

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	
CITY OF BOSTON	*	Case No.: MUP-15-5004
	*	
and	*	Date Issued: June 21, 2018
	*	
SERVICE EMPLOYEES INTERNATIONAL	*	
UNION, LOCAL 888	*	
	*	

Hearing Officer:

Will Evans, Esq.

Appearances:

Robert J. Boyle, Jr., Esq.	-	Representing the City of Boston
Maureen Medeiros, Esq.	-	Representing SEIU, Local 888

HEARING OFFICER DECISION

SUMMARY

1 The issue is whether the City of Boston (Employer or City) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter
3 150E (the Law) by: (1) failing to credit certain employees who received an upgrade
4 through the compensation grade appeal (CGA) process with back pay to the filing date
5 of their CGA, and (2) changing the job description and/or duties of the Administrative
6 Assistant position in the Disability Unit without providing the Service Employees
7 International Union, Local 888 (Union or SEIU) with prior notice and an opportunity to
8 bargain to resolution or impasse over the decisions and the impacts of those decisions

1 on employees' terms and conditions of employment. Based on the record and for the
2 reasons explained below, I do not find that the Employer violated the Law as alleged.

3 STATEMENT OF THE CASE

4 On December 21, 2015, the Union filed a Charge of Prohibited Practice (Charge)
5 with the Department of Labor Relations (DLR) alleging that the Employer had engaged
6 in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section
7 10(a)(1) of the Law. A duly designated DLR investigator conducted an investigation of
8 the matter on March 29, 2016. On May 26, 2016, the investigator issued a two-count
9 Complaint of Prohibited Practice (Complaint), alleging that the Employer had violated
10 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: (1) failing to credit two
11 employees who received an upgrade with back pay to the filing date of their CGAs,
12 inclusive of their new recommended grade, and (2) changing the job description and/or
13 duties of the Administrative Assistant position in the Disability Unit without providing the
14 Union with prior notice and an opportunity to bargain to resolution or impasse over the
15 decisions and the impacts of those decisions on terms and conditions of employment.¹
16 The Employer filed an Answer to the Complaint on June 21, 2016, admitting to certain
17 allegations and denying certain others.

¹ The DLR investigator dismissed the Union's allegations that the Employer violated the Law by: (1) upgrading the positions of two employees without notice and an opportunity to bargain to resolution or impasse, and (2) repudiating the provisions of the parties' collective bargaining agreement that provide for back pay to the filing date of an approved CGA. The Union filed no appeal of the dismissed allegations.

1 After a pre-hearing conference on February 21, 2017, Will Evans, Esq., a duly
 2 designated Hearing Officer employed by the DLR, conducted a hearing on March 9,
 3 2017, at which both parties had the opportunity to be heard, to examine witnesses, and
 4 to introduce evidence. On April 14, 2017, the parties filed post-hearing briefs. After
 5 careful review of the record evidence and in consideration of the parties' arguments, I
 6 make the following findings of fact and render the following opinion.

STIPULATED FACTS

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1. The City is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive collective bargaining representative for certain City Retirement Board employees in the Disability Unit, including Administrative Assistants.
4. On June 10, 2014, the Union filed Compensation Grade Appeals (CGAs), pursuant to Article 20, Section 4 of the parties' collective bargaining agreement (CBA), on behalf of three Administrative Assistants, Michele Sheets (Sheets) grade RL 16, Tara Jeanetti (Jeanetti) grade RL 15, and Kwai-Tim Lin (Lin) grade RL 15, requesting grade increases to RL 18. On October 30, 2015, the City upgraded Jeanetti and Lin to RL 16.
5. Jeanetti and Lin did not receive back pay to June 10, 2014.

FINDINGS OF FACT

28 The City and Union are parties to a collective bargaining agreement, effective
 29 October 1, 2013 to September 30, 2016 (2013-16 CBA). Article 20, Section 4 provides,
 30 in relevant part, the following:

31 Section 4. Compensation Grade Appeal.

1 (a) For all members of SEIU Local 888 employed in all City departments
2 except the Department of Neighborhood Development, the Elderly
3 Commission and Boston Centers for Youth and Families, the City and
4 Union shall create a joint Compensation Grade Appeal Committee
5 (Committee) comprised of up to two (2) individuals designated by the
6 Union and up to two (2) individuals designated by the City. The Committee
7 shall meet periodically in order to review a claim by the Union that certain
8 position(s) should receive a compensation upgrade. The Committee may
9 ensure that a job audit is completed as part of its review.

10 The Union agrees that any position for which an appeal is made was
11 properly graded on the effective date of this Agreement. In considering an
12 appeal, the Committee shall not examine changes in the job content in the
13 position for which the appeal is claimed that occurred prior to the effective
14 date of this Agreement. Rather, the review shall be restricted to a review
15 on the issue of whether, after the effective date of this Agreement, there
16 was a fundamental and substantial change in the job content of such
17 position that could have the effect of changing its compensation grade.
18 Further, the review shall not consider perceived changes in job duties
19 related to new technology, state or federal mandates, and/or to increases
20 in the volume of work or duties.

21 At the completion of its review, the Committee shall issue a non-binding
22 recommendation to the City relative to the claim. The Union has the right
23 to file and advance a grievance filed over the outcome of such
24 recommendation under and in conformance with Article 7 of this
25 Agreement except that in no event shall such grievance be subject to
26 arbitration without the written agreement of the City of Boston's Office of
27 Labor Relations.

28 In the event that the Committee unanimously recommends an upgrade,
29 written agreement from the Office of Labor Relations shall not be withheld.
30 Such arbitration shall be a de novo proceeding based on the standards set
31 forth in paragraph two (2) of this section. In such arbitration, the
32 Committee's recommendation and deliberations are not admissible.
33 Furthermore, the arbitrator shall draw no inferences or base any findings
34 on the fact that the dispute is before him/her.

35

1 On or about June 4, 2014, three Administrative Assistants in the Disabilities Unit
2 of the City's Retirement Board, Michelle Sheets (Sheets), Tara Jeanetti (Jeanetti) and
3 Kwai-Tim Lin (Lin), completed CGA forms, seeking compensation upgrades. At the
4 time they completed the CGA forms, Sheets was at pay grade RL 16, while Jeanetti and
5 Lin were both at pay grade RL 15; each requested advancement to pay grade RL 18.

6 The CGA form asked employees to describe the duties and responsibilities of
7 their current position, as well as any changes in job content. All three employees stated
8 that they were performing similar, if not identical, duties and that any changes in the
9 content of their positions took place over the past six-plus years. Attached to Sheets'
10 CGA form was the following job description for the Administrative Assistant RL 16:

11 **Administrative Assistant RL 16**

12
13 **Brief Job Description (essential functions of the job):** Responsibilities
14 include the processing of disability applications, the preparation of records
15 for review by the Board, by the Public Employee Retirement
16 Administration and by the Contributory Retirement Appeals Board;
17 performing complete desk review for all disability death claims; calculating
18 benefits for disability retirements and death benefits for survivors.
19 Composes & maintains monthly & annual statistical reports; administers &
20 reports data to PERAC's Restoration to Service Unit. Works closely with
21 the supervisor of the disability unit researching issues relating to disability
22 practices & procedures. Performs other duties & special projects as
23 assigned by senior management and/or board counsel that may entail
24 statistical analysis and/or written correspondence.

25
26 **Minimum Entrance Qualifications:** Applicant must possess at least two
27 (2) years of full time, or equivalent part time, professional experience in
28 work, which involves accurate preparation & maintenance of written &
29 electronic files. Familiarity with public employee retirement law MGL Ch 32
30 is advantageous, especially Sections 6 & 7. Experience on an HP 3000

1 work platform is preferred. The aptitude to converse clearly and to
2 effectively work with staff and the public, as well as, awareness and
3 practice of proper customer relation's skills are required. Adequate skills in
4 Word, Excel & Access are useful.

5
6 An associate's degree in accounting, finance, economics, public
7 administration or business administration, from a certified college may be
8 substituted for one (1) year of workplace experience.

9
10 Boston Residency Required

11
12 On or about June 10, 2014, the Union's field representative, Mari Cooney
13 (Cooney), submitted the completed CGA forms on behalf of the three employees to the
14 Employer. In accordance with Article 20, Section 4(a) of the 2013-16 CBA, a joint CGA
15 Committee was formed to review the appeals and to ensure that a job audit was
16 completed. On or about June 18, 2014, the CGA forms were forwarded to the Office of
17 Human Resources (OHR) who first met with the three applicants on July 29, 2014 and
18 then with the Department Manager on December 9, 2014. Cooney attended both the
19 July 29, 2014 and December 9, 2014 meetings as the Union's representative and
20 advocated on behalf of Jeanetti, Sheets, and Lin.

21 On May 8, 2015, Timothy Smyth (Smyth) emailed staff in the Disability Unit and
22 asked them to look over an updated job description for the Administrative Assistant
23 grade RL 16 position, which provided the following:

24 The Boston Retirement Board provides accurate, timely and consistent
25 guidance and benefits to its members. Reporting to the Manager of the
26 Disability Unit and in accordance with performance indicators such as
27 quality of service and productivity, works in a direct support role for the

1 manager and performs a variety of duties to provide assistance to
2 members including, but not limited to, the following:

- 3
- 4 • Provides end-to-end retirement services from beginning through final
5 disbursement to members and beneficiaries; guides members through
6 the retirement process to ensure the provision of benefit entitlements.
7 Answers telephone and walk-in inquiries regarding disability retirement
8 information.
- 9 • Enters and tracks the progression of the disability retirement
10 applications and death applications in the V3 pension software
11 disability workflow from beginning to end, including medical review,
12 calculations, and retirement workflow.
- 13 • Processes disability applications and involuntary disability
14 applications.
- 15 • Prepares records for review and use by the Retirement Board staff
16 and PERAC, which includes, but is not limited to, photocopying and
17 scanning.
- 18 • Performs complete desk reviews for all disability and accidental death
19 claims; calculating benefits for disability retirements and death benefits
20 for survivors.
- 21 • Requests and researches records and files from departments and
22 agencies to validate data.
- 23 • Composes & maintains monthly & annual statistical reports; drafts full
24 case Regional Medical Panel Reviews.
- 25 • Tracks monthly roster of disability retirement applications; administers
26 & reports data to PERAC's Restoration to Service Unit. Notifies
27 departments of restoration of service of members.
- 28 • Works closely with the supervisor of the disability unit researching
29 issues relating to disability practices and procedures.
- 30 • Works closely with the Retirement Board's legal unit.
- 31 • Reviews and re-routes case files to appropriate Quality Assurance
32 Analyst and Disability Representatives.
- 33 • Calculates creditable service in the V3 pension software.
- 34 • Prepares and processes invoices for service purchases and/or
35 redeposit of refunds.
- 36 • Prepares repayment of accumulated deductions ("2 year rule")
37 invoices.
- 38 • Calculates breaks in service.
- 39 • Determines the non-job earn code reports for service when dealing
40 with ordinary applications.

- 1 • Calculates worker's compensation breakdowns and completes
- 2 worker's compensation history card when applicable.
- 3 • Determines the one year average salaries for accidental disability
- 4 applications and three year average salaries for ordinary disability
- 5 applications.
- 6 • Completes average salary in the pension software.
- 7 • Produces a manual history card, if necessary.
- 8 • Confirms accuracy of account balances in the V3 pension software.
- 9 • Verifies member's contribution rates.
- 10 • Produces a duplicate bill when [the] original is omitted and then
- 11 processes in the pension software: military, service purchase, percent
- 12 makeups and redeposit of refunds.
- 13 • Processes/intakes final papers; counsels members regarding final
- 14 options and assists members in filing paper work.
- 15 • Schedules, attends and records Review Officer Hearings; tracks and
- 16 follows up recommended decisions using spreadsheet.
- 17 • Manually calculates and prepares monthly report for Retirement
- 18 Board meeting containing statistics relative to disability cases as
- 19 required by the Executive Officer.
- 20 • Scans and/or manually copies any and all records needed for
- 21 presentation at Retirement Board meeting.
- 22 • Communicates, both verbally and in writing, with members,
- 23 physicians, attorneys, department heads, personnel officers, outside
- 24 vendors, and other agencies regarding all facets of disability and death
- 25 application or benefits and restoration of services.
- 26 • Scans and/or manually copies any needed file contents for legal staff
- 27 and outside counsel.
- 28 • Acts as a subject matter support staff when required to assist in the
- 29 maintenance and upgrading of the pension software in regard to the
- 30 use of the disability workflow.
- 31 • Performs other duties & special projects as assigned by senior
- 32 management and/or board counsel.
- 33 • Performs related work as required.

34 Minimum Entrance Requirements:

- 35 • Applicants must possess at least two (2) years of full-time, or
- 36 equivalent part-time, professional experience in office management,
- 37 office administration, business administration, or business
- 38 management the major duties of which included work involving the

- 1 processing of claims, the research and maintenance of confidential
- 2 written and electronic files and records, including confidential
- 3 documentation; preparation of reports and statistics, data validation,
- 4 fiscal calculations, and customer service.
- 5 • Familiarity with Massachusetts public employee retirement law and
- 6 regulations, especially sections 6, 7 & 9 of GL Ch. 32, is
- 7 advantageous.
- 8 • The aptitudes to converse clearly and to effectively work with staff
- 9 and the public, as well as the awareness to practice proper customer
- 10 relations skills are required.
- 11 • Ability to exercise good judgment and focus on detail as required by
- 12 the job.
- 13 • Ability to provide quality customer service; to review case files and
- 14 process forms such as disability and involuntary applications and
- 15 disability death claims; to prepare monthly and annual statistical
- 16 reports relative to disability cases; to prepare and maintain a variety of
- 17 records and files; to research records and files; to perform a variety of
- 18 calculations necessary to determine disability benefits.
- 19 • Competence in MS Word, Excel, Access and V3 pension software is
- 20 useful.
- 21 • An associate's degree in accounting, finance, economics, public
- 22 administration or business administration may be substituted for (1)
- 23 one year of workplace experience.
- 24 • Boston residency required.

25 According to Smyth the updated job description had already been reviewed by Michael
26 Collins, the Supervisor of the Disability Unit.

27 On May 27, 2015, Jeanetti responded that she had reviewed the updated job
28 description, along with Sheets and Lin, and wanted to know the next step in the
29 process. Jeanetti did not indicate to Smyth that any of the duties listed in the updated
30 job description were new or not previously performed by the Administrative Assistants.
31 Smyth replied on the same day that the updated job description would be sent back to
32 the CGA group who would act from there.

1 On July 23, 2015, Cooney emailed Ramona Salas, Program Director of the
2 Classification and Compensation Unit in the Office of Human Resources (Salas), Joan
3 Ventura, and Smyth regarding the updated job description and stated the following:

4 I am following up regarding the CGA filed on behalf of the above
5 mentioned in the Retirement Board. In review of the "new job duties", we
6 have many concerns pertaining to the 3 Pages of the job description that
7 was given to the Disability unit members. There were rumors in the
8 department that this was to be graded as RL 16.

9
10 Later in the day, Salas responded to Cooney that they had not completed the CGA
11 process.

12 At some point after July 23, 2015, the OHR denied the CGAs of Sheets, Jeanetti,
13 and Lin; however, an official letter of denial was not issued. In fact, at no point did the
14 three employees or the Union receive written notice that the CGAs had been denied.

15 On October 22, 2015, Smyth emailed the PRC requesting that Jeanetti and Lin
16 be placed at the same grade as Sheets, RL 16, based on equity:

17 We request this change as there are three people doing the same job [one
18 is a RL 16 (Michele Sheets) and the other two are RL 15]. We believe it
19 would be advantageous for there to be equity within the unit at the same
20 grade of RL 16.

21
22 On October 30, 2015, the PRC approved Smyth's request for a change in grades for
23 Jeanetti and Lin to achieve equity within the Disability Unit. Jeanetti, Sheets and Lin all
24 met with Human Resource Manager Shiaka Allen (Allen), who informed them that
25 Sheets' grade was not changing, but Jeanetti and Lin were being upgraded to RL 16.
26 Initially, Allen told them that Jeanetti and Lin would receive back pay to the date the

1 CGAs were filed. Allen also gave each a copy of the updated job description. None of
2 the Administrative Assistants indicated to Allen that any of the duties listed in the
3 updated job description were new or not previously performed by the Administrative
4 Assistants.

5 After learning that the Employer had approved upgrades for Jeanetti and Lin to
6 RL 16, Cooney contacted Smyth on November 5, 2015 regarding the updated job
7 description that the three employees had received. In her email, Cooney stated the
8 following:

9 The Union was never notified regarding a new job description or any information
10 regarding the CGA for these three employees/members of the Retirement Board.
11 We are reaching out to meet to review and discuss the new job description.
12

13 Less than an hour later, Salas, who was copied on Cooney's email to Smyth, replied
14 that she had spoken to Cooney and would go over the updated job description with her.

15 On November 24, 2015, Jeanetti informed Cooney that Allen told her that she
16 had made a mistake. Allen said that Jeanetti and Lin would not receive back pay from
17 the date they filed the CGA Form, but rather from the date when the decision was made
18 to advance them to pay grade 16.

19 On December 21, 2015, the Union filed the Charge in the present case alleging
20 that the Employer had engaged in prohibited practices within the meaning of Section
21 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.
22

OPINION

1
2 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law
3 when it unilaterally changes an existing condition of employment or implements a new
4 condition of employment involving a mandatory subject of bargaining without first giving
5 its employees' exclusive bargaining representative notice and an opportunity to bargain
6 to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations
7 Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations
8 Commission, 388 Mass. 557 (1983); Commonwealth of Massachusetts, 30 MLC 63,
9 SUP-4784 (Oct. 9, 2003), aff'd Secretary of Administration and Finance v.
10 Commonwealth Employment Relations Board, 74 Mass. App. Ct. 91 (2009). The
11 employer's obligation to bargain before changing conditions of employment extends to
12 working conditions established through past practice, as well as those specified in a
13 collective bargaining agreement. Town of Andover, 28 MLC 264, 268, MUP-1012 and
14 MUP-1186 (Feb. 7, 2002) (citing City of Gloucester, 26 MLC 128, 129, MUP-2180
15 (March 1, 2000); Town of Wilmington, 9 MLC 1694, 1699, MUP-4688 (March 18,
16 1983)).

17 To establish a unilateral change violation, the charging party must show that: (1)
18 the employer changed an existing practice or instituted a new one; (2) the change
19 affected a mandatory subject of bargaining; and, (3) the change was implemented
20 without prior notice and an opportunity to bargain to resolution or impasse. Town of

1 Andover, 28 MLC at 268 (citing Commonwealth of Massachusetts, 27 MLC 70, 72,
2 SUP-4503 (Dec. 6, 2000); City of Boston, 26 MLC 177, 181, MUP-1431 (Mar. 23, 2000);
3 Massachusetts Port Authority, 26 MLC 100, 101, UP-2624 (Jan. 14, 2000)).

4 Wages, job duties, and workloads are mandatory subjects of bargaining. See
5 Commonwealth of Massachusetts, 28 MLC 36, 40, SUP-4345 (June 29, 2001) (job
6 duties and workload are mandatory subjects of bargaining); City of Springfield, 11 MLC
7 1116, MUP-5365 (August 15, 1984) (creating a "light duty" job description for officers
8 returning from injury leave is a mandatory subject of bargaining); Agawam School
9 Committee, 10 MLC 1003, MUP-5030 (June 10, 1983) (requiring guidance counselors
10 to call absent students was a new job duty and affected a mandatory subject of
11 bargaining). The charging party bears the burden of proving the workload impacts of an
12 employer's unilateral change, and the Commonwealth Employment Relations Board
13 (CERB) will not infer such an impact based solely on evidence that a change has
14 occurred. Town of Winchester, 42 MLC 332, MUP-13-3289, (June 23, 2016) (citing
15 Town of Seekonk, 14 MLC 1725, 1730-31, MUP-6131 (May 10, 1988)).

16 **1. Count 1: Crediting Upgrade with Back Pay**

17 To determine whether a binding past practice exists, the CERB "analyzes the
18 combination of facts upon which the alleged practice is predicated, including whether
19 the practice has occurred with regularity over a sufficient period of time so that it is
20 reasonable to expect that the practice will continue." Commonwealth of Massachusetts
21 30 MLC at 64. While the CERB "inquires whether employees in the unit have a

1 reasonable expectation that the practice in question will continue," City of Westfield, 22
2 MLC 1394, 1404, MUP-9697 (H.O. Jan. 10, 1996), aff'd, 25 MLC 163 (April 20, 1999),
3 the CERB also focuses on the fact that "[a] past practice is a practice which is
4 unequivocal, has existed substantially unvaried for a reasonable period of time and is
5 known and is accepted by both parties." Town of Dedham School Committee, 5 MLC
6 1836, 1839, MUP-3002 (Nov. 14, 1978).

7 In the present case, it was undisputed that Jeanetti and Lin filed CGAs in June
8 2014 and were upgraded to R-16 in November 2015; however, the parties disputed
9 whether the upgrades were done pursuant to the CGA process in the CBA. The Union
10 argued that, prior to the upgrades of Jeanetti and Lin, the City had a long-established
11 practice of compensating employees who filed approved CGAs with back pay to the
12 date the CGAs were filed. The Union contended that, since the City failed to send notice
13 of denial, the CGAs of both Jeanetti and Lin should be treated as approved. In support
14 of this contention, the Union argued that neither the CGA log nor any of the City's
15 witnesses could state when the CGA Committee had made the denial decisions.
16 Conversely, the City argued that the CGAs of Jeanetti, Lin and Sheets were denied in
17 accordance with the parties' CBA. However, in order to obtain departmental equity,
18 Jeanetti and Lin received upgrades outside the CGA process. Since Jeanetti and Lin
19 did not receive upgrades through the CGA process, the City contended that they were
20 not entitled to back pay to the date their CGAs were filed. Furthermore, the City

1 disputed whether the Union presented sufficient evidence to establish a past practice of
2 always paying CGA increases retroactive to the date of filing.

3 Upon review of the record, no evidence was produced to suggest that the CGA
4 Committee, in fact, approved the appeals of Jeanetti and Lin. To the contrary, the
5 evidence presented at hearing indicated that the CGAs of Jeanetti, Lin and Sheets were
6 denied. Although the CGA log did not provide the date of the decision, it clearly stated
7 under the decision column that each appeal was denied. Although the CBA did not
8 address the manner in which the CGA Committee must give notice of its decision, the
9 Employer conceded that notice of the denials should have been issued to Jeanetti, Lin,
10 Sheets and the Union.

11 Based on the email sent by Smyth on October 22, 2015 and the CGA log, as well
12 as witness testimony at hearing, the evidence supported the Employer's contention that
13 Jeanetti and Lin received department upgrades for internal equity only and not through
14 the CGA process.² Because the upgrades were outside the CGA process, I need not
15 decide the issue of whether there is a past practice of compensating employees who
16 filed approved CGAs with back pay to the date the CGAs were filed. As the CGAs of

² The issue of whether the Employer violated the Law by implementing a unilateral change in pay grades for Jeanetti and Lin without giving the Union notice and an opportunity to bargaining to resolution or impasse is not before me. Furthermore, the Union did not seek rescission of the upgrades given to Jeanetti and Lin for internal departmental equity.

1 Jeanetti and Li were denied, they are not entitled to back pay to the date the CGAs
2 were filed.³

3 **2. Count 2: Changing Job Description and/or Duties**

4 It is indisputable that the Employer changed the existing job description for the
5 Administrative Assistant position. As part of the CGA process, Sheets, Jeanetti and Lin
6 submitted a detailed list of the duties and responsibilities for their current positions, as
7 well as a description of any changes in the job content for their positions. Based on the
8 information contained in the CGAs, the Employer updated the job description to reflect
9 what the Administrative Assistants were actually doing on the job.

10 Although the Employer changed the existing job description, the change did not
11 affect a mandatory subject of bargaining. After reviewing the updated job description,
12 none of the Administrative Assistants indicated either to the Employer or to the Union
13 that the duties contained in the updated job description were new or not previously
14 performed by the Administrative Assistants. Furthermore, no such evidence or
15 testimony was produced at the hearing. To the contrary, the evidence at hearing
16 suggested that the Employer issued the updated job description to reflect the duties that
17 the Administrative Assistants were actually performing. Similarly, no evidence was

³ No evidence was introduced regarding a past practice of granting back pay for upgrades for internal departmental equity.

1 produced to show that the changes in job description impacted workloads. Not one
2 witness testified that workloads increased as a result of the updated job description.

3 Under such circumstances, the change in the job description did not affect a
4 mandatory subject of bargaining because the change did not impact employees' terms
5 and conditions of employment. Contrast School Committee of Newton v. Labor
6 Relations Commission, 388 Mass. 557, 564 (1983) (a public employer is required to
7 bargain over the impact of a managerial decision if it affects employees' wages, hours,
8 and other terms and conditions of employment). Without proof that the updated job
9 description increased unit members' workloads or impacted any other mandatory
10 subject of bargaining, I must dismiss this count of the Complaint. See City of Boston, 8
11 MLC at 1434-35 (CERB found no unilateral change violation after union failed to prove
12 that employer increased workload beyond the existing parameters); Town of
13 Winchester, 42 MLC 332, MUP-13-3289, (June 23, 2016) (citing Town of Seekonk, 14
14 MLC 1725, 1730-31, MUP-6131 (May 10, 1988) (holding that CERB will not infer
15 impacts based solely on evidence of a change).

16 Finally, no evidence was introduced and no witness testified that the actual job
17 duties of the Administrative Assistant position changed after the Employer issued the
18 updated job description. According to Jeanetti, Sheets and Lin in their CGAs, there had
19 been changes in job duties previously; however, those changes occurred over the past
20 six-plus years. The Union presented no evidence to establish that a change in actual job

1 duties occurred within six month of filing the Charge. Accordingly, without proof that the
2 Employer changed the actual job duties of the Administrative Assistants within six
3 months of the filing of the present Charge, I must dismiss this allegation in the
4 Complaint.

5 CONCLUSION

6 For the reasons stated above, I conclude that the Employer did not violate
7 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by (1) failing to credit
8 certain employees who received an upgrade through the CGA process with pack pay to
9 the filing date of their CGA or (2) changing the job description and/or duties of the
10 Administrative Assistant in the Disability Unit without providing the Union with prior
11 notice and an opportunity to bargain to resolution or impasse over the decisions and the
12 impacts of those decisions on employees' terms and conditions of employment.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



WILL EVANS, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.