In the Matter of PENTUCKET REGIONAL SCHOOL COMMITTEE

and

PENTUCKET ASSOCIATION OF TEACHERS/MTA

Case No. MUP-08-5208

54.6131	***early retirement incentives***
67.15	***union waiver of bargaining rights***
67.61	***bargaining with individuals***
91.5	***sufficiency of charge***

October 22, 2010
Kendrah Davis, Hearing Officer

Robert G. Fraser, Esq. *Colby C. Brunt, Esq.*	*Representing the Pentucket Regional School Committee*
Brian A. Riley, Esq.	*Representing the Pentucket Association of Teachers*

HEARING OFFICER'S DECISION AND ORDER

Summary

The issue is whether the Pentucket Regional School Committee (School Committee) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by failing to bargain in good faith with the Pentucket Association of Teachers/MTA (Association) by bypassing the Association and dealing directly with bargaining unit member, Susan Thrope (Thrope) over early retirement financial incentives. Based on the record and for the reasons explained below, I conclude that the School Committee refused to bargain in good faith by bypassing the Association and dealing directly with Thrope, in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Statement of the Case

On April 17, 2008, the Association filed a Charge of Prohibited Practice (Charge) with the Division of Labor Relations (Division) alleging that the School Committee had engaged in prohibited practices within the meaning of Sections 10(a)(1) and 10(a)(5) of Massachusetts General Laws, Chapter 150E (the Law). Following an investigation, Margaret M. Sullivan, Esq., a duly-designated Division Investigator issued a Notice of Hearing (Notice) and Complaint of Prohibited Practice (Complaint) on November 10, 2008, alleging that the School Committee failed to bargain in good faith by bypassing the Association and dealing directly with bargaining unit member Thrope over financial incentives for early retirement. On May 29 and October 9, 2008, the School Committee

filed a Motion to Dismiss the Charge. On November 18, 2008, the School Committee filed its Answer and a Renewed Motion to Dismiss, arguing that "in the interest of justice and the preservation of scarce resources" the Commonwealth Employment Relations Board (Board) should dismiss the Complaint.

Pursuant to Notice, I conducted a hearing on March 24, 2009. The parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence. On June 1, 2009, the parties filed post-hearing briefs. On the entire record, including my observation of witness demeanor, I make the following findings of fact and render the following decision:

Stipulations of Fact

The parties stipulated to the following facts:

1. The School Committee is a public employer within the meaning of Section 1 of the Law.

2. The Association is an employee organization within the meaning of Section 1 of the Law.

3. The Association is the exclusive bargaining representative for all professional teaching personnel employed by the School Committee.

4. Paul Livingston, Ed. D. (Superintendent Livingston) is the Superintendent of the Pentucket Regional School District and an agent of the School Committee.

5. Susan Thrope (Thrope) is a speech language pathologist employed by the School Committee and a member of the bargaining unit referred to in paragraph 3.

Findings of Facts

Bargaining unit member Thrope has been employed by the School Committee for approximately sixteen (16) years, and has been a teacher since 1975. Thrope elected "retirement plus" under the Massachusetts Teachers Retirement System (MTRS). In or around 2008, Thrope was assigned to the Page School in West Newbury, MA, which is part of the Pentucket Regional School District (School District). In or about April of 2008, Thrope was at Master's plus 60, step 15 on the School Committee's salary scale - $69,678.00.

Superintendent Livingston began teaching in 1978. In 1989, he became a school business administrator and then became superintendent for several school districts: in Littleton, Massachusetts for approximately five years; in Walpole, Massachusetts for approximately three years; and, in Nashoba, Massachusetts for approximately five years. Superintendent Livingston has been employed with the School District for approximately three years.

Bargaining unit member Maria Gray (Gray) has been employed as a classroom teacher since 1986 and served as Association Building Representative for ten years. For the last five years, Gray has served as Association President and was on the negotiating team for the current collective bargaining agreement (Agreement) between the School Committee and the Association, which is effective from 2007 to 2010.

On or about February 11, 2008, Superintendent Livingston met with Gray to discuss budget concerns, possible staff reductions for the 2008-2009 school year and Thrope's early retirement. The proposed budget for that school year included a possible reduction in the speech and language department of 1.2 full-time staff members. At the February 11, 2008 meeting, Superintendent Livingston told Gray that he intended to offer Thrope a "buyout." Gray responded to Superintendent Livingston that "he could not do that."[1] Gray recorded on her desk calendar "blotter" the date of her meeting with Superintendent Livingston and the name "S. Thrope." In fact, when testifying, Gray referred specifically to the blotter.

On April 1, 2008, Superintendent Livingston communicated directly with Thrope at the Page School to confirm rumors about Thrope's possible retirement, and to determine whether Thrope was in fact considering retirement. When Superintendent Livingston approached Thrope she was engaged in an Individualized Education Plan (IEP) meeting. Superintendent Livingston motioned to Thrope, indicating that he would like to speak with her. Thrope acknowledged Superintendent Livingston's motion and left the IEP meeting. Once Thrope and Superintendent Livingston were together in the hallway, Thrope suggested that they move the discussion into her nearby office. During the meeting, Superintendent Livingston asked Thrope if she was considering retirement. Thrope responded that she had two more years to go and that her plan was to reach eighty percent (80%), which was the maximum benefit of her retirement formula.

During the April 1, 2008 meeting, Superintendent Livingston and Thrope discussed the MTRS, which is based on a formula of the prospective retiree's highest three years of service. To determine how Thrope's retirement might be calculated into the MTRS, Superintendent Livingston asked Thrope if she was aware of her salary figures, to which she responded negatively. Superintendent Livingston also asked Thrope if she was aware of her years of service, to which she responded that she was unsure. At this point, Superintendent Livingston made a telephone call and asked Kate Sheppard (Sheppard), the payroll employee in the business office, "what was Ms. Thrope's current salary, and what had been her past salaries?"

At the conclusion of the April 1, 2008 meeting, Superintendent Livingston suggested to Thrope that it was possible for her to retire in June of 2008 with a twenty-thousand dollar ($20,000) "buy-out" incentive. Thrope responded to Superintendent Livingston that she would have to think about it and consult her financial advisor. At that point, Superintendent Livingston raised the buy-out incentive to twenty-five thousand dollars ($25,000).

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1. Superintendent Livingston testified that while he may have met with Gray in February of 2008, he did not recall whether they discussed Thrope or an early retirement incentive pertaining to Thrope. Based on the more specific recollection of Gray, and on the documentary evidence proffered, I credit Gray's testimony on this point.

Thrope stated to Superintendent Livingston that if she was interested she would get back to him.

During the April 1, 2008 meeting, Superintendent Livingston memorialized various parts of his discussion with Thrope on a piece of paper. After the April 1, 2008 meeting, Thrope and her girlfriend Joanne made further markings on the paper. Superintendent Livingston's markings include: (1) writing on the top right-hand corner of the document stating salary figures for the fiscal years 2006–2010: $64,235, $66,919, $66,335, $66, 964, $69,678, $71,769, $71,790, $73,92x, and $57,432 (8040); (2) writing on the top left-hand side of the document stating salary figures and percentages: "$48,000 - 80% of 3 highest years salary" and "70% 77% = 51,562.28;" (3) writing in the two boxes located at about the middle of the document stating salary figures and percentages: the first box reads "Retire FY08" and states "?% (Average $66,964)" and "70% $46,874.80?," the second box reads "Retire FY10" and states "80% ($71,790)" and "$57,432;" and (4) writing on the lower left-hand corner of the paper that states salary figures "($20,000, $30,000, $30,000 and $80,000)", which represent the cost savings that the School District would recognize if any senior staff member should retire. Thrope's markings include: (1) writing on the middle right-hand side of the document stating Joanne's name and telephone number; and (2) writing on the middle upper right-hand side of the document stating "at age 58 33 years of service." Joanne's markings include writing on the middle upper right-hand side of the document stating "54,240.56 ← 77.4%."

By e-mail dated April 1, 2008, and after the April 1, 2008 meeting, Superintendent Livingston corresponded with Thrope. This e-mail states, in part:

> Thanks for the conversation this morning. I went back and looked at your file and certainly, without having complete knowledge of your career. I estimate that you would have 33 years of service (if you already or will purchase back some RI time - you can buy back up to 10 years of out of state service) by this June and, at I think approximately the age of 58, you may be eligible for 77.4% of your highest three years' salary from the State's retirement system under Retirement +. Obviously this percentage is quite different from the 70% I was estimating this morning. If you wish to use the district's contact person at the Teacher's Retirement Board to talk to, please let me know. Another good person to talk to, who you may know, is Mary Parry who was a HS English Teacher and Association President here at PRSD. Let me know if we can provide you any information or if we can help.

By e-mail dated April 3, 2008, Thrope informed the Association of Superintendent Livingston's buy-out offer. This e-mail states, in part:

> ...Paul L. offered me a retirement incentive to leave in June this year. This happened on Tuesday. Yesterday, I had a consultation with my financial advisor... She gave me EXCELLENT advice and I need to negotiate for what I want to settle for. It seems best to retire later WITH the package but I would settle for October 13, 2008 on my 58th birthday.
>
> I know I need you to be by my side as I move forward in this vein. Please get in touch...

By e-mail dated April 4, 2008, Thrope corresponded again with the Association, asking for guidance on the buy-out offer. This e-mail states, in part:

> I'm hoping you got my e-mail about Paul's offer for early retirement....
>
> I'd like to meet with you ASAP and I'm hoping you can give me some dates that are convenient for you....
>
> I will be calling MTRS to get a confirmation statement of my years of service. I already did a huge buyback so the information shouldn't require too much investigation. Do you have any power to speed up that end of the process?
>
> I also need to confirm the rate of my last 3 salaried years. I need to find out when I started my salary level at Master's+60....
>
> I hope to get this "negotiation" show on the road if that's what's in the cards for me....

On or around April 4 or 6, 2008, Thrope met with her financial advisor, Ms. Parry and decided against early retirement.

By e-mail dated April 5, 2008, Gray corresponded with MTA Consultant Charles Stevens (Stevens). This e-mail states, in part, "I found out that Paul has offered a Speech and Language (status)a [sic] monetary buyout to entice her to leave....1. Can he arbitrarily offer this to anyone? 2. Are there any guidelines for determining a buyout?"

By e-mail dated April 11, 2008, Thrope corresponded with the Association, expressing her desire to negotiate a counter-offer to the Superintendent's buy-out offer. This e-mail states, in part:

> I don't know ALL the ins and outs of what's going on but my guess is that Paul needs to get clearance from the school committee before he's allowed to give me an offer. Am I correct?
>
> My plan was to negotiate with a counter offer. I don't know if the offer even stands now but the only thing I can do now is wait for my letter of creditable service to arrive from MTRS...When I get a hold of it, I can then do some real figuring....
>
> If nothing works out, it seems that I probably have only **ONE** year left, not two. I guess I was feeling snowed under and thought (for some reason), that I would end on my birthday in 10/2010 instead of 10/2009....

By e-mail dated April 16, 2008, Superintendent Livingston wrote to the Association, asking it to consider a buy-out provision for Thrope. This e-mail states, in part:

> Our contract in Article XXX, Letter G, calls for contractual personnel layoffs to be completed if practicable by May 15th prior to the effective date of any layoff and that the period of time from May 15th to May 30th would be used to work out questions....
>
> Lastly, I would like to consider our options for the Speech and Language Position reduction.... Susan Thrope at Page is the S&L staff member that is nearest retirement. It could be to her advantage to retire one year earlier and to the district's advantage to maintain a staff member, Denise Torti, who wants to stay and knows our system well. Ultimately, we need to cut 1.2 from S&L, so without something happening, we would lose 1.0 Denise Torti and .2 Danielle Oliva (PTS). I think Danielle wants to stay full time and would probably look for a FT job elsewhere as they are pretty easy to find.

> Would the association consider a buy out provision for two individuals - Susan Thrope and Greg Kunkle?....[sic] Obviously it would need to be agreeable to the individuals involved as well as the association and the administration....
>
> Beyond the budget decisions, several non-renewals may be taking place...I would like to talk to you about this process before we proceed. I hope we can set up a time to discuss this.

By e-mail dated May 12, 2008, Stevens wrote to Gray and asked her to provide him with any dates on which she met with Superintendent Livingston concerning the buyout. By e-mail dated the same day, Gray replied to Steven's request and stated, in part:

> I met with Paul on February 11th, 2008, at which time he told me he was going to offer Susan Thrope a buyout...I informed he could NOT do this - it had to be negotiated with the Association.
>
> On April 2, 2008, he offered the buyout to Susan Thrope ([sic] I have notes and email documentation of this and subsequent discussions between Susan Thrope and Paul Livingston.
>
> On April 10, 2008 I went to see the superintendent and confronted him. He told me [sic] had made this offer.[2]

Opinion

A. Renewed Motion to Dismiss

In support of its Renewed Motion, the School Committee argues that: (1) Superintendent Livingston refrained from pursuing the matter of a possible "buy out" as soon as the Association's President rejected it; and/or, (2) the School Committee was under no obligation to negotiate with the Association over any matter not covered by their Agreement as a result of the "zipper clause and waiver" found in Article II, Section D of the Agreement; and, (3) the Charge is defective because the Association failed to respond to items 15 & 16.

The Association did not respond to or oppose the Respondent's renewed motion. After careful consideration, I have decided to deny the Renewed Motion for the reasons set forth below.

1. Zipper Clause

The Board holds that where an employer raises the affirmative defense of waiver by contract, the employer bears the burden of demonstrating that the parties consciously considered the situation that has arisen and that the union knowingly waived its bargaining rights. *Massachusetts Port Authority*, 36 MLC 5, 12 (2009); *Central Berkshire Regional School Committee*, 31 MLC 191, 202 (2005); *Commonwealth of Massachusetts*, 26 MLC 228, 231 (2000); *Town of Marblehead*, 12 MLC 1667, 1670 (1986). The initial inquiry focuses upon the language of the contract. *Massachusetts Port Authority*, 36 MLC at 12; *Town of Mansfield*, 25 MLC 14, 15 (1998). If the language clearly, unequivocally and specifically permits the employer to make the change, no further inquiry is necessary. *Massachusetts Port Authority*, 36 MLC at 12; *City of Worcester*, 16 MLC 1327, 1333 (1989). A "zipper clause" may support a finding of a waiver. *School Committee of Newton vs. Labor Relations Comm'n*, 388 Mass. 557, 569 (1983). A broadly formed clause is too vague to infer a clear and unmistakable waiver by a union over mandatory subjects of bargaining. *Id.* at 569.

Article II, Section D of the parties' Agreement states, "During the term of this agreement neither party shall be required to negotiate concerning any matter affecting wages, hours and other conditions of employment whether or not such matter is covered in the Agreement or as amended, except as indicated in [Section] A, above."[3]

The School Committee argues that by agreeing to the zipper clause, the Association waived its right to bargain during the life of the Agreement over the content of the "buy-out" under the direct dealing claim. While it is possible for a zipper clause to relieve the parties of their obligation to bargain prospectively about new subjects during the term of the contract, that waiver does not authorize the School Committee to deal directly with bargaining unit members. See *City of Westfield*, 25 MLC 163, 166 (1999). Accordingly, I am denying this portion of the School Committee's Renewed Motion to dismiss with prejudice.

2. Charge

The Division's charge of prohibited practice form instructs the charging party to answer all applicable questions and that failure "to provide information *may* result in the dismissal of the charge." (Emphasis added.) The charge form also indicates that "[p]ursuant to 456 CMR 15.04, the Division *will not* issue a complaint unless the charging party has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14." (Emphasis added.) Further, the charge form indicates that the "Division *may* decline to issue a complaint unless reasonable settlement efforts have been made by the charging party 456 CMR 15.04(1)." (Emphasis added).

There are twenty-two (22) numbered sections on the charge form. The School Committee argues that the Association's failure to indicate its remedial request in section 15 and, settlement efforts in section 16, amounts to a "defective" charge. However, review of the Charge shows that while the Association did not respond to section 15, it did respond to section 16 by indicating that settlement efforts were attempted.

Nothing in the Division's Rules and Regulations require that the charging party *must* indicate remedy or settlement as part of the mandatory contents of its charge. [4] Further, the Division's Pro-

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2. Gray testified that the April 10, 2008 meeting with Superintendent Livingston was the same meeting as their April 17, 2008 meeting. Gray also testified that she spoke with Superintendent Livingston on both dates.

3. Article II, Section A of the Agreement states:

Not later than October 15, of the calendar year preceding the calendar year in which this Agreement expires, the Committee agrees to enter into negotiations with the Association over a successor Agreement in accordance with the procedure set forth herein, a good-faith effort to reach agreement concerning teachers' wages, hours, and other conditions of their employment in accordance with Chapter 150E of the Massachusetts General Laws and any subsequent amendments. Any agreement so negotiated will apply to all teachers and will be reduced to writing and signed by the Committee and the Association.

4. 456 CMR 15.02, states that a charge made under 456 CMR 15.00 *shall* contain the following:

hibited Practice In-Person Investigation Procedures (Procedures) "strongly encourage[s]" the charging party to file any documentary evidence specific to the allegations in the charge, including relief sought and settlement proposals; however, nothing in the Procedures mandates that the charging party must file such evidence prior to an investigator's probable cause determination.[5]

Here, the Investigator reviewed the charge and conducted an investigation into the matter on September 18, 2008. Notwithstanding the Association's omission in section 15 of the Charge, after considering the School Committee's May 29, 2008 Motion and, after offering both parties the opportunity to present evidence, the Investigator determined that there was probable cause to issue a Complaint. Accordingly, the Association's failure to indicate its remedial request in section 15 of the Charge does not amount to a "defective" Charge, as alleged by the School Committee and I am denying this portion of its Renewed Motion with prejudice.

Accordingly, I deny the School Committee's Renewed Motion in its entirety.

B. Direct Dealing

It is well-established that the duty to bargain collectively with the employees' exclusive bargaining representative prohibits the employer from dealing directly with employees in the bargaining unit on matters that are properly the subject of negotiations with the bargaining unit's exclusive representative. *City of Lowell*, 28 MLC 157, 158 (2001) (citing *Millis School Committee*, 23 MLC 99, 99-100 (1996)). An employer's direct dealing with the employees in the bargaining unit undermines the effectiveness of the bargaining representative and creates the possibility of conflict between individually negotiated gains and the terms of the contract. *Millis School Committee*, 23 MLC at 100 (citing *Lawrence School Committee*, 3 MLC 1304, 1312 (1976)). An employer's communication with its employees is direct dealing if "its purpose or effect" is 'the erosion of the union's status as the exclusive bargaining representative. *Service Employees International Union, AFL-CIO, Local 509* v. *Labor Relations Commission*, 431 Mass. 710, 715 (2000). Direct dealing is impermissible for at least two reasons. First, direct dealing violates the union's statutory right to speak exclusively for the employees who have elected it to serve as their sole representative. *Suffolk County Sheriff's Department*, 28 MLC 253, 259 (2002) (citing *Service Employees International Union*, 431 Mass. at 715). Second, direct dealing undermines employees' belief that the union actually possesses the power of exclusive representation to which the statute entitles it. *Suffolk County Sheriff's Department*, 28 MLC at 259; *Service Employees International Union*, 431 Mass. at 715. The employer's duty to bargain about mandatory subjects of bargaining goes hand-in-hand with its duty to refrain from bargaining directly with individual employees represented by the union. *City of Springfield*, 17 MLC 1380, 1384-85 (1990).

The School Committee argues that it did not "negotiate" with Thrope, but merely "discussed" her retirement plans and how the MTRS would calculate if she were to consider early retirement. Next, the School Committee argues that Superintendent Livingston was willing to bargain with the Association but the Association failed to respond to his request to bargain. Last, the School Committee argues that Superintendent Livingston directed Thrope to speak with the Association about any questions she had about early retirement. To support its argument, the School Committee relies on *Millis School Committee*, 23 MLC 99 (1996); *Ashburnham-Westminster Regional School District*, 34 MLC 125 (2008); *Commonwealth of Massachusetts*, 25 MLC 48 (1998); and *Lexington School Committee*, 8 MLC 1088 (1981).

In *Millis School Committee*, a bargaining unit member notified the superintendent of his effective retirement date and began receiving an additional 10% of his salary as an early retirement stipend. *Id.* at 99. The bargaining unit member later decided that he would remain employed in the school system, despite the fact that he was already receiving the early retirement stipend. *Id.* The superintendent met with the bargaining unit member and worked out a payment plan, enabling him to pay back the retirement stipend plus the 10%. The bargaining unit member and the school committee entered into a written agreement based on these terms and the superintendent did not inform the union of his dealings with the bargaining unit member. *Id.* The former Labor Relations Commission (Commission) explained that the duty to bargain collectively with the employees' exclusive collective bargaining representative prohibits the employer from dealing directly with employees in the bargaining unit on matters that are properly the subject of negotiations with the bargaining unit's exclusive representative because direct dealing with the employees in the bargaining unit undermines the effectiveness of the bargaining representative and creates the possibility of conflict between individually negotiated gains and the terms of the contract. *Id.* at 100.

The School Committee argues that the distinction here from the *Millis School Committee* case is in that case the Commission emphasized the term "negotiating" and here Superintendent Livingston's conduct toward Thrope was not a "negotiation" but a discussion. *Id.* at 100. Specifically, the School Committee argues that Superintendent Livingston did not offer Thrope an early retirement incentive and did not "negotiate" with her over an early retirement incentive during their April 1, 2008 meeting. Instead,

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(1) The full name and address of the individual, employer, employee or employee organization making the charge and his or her official position, if any.

(2) The full name and principal place of business of the employer, employee or employee organization against whom the charge is made, hereafter called the respondent.

(3) An enumeration of the subdivision of M.G.L. c. 150E claimed to have been violated and a clear and concise statement of all relevant facts which cause the charging party to believe that the Law has been violated.

(4) The respondent shall have the right to file a response within five days after the service of such charge or within such other time as the division may require.

5. The Procedures are not intended to replace or otherwise supplant the Division's Rules and Regulations set forth in 456 CMR 1.00 *et seq.*

the School Committee contends Superintendent Livingston discussed with Thrope rumors surrounding her early retirement and explained to her how the MTRS would calculate her retirement benefit at present and future salary, what the School District projected cost savings would be if she, or any senior staff member were to retire, and various other retirement scenarios. The School Committee notes that after the April 1, 2008 meeting, Superintendent Livingston suggested to Thrope that she follow-up with the Association regarding any remaining retirement questions. The School Committee also points to Superintendent Livingston's April 16, 2008 e-mail to Gray, asking if the Association would consider a buy-out for Thrope. The School Committee argues that the Association's negative response to this e-mail is evidence that no further discussion between Superintendent Livingston and Thrope took place over this issue.

The remaining cases cited by the School Committee are not on point. In *Ashburnham-Westminster Regional School District*, 34 MLC 125, 126 (2008), the union alleged unilateral change and surface bargaining violations, which are not alleged here. Further, while the Board ultimately dismissed the union's charge, it did so after finding that the parties met five days prior to the change and the union had failed to respond to the employer's subsequent request to impact bargain. *Id.* at 126. Here, the Association alleges a direct dealing violation and responded to the School Committee's April 16, 2008 request to bargain.

Finally, the School Committee relies on *Commonwealth of Massachusetts*, 25 MLC 48, 50 (1998) and *Lexington School Committee*, 8 MLC 1088, 1091 (1981). However, the School Committee's reliance on *Commonwealth of Massachusetts* is erroneous because it was reversed by the court in *Service Employees International Union*. The Court held that an "employer's communication with its employees is direct dealing if 'its purpose or effect' is 'the erosion of the [u]nion's status as the exclusive bargaining representative." *Service Employees International Union*, 431 Mass. at 717. The Court held further that "[e]mployers are responsible for the foreseeable consequences of surveys regardless of their subjective intent." *Id. Lexington School Committee* is distinguished because in that case a teacher initiated contact with her principal and informed him that she was suffering from acute back pain and rheumatoid arthritis, which prevented her from starting the school year as planned. The principal then explained her sick leave options and they agreed (without informing the union) that she would share her duties with another teacher during the first half of the year. Here, Superintendent Livingston initiated contact with Thrope on April 1, 2008, and discussed the possibilities of early retirement even after the Association objected to such discussions at the February 11, 2008 meeting.

In this case, the evidence shows that on or about February 11, 2008, Superintendent Livingston informed the Association of his intentions to offer Thrope a buy-out, to which the Association protested. The evidence also shows that on April 1, 2008, Superintendent Livingston met with Thrope and proceeded to negotiate the terms for a possible early retirement in June of 2008. Superintendent Livingston discussed with Thrope her salaries and the calculation of those salaries under the MTRS. Superintendent Livingston then contacted the School District's central office to confirm Thrope's salary information and memorialized her salary figures and percentages on a piece of paper during their meeting. When Thrope indicated that she was uncertain about whether she wanted to retire early, Superintendent Livingston proceeded to offer her two buy-outs in the amount of $20,000 and $25,000. Superintendent Livingston's April 1, 2008 meeting with Thrope, in which he offered her a buy-out in exchange for her early retirement amounts to direct dealing. While the School Committee argues that it did not "negotiate" with Thrope but, instead "discussed" her early retirement, mere nomenclature does not alleviate the School Committee of its obligation to deal exclusively with the Association over mandatory subjects of bargaining, nor does it alleviate the School Committee of its statutory duty to bargain in good faith without dealing directly with bargaining unit members.

Conclusion

For the reasons stated, I conclude that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by bypassing the Association and dealing directly with bargaining unit member Susan Thrope over financial incentives for early retirement.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the School Committee shall:

1. Cease and desist from:

   a. Negotiating directly with employees over matters that are properly the subject of negotiations with the Association.

   b. 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. Upon request, meet and bargain in good faith to resolution or impasse with the Association over the decision to offer financial incentives for early retirement to bargaining unit members.

   b. Sign and post immediately in all conspicuous places where members of the Association's bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the School Committee customarily communicates to its employees 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 Division in writing within thirty (30) days of receiving this Decision and Order of the steps taken to comply with it.

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 A HEARING OFFICER OF THE MASSACHUSETTS DIVISION OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A Hearing Officer at the office of the Massachusetts Division of Labor Relations, has held that the Pentucket Regional School Committee (School Committee) violated Section 10(a)(5), and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to bargain in good faith by bypassing the Pentucket Association of Teachers/MTA (Association) and dealing directly with a bargaining unit member.

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

WE WILL NOT fail to bargain in good faith by bypassing the Association and dealing directly with bargaining unit members.

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:

1) Upon request, meet and bargain in good faith with the Association over financial incentives for early retirement to bargaining unit members.

[signed]
Pentucket Regional School Committee Date

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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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."