must have the support of "two-thirds of the BTU members who work more than 50% of their week at the school in order to apply as a Whole School Pilot School." While it also requires that Whole School Pilot School applications include the signatures of at least two-thirds of the BTU members who work more than 50% of their time, the record does not reflect whether any Pilot School applications have ever included these signatures. Rather, since 1994, when the first Whole School Pilot School application was submitted and accepted, BTU representatives have conducted secret ballot votes to determine whether the application has the requisite two-thirds support of eligible bargaining unit members to move to the Joint Steering Committee level. At that point, as the Union's 2006 e-bulletin explains, "by contract, the union president and the superintendent can each exercise veto power over any school's vote to become a pilot school."

Accordingly, regardless of whether the secret ballot voting procedure had its origins in the Article III(C)(4)(d) waiver provisions, as the School Committee argues, or whether it was the result of the November 29, 1995 BTU Executive Board motion, as the Union argues, the facts reflect that, until the JFK School vote, the parties followed a two-step procedure for each of the Whole School Pilot School conversions that took place in that time period. That is, from 1995 to 2006 both parties understood and by acceptance of this practice agreed that two prerequisites had to be met before a Whole School Pilot School proposal could be submitted to the School Committee for approval: the expressed support, via secret ballot vote, of at least two-thirds of eligible bargaining unit members, followed by Joint Steering Committee approval. Nothing in the parties' bargained-for procedure, or their practice implementing that procedure, states or even suggests that a Pilot School Conversion vote is not valid unless BTU leadership meets with bar-

31. In its post-hearing brief, the Union argues, for the first time, that the BTU e-Bulletin's statement that the "original vote garnered the necessary 2/3 vote required" is hearsay and therefore cannot form the basis of a reliable finding that the vote in fact garnered the necessary two-thirds membership support. The Union and School Committee submitted this article as a joint exhibit. While both parties preserved their rights in the Joint Pre-Hearing Memorandum to argue the relevancy of this exhibit, at no time during the hearing did the Union argue that the contents of the e-Bulletin constituted inadmissible hearsay. Accordingly, notwithstanding the Union's arguments, the Hearing Officer found the e-Bulletin to be a reliable source of

information regarding the actual vote results and the Union's contemporaneous rationale for seeking a second vote because: 1) the article was reported, written and published on the Union's website in the month following the vote during which time Union leadership met on at least three occasions with JFK staff members, including BTU representative Sweatt, who conducted both the first and second votes; and 2) the Union's statements and actions following the vote, as described above, comported with the article's claims that the vote had passed by a 2/3 majority and the article's stated reasons for holding a second election.

gaining unit members before the vote is taken.³² Under these circumstances, by refusing to abide by the result of the first JFK vote and move the matter to the Joint Steering Committee level in accordance with the established practice the Union violated its duty to bargain in good faith in that it unilaterally imposed pre-conditions on a bargained-for procedure and practice implementing that procedure.

In so holding, we acknowledge that the Board has “generally considered a union’s violation of Section 10(b)(2) of the Law in the context of a union’s conduct during negotiations, and found a violation where the union had failed to fulfill the Law’s requirement to bargain in good faith.” *North Middlesex Regional School District Teachers Association*, 28 MLC at 163 (additional citations omitted). This stands to reason. A union is not often in a position to effect an unlawful unilateral change to an agreed-upon practice and thereby engage in bad faith bargaining. The violation we have found here however is that the Union unilaterally and hence unlawfully imposed an additional condition on the established and agreed to procedures for converting to a Whole School Pilot School, a conversion that would have led to changes in terms and conditions of employment.

The Board previously has, with judicial approval, reached a similar conclusion. In *Springfield Housing Authority v. Labor Relations Commission*, 16 Mass. App. Ct 653 (1983), the employer and union reached agreement on a collective bargaining agreement, but the employer refused to ratify the agreement unless it was first approved by an outside agency. Because the union had not agreed to this prior condition, the Appeals Court affirmed the former Labor Relations Commission’s determination that this constituted a violation of the employer’s duty to bargain in good faith. The Court reasoned that where the relevant statute³³ stated that Section 10 of the Law applied to housing authorities “notwithstanding any provision of the law to the contrary,” the housing authority could not unilaterally condition its ratification of the fully negotiated CBA upon approval of a third party. *Id.* at 656. *Accord Fall River Housing Authority*, 8 MLC 2038, (1982). *See also Teamsters Local 287, International Brotherhood of Teamsters*, 347 NLRB 339 (2006), *aff’d*, 293 Fed. Appx. 518, 2008 WL 4280140 (C.A.9) (2008)(union violated its duty to bargain in good faith by unilaterally imposing conditions on the submission of agreement for bargaining unit ratification).

The same result should obtain here. Just as a ratification vote measures bargaining unit members’ support for the terms and conditions of employment embodied in a new or successor CBA, the two-step procedure utilized by the parties in this case measure whether there is bargaining unit member, Union and management support to implement a form of school-based management that imposes significant changes on existing terms and conditions of employment. Just as the housing authorities in the cases described above could not unilaterally make their contract ratification con-

tingent on third-party pre-approval, the Union here could not unilaterally impose pre-conditions on the established Pilot School Conversion procedure. *See Springfield Housing Authority, supra*. Where the evidence reflects a longstanding, consistent practice of holding a secret ballot vote as a means of ascertaining the bargaining member support required by the Overview/RFP and no prior practice of conditioning the validity of those votes on meetings between BTU leadership and bargaining unit members, *see* note 32, *supra*, there are sufficient facts to support the conclusion that the Union violated the Law in the manner alleged.

That said, nothing in our decision prevents BTU leadership from having its local representatives arrange a meeting between BTU leadership and bargaining unit members to explain the ramifications of converting to a Pilot School *before* scheduling a Pilot School conversion vote. However, if, as here, such a meeting does not occur, the Union cannot rely on its internal policy as a lawful basis to nullify a vote that has already taken place and thereby avoid Joint Steering Committee review. The overriding policy in this case is the duty, embodied in Sections 6 and Section 10(a)(5) of the Law, to bargain in good faith by refraining from making unilateral changes to bargained-for procedures and practices affecting terms and conditions of employment. Accordingly, following the affirmative two-thirds JFK vote, the Union was contractually obligated to move the application to the Joint Steering Committee level, where it could have exercised its veto power, as it did after the first Gardner School vote. The Union could not however insist on abiding by its membership rule without running afoul of its bargaining obligation. *See National Association of Government Employees*, 13 MLC 1525, 1526 (1987)(a union’s freedom to regulate its internal affairs must give way to certain overriding interests implicit in the Law). The Union could, however, seek to bargain with the School Committee over the change in the conversion procedure that specifically makes the sought-after meeting a pre-condition of a valid vote.

The Union asserts several arguments in its defense. It argues that the School Committee failed to demonstrate that the first JFK School vote had the requisite two-thirds support of BTU members who work more than 50% of their week at the school. Indeed, one of the alleged “flaws” cited by the Union in its e-bulletin for seeking a second JFK vote was that some long-term substitutes had been allowed to vote. Obviously, if these votes affected the requisite two-thirds majority, the Union would not have been obligated to move the matter to the Steering Committee. However, the record reflects that, at most, two substitute teachers were allowed to vote. The record also reflects that Morales cast a vote, although it is not clear if her vote was counted. Assuming it was, and further assuming that the two substitute teachers also voted and that all three individuals voted in favor of conversion, this still would not have rendered the original vote invalid. As reported in the e-bulletin, the original vote was 30-7 in favor of conversion. Subtracting the

32. The record reflects no consistent practice regarding pre-vote meetings, i.e., sometimes BTU leadership met with the bargaining unit members in advance of the vote; sometimes it did not. There is no evidence however that, before the JFK vote, a conversion vote’s validity was contingent on whether there had been such a meeting.

33. MGL c. 121B, §29, as amended.

three potentially flawed “yes” votes from this tally, the vote would have been 27-7. Accordingly, even without those three ballots, the record evidence shows the requisite two-thirds support from eligible faculty, thereby obligating the Union to move the application to the next step.

The Union also claims that because the School Committee argues that the BTU was bound by the parties’ existing procedure, the School Committee bears the burden of proving its own adherence to that procedure. In particular, the Union claims that there is insufficient record evidence that a secret ballot vote ever took place, that bargaining unit members were given five days notice, as required by both the 1995 policy and the CBA’s waiver voting provision or that the application was signed as required by the Overview/RFP. However, the procedure and practice we have found is limited to the two-step voting/Steering Committee process described above. Because the unchallenged findings reflect that a secret ballot election took place on October 20, 2006, *see* note 31 and accompanying text, above, the Union’s argument that the School Committee failed to prove that a secret ballot vote even took place lacks merit. Beyond that, there is insufficient evidence that the parties had a practice of adhering to either the five-day notice or signature requirements set forth in both the Union’s membership policy and the contractual waiver procedure such that the School Committee’s failure to adhere to these requirements somehow excused the Union’s obligation to abide by the vote’s results.³⁴ As such, these arguments are irrelevant to our analysis of whether the Union violated the Law by imposing additional requirements on the established two-step procedure and the practice implementing that procedure.

For the foregoing reasons, the Union’s refusal to abide by the October 20, 2006 conversion vote and submit the JFK’s Pilot School application to the Joint Steering Committee constitutes a violation of Section 10(b)(2) and, derivatively, Section 10(b)(1) of the Law.

Remedy

In its charge, the School Committee sought a Board order requiring the Union to honor the results of the first JFK vote and its agreement to create new Pilot Schools. The purpose of the Board’s remedies is to restore the parties to the position they would have been in but for the unfair labor practice. *Commonwealth of Massachusetts*, 29 MLC 162, 164 (2003). The Board has broad discretion in fashioning a remedy calculated to effectuate the purposes of the Law and to vitiate the effects of the violation. *Id.* In this case, that means ordering the Union to abide by the results of the first JFK vote and move the JFK Pilot School proposal to the Joint Steering Committee for approval or veto.

34. The Union’s failure in the weeks following the first JFK School vote to cite these factors as a basis to seek a second vote is further evidence that they were not part of the established Pilot School procedure. Indeed, the very fact that the Union

Order

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Boston Teachers Union shall:

1. Cease and desist from:
 - a) Failing to bargain in good faith in violation of Section 10(a)(5) of the Law by failing to honor the results of the October 20, 2006 vote to convert the JFK School to a Pilot School by forwarding the Pilot School Proposal to the Joint Steering Committee for its consideration and by unilaterally imposing pre-conditions on the existing Pilot School conversion procedure.
 - b) In any like or related manner, interfering with, restraining or coercing the Employer in the exercise of its rights under the Law.
2. Take the following affirmative action that will effectuate the policies of the Law:
 - a) The Union shall abide by the results of the October 20, 2006 secret ballot bargaining unit vote to convert the JFK School to a Pilot School and forward the Pilot School proposal to the Joint Steering Committee for its consideration.
 - b) Post immediately in all conspicuous places where members of the Union bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the Union customarily communicates to members via intranet or email, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and,
 - c) Notify the Department in writing within ten days of receipt of this Decision and Order of the steps taken to comply with it.

SO ORDERED.

APPEAL RIGHTS

Pursuant to MGL c.150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT RELATIONS BOARD

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH
EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF
MASSACHUSETTS

The Commonwealth Employment Relations Board has held that the Boston Teachers Union has violated Section 10(b)(2), and, de-

sought a second vote, rather than a signed application, demonstrates that bargaining unit support was always measured by confidential secret ballots, not by published signatures.

rivatively, Section 10(b)(1) of Massachusetts General Laws, Chapter 150E by failing to abide by the results of the October 20, 2006 secret ballot vote to convert the JFK School to a Pilot School and by unilaterally imposing additional pre-conditions on the existing Pilot School conversion procedure.

The Boston Teachers Union posts this Notice in compliance with the Commonwealth Employment Relations Board's Order.

WE WILL abide by the results of the October 20, 2006 secret ballot vote on whether to convert the John F. Kennedy School to a Pilot School by forwarding the Pilot School proposal to the Joint Steering Committee for its consideration.

[signed]
For the Boston Teachers Union

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE
DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Division Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).

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In the Matter of WESTON SCHOOL COMMITTEE
and

AFSCME COUNCIL 93, LOCAL 335

Case No. CAS-08-3732

May 23, 2011

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

James M. Pender, Esq. *Representing the Weston Public
Schools*

Joseph L. DeLorey, Esq. *Representing AFSCME,
Council 93*

DECISION¹

Introduction

The Weston School Committee (Employer or School Committee) seeks to sever the Bookkeeper in the Weston Public School's Food Services Department (FS Bookkeeper) from a bargaining unit of Food Services employees represented by the American Federation of State, County and Municipal Employees, Council 93, Local 335 (Union or AFSCME) and accrete it to the bargaining unit represented by Weston Educational Administrative Assistants Association (WEAAA). As grounds for the petition, the Employer argues that the FS Bookkeeper's responsibility for calculating a program surplus that is distributed to bargaining unit members pursuant to a formula set forth in the parties' collective bargaining agreement (CBA) creates financial conflicts of interest and divided loyalties. AFSCME opposes the position on the grounds that avoiding speculative conflicts does not warrant unit severance and because the FS Bookkeeper otherwise shares a community of interest with the rest of its bargaining unit.

After considering the parties' submissions and arguments, the Commonwealth Employment Relations Board (Board) dismisses the petition because the FS Bookkeeper's responsibilities do not create an inherent conflict of interest warranting severance.

Statement of the Case

The Employer filed this petition on August 11, 2008. On October 10, 2008, the Employer filed additional materials in support of its petition including an affidavit from Cynthia Mahr (Mahr), Director of Finance and Operations for the Weston Public Schools, the FS Bookkeeper's job description, an organizational chart, and copies of the most recent AFSCME and WEAAA CBAs.

1. Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the Department of Labor Relations.