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In the Matter of NEWTON SCHOOL COMMITTEE

and

NEWTON PUBLIC SCHOOLS CUSTODIANS  
ASSOCIATION

Case No. MUP-05-4579

52.63 *oral agreements*

52.65 *"meeting of the minds"*

May 22, 2013

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#### HEARING OFFICER'S DECISION'

##### SUMMARY

The issue in this case is whether the Newton School Committee (School Committee or Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by repudiating an oral agreement concerning overtime. Because I find that the parties did not have a meeting of the minds on the issue, I conclude that they did not reach an oral agreement and, thus, no repudiation took place.

##### STATEMENT OF THE CASE

On November 10, 2005, the Newton Public Schools Custodians Association (Association) filed a charge with the Department of Labor Relations (Department) in Case No. MUP-05-4579, alleging that the School Committee had violated Sections 10(a)(5) and (1) of the Law. On April 4, 2007, the Association withdrew certain portions of its charge pursuant to a settlement agreement. Following an investigation, the Commonwealth Employment Relations Board (CERB) on May 28, 2008 dismissed the remaining portions of the charge alleging that the School Committee unlawfully reduced overtime for the Community Education Program (CEP) and the Theater Ink Program. On June 30, 2008, pursuant to 456 CMR 15.04(3), the Association filed a request for review of the CERB's dismissal of the allegation concerning CEP overtime.<sup>2</sup> On May 7, 2010, the CERB issued a complaint of prohibited practice alleging that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) by repudiating an oral agreement when it reduced CEP overtime to four hours at Newton North High

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1. Pursuant to Standing Order 2009-1 and 456 CMR 13.01(1) of the Rules and Regulations of the Department of Labor Relations, the Commonwealth Employment Relations Board, the Department's appellate body, designated hearing officers to preside over hearings and decide the allegations set forth in complaints for prohibited practice charges filed on or before November 14, 2007.

2. The Association did not file a request for review of the CERB's dismissal of the Theater Ink overtime allegation.

School. The School Committee filed an answer to the complaint on June 14, 2010.

I conducted a hearing on March 28, 2011, at which time all parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The parties submitted their post-hearing briefs postmarked on August 10, 2011. Upon review of the entire record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following decision.

*Stipulated Facts*

1. The City of Newton (City) is a public employer within the meaning of Section 1 of the Law.
2. The Newton School Committee (School Committee) is a school committee duly organized in accordance, with law, and as such is the agent of the City for the purpose of bargaining with school employees within the Newton Public Schools.
3. The Association is the collective bargaining representative for a bargaining unit of school custodians and maintenance employees employed by the School Committee and is a public employee organization within the meaning of Section 1 of the Law.
4. The Association has represented the workforce within its current bargaining unit since the late 1960's.
5. The parties have negotiated a series of collective bargaining agreements for the bargaining unit from the late 1960's through and including the present.
6. Newton North High School is one of the buildings within the Newton school system. Newton North High School is cleaned and maintained by members of the workforce represented by the Association.
7. For many years prior to November 2004, custodians at Newton North High School received regular and overtime pay, pursuant to Article XVIII, Section J of the collective bargaining agreement, in connection with the use of the school building during non-school hours under the Community Education Program ("CEP").
8. In November of 2004, a meeting was held regarding overtime including CEP overtime. Present at the meeting were Michael Cronin and Paul Anastasi on behalf of the School Department and Tim Curry and others on behalf of the union [Association].

9. By letter dated June 21, 2005, the School Department issued a memorandum that announced changes with respect to CEP overtime, which were to become effective July 1, 2005.

FINDINGS OF FACT<sup>3</sup>

The Association is the exclusive bargaining representative for certain employees of the School Committee, who perform maintenance and custodial functions, including senior building custodians, permanent intermittent building custodians, building custodians and building maintenance craftsmen. The School Committee and the Association were parties to a collective bargaining agreement, the 2003-2004 Agreement,<sup>4</sup> that remained in effect when the events in question here took place in 2004 and 2005.<sup>5</sup> Also, on November 13, 2006, the parties executed a successor collective bargaining agreement that retroactively covered the period from July 1, 2004 through June 30, 2006 (2004-2006 Agreement).<sup>6</sup>

Unit members provide maintenance and custodial services to twenty-two buildings, including elementary schools, middle schools and high schools. The School Committee, acting through Support Services,<sup>7</sup> subcontracts with various groups who utilize the buildings when classes are not in session. The hourly rates that the School Committee charges those groups vary depending upon whether the users are under the auspices of the School Department (Category A), the City of Newton (Category B), or a private entity (Category C).<sup>8</sup>

Users complete a request/permit (permit) for each building that they want to use, which includes identifying the proposed dates and times, identifying the particular rooms or spaces, and submitting the permit to the building's senior custodian. The senior custodian then estimates the number of custodians and overtime hours,<sup>9</sup> if any, that will need to be assigned, if the Employer allows the user's request, and includes those projections on the form. The senior custodian can decide that the user's request does not necessitate any overtime. If overtime is needed, the senior custodian must assign a minimum of three hours. The Facilities Operations Manager Paul Anastasi (Anastasi)<sup>10</sup> subsequently reviews the user's request and the senior custodian's overtime and staffing projections.<sup>11</sup> When Anastasi approves the user's request, he must also decide whether to allow or to modify the number of overtime hours the senior custodian has projected as necessary to satisfy the user's request. The Association acknowledges that Anastasi can modify the number of overtime hours that the senior custodian has

3. The Department's jurisdiction in this matter is uncontested.

4. The parties concluded negotiations for the 2003-2004 Agreement on November 20, 2003.

5. From January 2004 until April 2005, counsel and various representatives from the School Committee and the Association held fourteen mid-term or side table bargaining sessions.

6. The parties held three bargaining sessions for the 2004-2006 Agreement between May 19, 2005 and June 17, 2005. The parties reached a tentative agreement for the 2004-2006 Agreement on June 17, 2005. The record does not reveal why the parties did not execute the 2004-2006 Agreement until November 13, 2006.

7. Support Services oversees the operations and maintenance of all school buildings.

8. The School Committee also charges parent teacher organizations (PTOs) a special user rate, which includes waiving any fee for them to use school buildings to hold their first five meetings each school year.

9. Pursuant to XVIII, Section F1b of the 2003-2004 and 2004-2006 Agreements, custodians are eligible for overtime assignments on a rotating basis and sign up for overtime opportunities in their particular schools at the beginning of the school year.

10. Anastasi has been the facilities operations manager since June of 2003.

11. Anastasi reviews 1200 to 1300 user requests per year.

estimated as necessary, if Anastasi believes the projected overtime hours are excessive.

The parties refer to this overtime as user fee or permit overtime. Since approximately 1993, all of the collective bargaining agreements between the School Committee and the Association have contained the same language concerning user fee overtime. This language is present in Article XVIII, Section J of both the 2003-2004 and 2004-2006 Agreements. The provision states in pertinent part:

#### J. User Fee Overtime

Users who are now paying user fees in school facilities will continue to pay such fees in amounts sufficient to cover reasonable custodial overtime. Custodians will either be assigned to cover these activities on an overtime basis or will not be so assigned, at the discretion of Support Services.<sup>12</sup> If custodians are so assigned, they will be paid at an overtime rate for a minimum of three hours or for the hours actually worked, and they will perform specified duties related to the user activity; if time reasonably permits, they may also be asked to perform other custodial duties for the hours so assigned. If, in the discretion of Support Services, custodians are not so assigned to cover a user activity on an overtime basis, the user will still be charged a user fee, which, unless otherwise established by a recognized practice of the parties, shall include an amount equal to a minimum of three hours pay at an overtime rate for each custodian reasonably required for such activity. Such amount will be placed in a system-wide pool to compensate custodians for other overtime assignments, exclusive of package overtime, man-out overtime, and overtime related to school athletics.

Two thirds (2/3) of the money in the system-wide pool will be used for custodial overtime in the schools where the funds were generated, and one third (1/3) will be used as determined by Support Services. The School Department will keep track of the pool hours each school year and assign the appropriate hours to custodians beginning on September 1 of the following school year. The number of pool hours generated in the 1995-1996 school year will be assigned during the 1996-1997 school year. If more or fewer pool hours are generated in the 1996-1997 year than in the previous year, the adjustment up or down will be made in the 1997-1998 year, etc. The parties will meet periodically to monitor this system. (Footnote omitted)

#### CEP

The CEP, an arm of the Newton Public Schools, provides educational, social, cultural and vocational programs to adults and children. The CEP regularly uses nineteen out of the twenty-two of the school buildings to conduct their courses, which includes Newton North High School (Newton North).<sup>13</sup> For more than

twenty-years, the Newton North senior day custodian, including the current senior day custodian Timothy Keefe (Keefe),<sup>14</sup> has allotted eight hours of user fee overtime (CEP overtime) on the nights when CEP courses take place.<sup>15</sup> Keefe assigned four custodians an hour of overtime each to prepare for the CEP by: cleaning classrooms and making them orderly, emptying the trash barrels, cleaning the restrooms, and sweeping or vacuuming the school's corridors. A fifth custodian received four hours of overtime in order to open the building for CEP participants and to be present while the CEP courses took place, which included giving directions to participants, delivering any equipment that CEP instructors needed, and responding to other requests. After the CEP courses concluded for the evening, the custodian rearranged furniture in the classrooms, if necessary, tidied and restocked supplies in the restrooms.<sup>16</sup>

#### 2004

Between July 1, 2004 and September 14, 2004, Anastasi reviewed 100 out of 188 permits that various users had requested during that ten-week period. He reduced certain overtime projections that senior custodians had made for twelve of those permits, including at least one overtime projection that Keefe had made at Newton North.<sup>17</sup> On or about September 10, 2004, Keefe called Anastasi to request a meeting in order to discuss the reduction in Keefe's overtime projection. On September 14, 2004, Keefe withdrew his request for a meeting because the Association's legal counsel was pursuing the matter. On September 24, 2004, Barbara Simkowski (Simkowski), the CEP Director, sent a letter to Anastasi and his supervisor Michael Cronin (Cronin), Chief of Operations,<sup>18</sup> stating:

Attached is a copy of a letter I wrote in October 2002,<sup>19</sup> requesting that the custodial staff STOP (emphasis in original) delivering special services to Newton Community Education. I was making an attempt to reduce our costs by reducing our services. I had rearranged things with my staff and faculty in order to have materials delivered to classrooms without custodial assistance.

What ensued was a two-year process during which NONE of these services were cut. Not only that, but none of my costs were cut!<sup>20</sup> I am still paying 8 hours per day for 4 hours of service. Michael Cronin has promised me that we could get some relief, as my part of this process I am much more than willing to begin working without "valet service" to my program. I can deliver the few pieces of equipment myself, or have them picked up by my faculty.

I do not believe that all the rooms are cleaned AFTER we leave them. I have had many teachers from daytime come and complain about things left in their classrooms or tables and chairs left askew, or similar problems that would indicate nothing has changed after

12. During various rounds of successor contract negotiations, the Association unsuccessfully had proposed changes to the language contained in Article XVIII, Section J, to grant the senior custodian at each school the sole discretion to decide how much user fee overtime should be charged.

13. Newton North is the school building where the CEP holds the majority of its courses.

14. The record does not reveal how long Keefe has been the day senior custodian at Newton North.

15. CEP classes typically take place Mondays through Thursdays.

16. CEP courses typically took place between 6 PM and 9 PM.

17. The record does not indicate whether any of the other permits that Anastasi reviewed concerned Newton North.

18. Cronin has been chief of operations for approximately ten years.

19. On October 30, 2002, Simkowski wrote to Support Services claiming that: the CEP had paid for overtime that was not owed; the CEP should receive credit for those payments; and the CEP no longer needed to have a custodian assigned to it on an overtime basis while courses were taking place. The record does not contain Support Services' response, if any, to Simkowski's memorandum.

20. The CEP program has dual revenue sources, with revenue from a revolving account that contains fees that CEP participants pay and with revenue from the system-wide pool of overtime monies, which is referenced in Article XVII, Section J.

our teachers leave the room. We are blamed for things left on the rug, windows left open, doors left unlocked. Presumably, the daytime teachers would not complain if the rooms were truly being checked after we leave.

I have been arguing for two full years that we are being overcharged. Everyone (except the union) has agreed with me. I am hoping that the time has finally come when our charges will be reduced to what is actually needed. We sometimes use Newton South as many hours as we are using Newton North (rarely, but sometimes). We are never overcharged at South [Newton South High School].

On October 4, 2004, Simkowski sent an email message to Keefe<sup>21</sup> stating in pertinent part:

Greetings, I want to remind you that we no longer need special attention or a custodian assigned to NCE [CEP] for the hour or the evening. We are having our teachers pick up their equipment, or delivering ourselves what is needed. We do still need the rooms to be opened, of course.

A man has been sent to help us every night, despite these requests, and we are sending them away each time. Just wanted to save you, and them, the time. My first memo went out to you last week, and this is my second.

On October 12, 2004, a meeting took place between representatives of the Association and the School Committee concerning Simkowski's contentions that CEP overtime at Newton North was excessive,<sup>22</sup> as well as certain other issues concerning user fee overtime.<sup>23</sup> Timothy Curry (Curry), the president,<sup>24</sup> Ernest Peltier (Peltier), the vice-president,<sup>25</sup> Edward Champagne (Champagne) and John Griffin (Griffin) represented the Association, while Cronin, Anastasi, and Paul Stein, the human resources director, represented the School Committee.<sup>26</sup> Keefe also was present and described the services that custodians at Newton North provided to the CEP on an overtime basis. Cronin then proposed that the CEP pay five hours<sup>27</sup> of overtime each night at Newton North, while the Association maintained that seven and one-half or eight hours of overtime each night was necessary. Ultimately, the Association and the Employer agreed to seven hours of CEP overtime at Newton North until November 1, 2004, when the parties would

meet again to discuss the issue.<sup>28</sup> Later that same day, Cronin sent the following letter to Curry:<sup>29</sup>

Thank you for meeting with me, Paul Anastasi, Paul Stein, Tim Keefe, Ernie Peltier, Ed Champagne and John Griffin about the overtime concerns at North. As you know we had a very informative exchange of ideas which resulted in the need for another discussion. We agreed that Support Services would assign 7 hours per day for the Community Education permit (except Saturdays) until November 1 when we will meet again. Hopefully, this meeting will continue to clarify both perspectives on the overtime issues.

On November 2, 2004, the Association and the Employer held a second meeting. Curry and Peltier attended on behalf of the Association, while Cronin and Anastasi attended on behalf of the School Committee. Keefe was also present. Keefe and Peltier described instances where the CEP had left furniture in disarray at Newton North and left computer rooms unlocked. Cronin also asked the Association to respond to its proposal that the CEP pay for five hours of user fee overtime each day at Newton North. The Union still maintained that seven and one-half or eight hours of overtime each night was necessary, and the Employer asked the Association for data to support its position. Cronin also assigned Anastasi to do a study at Newton North to evaluate how many classrooms/areas the CEP used and what custodial services the CEP actually needed. The School Committee did not make any changes to the seven hours of CEP overtime at Newton North.

On November 16, 2004, the Association and the School Committee held a third meeting. Curry, Peltier and Griffin were present on behalf of the Association, while Cronin and Anastasi were present on behalf of the School Committee. Keefe and Peltier both referenced instances where the CEP had moved furniture and did not move it back at the end of the evening. Peltier also noted that the CEP had made requests for assistance from the custodians working at Newton North. The Employer inquired whether the Association had a response to the Employer's proposal of five hours of CEP overtime per night at Newton North. The Association did not make a counter-proposal. Cronin then informed the Association's

21. Simkowski sent a copy of the email message to Anastasi.

22. The Association and the School Committee previously discussed user fee overtime, including CEP overtime, at an October 8, 2004 mid-term bargaining session, the ninth session, but did not agree upon any changes to Article XVIII, Section J at that session.

23. The parties also discussed certain overtime issues concerning the Theater Ink program.

24. Curry, who has worked in the Newton Schools for more than twenty-eight years, is a senior custodian at the Oak Hill Middle School, and has been Association president for twelve years.

25. Peltier, who has worked for the Newton Schools for fifty-one years, is a junior custodian at Newton South High School and has been Association vice-president for twelve years. Peltier also had prior stints as president and vice-president.

26. Cronin had no authority to amend contractual language without first receiving approval from the School Committee and its counsel. However, he previously had resolved certain grievances without receiving prior approval of the School Committee, including grievances about discipline and work performance. Further, he and the Association's representatives had on certain occasions agreed to combine the half-day holidays on the day before Christmas and the day before New Year's into a single day off when such half holidays fell on weekends.

I specifically decline to make a finding as to whether or not Cronin received approval from the School Committee when he entered into an agreement with the Association to settle a promotional bypass by paying the grievant \$2000. Because the parties allegedly reached that agreement in February 2006, Cronin's authority to enter into that settlement agreement, without or without the School Committee's approval, sheds no light on whether Cronin had authority to enter into an oral agreement with the Association in November 2004.

27. Cronin testified that he had wanted to reduce CEP overtime at Newton North from eight hours to three hours. However, Anastasi testified that Cronin proposed to reduce the CEP overtime to five hours. Because Anastasi's notes, which he made contemporaneously with the October 12, 2004 bargaining session, reflect the five hour proposal, I credit Anastasi's testimony on this point.

28. Curry and Peltier testified that the Association and the School Committee agreed to seven hours of CEP overtime in November 2004, while Cronin and Anastasi testified that the parties reached agreement on the seven hours of CEP overtime in October 2004. I credit the testimony of Cronin and Anastasi, because their testimony is consistent with Cronin's October 12, 2004 letter, which is reprinted above, and Anastasi's contemporaneous notes.

29. Cronin sent copies of the letter to Griffin, Keefe, Anastasi and Simkowski.

representatives that he would send them a letter concerning CEP overtime at Newton North.

From November 16, 2004 through June 21, 2005, CEP overtime at Newton North continued to be seven hours per night.<sup>30</sup> At some point during that seven-month time period,<sup>31</sup> Anastasi conducted a two to three week observation of how the CEP operated at Newton North. Specifically, during those two to three weeks, Anastasi went to Newton North from 6:00 PM to 9:00 PM to observe: the location of the rooms/spaces that the CEP used, including the distance between those rooms/spaces, the amount of trash that the CEP left behind in the classrooms, the impact on the restrooms of CEP participants' use, and the frequency in which custodians needed to restock supplies in those restrooms. On certain occasions during that period, Anastasi also went to Newton North at the end of the high school day to observe the state of the classrooms before the CEP courses began in the evening. On other days, he also went to Newton North in the early morning before high school classes started to observe the state of the classrooms/spaces that the CEP had used the night before. On June 21, 2005, Anastasi sent a memorandum to Keefe stating in pertinent part:

Effective July 1, 2005<sup>32</sup> the approved overtime hours for Newton Community Education will be an average of four hours Monday through Thursday. My approved hours were derived from the facts found below and on the tables on page 2 of this memo.<sup>33</sup>

I took the 410 minutes available in an 8 hour run<sup>34</sup> and dividing them by the average number of rooms (30.75) in a run, which equals 13.33 minutes to clean each room.

The hours found in Table #1 came from multiplying 13.33 minutes by the average number of rooms used by Community Education [CEP] Monday through Thursday each week.

I then rounded the number up to the next hour.

The weekend classes do need custodial service to open the building, be present in the general vicinity during classes, cleaning and securing the building. ...

As of July 1, 2005 and continuing, CEP overtime at Newton North has continued to be four hours, Monday through Thursday.

#### OPINION

Section 6 of the Law requires public employers and unions that represent their employees to meet at reasonable times to negotiate in good faith regarding wages, hours, standards of productivity and performance, and any other terms and conditions of employment. The statutory obligation to bargain in good faith includes the duty to comply with the terms of a collectively bargained agreement. *Commonwealth of Massachusetts*, 26 MLC 165, 168 (2000) (citing *City of Quincy*, 17 MLC 1603 (1991); *Massachusetts*

*Board of Regents of Higher Education*, 10 MLC 1196 (1983)). A public employer's deliberate refusal to abide by an unambiguous collectively bargained agreement constitutes a repudiation of that agreement in violation of the Law. *Town of Falmouth*, 20 MLC 1555 (1994), *aff'd sub nom.*, *Town of Falmouth v. Labor Relations Commission*, 42 Mass. App. Ct. 1113 (1997). If the evidence is insufficient to find an agreement or if the parties hold differing good faith interpretations of the language at issue, the CERB will conclude that no repudiation has occurred. *Commonwealth of Massachusetts*, 18 MLC 1161, 1163 (1986).

Here, the Association contends that the parties orally agreed in November of 2004 to reduce CEP overtime at Newton North from eight hours to seven hours, Mondays through Thursdays and that the School Committee repudiated that agreement when it reduced CEP overtime at Newton North to four hours effective July 1, 2005. Conversely, the School Committee asserts that it never agreed that CEP overtime at Newton North would remain fixed at seven hours per night and was not subject to change in the future. In determining whether an employer and a union reached an agreement, the CERB considers whether there has been a meeting of the minds on the actual terms of the agreement. *Town of Ipswich*, 11 MLC 1403, 1410 (1985), *aff'd sub nom.*, *Town of Ipswich v. Labor Relations Commission*, 21 Mass. App. Ct. 1113 (1986). To achieve a meeting of the minds, the parties must manifest an assent to the terms of the agreement. *Suffolk County Sheriff's Department*, 30 MLC 1, 6 (2003). The CERB has long recognized that a meeting of the minds can occur without anything having been reduced to writing or having been signed by either party. *Chief Justice for Administration and Management of the Trial Court*, 35 MLC 171, 173 (2009) (an oral agreement between a public employer and a union is effective and enforceable under the Law if the agreement is otherwise valid) (citing *Service Employees International Union, Local 509 v. Labor Relations Commission*, 410 Mass. 141, 145 (1991)).

Upon review of the record, I conclude that the parties' statements and conduct do not demonstrate a meeting of the minds that CEP overtime at Newton North would remain at seven hours per night on a permanent basis. First, the Association asserts that the parties reached their oral agreement to reduce the CEP overtime from 8 hours to 7 hours in November of 2004. However, the facts before me show that the parties actually reached that agreement on October 12, 2004. On that same date, Cronin sent a letter stating that: "We agreed that Support Services would assign 7 hours per day for the Community Education permit ... until November 1 when we will meet again." The record does not show that the Association ever responded to or challenged the statements that Cronin made in his letter.

30. At mid-term bargaining sessions on December 15, 2004, the tenth session, and April 14, 2005, the thirteenth session, the parties discussed user fee overtime but ultimately made no changes to the language contained in Article XVIII, Section J.

31. The record does not reveal the dates when Anastasi carried out his observations, except that those observations took place at least thirty days prior to June 21, 2005.

32. Anastasi selected July 1, 2005 as the effective date because it coincided with the start of the new fiscal year.

33. Anastasi attached a second page with three tables with the following labels: #1 Community Education Monday through Thursday coverage hours; #2 The four runs that clean the majority of rooms Community Education uses; and #3 The total number of minutes available to clean in an eight hour run.

34. The School Committee has a longstanding practice of assigning custodians to perform certain duties that are referred to as runs, which require custodians to clean certain rooms during specific periods of time.

Although the parties met again on November 2, 2004 and November 16, 2004, the Association provided no evidence of the specific words that Cronin allegedly used at those meetings that caused the Association's representatives to believe that Cronin had agreed that CEP overtime at Newton North always would be seven hours, (see *City of Boston/Boston Public Library*, 26 MLC 215, 217 (2000) (not introducing into evidence specific words that library president used that caused union to believe that he agreed to a smoking lounge)) or even identified the meeting at which Cronin allegedly made those statements. Instead, the Association's witnesses merely testified that they believed that they had a "gentlemen's agreement" with Cronin. However, the key legal inquiry to determine if there is a meeting of the minds is whether both parties have manifested assent and not whether the Association's representatives reasonably believed that a conversation resulted in an oral agreement. See *Town of Hanson*, 39 MLC 158 (2012). Moreover, the only contemporaneous notes of the October and November 2004 meetings that the parties placed into evidence were Anastasi's notes. A review of those notes does not demonstrate that the parties agreed to permanently assign seven hours of CEP overtime per night at Newton North. See *City of Boston/Boston Public Library*, 26 MLC at 217 (concluding that bargaining notes do not show that the parties had agreed upon a possible location for a smoking lounge). Rather, the notes reveal that the Employer had proposed on November 2 and November 16, 2004 to reduce CEP overtime at Newton North to five hours.

Finally, the Employer's conduct was not consistent with the parties having a meeting of the minds that they would assign seven hours of CEP overtime at Newton North on a permanent basis. Compare *Suffolk County Sheriff's Department*, 30 MLC at 6 (promoting unit members on a temporary basis consistent with the parties' oral agreement), and *City of Everett*, 26 MLC 25, 28 (1999)

(fire's chief delivering a verbal warning consistent with oral agreement). Although Cronin continued to permit Keefe to assign seven hours of CEP overtime at Newton North for the eight month period between November 2004 and July 2005, he also directed Anastasi at the November 2, 2004 meeting to evaluate how many classrooms/areas that the CEP used and what services the CEP actually needed. Further, Anastasi carried out that evaluation over a two to three week period at some point after November 2004. If the parties had reached an agreement to permanently assign seven hours of CEP overtime at Newton North in November 2004, there would have been no need for Anastasi to carry out the study.

#### CONCLUSION

Based on the record and for the reasons stated above, I conclude that the School Committee did not violate Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by repudiating an alleged oral agreement to permanently assign seven hours of CEP overtime at Newton North High School.

#### APPEAL RIGHTS

The parties are advised of their right, pursuant to MGL c.150E, Section 11, 456 CMR 13.02(1)(j), and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, the decision shall become final and binding on the parties.

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