

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

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In the Matter of

FRANKLIN COUNTY TECHNICAL  
REGIONAL SCHOOL COMMITTEE

and

FRANKLIN COUNTY TECHNICAL  
TEACHERS ASSOCIATION

Case No. MUP-14-3867

Date Issued: May 31, 2016

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CERB Members Participating:

Marjorie F. Wittner, Chair  
Elizabeth Neumeier, CERB Member  
Katherine G. Lev, CERB Member

Appearances:

Fernand J. Dupere, Esq.	-	Representing the Franklin County Technical Regional School Committee
Matthew D. Jones, Esq.	-	Representing the Franklin County Technical Teachers Association

CERB DECISION ON APPEAL OF HEARING OFFICER DECISION

SUMMARY

1           On October 9, 2015, a Department of Labor Relations (DLR) Hearing Officer issued  
2   his decision in this matter. The Hearing Officer found that the Franklin County Technical  
3   Regional School Committee (School Committee or Employer) failed to offer unconditional  
4   support of a grievance settlement in violation of Section 10(a)(5) and, derivatively Section

1 10(a)(1) of M.G.L c 150E (the Law) when, following the settlement, Superintendent James  
2 Lavery (Lavery) made a formal recommendation to the School Committee's Finance  
3 Subcommittee to fund it but immediately allowed his subordinate, Principal Richard Martin  
4 (Martin) to make a non-funding recommendation. The Hearing Officer ordered the School  
5 Committee to cease and desist from its unlawful behavior and to submit a request for funding  
6 with unconditional support to the School Committee's Finance Subcommittee.

7 The School Committee filed a timely appeal of the decision with the Commonwealth  
8 Employment Relations Board (CERB) claiming legal error and challenging certain aspects of  
9 the remedy. The Union filed a responsive supplementary statement and the School  
10 Committee filed a reply to the Union's response. After considering the hearing record and the  
11 parties' arguments on review, the CERB affirms the decision for the reasons set forth below  
12 but clarifies the remedy.

### 13 Facts

14 The parties stipulated to certain facts and the Hearing Officer made additional findings  
15 of fact that the School Committee did not challenge. We therefore adopt those facts in their  
16 entirety and do not repeat them except as necessary for an understanding of the decision.  
17 Further reference may be made to the Hearing Officer's decision, which is reported at 42  
18 MLC 103, and attached to the slip opinion of this decision.

### 19 Opinion<sup>1</sup>

20 It is well-established that an employer's obligation to seek funding for a collectively-  
21 bargained agreement goes beyond the ministerial act of submitting the request for funding to  
22 the funding authority. Rather, the employer is required to take all necessary steps to fund it,

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<sup>1</sup> The CERB's jurisdiction is not contested.

1 including conveying clearly its unconditional support for the funding, particularly in the face of  
2 expressed opposition. City of Chelsea, 40 MLC 353, 355 MUP-13-2683 (May 29, 2014)  
3 (citing Town of Rockland, 16 MLC 1001, 1006, n. 11, 1007 (June 1, 1989); Worcester  
4 School Committee, 5 MLC 1080, 1083-1085 (MUP-2260) (June 21, 1978)).

5 In concluding that the School Committee had violated the Law, the Hearing Officer  
6 first addressed the threshold question of whether the parties had, in fact, reached a grievance  
7 settlement<sup>2</sup> that the School Committee was bound to support. He found that they had, and  
8 the School Committee does not appeal from this determination. Rather, it disputes Lavery's  
9 obligations under the settlement. The School Committee claims that, although Lavery may  
10 have agreed to "recommend" that funding be provided, it did not agree to the "unconditional  
11 support" that the Hearing Officer found the agreement required. The School Committee  
12 argues that there is a substantive difference between "support" and "unconditional support."

13 As the Union points out however, the "unconditional" support requirement is derived  
14 not from the language of the agreement itself, but by the statutory duty to bargain in good  
15 faith. That duty necessarily includes both parties' duty to uphold the bargain they have  
16 reached, which, for the employer, begins with its obligation to secure and support funding  
17 from the funding body for its costs. See id. Unless that support is unconditional, the statutory  
18 duty to uphold agreements reached as a result of collective bargaining would be rendered  
19 meaningless. Town of Rockland, 16 MLC at 1007 ("To permit the employer to negotiate an  
20 agreement and, after its finalization, to avoid it by failing to take necessary steps to fund it

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<sup>2</sup> The Union filed the grievance at issue after Tammy Hyson (Hyson), a teacher assigned to the business technology shop at the Franklin County Technical School (FCTS) met with the Union president after the other business technology teacher in the shop left to become the vocational curriculum coordinator for FCTS, leaving Hyson as the only business technology teacher in the business technology shop. The Hearing Officer referred to the grievance as the Hyson grievance and we adopt that nomenclature.

1 would permit unilateral repudiation of collective bargaining by the public employer.”)  
2 Accordingly, the fact that the agreement omits the words “unconditional” does not mean that  
3 the Hearing Officer erred when he concluded that the settlement required Lavery to submit a  
4 request to fund a second teacher in the business technology school for the 2014-2105 school  
5 year and to unconditionally support that request.

6 Next, the Hearing Officer considered whether the actions of Lavery and Martin at the  
7 Finance Subcommittee meeting on June 4, 2015 constituted the requisite unconditional  
8 support. He found that they did not based on: 1) Lavery conditioning his support of the  
9 request to fund the settlement by referencing Martin’s opposition; 2) Martin speaking against  
10 funding the grievance settlement; and 3) Lavery not refuting Martin’s opposition.

11 The School Committee challenges this conclusion for several reasons. It first claims  
12 that the Hearing Officer erroneously relied on Lavery’s statement at the Finance  
13 Subcommittee meeting, that he was aware of other business technology programs in other  
14 districts where there was only one instructor teaching the class. Although the Hearing Officer  
15 made this finding, his legal conclusion that Lavery and Martin’s actions lacked the requisite  
16 support was not based on this finding. We therefore reject this argument.

17 Second, the School Committee claims that the Hearing Officer erred by imposing the  
18 same duty of unconditional support on Martin that he imposed on Lavery. The School  
19 Committee points out that, unlike Lavery, Martin did not negotiate the settlement agreement  
20 and none of the cases cited by the Hearing Officer required subordinates to support funding  
21 for a bargained agreement.<sup>3</sup> As the Union points out, however, our case law establishes that  
22 managers or administrators are agents of a public employer whose actions may be imputed

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<sup>3</sup> The School Committee did not appeal from the Hearing Officer’s conclusion that the duty to support funding is applicable to grievance settlements.

1 to the employer itself. See Higher Education Coordinating Council, 25 MLC 69, 71, SUP-  
2 4087 (September 17, 1998). There is no dispute that both Lavery and Martin are agents of  
3 the School Committee. Thus, it was both reasonable and appropriate of the Union to assume  
4 that Lavery's agreement to support funding would include the support of his subordinates.  
5 We agree with the Hearing Officer that, as a policy matter, to permit a subordinate who is  
6 also an agent of management to oppose funding any kind of settlement that had been  
7 negotiated by a direct supervisor would undermine the confidence of unions and employers in  
8 the peaceful resolution of labor disputes. Further, as a practical matter, to hold otherwise  
9 would mean that every agreement the parties entered into must be signed by each person in  
10 the employer's chain of command.

11 Finally, even if Martin were not the School Committee's agent, the Hearing Officer's  
12 conclusion that the School Committee failed to provide the requisite support for the  
13 agreement was also based on Lavery's failure to refute Martin's statements. Our case law is  
14 clear that this silence in the face of opposition, standing alone, constitutes a violation of the  
15 duty to support. Town of Rockland, 16 MLC at 1007. We therefore affirm the Hearing  
16 Officer's decision and address the School Committee's remaining arguments regarding  
17 remedy.

#### 18 Remedy

19 It is well-established that the CERB has "considerable discretion . . . in fashioning an  
20 appropriate remedy." School Committee of Newton v. Labor Relations Commission, 388  
21 Mass. 557, 579 (1983). The CERB's goal in fashioning remedies is to restore the status quo  
22 ante "as nearly as possible by attempting to that which would have existed but for the unfair  
23 labor practice." Id. at 576.

1       The School Committee argues that the Hearing Officer violated the Law when, instead  
2 of merely requiring a notice and posting that the School Committee violated the Law as  
3 alleged, he ordered the "School Committee" to "submit a request for funding the settlement of  
4 the Hyson grievance with unconditional support to the Finance Subcommittee of the Franklin  
5 County Technical Regional School Committee." The School Committee claims that the  
6 Hearing Officer's order (Order) is erroneous for several reasons. First, the allegation was  
7 that the Superintendent, not the School Committee, failed to make an appropriate  
8 recommendation to the Finance Subcommittee. It notes that its process for funding is for the  
9 Curriculum Subcommittee to make a recommendation to the Finance Subcommittee, and  
10 then for the Finance Subcommittee, as an advisory committee, to make a recommendation to  
11 the School Committee. Because the issue never reached the School Committee, the School  
12 Committee argues that it was illogical and beyond the Hearing Officer's authority to order the  
13 School Committee to make a recommendation to the Finance Subcommittee for funding.  
14 The School Committee submits that the appropriate order would be for the School Committee  
15 to order the Superintendent to make the funding recommendation to the Finance  
16 Subcommittee and then, if the Finance Subcommittee approved the request, for them to  
17 forward it to the School Committee to make a final recommendation.

18       We agree with the School Committee, that, as presently worded, Section 2(a) of the  
19 Order fails to distinguish between the School Committee in its capacity as the statutory  
20 employer of the agents whose acts were found to violate the Law, and the School Committee  
21 in its capacity as the funding body. To clarify this, instead of ordering the School Committee  
22 to "submit the request for funding," we order the School Committee to require Lavery to  
23 submit the funding request.

1       The School Committee next argues that Lavery's agreement was limited to seeking  
2 funding for the 2014-2015 school year only and, thus, requiring Lavery to submit a request  
3 for funding the agreement beyond that school year goes beyond the terms of that settlement.  
4 The School Committee also claims that the Order requires the School Committee to fund the  
5 agreement and there is no appropriation for an additional teacher for the subsequent school  
6 year. As modified, however, the Order does not mandate funding; it only orders the School  
7 Committee to require Lavery to submit an unconditional request to fund the settlement of the  
8 grievance. This leaves both the Finance Subcommittee, and, if necessary, the School  
9 Committee, free to exercise their discretion to approve the funding request or not. Further,  
10 the purpose of the agreement was to have Lavery recommend funding for a second  
11 business technology position in 2014-2015, i.e., the upcoming school year. As the Union  
12 points out, the impossibility now of making a recommendation for the 2014-2015 year is  
13 entirely the result of the School Committee's unlawful action. Accordingly, an order to seek  
14 funding for a second business technology position, even if the request must now apply to a  
15 later period, is appropriate because it places the Union, "as nearly as possible" in the position  
16 it would have been in but for the School Committee's unlawful behavior. School Committee  
17 of Newton, 388 Mass. at 576. As to the ability to fund, in analogous circumstances, where  
18 existing appropriations may not be sufficient, the CERB has indicated that an employer's  
19 obligation to support the agreement it makes includes taking all appropriate steps to comply  
20 with the agreement, including if necessary, seeking supplemental appropriations. Town of  
21 Rockland, 16 MLC at 1009, (citing City of Chelsea, 13 MLC 1144, MUP-6211 (September 22,  
22 1986)).

1 Conclusion

2 For the above reasons, we affirm the Hearing Officer's decision and issue the following  
3 Order.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the Franklin  
County Technical Regional School Committee shall:

1. Cease and desist from;

- a) Failing or refusing to bargain collectively in good faith with the Union by failing to unconditionally support any funding requests necessary to effectuate grievance settlements;
- 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 action that will effectuate the purposes of the Law:

- a) Require Laverty to submit a request for funding the settlement of the Hyson grievance with unconditional support to the Finance Subcommittee of the Franklin County Technical Regional School Committee;
- b) Post immediately in all conspicuous places where members of Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the School Committee customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
- c) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.




**SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

  
MARJORIE F. WITTNER, CHAIR

  
ELIZABETH NEUMEIER, CERB MEMBER

  
KATHERINE G. LEV, CERB MEMBER

**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  
DEPARTMENT OF LABOR RELATIONS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT RELATIONS  
BOARD  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

The Commonwealth Employment Relations Board has held that the Franklin County Technical School 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 unconditionally support the request to fund a grievance settlement with the Franklin County Technical School Teachers Association (Union).

Section 2 of the M.G.L. c. 150E gives public employees the following rights:

- to engage in self-organization: to form, join or assist any union;
- to bargain collectively through representatives of their own choosing;
- to act together for the purpose of collective bargaining or other mutual aid or protection; and
- to refrain from all of the above.

The School Committee assures its employees that:

WE WILL NOT fail and refuse to bargain collectively in good faith with the Union by failing to unconditionally support the request to fund grievance settlements with the Union.

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

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

Require the Superintendent of Schools to submit a request for funding of the settlement of the Hyson grievance with unconditional support to the Finance Subcommittee of the Franklin County Technical Regional School Committee.

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For Franklin County Technical School  
Regional School Committee

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

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

FRANKLIN COUNTY TECHNICAL  
REGIONAL SCHOOL COMMITTEE

and

FRANKLIN COUNTY TECHNICAL  
TEACHERS ASSOCIATION

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Case No. MUP-14-3867

Date Issued: October 9, 2015

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Hearing Officer:

Brian K. Harrington, Esq.

Appearances:

Fernand J. Dupere, Esq.	-	Representing the Franklin County Technical Regional School Committee
Matthew D. Jones, Esq.	-	Representing the Franklin County Technical Teachers Association

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1       The issue is whether the Franklin County Technical Regional School Committee  
2 (School Committee or Employer), bargained in bad faith when, following a grievance  
3 settlement, Superintendent James Lavery (Lavery) made a formal recommendation to  
4 the School Committee's Finance Subcommittee to fund the settlement but allowed his  
5 subordinate to immediately make a non-funding recommendation, in violation of Section  
6 10(a)(5) and derivatively Section 10(a)(1) of Massachusetts General Laws Chapter

1 150E (the Law). I find that the School Committee violated the Law in the manner  
2 alleged.

3 STATEMENT OF THE CASE

4 On July 21, 2014, the Franklin County Technical Teachers Association (FCTTA,  
5 or Union) filed a charge with the Department of Labor Relations (DLR) alleging that the  
6 Employer had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law.  
7 The Employer filed a Written Response to this charge on August 5, 2014. Following an  
8 investigation, the DLR issued a Complaint of Prohibited Practice and Partial Dismissal<sup>1</sup>  
9 on October 24, 2014, alleging that the Employer had violated Section 10(a)(5) and  
10 derivatively, Section 10 (a)(1) of the Law by failing to bargain in good faith when Lavery  
11 and Assistant Superintendent and Principal Richard Martin (Martin) failed to offer  
12 unconditional support of a grievance settlement to the School Committee. The  
13 Employer filed an Answer to the Complaint on May 8, 2015.

14 I conducted one day of hearing on May 11, 2015, at which both parties had the  
15 opportunity to be heard, to examine witnesses and to introduce evidence. The parties  
16 filed post-hearing briefs on or about July 17, 2015. Upon review of the entire record,  
17 including my observation of the demeanor of the witnesses, I make the following  
18 findings of fact and render the following decision.

19 FACTS

- 20 1. The School Committee is a public employer within the meaning of Section  
21 1 of the Law.
- 22 2. The Union is an employee organization within the meaning of Section 1 of  
23 the Law.

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<sup>1</sup> Those allegations which were dismissed by the investigator were not appealed to the Commonwealth Employment Relations Board (Board) and are therefore not part of this decision.

1           3.     The Union is the exclusive bargaining representative for all teachers  
2                 employed by the School Committee.

3           4.     The Union and the School Committee are parties to a Collective  
4                 Bargaining Agreement (Agreement) which expires on June 30, 2016.  
5

6                                 FINDINGS OF FACT

7           Franklin County Technical School (FCTS) is a vocational high school where  
8           students spend half of their time in traditional academic classes and the other half in  
9           vocational shops. For example, grades 9 and 11 attend academic classes one week  
10          while grades 10 and 12 attend shop classes, and the following week the schedule is  
11          reversed. There are thirteen shops at FCTS, ranging from electrical, carpentry, welding  
12          and auto body and including business technology. Business technology is a shop that  
13          prepares students for general office work. Generally, there are two vocational teachers  
14          assigned to each shop.

15          At the end of the 2012-2013 school year, Tammy Hyson (Hyson) and Jocelyn  
16          Croft (Croft) were the two teachers assigned to the business technology shop. Croft left  
17          the shop teaching position to become the vocational curriculum coordinator for FCTS,  
18          leaving Hyson as the sole teacher in the business technology shop. Hyson met with  
19          Union President Elyse Cann (Cann) who filed a grievance on the matter on November  
20          13, 2013. Croft resolved the grievance temporarily by placing a substitute teacher in the  
21          business technology shop along with Hyson.<sup>2</sup> Croft then referred the matter to Martin at  
22          the next step of the grievance process.

23          Martin declined to rule on the Hyson grievance. Therefore, the Union next moved  
24          the grievance to Lavery on February 28, 2014. Lavery met with Cann and Hyson on

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<sup>2</sup> Because she was promoted to the position of curriculum director, Croft heard the grievance at step 1.

1 April 1, 2014.<sup>3</sup> At that meeting, the parties agreed to place a specific substitute teacher  
2 in Hyson's shop full time for the remainder of the 2013-2014 school year. Lavery and  
3 Cann also agreed that Lavery would recommend to the Finance Subcommittee of the  
4 School Committee that an additional full time certified or certifiable instructor be hired in  
5 the business technology shop for the 2014-2015 school year. If the Finance  
6 Subcommittee approved Lavery's request, he would make the same request of the full  
7 School Committee.

8 From April 4 through 7, 2014, Cann and Lavery exchanged emails on the  
9 subject of the grievance settlement. Lavery offered edits of a document that Cann had  
10 prepared. Lavery's final email to Cann on April 7 thanked her for getting back to him  
11 on the "proposed compromise," and as a final change, requested deletion of an issue  
12 involving classroom space in the business technology shop. Cann agreed to this  
13 change by subsequent email that same day, and thanked Lavery for reaching a  
14 settlement. There was no evidence of any written or email response from Lavery to  
15 Cann's final April 7, 2014 email. The parties never drafted a written document  
16 memorializing the terms of their agreement.

17 On May 27, 2014, Lavery called for a special session of the Curriculum  
18 Subcommittee of the School Committee to discuss his recommendation to hire a  
19 second business technology teacher for the 2014-2015 school year.<sup>4</sup> At this meeting,  
20 Lavery recommended hiring a second business technology teacher for the 2014-2015

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<sup>3</sup> This meeting started as a hearing of the Hyson grievance but turned into an informal discussion of the best way to resolve the grievance through settlement.

<sup>4</sup> Although the settlement between the parties specified that Lavery's recommendation would be made to the Finance Subcommittee, both sides subsequently realized that the recommendation needed to be presented to the Curriculum Subcommittee first.

1 academic year, but stated that Martin did not agree with this recommendation. Lavery  
2 then yielded the floor to Martin. Martin gave several reasons why FCTS should not hire  
3 a second shop teacher in the business technology shop, including, widely varying  
4 enrollment in the shop and the lack of safety issues present in other shops. The  
5 members of the Curriculum Subcommittee expressed some confusion due to the  
6 conflicting viewpoints of Lavery and Martin, but voted to recommend the hiring of a  
7 second shop teacher in the business technology shop by a vote of three in favor with  
8 one abstention. This action sent the matter to the Finance Subcommittee.

9 The next scheduled meeting of the Finance Subcommittee took place on June 4,  
10 2014. At this meeting, Lavery again recommended hiring a second teacher in the  
11 business technology shop for the 2014-2015 academic year. However, Lavery then  
12 stated that both Martin and School Business Manager Russ Kaubris (Kaubris) were at  
13 the meeting to speak on the matter as well. Kaubris indicated that since the budget for  
14 the 2014-2015 school year had already been set, the only way to fund this position  
15 would be to make cuts somewhere else in the budget.<sup>5</sup> Martin spoke next, stating his  
16 belief that the students in the business technology shop did not require a second  
17 teacher and that in this case, one instructor was capable of teaching two grades during  
18 the same class period.

19 Lavery then spoke in response to a question from a Committee member and  
20 stated that he was aware of other business technology programs in other districts where  
21 there was only one instructor teaching the class. At this point, Cann and Lavery had a

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<sup>5</sup> Although initially the Union argued that Kaubris' comments violated the Law as well, Kaubris was employed directly by the School Committee and had no reporting relationship to Lavery. Therefore, I do not reach the issue of the appropriateness of Kaubris' presentation. I merely note it in the context of Lavery's comments.

1 disagreement over whether the Curriculum Subcommittee had “recommended” hiring a  
2 second teacher for the 2014-2015 school year or had merely “passed over” the issue to  
3 the Finance Subcommittee.<sup>6</sup> A motion was made and seconded to not approve the  
4 hiring of a second teacher in the business technology shop for the 2014-2015 academic  
5 year. This motion passed unanimously. The School Committee did not hire a second  
6 teacher for the business technology shop.

7 Opinion

8 The issue in this case is whether the School Committee failed to bargain in good  
9 faith in violation of Section 10(a)(5) of the Law when Lavery and Martin failed to offer  
10 unconditional support for funding a grievance settlement at the meeting of the Finance  
11 Subcommittee of the School Committee. To make this determination, I must first find  
12 that the parties reached a settlement to resolve the Hyson grievance. Second, I must  
13 determine that the actions of Lavery and/or Martin did not unconditionally support the  
14 terms of the settlement. Finally, if the answer to the first two questions is affirmative, I  
15 must decide whether the lack of unconditional support by Lavery and Martin constitutes  
16 bargaining in bad faith in violation of the Law.

17 The School Committee first argues that Lavery agreed to recommend hiring a  
18 second teacher in the business technology shop for the 2014-2015 school year as a  
19 result of a discussion he had with Cann, but not as part of settlement of Hyson's  
20 grievance. It then argues that there could be no settlement because the parties did not  
21 reduce anything to writing. I disagree. First, oral agreements between labor and

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<sup>6</sup> This dispute arose because the minutes of the May 27, 2014 Curriculum Subcommittee meeting were not yet available on June 4. Those minutes did reflect a recommendation to hire a second instructor.



1 management can be enforceable under the Law. SEIU, Local 509, 410 Mass. 141, 145  
2 (1991). The Board has long recognized that a meeting of the minds can take place  
3 without anything being reduced to writing or signed by either party. City of Cambridge,  
4 35 MLC 183, MUP-04-4229 (March 5, 2009) (citing Town of Ipswich, 11 MLC 1403,  
5 1410, MUP-5248 (February 7, 1985)). It is up to the finder of fact to determine the  
6 intent of the parties to effectuate the terms of the settlement agreement. City of  
7 Cambridge, 35 MLC at 187.

8 It is clear in this case that the parties intended to reach a settlement agreement  
9 and did. At the April 1, 2014 grievance meeting, Cann and Lavery agreed to a two-part  
10 settlement. First, Lavery agreed to assign, and did assign, a specific substitute teacher  
11 full time to the business technology shop for the remainder of the 2013-2014 school  
12 year. Second, at the end of the grievance meeting, Lavery specifically agreed to  
13 recommend to the Finance Subcommittee and if successful there, to the full School  
14 Committee, the hiring of a second full time certified or certifiable teacher in the business  
15 technology shop for the 2014-2015 school year.

16 The School Committee alleges that since further discussion over the terms of the  
17 agreement took place between Cann and Lavery from April 4-7, no actual settlement  
18 occurred. Again, I disagree. Lavery's last email to Cann on the matter, dated April 7,  
19 references the "proposed compromise" and requested only that Cann accept deletion of  
20 a third paragraph regarding space for the business technology shop. Cann agreed to  
21 his request in her final email, and congratulates Lavery for reaching a settlement.  
22 There was no evidence that Lavery responded to her statements by denying that a  
23 settlement existed. Therefore, I find that there was an agreement between Lavery and

1 Cann to resolve the Hyson grievance. Part of that agreement required Lavery to submit  
2 to the Finance Subcommittee a request to fund a second teacher in the business  
3 technology shop for the 2014-2015 school year and unconditionally support that  
4 request.

5 Next, I consider whether the actions of Lavery and Martin at the Finance  
6 Subcommittee meeting of June 4, 2015 constituted the requisite unconditional support.  
7 I find that they did not. According to the terms of the settlement between Lavery and  
8 Cann, Lavery agreed to "recommend" to the Finance Sub-committee that funding be  
9 provided for hiring a second full time certified or certifiable instructor in the business  
10 technology shop for the 2014-2015 school year.

11 It is undisputed that management negotiators have an unconditional obligation to  
12 seek funding for the cost items of collectively bargained agreements, and can be  
13 compelled to do so. Local 1652, IAFF v. Town of Framingham, 442 Mass. 463, 469  
14 (2004); County of Suffolk v. Labor Relations Commission, 15 Mass. App. Ct. 127, 129,  
15 133 (1983), See also, Mendes v. Taunton, 366 Mass. 109, 118 (1974); Town of  
16 Rockland, 16 MLC 1001, 1005, MUP-5603 (April 24, 1989). This obligation includes a  
17 requirement to express support for the funding request in the face of any expressed  
18 opposition. Mendes v. Taunton, 366 Mass. at 118; Town of Rockland, 16 MLC at 1005.  
19 Failure to do so is a clear violation of the Law. Mendes v. Taunton, 366 Mass. at 118  
20 (1974); City of Melrose, 28 MLC 53, MUP-1838, (June 22, 2001).

21 Here, the School Committee did not fulfill its unconditional obligation to seek  
22 funding for the settlement of the Hyson grievance. Martin was Lavery's subordinate  
23 and was similarly bound to seek funding for the settlement. Lavery indicated in his own

1 remarks that Martin was opposed to the settlement, demonstrating prior  
2 knowledge that Martin would speak against funding the second business technology  
3 teacher. Lavery then gave Martin the opportunity to oppose the funding request which  
4 would have resolved the Hyson grievance. The actions of Lavery and Martin  
5 constituted a clear violation of the Law.

6 The sole remaining question is whether the duty to support funding is applicable  
7 to grievance settlements as well as collectively bargained agreements. It is. The Board  
8 has found that the settlement of a court case is functionally equivalent to the settlement  
9 of a collective bargaining agreement in triggering an employer's duty to unconditionally  
10 support any funding request necessary to effectuate that settlement. Board of Trustees  
11 of the University of Massachusetts, Amherst, 30 MLC 52, SUP-02-4890 (January 21,  
12 2004). There is no compelling reason to differentiate the settlement of a grievance from  
13 the settlement of a court case in applying this obligation to an employer.

14 Moreover, adopting the position of the School Committee would not effectuate  
15 the purposes of the Law. To permit a subordinate to oppose funding any kind of  
16 settlement that had been negotiated by a direct supervisor would drastically undermine  
17 the confidence of unions and employers in the peaceful resolution of labor disputes in  
18 general. Such a practice would also impose another layer into the negotiations process.  
19 Simply put, the School Committee failed to bargain in good faith in violation of Section  
20 10(a)(5) of the Law when: 1) Lavery conditioned his support of the request to fund the  
21 Hyson grievance by referencing Martin's opposition; 2) Martin spoke against funding the  
22 grievance settlement; and 3) Lavery did not refute Martin's opposition.

1 CONCLUSION

2 Based on the record and for the reasons explained above, I conclude that the  
3 Employer failed to bargain in good faith in violation of Section 10(a)(5) of the Law.  
4

5 ORDER

6 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the  
7 Franklin County Technical Regional School Committee shall:

8 3. Cease and desist from;  
9

10 c) Failing or refusing to bargain collectively in good faith with the  
11 Union by failing to unconditionally support any funding requests  
12 necessary to effectuate grievance settlements;  
13

14 d) In any like or related manner interfering with, restraining or coercing  
15 employees in the exercise of their rights guaranteed under the  
16 Law.  
17

18 4. Take the following action that will effectuate the purposes of the Law:  
19

20 d) Submit a request for funding the settlement of the Hyson grievance  
21 with unconditional support to the Finance Subcommittee of the  
22 Franklin County Technical Regional School Committee;  
23

24 e) Post immediately in all conspicuous places where members of  
25 Union's bargaining unit usually congregate, or where notices are  
26 usually posted, including electronically, if the School Committee  
27 customarily communicates with these unit members via intranet or  
28 email and display for a period of thirty (30) days thereafter, signed  
29 copies of the attached Notice to Employees.  
30

31 f) Notify the DLR in writing of the steps taken to comply with this  
32 decision within ten (10) days of receipt of this decision.  
33

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

/s/  
BRIAN K. HARRINGTON, ESQ.  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.15, 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 the ten days, this decision shall become final and binding on the parties.