In the Matter of CAMBRIDGE PUBLIC HEALTH COMMISSION d/b/a CAMBRIDGE HEALTH ALLIANCE

and

MASSACHUSETTS NURSES ASSOCIATION

Case No. MUP-10-5888

54.611	health insurance
54.613	pension and retirement
67.13	economic justification
67.165	bargained to impasse
67.82	implementing changes after impasse
108.62	changes prior to mediation and fact-finding

August 27, 2010
Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Jack J. Canzoneri, Esq.	*Representing the Massachusetts*
James Lamond, Esq.	*Nurses Association*
Jerome N. Weinstein, Esq.	*Representing the Cambridge*
Andrew M. Fuqua, Esq.	*Health Alliance*

DECISION[1]

Introduction

On August 18, 2010, the Commonwealth Employment Relations Board (Board) issued a ruling ordering a hearing in the above-captioned matter to consider the affirmative defense raised by the Cambridge Public Health Commission d/b/a Cambridge Health Alliance (Alliance or Employer), to wit, that economic exigencies required it to make unilateral changes to its retiree health insurance benefit contribution before the expiration of its collective bargaining agreement with the Massachusetts Nurses Association (MNA or Union) and before completing the collective bargaining process set forth in Section 9 of M.G.L. c. 150E (the Law).[2] Based on the record as a whole, and for the reasons set forth below, we find that the Alliance has failed to establish the elements of its affirmative defense of economic exigency and therefore hold that its conduct violated sections 10(a)(5) and (1) of the Law.

Statement of the Case[3]

On June 30, 2010, the MNA filed a charge of prohibited practice with the Division of Labor Relations (Division) against the Alliance alleging a violation of M.G.L. c. 150E, Sections 10(a)(5) and 10(a)(1) and requested that the Division pursue immediate, emergency injunctive relief. The Alliance filed a response to the charge on July 6, 2010. The Division issued a Complaint of Prohibited Practice on July 12, 2010 alleging that the Employer had violated Sections 10(a)(5) and (1) of the Law by notifying employees that it would immediately implement changes in retiree health benefits on June 24, 2010. The Alliance filed an answer to the Complaint on July 16, 2010.

Pursuant to notice, an expedited hearing took place on August 11, 2010. At the close of the hearing, at which no testimony was taken,[4] the Board instructed the parties to file briefs by the close of business on August 16, 2010, addressing the issues of: 1) whether Section 9 obligations precluded the Alliance from taking the actions complained of; and 2) whether the Respondent's affirmative defense of economic exigencies possibly provides an exemption from Section 9 obligations. The Board instructed the parties that, after ruling on those legal issues, a further hearing, if necessary, would be held on August 20, 2010.

Both parties filed briefs in accordance with the Board's instruction, and on August 18, 2010, the Board issued a ruling that, among other things, ordered a hearing on August 20, 2010 on the sole issue of whether economic exigencies provided an exemption from the Alliance's Section 9 obligation.[5] The Board conducted the second day of the expedited hearing on August 20, 2010. At that hearing, all parties had the opportunity to be heard, to examine, and cross-examine witnesses and to introduce evidence. Both parties filed post-hearing briefs on August 25, 2010.

Findings of Fact[6]

The facts found in the Board's Ruling on Motion for Summary Decision dated August 18, 2010, are incorporated by reference. The following findings of fact are based upon the exhibits introduced and testimony taken at the hearing on August 20, 2010.

The Alliance, Generally

The Alliance is a provider network with a managed-care insurance component. It was created through State statute in 1996 as a government agency for the purpose of having the Public Health Department for the City of Cambridge and the Cambridge Hospital merge with the Somerville Hospital in its own government agency separate from the City.

The Alliance has two primary service areas: Cambridge, Somerville, part of Medford and part of Arlington; and, Walden, Chelsea, Revere, Everett and Winthrop, serviced by the Alliance's Whidden campus in Everett. The Alliance has approximately 20 ambulatory sites and three hospital campuses: Somerville, Cambridge Hospital, and Whidden Memorial in Everett, Massachusetts. The Alliance, considered one of the major safety net hospi-

1. The Board's jurisdiction is not contested. References to the Board in this decision include the former Labor Relations Commission, the Board's predecessor body.

2. The full text of the Ruling is attached to this decision.

3. A detailed statement of the case through August 18, 2010 is set forth in the attached Ruling.

4. On August 11, 2010, the MNA offered no witnesses in its case in chief but reserved its right to call rebuttal witnesses. The Alliance asserted that its chief witnesses were unavailable. Thirty joint exhibits were identified and entered into evidence. Both parties made opening statements.

5. On July 13, 2010, the MNA filed a request, pursuant to Section 11(f) of the Law and Division Rule 456 CMR 13.02(1)(c), to have the hearing in this matter conducted by the Board in the first instance. That request was granted.

tals in Massachusetts and the only remaining public hospital in Massachusetts, serves primarily low-income individuals, with greater than 50% of the volume coming from low-income, uninsured, underinsured, or state-program-enrolled individuals.

The Alliance is designated as a disproportionate share hospital (DSH) under federal and state statutes. Under Massachusetts law, a DSH must have a minimum of 63% of its revenue from Title XVIII to XIX, i.e., Medicare/Medicaid and uninsured patients. More than 81% of the Alliance's inpatients and more than 71% of outpatients are government funded.

The Alliance has a medical practice group of physicians, Charter Professional Services; a foundation, the Alliance Foundation Community Health; and a separately-incorporated managed care insurance component, Network Health, Inc. All three subsidiaries are 501(c) (3) not-for-profit corporations under Massachusetts law. No individuals are employed directly by the parent commission. There are separate payrolls for the different entities. Approximately 1800 to 2000 employees are on the public payroll.

Network Health, Inc. holds two major contracts with the Commonwealth of Massachusetts, a MassHealth Medicaid managed care contract and a Commonwealth Care contract developed as part of health reform in Massachusetts. Both are insurance products for low-income individuals through those two state programs and all payments come from the State or the State's Insurance Connector. During the last two fiscal years[7] more than 81% of overall revenue has come from government sources. The network provides routine community-based secondary hospital care in the inpatient facilities, i.e., routine medical/surgical including maternity care, and a full array of behavioral health for the child, adolescent, adult and geriatric patient populations. In the last fiscal year there were more than 700,000 ambulatory visits. Tertiary or advanced type technology is not provided and the pediatric unit was discontinued.

The Alliance owns most of the assets at the Somerville campus and some of the assets at the Whidden campus.

The Alliance has collective bargaining agreements with a number of unions in addition to the MNA, including: the Teamsters, who represent security guards; Local 877 of the International Union of Operating Engineers, who represent maintenance workers; the Laborers, Local 380, who represent two bargaining units, including a separate laboratory unit; and the USW,[8] who represent social workers. The collective bargaining agreements for all of these units, with the exception of the Teamsters unit, expired on June 30, 2010. There are somewhere between 325-350 members in the MNA's unit [9] and between 40-60 employees in the Teamster's unit.[10]

Gordon Boudrow (Boudrow) is the Alliance's Senior Vice President of Finance and Chief Financial Officer. Joan Bennett (Bennett) is the Senior Vice President of Human Resources.

GASB 45, generally

The Government Accounting Standards Board (GASB) sets the accounting standards that government agencies must adhere to when they record their financial transactions and have their records audited. If the GASB standards are not followed, auditors would have to indicate the lack of compliance on an entity's financial statements.

In June 2004, GASB issued Statement No. 45 (GASB 45). This statement requires all government agencies to start to record the accrued liability, amortized over a 30-year period, for other post-retirement health and benefits or OPEB,[11] as a line item in the balance sheet portion of its annual financial statement.[12] For the Alliance, this recording obligation began at the beginning of the first fiscal year after December 31, 2006, or on July 1, 2007.

GASB 45 requires agencies to hire an actuarial firm to make an actuarial calculation of the future cost over the life of the individuals who are currently active and will retire and to determine how much of that full liability must be recorded on an annual basis in the agency's records, whether or not that liability is fully funded. There are a number of ways to reduce that liability by for example, making the plan changes at issue here, pre-funding the liability by setting up a trust fund, or selling Alliance assets at a gain. The Alliance did not consider the latter two options when, in FY 10, it decided to implement the 50/50 benefit change discussed below. Prior to July 1, 2010, the retiree health insurance contribution for all employees who were members of the Cambridge Retirement system was 90% of the cost; employees contributed 10%.

The Massachusetts Health Reform Act and Medicaid Waivers

A Medicaid waiver, sometimes referred to as a Section 1115 demonstration project, allows states to deviate from the regular Medicaid federal and state laws to put forth demonstration products that enhance the quality of care and allow for outcomes that are more efficient and cost effective for Medicaid-eligible individ-

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6. These findings are based on the testimony and exhibits offered at the August 20 hearing. At that hearing, the parties agreed to designate the transcript as the official record pursuant to Division Rule 456 CMR 13.11 (4).

7. The fiscal year runs from July 1 through June 30.

8. The record does not reflect what "USW" stands for.

9. Boudrow testified there were approximately 350 Alliance members. We note however that Joint Stipulation 4 states that, as of June 24, 2010, approximately 325 members of the bargaining unit were members of the Cambridge Retirement System.

10. Boudrow testified there were approximately 50-60 security guards (See Transcript (Tr.) at 216) while Bennett testified there were about 40. *See* Tr. at 286.

11. OPEB includes life insurance, in addition to health insurance, and any other benefit not included in a pension.

12. According to the Summary of Statement No. 45 issued by the Governmental Accounting Standards Board in June 2004, GASB 45:

> Improves the relevance and usefulness of financial reporting by a) requiring systematic, accrual-basis measurement and recognition of OPEB cost (expense) over a period that approximates employees' years of service and b) providing information about actuarial accrued liabilities associated with OPEB and whether and to what extent progress is being made in funding the plan.

uals. The Massachusetts health reform law that took effect in FY 2007 included a Medicaid waiver. An amendment to the Medicaid waiver was required because the State had underestimated the full cost of its health reform and, so, requested that the federal government pick up an incremental component of those increased costs. The Alliance is specifically identified to receive payments under the current Medicaid waiver through funds paid to the State. On an annual basis, line items are included in the State's budget referencing these amounts, based on receipt of appropriate federal matching funds through the waiver.

When Healthcare Reform was adopted in Massachusetts in 2006, the Alliance was disadvantaged by the switch from cost-basis compensation for treating the uninsured through the Uncompensated Care Pool to the per-case reimbursement at 70% of the cost through the Health Safety Net. In addition, Medicaid rates were reduced. Those changes largely were responsible for a drop in federal and state support for the Alliance from $216.7 million in FY 07, to $194.3 million in FY 08, to $170.5 million in FY 09, years when the excess/(deficiency) of revenue over expenses worsened from $1.5 million, to ($2.4 million) to ($25.3 million).

FY 2008-FY 2009

The Reconfiguration Plan

As a result of an economic downturn in the fall of 2008, in mid-October 2008, Governor Patrick announced a series of budget reductions, known as "9C cuts." These cuts included the line item for a $40 million portion of the Alliance's supplemental funding for FY 09 and a series of cuts to health care providers, hospitals, and other related providers that cost the Alliance another $6 to 8 million. After meeting with local mayors and others, the Governor agreed to review those decisions and asked a subgroup for recommendations to reverse the FY 09 funding cuts and provide support for the State's amendment to its current Medicaid waiver for FY 10 and FY 11.[13]

The subgroup was comprised of representatives from the Commonwealth's Executive Office of Health and Human Services (EOHHS) and Alliance senior administrators, including Boudrow. There were no union representatives at these meetings. The subgroup held several meetings and used a consultant, Ernst & Young, to come up with a reconfiguration plan for the Alliance. Boudrow testified that the plan's goal was to demonstrate to the State and, ultimately, to the federal government, that the Alliance could be restructured and, with continued funding, result in a stable and viable organization that could produce financial results that were better than break-even. At the final meeting on December 22, 2008, the subgroup agreed upon a reconfiguration plan.

The reconfiguration of services, designed to generate $31.3 million in FY 10 and $33.2 million in FY 11, along with other management initiatives[14] would allow the Alliance to end FY 10 and FY 11 $2.5 million in the black if it received $85 million and $70 million respectively in those years as rate relief/supplemental revenue. The projections included an estimated[15] change in GASB 45 benefits in FY 11 (but not FY 10)[16] that would improve the Alliance's financial picture by $5.2 million. Without the estimated savings for FY 11, the projections include the following figures for the "GASB 45 Impact," the impact on the Alliance's balance sheet of having to record annually its actual and future amortized accrued OPEB liability: $13 million for FY 09, $13.2 million for FY 10 and $13.4 million for FY 11.[17]

That plan was approved the following day by EOHHS, and the State committed to including it in its request for the Medicaid waiver amendment. The summary contains a description of changes to be made by the Alliance, but makes no specific mention of any changes to GASB 45 benefits.[18] Boudrow believed that the Alliance's ability to demonstrate to the state that it could be a viable and sustainable organization in FY 10 was a "critical component of [sic] the State to include the funding in the waiver that they filed on March 1, 2010." *See* Tr. at 144-145.[19]

The MNA/Alliance 2007-2010 Negotiations

The Alliance and the MNA were parties to a collective bargaining agreement for the registered nurses at the Cambridge Hospital that

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13. According to CFO Boudrow, if the cuts were not restored the Alliance would have had to close one to two of its campuses.

14. The management initiatives included increases in managed care contracts from $5 million in FY10 to $11 million in FY 11; increases in denials management/other from $3 million in FY 10 to $4.5 million in FY 11; increases in physician productivity from $2.5 million in FY 10 to $5 million in FY 11; physician benefit changes of $0; professional contract/renegotiation changes of $0; a wage adjustment from $16,224,314 for FY 10 to $27,980,829 in FY 11; supplies/service inflation adjustment from $597,010 in FY 10 to $2,620,678 in FY 11; rental lease changes from $587,000 to $1,370,000 in FY 11; and network health contribution changes of $0.

15. The $5.2 million savings to be realized by a change in GASB 45 benefits was an estimate only because, as described below, as of December 2008, the Alliance had not hired an actuary to analyze the savings it could generate by making changes to its GASB 45 benefits.

16. Boudrow testified that at the time this plan was prepared they were contemplating making changes in the retiree health benefit during FY 11 but not in FY 10 because they were "requiring a lot of other concessions from employees at that time." *See* Tr. at 91.

17. Boudrow testified that the subgroup "broke out GASB because it was a new requirement that we had to start to reflect, and we wanted to just segregate that from the overall operations." *See* Tr. at 87.

18. Specifically, the agreed-to aspects of the restructuring require the following CHA actions:

> Total financial impact of service reconfiguration & management initiatives: (FY 10: $69.2M) & (FY 11: $100.9M)
>
> * 40% reduction in inpatient psychiatry beds and a 42% reduction in outpatient psychiatry services
>
> * 50% reduction in ambulatory sites while maintaining > 90% of primary care volume
>
> *Inpatient services at Cambridge and Whidden Hospitals only while maintaining med/surg volume
>
> *The Somerville campus will be redeployed for ambulatory clinical programs and core administrative consolidation.
>
> * Emergency Services will continue at all 3 campuses, 94,000 visits, with an expected growth rate of 3-4% annually. [Employer Exhibit 2 at 2.]

19. The state's waiver amendment had not been approved as of the hearing date.

was in effect from 2007-2010. The parties began negotiating the contract on July 27, 2007 and, after twenty-six bargaining sessions, reached agreement on a new contract on April 14, 2009.[20]

The Alliance discussed GASB 45 only peripherally at these meetings, as part of its general discussion of the Alliance's poor financial condition and outlook.[21] Nevertheless, on April 10, 2008, the Cambridge Hospital made a written "comprehensive" proposal that included the following offer for tiered retiree health benefits:

> Provide that for nurses who retire on or after March 1, 2008 and are eligible to receive retiree health insurance benefits from the City of Cambridge, CHA will pay a percentage of the premiums for such health insurance benefits as follows: (i) 90% for nurses with at least 20 years of continuous employment with TCH as of March 1, 2009; (ii) 79% for nurses with at least 15 but less than 20 years of continuous employment with TCH as of March 1, 2008; (iii) 65% for nurses with at least 10 years but less than 15 years of continuous employment with TCH [the Cambridge Hospital] as of March 1, 2008; (iv) 55% for nurses with at least five years but less than 10 years of continuous employment with TCH as of March 1, 2008; and (v) 50% for all other nurses.[22]

According to Cynthia McManus, MNA's chief spokesperson at these negotiations, this proposal did not generate much discussion at the table and the Alliance, for reasons that are not evident on this record, ultimately withdrew it.[23] The Alliance did not mention GASB 45 or propose any changes to retiree health insurance benefits at any of the bargaining sessions it conducted with the MNA for the 2003-2005, 2005-2006 or 2006-2007 contracts.

FY 10

The Segal Report

The Alliance hired an actuarial firm, The Segal Company, sometime after December 2008 to calculate GASB 45 requirements for all current and potential retirees as of December 31, 2008 under the then-existing 90% contribution rate and to advise on other options for changing that rate.[24] Segal issued a report on February 16, 2010 that contained the current costs and projected liability of the existing plan and the costs for FY 10 under three plan change options. Plan Change One would have increased retirement eligibility to age 60 with 20 years of service and increased retiree contributions to 20% of premiums, effective June 27, 2010. Plan Change Two would have made the same changes as Plan Change One, but only for retirees who were under age 65 as of June 27, 2010 and actively working employees as of June 27, 2010. Plan Change Three, which the Alliance eventually chose, called for increasing retiree health insurance contributions to 50% of premiums, effective after June 27, 2010.

The Segal report estimated that Plan Change One would reduce the Alliance's actuarial accrued liability (AAL) from $205,735,945 to $110,426,136 and its annual required contribution (ARC)[25] for FY 10 from $15,616,051 to $5,973,466. Plan Change Two was estimated to generate slightly less savings than Plan Change One. Plan Change Three generated the least balance sheet savings, from an AAL of $205,735,945 to $112,855,475 and an ARC from $15,616,051 to $6,427,367, or an approximately $9.2 million reduction in liability for FY 10.

In FY 10, the Alliance had approximately 1400 current and potential future retirees, approximately a quarter of whom, as noted above, were MNA members.

Financial Performance as of January 31, 2010 and the March 10, 2010 Meeting

As the stipulations reflect, the parties began preparing to negotiate the terms of the successor to the 2007-2010 agreement in or around January 2010. On March 10, 2010, the Alliance conducted a meeting with leaders of its various bargaining units, including the MNA. Both Boudrow and Bennett spoke at the meeting. Boudrow explained that the Alliance's financial picture for FY 10 thus far had been very poor and made a PowerPoint presentation showing that there had been declines in key revenue categories in FY 08 and FY 09 such as discharges, patient days and clinic visits and indicated that these revenue streams were continuing to worsen in FY 10. As a result of these losses, as of January 31, 2010, the Alliance was showing losses of approximately $35 million or $16.8 million greater than expected, although Boudrow anticipated those losses would improve later in the year due to better volume and supplemental funds from the state.

Other slides in Boudrow's PowerPoint presentation reflected an excess/(deficiency) of revenue over expenses of $14 million for 2006, $1.5 million for 2007, ($2.4 million) for 2008 and ($25.3 million) for 2009. (JX 7 A at 18.)[26] For the Alliance provider network, the audited financial statements show excess/(deficiency) of revenue over expenses of ($13.6 million) in 2006, $1.6 million in 2007, ($29.4 million) in 2008 and ($37 million) in 2009. Those figures represent two years before health reform and the GASB 45 implementation and the two years after both of those occurred. Bennett told the meeting's participants that the Alliance needed to reduce the cost of its retiree health benefits by approximately $10 million dollars in order to ensure what she referred to as its "sur-

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20. The agreement was ultimately signed on June 5, 2009.

21. Bennett recalled no discussions about GASB during the 2007-2010 MNA/Cambridge Hospital negotiations, but Cynthia McManus testified that there was some limited discussion. We credit McManus's testimony, as she appeared to have a more detailed memory of these negotiations.

22. The Alliance had made the same proposal on some unspecified date earlier in the parties' negotiations for this agreement.

23. Although Bennett did not recall a proposal calling for concessions to retiree health insurance benefits during these negotiations, the written Cambridge Hospital proposals produced by the Union support McManus's testimony.

24. Although the Alliance was required to, and actually did have an actuarial report in December 2006 that recorded its OPEB expenses for FY 08 and FY 09, (*See* Tr. at 220-221). December 2008 marked the first time that the Alliance had engaged an actuarial firm to also determine the amount it could *save* by changing the level of retiree health benefit contribution rates. To the extent the MNA argues that the Alliance had no actuarial calculations before the Segal report, that contention is not supported by the record.

25. The ARC figures appears as a line item in the audited balance sheets. The AAL figure is not a line item, but is disclosed in a footnote.

26. For the Alliance provider network federal and state support declined from $216.7 million in 2007 to $194.3 million in 2008 to $170.5 million in 2009.

vival." She further explained that there could be serious financial consequences if the Alliance did not have a positive bottom line and that the $10 million reduction in retiree health care costs "help[ed] us with the bottom line." *See* Tr. at 261-262.

On this topic, Bennett distributed a memo from CEO Dennis Keefe that the Alliance had previously distributed to its non-union employees on March 8, 2010 informing them that the Alliance was implementing changes to their retiree health benefits as of June 25, 2010. The memo explained GASB 45's reporting requirements and stated that "No dollars have been set aside to fund this liability, which is now approximately $238 million (as shown in CHA's 2009 audited financial statements) - an amount greater than CHA's total assets." The memo further stated the "need to redesign its benefit to make it significantly less costly" and notified the non-union employees that if they submitted paperwork to the Cambridge Retirement Board to retire after June 25, 2010, they would be required to pay 50% of their retiree health insurance benefit up from the current 10% premium contribution.[27]

According to the Alliance's minutes of that March 10th meeting, Bennett also informed those present that this change only applied to non-union employees "until we bargain with the Unions." Those minutes further state:

> This change is effective on or before June 25, 2010 and [sic] must retire by August 31, 2010. All paperwork would need to be submitted on or before June 25, 2010. The Board approved this date for all Non Union employees. This gives us a [chance] to negotiate with the bargaining unions prior to this date. The reason that the date is June 25, 2010 is because we need to get the $14.0M off the books for this fiscal year which ends June 30, 2010. The concern being our auditors. We need to get the loss of $36M of where we are year to date down to be a financially viable organization. We are talking survival at this point.

The minutes further indicate that McManus and others made suggestions for alternatives and that Bennett responded "we would need to look at this and bring this to the table." In response to a question about the date of June 25, 2010 changing, Bennett responded "this needs to be negotiated."

Other factors affecting the Alliance's Revenue in FY 10

In addition to the reduction in patient volume trends, the Alliance attributed its larger than expected losses in the first half of FY 10 to a number of external factors, including changes that the State made to Network Health because of the fiscal crisis. Those changes included: freezing reimbursement rates when Network Health should have gotten a cost-of-living increase on their MassHealth reimbursements; and modifying its Commonwealth Care contract as a result of the federal government refusing to pay benefits for aliens with special status, effective December 2009. As a result of the second change, 31,000 individuals were disenrolled from the Commonwealth Care program, of which 11,000 were Network Health members. Even though the State created an alternative plan for these individuals, the Alliance chose not to participate in the State's new bid process, and under the bid that was awarded, they were required to go to Caritas, and not Alliance, health facilities. Commonwealth Care also stopped automatically assigning people who were eligible to join Commonwealth Care to Alliance facilities. Network Health was the lowest bidder in three out of the five regions eligible and thus had previously been assigned to the vast majority of the automatic assignments.

Going Concern Opinion

A Going Concern Opinion (GCO) is a statement by a company's auditors that the organization is in difficult financial condition and in jeopardy of not continuing to operate. According to Boudrow, when an organization receives a GCO, its ability to obtain credit ceases. Sometime in FY 10, Boudrow had a conversation with Jim Winning (Winning), the outside auditor of the Alliance's financial statements. According to Boudrow,[28] during that conversation, Winning stated words to the effect that if the Alliance's losses continued in the "range" of what Alliance had experienced in the past two years - meaning the $25.3 million loss the Alliance had suffered in FY 09 - the auditor would have seriously consider issuing a GCO on its audit. Boudrow did not explore with Winning whether the Alliance would be at risk of receiving a GCO if its losses were at a lower level, for instance $3 million, $7 million or $10 million. Boudrow testified with certainty however that a positive bottom line would not result in a GCO.

Financial Picture/MNA Negotiations - March 2010-June 30, 2010

As the joint stipulations reflect, the parties met on several occasions between March 2010 and June 24, 2010 to negotiate the successor to the 2007-2010 agreement. At the May 3, 2010 meeting, the Alliance gave the Union its first set of proposals, which included the Retiree Health Insurance Benefit proposal set forth in Joint Stipulation 31. That proposal stated that the Retiree Health Insurance Benefit for employees on the Cambridge Public Payroll would be changed effective June 25, 2010, by among, other things, increasing employees' contribution rates from 10% to 50%. The proposal was, in essence, the same as that set forth as Plan Change Three in the Segal February 2010 report. Bennett told the MNA at this meeting that it was critical to get their negotiations done by June 25, 2010. The MNA rejected the proposal. The Alliance made the same proposal twice on June 24, 2010 and, after the MNA rejected the CHA's "Last Best and Final Offer" that day, the Alliance sent an email announcing that it was implementing the proposed changes "for the good of CHA, its financial stability and its future prospects."

All of the other bargaining units at Cambridge Hospital agreed to change their retiree health benefits to a 50/50 contribution rate in June 2010, except the Teamsters, whose contract did not expire until August 31, 2010 and the house officers, to whom the benefit did not apply.[29]

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27. This memo was essentially identical to Joint Exhibit 27, which Keefe issued to all TCH employees on June 25, 2010, except that the initial application date in JX 27 is July 23, 2010, not June 25, 2010.

28. The Alliance did not call Winning as a witness.

29. The house officers are medical residents who, by nature of the limited duration of their employment at the hospital, would not have the opportunity to retire.

Sometime in June 2010, the Alliance received two settlement checks from the State for overpayments that enabled the Alliance to reduce its liability that had appeared on its financial statements through May 31, 2010 by about $5.1 million.

Taking into account these gains and other improvements in the Alliance's economic picture through June, 30, 2010, and the $9.2 million reduction in recorded ARC liability it achieved by implementing the 50/50 benefit for the non-union and unionized employees, the Alliance's preliminary, unaudited FY 10 financial statements showed a positive result of $1.8 million. If the Alliance had not implemented the retirement health benefit changes for all retirement-eligible employees before June 30, 2010, it would have shown a loss of $7.4 million for the fiscal year.

Boudrow testified that in order to obtain the GASB 45 reduction in FY 10, the retiree health insurance plan terms would have had to be changed before June 30, 2010. He further testified however that not all aspects of the plan change that the Alliance implemented before June 30, 2010 were necessary in order for the Alliance to record a reduction in GASB 45 liability. That is, although the plan the Alliance implemented called for bargaining unit members to submit their retirement papers by July 23, 2010 and to actually retire by August 31, 2010, the Alliance could have achieved the same goal of reducing its liability by $10 million if it had postponed those deadlines by at least six months. Boudrow further testified that there was no limit to the number of plan changes an entity could record in a given fiscal year, but its auditors would require that any plan changes be supported by new actuarial calculations.

Opinion

As found in our August 18, 2010 Ruling on the MNA's Motion for Summary Decision, the Alliance is afforded the same opportunity to defend its actions here, where a Section 9 petition has been filed, as would any other employer who is alleged to have violated Section 10(a)(5) of the Law. The Board will examine the specific circumstances to determine whether compelling reasons justified the Alliance making the disputed unilateral change before it fulfilled its bargaining obligation. The Alliance carries the burden of establishing the recognized three elements of its economic-exigency affirmative defense: 1) circumstances beyond its control require the imposition of a deadline for negotiations; 2) the MNA was notified of those circumstances and the deadline; and 3) that the deadline imposed was reasonable and necessary. *New Bedford School Committee*, 8 MLC 1472, 1477-1480 (1981). These elements will be discussed in turn.

Circumstances Beyond Control

The Alliance argues that in considering this element of its defense the Board should consider all "external" events it had no power to control but that greatly affected its operations. The Alliance identifies a number of such events occurring over a period of years, as well as a significant decline in inpatient and outpatient volume since the start of the current recession, which began sometime in the late fall of 2008. The external events include GASB 45, announced in 2004, Healthcare Reform adopted by the Massachusetts legislature in 2006, the Commonwealth's decision to freeze rates under the MassHealth contract and to terminate automatic assignments under the Commonwealth Care contract as a result of the recession-driven decline in state revenues, and the Commonwealth's decision to "disenroll" aliens with special status effective December 1, 2009. Although these events, combined and individually, had a serious impact on the Alliance's bottom line, for the reasons set forth below, we conclude that the Alliance has failed to establish the causal connection between these events and the need to require the deadline of June 24, 2010, to negotiate and implement a change in retiree health benefits for MNA-represented nurses.

We first note that nothing in GASB 45, itself, required the Alliance to change the retiree health insurance contribution in fiscal year 2010 or any time before or after that date. Rather, GASB simply requires all government agencies to start to record the accrued liability for OPEB, amortized over a 30-year period, as a line item in the balance sheet portion of its annual financial statement. Thus, the establishment of GASB 45 is not equivalent to circumstances in cases where the Board determined that an imposed bargaining deadline was reasonable based on an external mandate or law because the law or mandate required discrete and specific action by a date certain. *See, e.g., Town of Westborough*, 25 MLC 81 (1997) (decision by private insurer to cancel Master Medical was beyond control of Town and justified deadline to complete bargaining); *Holliston School Committee*, 23 MLC 211, 213 (1997) (School Committee's imposed bargaining deadline based on mandate by Department of Education to increase learning times standards for 1995-1996 school year held justified and reasonable).

The Alliance frames its exigency defense by contending that the Board has not precisely addressed what constitutes circumstances beyond an employer's control, a key element in the exigency defense at issue here. However, the Alliance's interpretation of our case law on the question of what constitutes circumstances beyond the control of the employer blurs a critical distinction between an employer not being required to bargain with a union over a third party's decision to take certain action, *see MCOFU* v. *Labor Relations Comm.*, 417 Mass. 7 (1994) (holding that Group Insurance Commission's (GIC) decision to reduce health insurance rates for certain unionized state government employees was not a bargainable issue; only duty to bargain over impacts), and an exigency defense excusing an employer from bargaining over a mandatory subject of bargaining when extraordinary circumstances beyond the employer's control require it to take action right away and bargain later. *See, e.g. Town of Westborough* and *Holliston School Committee, supra.* The Alliance's reference to the *MCOFU* decision and *Town of Dennis*, 28 MLC 297 (2002) imply that the Alliance's legal obligation to implement GASB 45 accounting mandated its decision to unilaterally alter the MNA-nurses retirement health benefit in a manner analogous to the state's obligation to implement a health care benefit change mandated by the GIC. Nothing in the record supports such a direct causal link. GASB 45 actuarial obligations are, of course, not a bargainable issue. However, implementing GASB 45 did not cause or require a change to the 50/50 split in retirement health benefit premiums for MNA nurses implemented unilaterally at the end of June 2010.

The GASB 45 reporting requirements did, however, impact its financial statements and bottom line. In addition to the actual payments made for retiree health, the thirty-year amortized costs of payments for current employees' future retiree health costs must now be recorded. In 2006, after being apprised of this new reporting requirement, the Alliance commissioned an actuarial study costing out compliance starting in FY 08. The unilateral change in retiree health contributions was announced on June 24, 2010, after having been presented to the MNA for the first time on May 3, 2010. This case, thus, is analogous to *City of Boston*, 33 MLC 1 (2006), *aff'd sub nom. City of Boston* v. *Commonwealth Employment Relations Board*, 453 Mass. 389 (2009). In that case, the Board rejected the City's argument that circumstances outside its control mandated the implementation of a 28-day work period effective July 2002. The Board reasoned that because the federal law that permitted the City to adopt a 28-day work period had been in effect for over a decade, the City had had over a decade to evaluate whether or not to adopt a 28-day work period and bargain upon demand with the Union to resolution or impasse about its decision and the impacts of its decision and, thus, there was no emergency warranting its immediate action. *City of Boston*, 33 MLC at 9. Likewise here, having had four years notice of the GASB 45 impacts, those impacts cannot be viewed as an emergency warranting immediate unilateral action, rather than the completion of the statutory bargaining process. Therefore, we reject the Alliance's argument that it needed to implement the disputed unilateral change before the end of FY 10 for the MNA bargaining unit in order to maintain its overall eligibility for state rate relief and supplemental revenue.

The Alliance also explains that when Healthcare Reform was adopted in Massachusetts in 2006, the Alliance was disadvantaged by the switch from cost-basis compensation for treating the uninsured through the Uncompensated Care Pool to the per-case reimbursement at 70% of the cost through the Health Safety Net. In addition, Medicaid rates were reduced. Those changes largely were responsible for a drop in federal and state support from $216.7 million in FY 07, to $194.3 million in FY 08, to $170.5 million in FY 09, years when the excess/(deficiency) of revenue over expenses worsened from $1.5 million, to ($2.4 million) to ($25.3 million). The Alliance did not assert or present evidence that it was unaware of the negative impacts these changes would cause once Healthcare Reform was adopted. No doubt, as with the adoption of GASB 45, these changes, while very important to the bottom line, do not establish a basis for the pre-June 30, 2010 deadline for negotiations.

The Commonwealth's decisions to freeze rates under the MassHealth contract and to terminate the automatic assignments under the Commonwealth Care contract, and then to "disenroll" aliens with special status effective December 1, 2009, placed still more pressure on the Alliance's bottom line. While the Alliance was not alone in being impacted by cuts made by the state in its attempt to deal with declining revenues, and by declines in inpatient and outpatient volume, the nature of the population the Alliance serves made the impact particularly severe. This required the reconfiguration discussed above. Thus, the Alliance has established that it faced serious economic challenges driven, in large part, by circumstances beyond its control. What is missing, however, is evidence establishing the link between those circumstances and the requirement for this June 24, 2010 deadline for these negotiations with the MNA.

The Alliance contends that it was at risk of its auditor issuing a "going concern opinion" if it did not implement its final MNA retiree health offer in FY 10. The most that can be gleaned from the record on this subject is that the Alliance's auditor told Boudrow that the Alliance would be at risk for a going concern opinion if the Alliance's losses for a third year in a row remained "in the range" of the prior years' losses, i.e., $25.3 million dollars in FY 09. Boudrow admitted that he never explored with the auditor what specific number would give rise to such an opinion or the likelihood of a GCO had the Alliance incurred a loss of only $7 million or $3 million. This is significant, because by the end of FY 10, the Alliance's finances had greatly improved from the much bleaker picture the Alliance described to the MNA in March 2010. In particular, between May 1 and June 30, 2010, the Alliance was able to record a $5.1 million reduction in its overall liability based on a $5.8 million settlement check. Second, by June 30, 2010, the non-bargaining unit employees, and all other bargaining units, except the MNA and the Teamsters, had agreed to the 50/50 retiree health insurance contribution. Notably, the MNA accounted for just one quarter of the 1,400 or so individuals who were currently retired or active employees who could be eligible for retirement health benefits.[30] Thus, even ignoring the MNA, the Alliance could still have recorded a significant reduction in its net liability due to the GASB changes, although not the full $9.2 million the Alliance ultimately recorded for FY10.[31]

Given these improvements, known at the time the Alliance announced the unilateral implementation on June 24, 2010, and the fact that Boudrow failed to explore precisely what range of FY 10 financial results would have caused its auditor to issue a going concern opinion, we conclude that the Alliance has failed to demonstrate that its financial picture at the end of June 30 would have put the Alliance so at risk of an auditor's going concern opinion that a unilateral change in the MNA retiree health benefits was justified. *Commonwealth of Massachusetts*, 13 MLC 1497 (H.O. 1987), *aff'd Commonwealth of Massachusetts*, 14 MLC 1277 (1987) (rejecting employer's claim that it had to eliminate an em-

30. As the Union points out in its brief, there is no record evidence that the Alliance could not have refrained from implementing the retiree health benefits change for MNA and implemented only with respect to non-union personnel and for unions that agreed to the change. That this was a possibility is implicit in an exchange between Boudrow and Alliance counsel, in which Boudrow is asked whether it would have been "statistically significant" to "ignore" the Teamsters in calculating GASB. Boudrow replied that it would not.

31. For reasons that are not clear from this record, the Alliance included the net benefit realized by changing the Teamsters retiree health benefit even though it had not yet agreed to or even begun to bargain with the Teamsters over this change (T-229, 247)

ployee assistance program (EAP) to avoid a nursing shortage that could result in the decertification of the Fernald School, where there was insufficient evidence that actual decertification was imminent or that closing the EAP had any impact on actual nursing shortage).

Finally, the Alliance argues that anything other than a positive ledger balance in FY 10 could cause it to lose the supplemental revenues that the state agreed to seek in December 2008 based on the Alliance's reconfiguration plan. However, in response to a question posed by his counsel to Boudrow concerning what the consequence to the Alliance would be if it did not achieve a $2.5 million surplus in FY 10, Boudrow stated only that the Alliance's ability to demonstrate to the state that it could be a viable and sustainable organization was a "critical component of the State to include the funding in the waiver." That statement, standing alone, is insufficient to support the Alliance's claim that making the GASB changes for MNA employees before FY 10 was an essential part of maintaining its state funds. We note further that the State made the amendment request in March 2010, at a time when the Alliance's finance statements were showing a considerably higher loss than they did as of the end of June 2010. Moreover, as of the hearing date, the State's amendment request had neither been granted or denied, so any claims that the State's waiver request would be denied are sheer speculation and cannot form the basis of an economic exigency affirmative defense.

Notification of Circumstances and Deadline

To support the Alliance's claim under the second prong of the exigency defense, that the MNA had notice of the circumstances and deadline imposed here, the Alliance relies upon information provided at a March 10, 2010 meeting with the MNA and other unions. At that meeting Boudrow laid out the generally dire financial picture, including the GASB impact. The union representatives were informed that the decision to alter the retiree health insurance contribution had already been made and that Keefe would be informing all non-represented employees on the Cambridge public payroll that their share of retiree health insurance would increase from 10% to 50%.

According to the Alliance's minutes of that March 10th meeting, Bennett informed those present that this change only applied to non-union employees "until we bargain with the Unions." Those minutes further state:

> This change is effective on or before June 25, 2010 and must retire by August 31, 2010. All paperwork would need to be submitted on or before June 25, 2010. The Board approved this date for all Non Union employees. This gives us a [chance] to negotiate with the bargaining unions prior to this date. The reason that the date is June 25, 2010 is because we need to get the $14.0M off the books for this fiscal year which ends June 30, 2010. The concern being our auditors. We need to get the loss of $36M of where we are year to date down to be a financially viable organization. We are talking survival at this point.

The minutes further indicate that McManus and others made suggestions for alternatives and that Bennett responded "we would need to look at this and bring this to the table." In response to a question about the date of June 25, 2010 changing, Bennett responded "this needs to be negotiated."

Rather than putting the MNA on notice that the circumstances required that this specific change - and no other - had to be made and that it had to be made by June 25, 2010, the MNA reasonably could have left that meeting with the understanding that the announced change only applied to non-union employees and that any changes for union-represented employees would be negotiated, both as to form and timing.

The initial bargaining proposals put forward by the Alliance in May 2010 contained a proposed change in retiree health insurance identical to that imposed on non-union employees. Moreover, communications from members of the management bargaining team did indicate urgency in scheduling dates for negotiations. The deadline was addressed for the first time in an April 8, 2010 letter, referencing a "goal" of concluding by June 27, and subsequently in an April 14, 2010-email, referencing the Alliance's "urgent need to try and conclude negotiations by June 25." *See* Joint Stipulations 20 and 23.

There is a difference between a "goal" or an "urgent need to try" and a firm deadline required by external forces. Especially in the context of the flexibility indicated at the March 10 meeting, the statements by management are insufficient to put the MNA on notice that the Alliance viewed June 24 or June 25 as such a firm deadline.

Nevertheless, even assuming the Alliance adequately informed the Union of the June 25, 2010 deadline, the Alliance did not explain to the Union that it had some flexibility in the manner in which it implemented these changes, particularly that the stated July 23, 2010 deadline for applying to retire and the August 31, 2010 deadline to actually retire could have been moved to dates in FY 11 or even later, as long as the Alliance could record the plan change on its books by the close of FY 10. While there is insufficient evidence on the record that this would have been a purely "ministerial" act, as the Union argues, we agree with this Union that this information would have more fully explained the circumstances under which the proposed deadline was necessary. Accordingly, we conclude that the Alliance has failed to meet the second prong of its affirmative defense.

Reasonable And Necessary Deadline

Nor has the Alliance met its burden of establishing that the June 24, 2010 deadline it imposed for unilateral implementation of changes in its retirement health benefit premiums for MNA employees was reasonable and necessary "under all the prevailing circumstances." *New Bedford School Committee*, 8 MLC at 1479; *see Trustees of the Univ. of MA. Medical Ctr.*, 26 MLC 149, 159 (2000) (explaining that an employer's notification to the union that it must take action on a date certain requires justification with a compelling, objective reason). A series of factors persuade us that the Alliance has not met its evidentiary burden on this prong of the exigency test. These factors include: 1) the Alliance's longstanding awareness of the fiscal impacts of GASB 45 reporting requirements, as discussed above; 2) the agreement of other Alliance unions to the concession at issue and 3) the Alliance's decision not to

implement the change for at least one other union, the Teamsters who represent the security guards.

The Board previously has rejected an employer's arguments that a date certain to unilaterally implement was reasonable and necessary when the employer either had longstanding knowledge of the circumstances precipitating the unilateral change or where the circumstances permitted greater flexibility in its choice of action than it indicated during bargaining. In *City of Boston*, 33 MLC 1 (2006), we rejected an employer's argument that federal wage and hour law mandated implementation of a 28-day work period without bargaining on a date certain when the employer "had over a decade to evaluate whether or not to adopt a 28-day work period and to notify and bargain upon demand with the union about its decision" and related impacts. *City of Boston*, 33 MLC at 9. In that case, the City of Boston first notified the Union on April 9, 2002 of its intention to implement the 28-day work period on July 6, 2002; notably, federal regulations authorizing such a change had been in place since January of 1987. *Id.* at 3. In *New Bedford School Committee*, the former Labor Relations Commission rejected the school committee's exigency defense that unilateral action to alter its budget by laying off teachers was compelled by the Legislature's enactment of Proposition 2 ½ in 1980. 8 MLC at 1479. On January 9, 1981, subsequent to the enactment of Proposition 2 1/2, the school committee first informed the union that a reduction of force was necessary so that it could curtail previously appropriated expenditures for that fiscal year to avoid entering the following fiscal year with a deficit. *New Bedford School Committee*, 8 MLC at 1473. About two weeks later, after the union asked the school committee to consider whether layoffs could be avoided, the school committee voted to eliminate 53 positions, 18 of which were in the union's bargaining unit. Without reaching impasse and while a range of issues were on the bargaining table, the school committee acted unilaterally on February 12, 1981 and laid off 12 union employees. *Id.* Although the Board indicated that the employer had a need to act expeditiously to avoid further layoffs, it found that there was insufficient evidence to establish that eighteen teachers was the required number and that February 12 was the required date. *Id.* at 1479. Notably, in its analysis of the reasonableness and necessity of the deadline on which the employer asserted it must act, the Board took into consideration facts showing that the employer had significantly more flexibility in its position than it indicated during negotiations, because the employer laid off only 12 individuals instead of the 18 employees it said it had to layoff. *Id.*

Here, the facts reflect that the Alliance was aware of its GASB 45 obligations and its attendant bargaining impacts for at least three contract periods: 2005-2006; 2006-2007 and 2007-2010. It did not even raise the GASB issue in the first two periods. It raised it, but withdrew it, in the negotiations that ended in April 2009, even though by that time, the Alliance was suffering greater than usual losses. The employer's late-in-the-fourth quarter press to unilaterally implement its 50/50 retiree health premium option - a course of action that was merely one of many ways to resolve the budget gap it faced - lacks the requisite level of reasonableness or necessity.

Indeed, the evidence shows that in February 2010, Segal provided three scenarios to the Alliance for changing its retiree health insurance plans Boudrow testified that the Alliance unilaterally chose the plan that required a 50/50 contribution for employees who retired after August 31, 2010, even though the other two plans would have realized a greater reduction in its reported net liability and required an increased retiree contribution of only 20% (as opposed to 50%) when coupled with a higher eligibility age. The MNA was never afforded the opportunity to examine or bargain about the other options Segal developed for resolving the GASB 45 deficit problem.

Furthermore, during the Union's cross-examination, Boudrow indicated that several other alternative courses of action that could have reduced GASB 45's negative impact on the Alliance's balance sheet, e.g., establishing a trust fund to fund the future liability or selling some of the Alliance's assets at a gain, were not considered by the Alliance. Although the Alliance contends in its brief that these unexplored options were not viable or desirable, Boudrow's testimony does not preclude that such steps could have had a positive impact on its balance sheet.

Finally, with respect to the GASB 45 requirements, Boudrow's testimony indicated that the Alliance had a far greater degree of flexibility as to when it actually required employees to apply for retirement benefits or actually retire before being affected by the changes to the contribution rate than the firm deadline indicates. *See New Bedford School Committee*, 8 MLC at 1479 and analysis, above. On cross-examination, Boudrow indicated that making the plan change effective as of June 30, 2010 did not require that the Alliance unilaterally implement by June 30 its decision that the MNA nurses file for retirement using the July 23 and August 31 dates or lose their eligibility for the 90/10 plan benefit. Rather, the testimony shows stated these particular changes could have been be made pursuant to bargaining after the end of the fiscal year. These facts further undermine the necessity of the Alliance acting unilaterally by mandating a change by June 30, 2010. In sum, the evidence presented by the Alliance fails to explain why reducing its retiree health insurance contribution rate on June 24, 2010 by using the 50/50 formula was the only viable option under the prevailing circumstances.

Moreover, the necessity of a June 24 implementation of the 50/50 plan for the MNA nurses loses its urgency given the agreement of other Alliance unions to concede to the benefits - a concession that, ignoring the MNA, could have reduced Alliance's recorded liability by 75% or roughly $7 million dollars for the fiscal year at issue. Also, the reasonableness of the Alliance's decision to make a last and best final offer on June 24 is undercut by the Alliance's decision not to implement in any form the retirement health benefit change for at least one other union - the Teamsters who represent the security guards - during the time the Alliance claims it had to act immediately and unilaterally. Given these factors and the uncertainty that the dire consequences predicted by the Alliance would come to fruition if it did not reach agreement with the MNA by June 30, 2010, as we discussed above, we do not find the pre-June 30 deadline for implementing all aspects of its final offer

without fulfilling its bargaining obligations was reasonable and necessary. *Id.* at 1479.

Conclusion

For the foregoing reasons, we conclude that the Alliance violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unilaterally changing the retiree health insurance benefits of bargaining unit members.

Remedy

The Board's traditional remedy in unilateral change cases is an order that the employer restore the *status quo ante* and maintain the *status quo* until it has fulfilled its bargaining obligations. In this case, as described in the August 18, 2010 ruling, because the Union has already filed a petition for mediation with the Division under Section 9 of the Law, this obligation consists of the Alliance's obligation, under the ninth paragraph of Section 9 of the Law, to refrain from making unilateral changes until the collective bargaining process, including mediation, fact-finding or arbitration if applicable, shall have been completed, as certified by the Division.

Moreover, given the time-critical nature of this decision, we further emphasize the need for the Alliance to post the notice to all bargaining unit members, both in places where MNA members usually congregate and by electronic means by no later than August 30, 2010.

Order

WHEREFORE, based upon the foregoing, it is hereby ordered that the Alliance shall:

1. Cease and desist from:

a) Failing and refusing to bargain collectively in good faith with the Massachusetts Nurses Association over changes to bargaining unit members' retiree health insurance contribution rates.

b) Unilaterally changing the retiree health insurance contribution rates of bargaining unit members represented by the Massachusetts Nurses Association before completion of the collective bargaining process, as set forth in Section 9 of the Law.

c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

a) Restore all terms of the retiree health insurance benefit for all MNA bargaining unit members as in effect prior to the Alliance's unilateral change thereto.

b) Participate in good faith in the collective bargaining procedures, including mediation, fact-finding, or arbitration, if applicable, set forth in Section 9 of the Law.

c) Make whole employees for economic losses suffered, if any, as a direct result of the Alliance's actions, plus interest on any sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly.

d) Post immediately and by no means later than August 30, 2010, in all conspicuous places where members of the MNA's bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, via intranet or email, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees.

e) Notify the Division in writing within ten (10) days of the service of this Decision and Order of the steps taken in compliance therewith.

SO ORDERED.

APPEAL RIGHTS

Pursuant to M.G.L. 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
DIVISION OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH
EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF
MASSACHUSETTS

The Massachusetts Division of Labor Relations, Commonwealth Employment Relations Board (Board) has held that Cambridge Public Health Commission, d/b/a Cambridge Health Alliance (Alliance), has violated Section 10(a)(5), and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by unilaterally implementing changes to retiree health insurance contribution rates without satisfying the bargaining obligation set forth in M.G.L. c. 150E, Section 9.

The Alliance posts this Notice to Employees in compliance with the Board's order.

WE WILL NOT fail and refuse to bargain collectively in good faith with the Massachusetts Nurses Association over changes to bargaining unit members' retiree health insurance rates.

WE WILL NOT unilaterally change the retiree health insurance contribution rates of bargaining unit members represented by the Massachusetts Nurses Association before completion of the collective bargaining process set forth in Section 9 of the Law.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL take the following affirmative action that will effectuate the purposes of the Law:

Restore all terms of the retiree health insurance benefit for all MNA bargaining unit members in effect prior to the Alliance's unilateral change thereto.

Participate in good faith in the collective bargaining procedures, including mediation, fact-finding, or arbitration, if applicable, as set forth in Section 9 of the Law.

Make whole employees for economic losses suffered, if any, as a direct result of the Alliance's actions, plus interest on any sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly.

[signed]
For the Cambridge Health Alliance

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 of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).

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