

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	
	*	
WEYMOUTH SCHOOL	*	Case No. MUP-19-7645
COMMITTEE	*	
	*	
and	*	Date Issued: September 20, 2021
	*	
WEYMOUTH EDUCATORS	*	
ASSOCIATION	*	
	*	

Hearing Officer:

Timothy Hatfield, Esq.

Appearances:

Joseph A. Emerson, Jr., Esq. - Representing the Weymouth School Committee

Matthew D. Jones, Esq. - Representing the Weymouth Educators Association

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Weymouth School Committee (School
2 Committee or Employer violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
3 Massachusetts General Laws, Chapter 150E (the Law) by failing to provide the
4 Weymouth Educators Union (Union) with notice and an opportunity to bargain to
5 resolution or impasse over the impacts of the implementation of the Advisory Program at
6 the Abigail Adams Middle School (Adams) on the workload and job duties of its bargaining

1 unit of paraprofessionals. I find that the School Committee did not violate the Law in the
2 manner alleged.

3 Statement of the Case

4 On October 21, 2019, the Union filed a charge of prohibited practice with the
5 Department of Labor Relations (DLR) in Case No. MUP-19-7465, alleging that the School
6 Committee violated Section 10(a)(5), and, derivatively, Section 10(a)(1) of the Law. A
7 DLR investigator investigated the charge on January 6, 2020. On January 30, 2020, the
8 investigator issued a complaint alleging that School Committee violated Sections 10(a)(5)
9 and, derivatively, Section 10(a)(1) of the Law by failing to bargain to resolution or impasse
10 over the impacts of its decision to implement a student program called the Advisory
11 Program¹ on workload, and job duties of members of the paraprofessionals bargaining
12 unit and workload, job duties and non-active duty time of members of the administrators'
13 bargaining unit.² The School Committee filed its answer on February 7, 2020.

14 I conducted a hearing on December 3, 2020.³ Both parties had an opportunity to
15 be heard, to call witnesses and to introduce evidence. The parties submitted their post-
16 hearing briefs on February 19, 2021. Upon review of the entire record, including my

¹ The investigator dismissed the remaining allegations in the case alleging that the School Committee violated Section 10(a)(5) of the Law by implementing the Advisory Program without providing the Union with an opportunity to bargain to resolution impasse.

² In a November 16, 2020 email, the Union withdrew the allegations pertaining to the administrators' bargaining unit.

³ I conducted the hearing remotely pursuant to Governor Baker's teleworking directive to executive branch employees.

1 observation of the demeanor of the witnesses, I make the following findings of fact and
2 render the following opinion.

3 Stipulated Facts

- 4 1. The Respondent is a public employer within the meaning of G.L. c.150E (“the
5 Law”), §1.
- 6
- 7 2. The Charging Party is an employee organization within the meaning of §1 of the
8 Law.
- 9
- 10 3. The Charging Party is the exclusive representative of a bargaining unit of certain
11 administrators (Unit B) and paraprofessionals (Unit D) employed by the Weymouth
12 School Committee.
- 13
- 14 4. At the start of the 2019-2020 school year, the Respondent implemented an
15 “Advisory Program” at the Adams Middle School to develop healthy peer to peer
16 and adult to peer relationships in the building.

17 Findings of Fact⁴

18 The Union is the exclusive bargaining representative for three units of employees
19 who work in the Weymouth public schools. The bargaining units include: teachers,
20 guidance counselors, adjustment counsellors, nurses, specialists, librarians, and long-
21 term substitutes in Unit A; deans, directors, and assistant principals in Unit B; and
22 paraprofessionals in Unit D. The School Committee and the Union are parties to separate
23 collective bargaining agreements for the three units.

24 History of the Advisory Program

25 In or about the Fall of 2018, the Employer proposed implementation of a student
26 program known as the Advisory Program at the Adams, which then consisted of students
27 in grades five and six. The goal of the Advisory Program was to promote students’ social

⁴ The DLR’s jurisdiction in this matter is uncontested.

1 and emotional growth by having them meet in small groups with individual Unit A
2 members to foster connections outside of an academic setting. The Union subsequently
3 filed a grievance on behalf of its Unit A members protesting the proposed implementation
4 of the Advisory Program. The Union and the Employer agreed to resolve the grievance
5 at Step 1 of the contractual grievance procedure by rolling the issue into the successor
6 contract negotiations for Unit A. As part of successor contract negotiations, the parties
7 agreed to include the following provision concerning the Advisory Program in Unit A's two
8 consecutive collective bargaining agreements:⁵

9 Article XVI (K)

10 **Adams Advisory** [Emphasis in Original]: The parties agree to convene a
11 Joint Labor Management Subcommittee for the purpose of discussing
12 potential changes to the Advisory [P]program at Adams Middle School. The
13 Subcommittee shall consist of three (3) members appointed by the
14 Association and three (3) members appointed by the School Committee.
15 The Subcommittee shall have its first meeting no later than March 1, 2019.
16 The Subcommittee shall have until June 30, 2019 to submit non-binding
17 recommendations back to the parties for further negotiations.

18 April and May 2019

19 In April 2019, the Union and the Employer convened the first meeting of the Joint
20 Labor Management Subcommittee (JLMS) to discuss potential changes to the Adams'
21 Advisory Program, as referenced in Article XVI (K) above. The Employer's
22 representatives on the JLMS were Adams' principal Matthew Meehan (Meehan),⁶ School

⁵ In 2020, the Employer and the Union agreed to collective bargaining agreements for Unit A that, by their terms, were for the periods September 1, 2018 through August 31, 2019 (2018-2019 CBA) and September 1, 2019 through August 31, 2022 (2019-2022 CBA).

⁶ Meehan had been the Adams principal for six years.

1 Committee member Rebecca Sherlock-Shangraw and Kelly Burke (Burke)⁷, a school
2 adjustment counselor at the Adams and a Unit A member.⁸ The Union selected Patricia
3 Chandler (Chandler), a Unit A member and a math teacher at the Adams, Michael O'Dea
4 (O'Dea), a Unit A member and a humanities teacher at the Adams, and Tina Conte
5 (Conte), then a science teacher at the West Chapman Middle School, the Union's
6 secretary and a member of its executive board,⁹ as its representatives on the JLMS.¹⁰ The
7 JLMS' members met approximately six times between April and early June 2019 with a
8 deadline of June 30, 2019 to make recommendations in order that the Employer could
9 implement the Advisory Program for the 2019-2020 academic year.¹¹ Meehan took notes
10 of the meetings on his laptop computer and posted those notes as Google docs on Google
11 drive, where all JLMS members could access the notes, make changes to the notes, or
12 print out the notes. Meehan compiled the agendas for the meetings by consulting with
13 the other JLMS members at the end of each meeting about which topics that they wanted
14 to discuss at the next meeting. At the second meeting, Meehan indicated that after the

⁷ Burke had worked at the Adams for sixteen years.

⁸ Superintendent Jennifer Curtis-Whipple (Superintendent Curtis-Whipple) selected Meehan and Sherlock-Shangraw and Meehan selected Burke, with whom he previously had worked on the proposed advisory program in 2018, for the JLMS.

⁹ Conte had been a science teacher for seventeen years, was the Union secretary, and a member of the Executive Board. At the hearing, Union president Michael Murphy, (Murphy) described Conte as the representative of the Union leadership on the JLMS.

¹⁰ At hearing, Murphy indicated that he did not expect that the Adams' Advisory Program would involve Unit D members, and thus, did not select a Unit D member for JLMS.

¹¹ Murphy confirmed that he was aware that the Employer had a timeline of June 30, 2019 for the JLMS to complete its work, and that the Employer had a goal of implementing the Adams' Advisory Program in September 2019.

1 JLMS agreed upon recommendations for the Advisory Program, it was unlikely that the
2 JLMS would meet again. Meehan noted that he was going to submit the JLMS'
3 recommendations to the Superintendent, that he expected that she would accept the
4 recommendations without requesting changes, and that the June 30, 2019 deadline was
5 still in place

6 The topics that the JLMS discussed at the six meetings included: a) when the
7 Advisory Program should take place during the school day; b) whether the entire school
8 should participate in the Advisory Program at the same time or whether it should take
9 place at different times; c) which spaces in the Adams could be used for the Advisory
10 Program; and d) which groupings of students would be most beneficial to achieve the
11 goals of the Advisory Program. The JLMS agreed that the Advisory Program should take
12 place for twenty-five minutes on Wednesdays and that afternoon homeroom should be
13 eliminated. The members also discussed how the groups should no contain no more
14 than twelve students, and that to achieve that number, the Employer would need to utilize
15 all Adams' staff members, including teachers, other non-teacher members of Unit A,
16 administrators, paraprofessionals, custodians, and food service workers, to run the
17 groups. Also, the JLMS discussed how staff members would be able to access the
18 records of students in their groups via the ASPEN student information system. During
19 the period that the meetings were taking place, Murphy regularly would inquire of Conte
20 as to how the JLMS was proceeding, and she would inform him that the meetings were
21 still ongoing.

1 June 2019

2 On June 3, 2109, Meehan requested that Conte come to his office to review and
3 execute the following memorandum (June 3, 2019 memorandum), which was on Adams'
4 letterhead:

5 **To:** Dr. Jennifer Curtis-Whipple
6 **From:** Matthew Meehan
7 **Date:** June 3, 2019

8
9 **Background**

10 The Middle School Advisory Collaboration Group was formed via contract
11 negotiations and charged with collaboratively crafting how advisory would
12 be implemented at the middle level (Abigail Adams Middle School). The
13 team met weekly at Abigail Adams since April 29, 2019. All meeting
14 agendas and minutes are located in a shared drive.

15
16 **Members of the Advisory Group**

17 Matthew Meehan-Principal
18 Kelly Burke-Counselor'
19 Patricia Chandler-Math Teacher and Union Representative
20 Tina Conte-Science Teacher and Union Representative
21 Michael O'Dea-Humanities Teacher and Union Representative
22 Rebecca Sherlock-Shangraw-School Committee member

23
24 **Goal:** What is the point? What is our goal?

- 25
- 26 • Connectedness-development of healthy peer to peer and adult to peer
27 relationships in the building.
 - 28
 - 29 • For a child to have a connection with an adult in the building other than their
30 academic teacher.
 - 31
 - 32 • A mechanism for meeting students' developmental needs and delivering
33 social emotional learning.
 - 34
 - 35 • Actively pursue a reduction in conflict and aggression between students and
36 reinforce our positive behavior system we have in place.
 - 37
 - 38 • Increase academic performance and confidence.
 - 39
 - 40 • Advisory may serve as a safety net that meets the needs of children who
41 may have otherwise gone unnoticed and unsupported.
 - 42

1 **Implementation**-The Advisory collaboration group discussed and crafted
 2 each of the following subcategories coming to consensus on each after
 3 debating pros and cons. Details were discussed and resolutions brought
 4 and reviewed at each meeting.

5
 6 **Advisory Groups**

7 Small groups, approximately 12 students in each.

8 All staff utilized building wide.

9 Non-academic.

10 All student information will be shared via Aspen.

11 Advisory will be placed on the master schedule and show up as a non-
 12 academic class on student and teacher schedules.

13 Grade 5 teachers will have 6th grade students.

14 Grade 6 teachers will have 5th grade students.

15 Exploratory teachers¹² and support personnel¹³ will carry both.

16
 17 *Rationale*-Grouping students this way forms the smallest groups and
 18 provides for the most equitable implementation.

19
 20 **Frequency**

21 Advisory will be once a week on Wednesdays during a static block
 22 (nonrotating).

23
 24 Advisory will begin immediately on the first day of school. The block can be
 25 placed anywhere in the schedule. ...

26
 27 *Rationale*-Staying away from Mondays, Fridays and PD [professional
 28 development] days. Want to begin the advisory as early as possible to
 29 establish routine, management systems. Wednesdays seem to be the least
 30 disrupted.

31
 32 **Duration**

33 25-minute advisory block from September to June (all year long).

34
 35 Afternoon homeroom will be eliminated. Students will be dismissed at 2:45
 36 and report to areas of the building that are supervised. The time will then
 37 be re-allocated to the advisory block, i.e., 5 minutes per day=25 minute
 38 advisory block.

39
 40 *Rationale*-Research varies on the frequency and duration of Advisories.
 41 The team debated various models, looked at the content to be delivered

12 Exploratory subjects include music, theater, art, physical education, health, and computers.

13 At hearing, Meehan described support personnel as any Adams staff members who were not teachers.

1 and workloads of current educators. After discussion, it was decided 25
 2 minutes, similar to the previous peace builders' advisory model, would be
 3 implemented as a trial.¹⁴
 4

5 **Content**

6 Much of the content is already developed by the ROAR advisory team. Our
 7 proposal is to create two stipend positions to coordinate all curriculum and
 8 content and coach teachers throughout the school year. These
 9 coordinators would also assist in professional development.
 10

11 *Rationale*-Advisory is a new concept and needs to be supported as much
 12 as possible during implementation. Having two coordinators to manage
 13 curriculum and coach teachers would bring resolution to many of the original
 14 concerns brought forth in the original grievance.
 15

16 **Professional Development**

17 Initial training will be provided prior to the 2019-2020 school year during the
 18 ½ professional development day.
 19

20 In addition, each of the four building based professional development days
 21 will be dedicated to infusing staff with energetic strategies and review new
 22 lesson[s] coming up. Each of the PD days would be differentiated into
 23 varying levels of need for staff, i.e., most support to simple overview. The
 24 coaches also would be present to staff for a portion of those PD days while
 25 also being available during the school day/year.
 26

27 Respectfully submitted,

28
 29 Kelly-Burke-Abigail Adams Counselor

30
 31 Patricia Chandler-Abigail Adams Math Teacher and Union Representative

32
 33 Tina Conte-Chapman Science Teacher and Union Representative

34
 35 Matthew Meehan-Abigail Adams Principal

36
 37 Michael O'Dea-Abigail Adams Humanities Teacher and Union
 38 Representative

39
 40 Rebecca Sherlock-Shangraw-Weymouth School Committee member

¹⁴ The Employer had implemented the Peace Builders program approximately five years before in response to a state anti-bullying initiative. Each month Adams' homeroom teachers, in concert with another teacher, specialist or paraprofessional, conducted activities related to the Peace Builders program for twenty-five minutes for students assigned to that homeroom.

1 After reviewing the June 3, 2019 memorandum, Conte placed her signature near
2 her typed name.¹⁵ Meehan also signed the June 3, 2019 memorandum and then
3 submitted it to the Superintendent. Meehan did not provide a copy of the June 3, 2019
4 memorandum to Murphy as Union president. On or about that time, Conte informed
5 Murphy that the JLMS had completed its work and that its meetings were concluded.¹⁶
6 Conte did not provide Murphy with a copy of the June 3, 2019 memorandum. Between
7 June and September 2019, the Union did not request to bargain over the impacts of the
8 implementation of the Advisory Proposal, because Murphy was waiting for Meehan to
9 send him a copy of the June 3, 2019 memorandum. Murphy had expected that Meehan
10 would send him a copy of the June 3, 2019 memorandum, that the Union then would
11 decide whether to accept the recommendations contained therein, and if not, that the
12 parties would engage in further bargaining. The record does not indicate that on or about
13 that time, Murphy requested that Meehan provide him with a copy of the June 3, 2019
14 memorandum.¹⁷
15 September 2019

¹⁵ Burke, Chandler, and O'Dea also signed the June 3, 2019 memorandum on or about that time.

¹⁶The record does not contain the exact date when Conte told Murphy that the JLMS had finished its work and concluded its meetings. However, Conte described at hearing how she provided this information to Murphy either shortly before or at the Union's monthly executive board meeting, usually that is usually held the first Tuesday of the month, which in 2019 would have been June 4th.

¹⁷ Murphy ultimately received a copy of the June 3, 2019 memorandum from the Employer in Fall of 2019.

1 On September 3, 2019, the first day of the 2019-2020 school year,¹⁸ the Employer
 2 held a meeting in the cafeteria for all Adams' staff, including teachers, counselors, and
 3 paraprofessionals. Karen Putnam (Putnam)¹⁹ and Burke, whom the Employer had
 4 appointed as coordinators for curriculum and content for the Advisory Program,²⁰
 5 conducted a training session for staff on how to facilitate small group discussions with
 6 students as part of the Advisory Program. As part of that training program, Burke and
 7 Putnam distributed the following handout (September 3, 2019 handout):

8 **Staff Meeting on Advisory** [Emphasis in Original]
 9

10 **Program Advisors:** Karen Putnam/Kelly Burke
 11

12 Create and distribute weekly topics
 13

14 Support teacher advisors
 15

16 Offer guidance at staff meetings and in between weekly lessons
 17

18 Karen=5th grade teachers, Kelly=6th grade teachers²¹
 19

20 Option to meet with a group of students to get input/feedback
 21

22 **Reviewing Week 1:**
 23

24 **What is advisory?**
 25

26 It aims to help adjust to school, build community, and succeed academically
 27

28 A weekly session (ungraded) for students to connect with an adult other
 29 than classroom teacher

¹⁸ Adams' students started classes the next day.

¹⁹ Putnam's job title is not identified in the record.

²⁰ The Employer paid Burke and Putnam stipends for their roles as coordinators for the Advisory Program.

²¹ Putnam would be a resource for questions that fifth grade teachers might have, and Burke would be resource for sixth grade teachers.

1 A place to connect with other peers
 2
 3 Sessions will focus on Social Emotional Learning (SEL)
 4
 5 The month of September will focus on getting to know each other.
 6

7 **What is the advisor role?**

8
9 Primary role is facilitator

10
11 **What are the rules specific to advisory?** (Let the students help create the
12 rules to create cohesiveness and ownership but ultimately, they should be:)

13
14 **Be on time to Advisory**

15
16 **Treat each other with kindness and respect**

17
18 **One person speaks and other listen**

19
20 **Bring a positive attitude**

21
22 **Activity: Fun Fact Ice Breaker** Each student will take a minute to write
23 down their name and one fun fact about themselves that they are willing to
24 share with the group. (Ask the students to write their names on the back
25 because they will be collected.) The group leader will share his or her own
26 fact followed by students.
27

28 Example: "My name is Ms. Putnam and "I just kayaked with dolphins last
29 week."

30 ** The advisor will collect the index cards to use as an icebreaker for week
31 two.

32 At the September 3, 2019 training, the staff had many questions about the content
 33 of what they should talk about with students in the Advisory Program.²² Burke indicated
 34 that she and Putnam would distribute weekly topic outlines to staff members' mailboxes
 35 in order that staff did not need to develop curriculum or content for their meetings with

²² At hearing, Burke indicated that she was surprised how even seasoned Adams' teachers were nervous about meeting with groups of students in the Advisory Program and she opined that it does not come easily to everyone to sit with a group of middle schoolers and have a conversation.

1 students. However, Putnam also advised the staff members that they did not need to
2 adhere only to the topics that she and Burke proposed when speaking to the students in
3 their groups and could even show a video if they chose. The Employer had scheduled
4 the Advisory Program to take place for twenty-five minutes every Wednesday from 8:30
5 a.m. to 8:55 a.m. in the so-called ROAR block.²³ Staff members would facilitate
6 conversations with ten to twelve students assigned to their groups. Staff members would
7 take attendance, but would not issue grades or evaluations to the students in their groups.

8 On September 8, 2019, Meehan sent an email entitled Adams Insider 9-8-2019 to
9 all building staff, which stated in pertinent part:

10 Abigail Adams Advisory to Kick off[f] Wednesday!

11
12 Research shows that students who feel connected to an adult in a school
13 perform much better, come to school more often and have less disciplinary
14 issues. The purpose of advisory is to ensure that at least one adult in the
15 school is getting to know each student well, making sure their learning
16 needs are being met and encouraging them to make good academic
17 choices and plan for their future. Advisories are designed to foster stronger
18 adult-student relationships and a stronger sense of belonging and
19 community among students.

20
21 Advisory will be led by Abigail Adams Staff who will facilitate lessons
22 focused on academic, social, or future-planning issues. Groups generally
23 consist of 10 students and will meet each week for a period of 25 minutes.²⁴
24 Click on the links below to find out more about advisories at all levels and
25 what we are trying to accomplish here at Adams.

26 On or about Monday, September 9, 2019, Burke and Putnam put the following
27 outline for the Week One (September 11, 2019) Advisory Program in staff members'
28 mailboxes:

²³ Although the Adams had a rotating six-period class schedule in the Fall 2019, the ROAR block, which contained the Advisory Program, was fixed, and did not rotate.

²⁴ The regular Adams' class periods were longer than twenty-five minutes.

1 **Advisory Lesson 1: Introductions**

2
3 What is advisory?

4 The purpose of advisory is to connect students to an adult other than your
5 classroom teacher as well as to other peers. Advisory helps students adjust
6 to school, build community, and succeed academically.

7
8 What are the rules specific to advisory? (Let the students help create the
9 rules to create cohesiveness and ownership but ultimately, they should be:)

10
11 Be on time to Advisory
12 Treat each other with kindness and respect
13 One person speaks and others listen
14 Bring a positive attitude

15
16 Activity: Fun Fact Ice Breaker Each student will take a minute to write down
17 their name and one fun fact about themselves that they are willing to share
18 with the group. (Ask the students to write their names on the back because
19 they will be collected.) The group leader will share his or her own fact
20 followed by students.

21
22 Example: "My name is Ms. Putnam and "I just kayaked with dolphins last
23 week."

24 ** The advisor will collect the index cards to use as an icebreaker for week
25 two,

26 Thereafter, several staff members contacted Burke and Putnam with concerns about
27 having extra time in their group meetings for which they had no content to discuss with
28 students, which Burke at hearing described as "dead time." On September 10, 2019,
29 Putnam responded in an email to all Adams' staff members that stated in pertinent part:

30 Good morning,

31
32 A few of you have expressed concern about the length of the lesson not
33 filling the time, so we thought that we would reach out to reassure and
34 offer suggestions.

35
36 As a reminder, the facilitator will:

37 take attendance
38 explain the purpose of your advisory and your role
39 create rules
40

1 Ask the students to share their names and one fun fact. (you will do this
2 as well).
3
4 If I said, "My name is Ms. Putnam and I swam with dolphins last week,"
5 you may want to expand and ask where I was able to do that.
6
7 If you do expand on their comments, the time will most likely be filled.
8 However, if you have a few extra minutes this would be an amazing
9 opportunity to ask students, "How is the start of your school year going?"
10 or "What is going well or not?"
11
12 We hope that you enjoy your time tomorrow. Kate, Kelly, and I are here to
13 help and are open to feedback.
14
15 Extra lessons and index cards will be in the teacher's room. We ask that
16 homeroom teachers remind students to bring a writing utensil.
17
18 Thanks.²⁵

19 Outlines for the Advisory Program Meetings

20 Burke and Putnam continued to put outlines for the Advisory Program in staff
21 members' mailboxes. Staff members typically would receive their outlines several days
22 before they met with their groups. For example, on Friday, September 13, 2019, Putnam
23 sent an email (September 13, 2019 email) with an outline for Advisory Lesson 2 attached.
24 Putnam's September 13, 2019 email stated in pertinent part:

25 Good afternoon,
26
27 Attached is a lesson for Advisory next week. If you have questions about
28 the lesson, please see Kelly if you are a 6th grade teacher, Kate if you are an
29 exploratory teacher, specialist, or paraprofessional, or myself if you are a 5th
30 grade teacher. There will be hard copies of the lesson in mailboxes/folders
31 on Monday and scrap paper on the table below the mailboxes.
32
33 We hope you have fun with the activities.

34 The attached outline for Advisory Lesson 2 read as follows:
35

²⁵ Putnam typed her first name as well as the first names of Burke and Kate McCue-Day, who also worked on the Advisory Program, at the end of the email.

1 a) **Advisory Lesson 2: Building Relationships** (For September 18, 2019)

2
3 Objective: Students will continue to build relationships in a fun, productive
4 setting.

5
6 Opener: 5 minutes

7
8 Greet students and let them know that we are continuing to build
9 relationships and community.

10
11 Ask students to seat themselves in a circle or at a table where they are all
12 facing each other.

13
14 Begin by asking each student to say their name and one positive comment
15 about the last few days at Abigail Adams. If a student can't come up with
16 anything positive that may have happened, follow up by asking if there is
17 something they are looking forward to at school this year.

18
19 Advisers will close by saying their name and answering the same
20 question.

21
22 Lesson: 15 minutes

23
24 Activity 1) Two Truths and a Lie: Advisors and students will write down
25 two true statements about themselves and one false. Remind students
26 that they should write down things that others in the group would not know
27 about them. (For example, if a student has a friend in the group, that
28 person may already know what sports the student plays, or how many
29 siblings are in their family.) Ask students one at a time to read what they
30 wrote. Have each of the other students guess which one is the lie. The
31 student will reveal which one was the lie after every student has made
32 their guess. Go on to student two and repeat the process until every
33 student (and you) have revealed their two truths and a lie.

34
35 If time allows-

36
37 Activity 2) Review fun facts and names from week 1-The advisor will read
38 the fun act and ask the students to remember who wrote the fun fact from
39 the week before.

40
41 Closer: 5 minutes: Praise students for sharing more about themselves and
42 follow up by asking one or more of the following:

43
44 Was it easy or challenging to come up with truths or lies and why do you
45 think that may be the case?
46

1 What are some things we all have in common?

2

3 What about our differences?

4

5 Optional! Some of you might want your advisory students to keep a
6 journal. This will allow you to always have paper for them to do activities.
7 The suggestion is that you hold on to them from week to week. This is
8 not mandatory. If you are interested and need journals, see Mrs. McCue-
9 Day.

10 Also, the record contains five additional outlines that Burke and Putnam wrote and
11 provided to staff members for subsequent Advisory Program meetings in September and
12 October 2019. Those outlines are as follows:

13 a) **Advisory Lesson 3: Building Relationships, cont'd** (For September 25,
14 2019)

15

16 Objective: Students will gain insight into our similarities and our differences.

17

18 Opener: 5 minutes-High/Low-Ask each student what has gone well since last
19 Advisory. Was there something that may not have gone well?

20

21 Activity: 15 minutes-Hand out scrap paper of some kind. Have students draw
22 a big circle in the middle. On the inside have them write 3-5 ways everyone
23 in the group is the same. On the outside of the circle have them write how
24 we are uniquely different ... or so they think!!

25

26 *Advisor's note: If students have difficulty coming up with either similarities or*
27 *differences, you could provide some hints: town in which they live, their*
28 *school, etc. Students may gravitate towards naming physical attributes*
29 *which make us similar or different, you may encourage them to identify non-*
30 *physical characteristics [Emphasis in original].*

31

32 Closer: 5 minutes After each student shares their thoughts, ask them if they
33 felt the activity was difficult or easy? What made it so? Was there anything
34 that surprised you?

35

36 Or if you would rather:

37

38 Activity: 15 minutes-Group Word Collage-Have your student collectively
39 create a collage of words that represent their hopes and plans for the
40 upcoming school year. Students should pass the paper around and come
41 up with a word that [is] positive and inspiring. The paper will be passed on
42 to the next student in the group to add a word without repeating. Ask

1 students to send the paper around to each person until they run out of words.
2 If you want to make the activity more creative bring crayons (not required).

3 **b) Advisory Lesson 4: Checking in** (For October 2, 2019)

4
5 Objective: Now that students have a month of school and advisory under
6 their belt, this will offer them a place to process these new transitions and
7 reflect on how they are managing at school.

8
9 Opener: (5 minutes)-High/Low-Ask each student to share one positive thing
10 that has happened since last Advisory, or one thing that may not have gone
11 as planned.

12
13 Activity: (15 minutes)-Here are some questions that can help you get some
14 of your advisees' perceptions of school. These questions can be used for
15 journaling, or you can divide your advisory into groups, with each group
16 choosing to discuss 2 or 3 questions. If you discuss any of these questions
17 as a whole group, remind students that this is an opportunity to hear from
18 different perspectives-it is not time to begin a debate, but to really listen to
19 each person's take on the question.

- 20
21 1) What do you like best about going to Abigail Adams?
22
23 2) What do you like least about going to Abigail Adams?
24
25 3) On a scale of 1-10, how respectful do you see the staff being to
26 students? How about the students being respectful to staff? Students
27 to students? Staff to staff? Say a little about the number you chose.
28
29 4) If you could make changes in scheduling or curriculum, what would
30 you recommend? How would these changes benefit students?
31
32 5) What worries did you have about starting school?
33
34 6) On a scale of 1-10, how much effort do you feel you are putting into
35 your schoolwork? Homework? Are you satisfied with that number?
36
37 7) Is there anything that would make your school experience better? If
38 so, what is it?

39
40 Closer: (5 Minutes)-Praise and thank each group member for their attention
41 and participation. Ask them what went well in group, and what could have
42 gone better. If time allows ... discuss as a group what this quote means to
43 them.

44
45 There is no elevator to success. You have to take the stairs.

1 c) **Advisory [Lesson] Week 5: Goal Setting** (For October 9, 2019)

2
3 Objective: Setting goals provides a way for students to focus attention and
4 effort towards a plan. Students can monitor their progress and explore how
5 to modify or alter their goals if needed.

6
7 Opener: 5 mins. -On a scale of 1-10 (10 being the best), ask students to
8 rate their school experience thus far and why.

9
10 Activity: 15+mins-Ask each student to think of and write down (on scrap
11 paper or journal if using them) one short term goal (i.e., term 1) and one
12 long term goal (i.e., end of the school year) that is meaningful to them. Use
13 the SMART GOALS outline below to assist students with these goals. Ask
14 them: is your goal specific, measurable, or achievable? Next, ask students
15 to write 2 or 3 steps that will help them accomplish each goal or how others
16 can help you work on your goal.

17 If/when students share their goals within the group, encourage the group
18 to listen as this is not a group conversation and each person's goals are
19 unique to them.

20 ** Please hold on to their goals so that we can review them at a later date.

21
22 Closer: 5 mins-Ask students to name someone or something that has
23 influenced them in their life.

24
25 **Components of SMART GOALS:**

26
27 **Specific:** The goal should be well defined so that everybody knows exactly
28 the intended outcome for the goal.

29
30 **Measurable:** A goal that is measurable means that data can be taken on
31 the goal to provide evidence of it being met or not met.

32
33 **Achievable:** The goal will challenge the student, so that it is worthwhile to
34 work on, but that it is also a realistic task for the student to accomplish.

35
36 **Relevant:** The goal is something that matters or is important to the student.

37
38 **Timely:** A goal should always indicate a timed deadline for its outcome.

39 d) **Advisory [Lesson] Week 6: Organization and time management** (For
40 October 16, 2021)

41
42 Objective: Invite students to talk about their personal organization and time
43 management habits and how they relate to academic performance.

44 Opener: Ask students: "what do you always make time to do every work
45 that's really important to you?"

1
2 Activity: Discuss the benefits of various organizational strategies (agenda
3 book, calendars, recording tasks, making lists) and share their responses
4 to any of these questions:
5

- 6 • For those of you who keep a calendar, what do you like about this
7 habit What does it do for you?
8
- 9 • For those of you who don't keep a calendar regularly, what gets in
10 the way of making this a regular habit?
11
- 12 • Academically, what are the benefits of writing tasks down?
13
- 14 • What kinds of tasks or assignments are you most likely to avoid or
15 delay? Discuss the reasons for your procrastination. What are three
16 things you can tell yourself that will help you shift from delaying to
17 doing?
18
- 19 • What's your worst nightmare about forgetting an important event or
20 task?
21
- 22 • Share an experience in the past when you regretted not being
23 prepared or on time. What happened? How did it affect your
24 performance or other people's perception of you?
25

26 Closer: Share out two tips that help keep you organized in school or in life.
27 Did you hear something today that you will try in the future? Or do you use
28 technology/apps to keep you organized? Explain.

29 e) **Advisory [Lesson] Week [7]: Stress** (For October 23, 2019)
30

31 Objective: Students will learn that there are varying degrees of stress, and
32 that they have some control over the stress that they choose to take on each
33 day.
34

35 Activity: Ask the students to think for a minute about the many things that
36 may be stressful. Hand out sticky notes and ask them to write one thing
37 that is stressful on each note. Students may come up with more than one
38 but must put only one per sticky note. Advisors will have two large sheets.
39 One will read "Stressors we can avoid" (within our control), and the other
40 will read "Stressors we cannot avoid" (out of our control).

41 Students will place their sticky note stressors on the corresponding sheet.
42 Advisors will read the sticky notes out loud, and students as a group will
43 determine if in fact that particular stressor can be avoided or not. Many

1 times, students will put down a stressor that could really be avoided such
2 as getting homework done.

3
4 Follow up discussion: Advisors can ask for other student input and
5 discussion. If time permits, ask students how they felt about the activity?

6 Paraprofessionals

7 The School Committee and the Union were parties to a collective bargaining
8 agreement for the paraprofessionals in Unit D that, by its terms was in effect from
9 September 1, 2017 through August 31, 2020 (2017-2020 CBA). The Unit D 2017-2020
10 CBA contained no provision with similar language to Article XVI (K), the Adams Advisory
11 Program provision, which was present in Unit A's 2018-2019 and 2019-2022 CBAs. The
12 paraprofessionals in Unit D include educational support personnel (ESPs), certified
13 nursing assistants, library, clerical, and security paraprofessionals. Although Meehan
14 was unsure of the exact number of paraprofessionals who worked at the Adams during
15 the 2019-2020 school year, he estimated that there were between twelve and fifteen
16 ESP's and five or six clerical, security²⁶ and library paraprofessionals, which Meehan
17 described as student support personnel.²⁷ When asked at hearing how many Adams'
18 paraprofessionals participated in the Advisory Program, he stated the "vast majority" as
19 he needed as many staff members as possible participating in the Advisory Program.
20 According to a spreadsheet that showed the names of staff members who were assigned
21 to participate in the Advisory Program, where they would meet with their groups, and what

²⁶ Security paraprofessionals at the Adams, escort staff and students when requested, and are present in the cafeteria for student lunches.

²⁷ Meehan noted that the clerical and security paraprofessionals sometimes cover a classroom if a teacher is absent, and the Employers pays them additional compensation, if they do so.

1 were their bargaining units, 106 Adams staff members were assigned to meet with
2 students as part of the Advisory Program. Those staff members included ninety Unit A
3 members, three Unit B members, ten Unit D members, and three staff members whose
4 unit status, if any, was not identified on the spreadsheet.

5 Maureen Cone

6 Maureen Cone (Cone) is an ESP at the Adams, who has worked for the Employer
7 for sixteen years. In the 2019-2020 school year, Cone was assigned to work with
8 students, both fifth and sixth graders, who were receiving special education (SPED)
9 services and had individualized education plans (IEPs), in an inclusion setting. She
10 described her role as: a) reinforcing what the teacher has taught; b) supporting the
11 students by helping them to stay organized when going between classes, c) helping non-
12 readers to read, and d) helping kids to get on and off the school van. For mathematics
13 and English Language Arts, she worked with a SPED teacher in a small classroom. She
14 would reinforce what the teacher was teaching by meeting with one or two students
15 separately and helping non-readers to use their Chromebooks or to read a story or
16 comprehend the story. For history and science, Cone worked with her students alongside
17 a general education teacher and a SPED teacher. Both students receiving special
18 education services and general education services were present in the classroom. The
19 history or science teacher would instruct the students and the SPED teacher would assist.
20 The SPED teacher and Cone would then work with students receiving special education
21 services, which include showing a video or giving the students extra study time. For
22 example, Cone helped the students label their papers when doing a science project. She
23 also helped the students study for a history test by making flash cards. Cone also worked

1 with the classroom teacher alone when her students were taking an exploratory class
2 along with students receiving general education services.

3 In September 2019, the Employer assigned Cone to meet with ten students in the
4 cafeteria as part of the Advisory Program.²⁸ Cone attended the September 3, 2019
5 training but was nervous about her role in the Advisory Program.²⁹ She consulted with
6 Burke and several other unnamed adjustment counsellors for tips about working with her
7 group. She also received the outlines for the Advisory Program lessons that Burke and
8 Putnam placed in her mailbox each week. When her students arrived for the Advisory
9 Program each week, Cone took attendance. Two of the students were also students with
10 whom she worked with as an ESP, but the other students were not.³⁰ She either talked
11 with the students about the topic in the outline for that week or sometimes the students
12 talked about what they had done the prior weekend or a new video game. She oversaw
13 students' behavior and maintained order in the group. At hearing, Cone described the
14 meetings as social rather than instructional. She believed that she was responsible for
15 encouraging more introverted students to speak during meetings, discouraging students
16 who only wanted to talk and did not want to listen to others, and reinforcing social norms,
17 including don't interrupt or talk over other students. Cone did not grade or evaluate the
18 students in the group. Cone acknowledged that participating in the Advisory Program

²⁸ Eight other groups also met in the cafeteria for the Advisory Program.

²⁹ Cone acknowledged that although she initially was nervous about her Advisory Program assignment, she grew to like working with the students in her group.

³⁰ The Employer later removed and reassigned one of those two students from Cone's Advisory Program group due to behavioral issues.

1 did not change the length of her workday or her the length of her lunch break.³¹ She
2 continued to participate the Advisory Program until the COVID-19 pandemic shut down
3 in-person learning in the schools on March 16, 2019.

4 Linda Racicot

5 Linda Racicot (Racicot) has worked for the Employer for thirteen years as a
6 paraprofessional. She also is an ESP at the Adams, although she referred to herself as
7 a program paraprofessional because she works in a program for those students who
8 receive special education services because of emotional needs. As a paraprofessional,
9 she worked with both general education and SPED teachers and sometimes worked with
10 students in small groups to reinforce what the teachers were teaching. Racicot attended
11 the September 3, 2019 training and received the Advisory Program outlines in her
12 mailbox. As part of the Advisory Program, the Employer assigned her to meet with ten
13 students in a classroom. A teacher was also meeting with his Advisory Program group in
14 that same classroom, and Racicot and the teacher decided to combine the two groups.
15 Racicot and the teacher would talk about the topic in the outline for that week's Advisory
16 Program lesson but also would expand upon a particular section of the outline if the
17 students were interested. Like Cone, Racicot's participation in the Advisory Program did
18 not alter when she received lunch or the length of her workday. She also did not grade
19 or evaluate the students in her Advisory Program group.

³¹ Paraprofessionals in the Employer's schools do not have a preparation periods or free periods, except for their lunch breaks.

1 Judi Simonelli

2 Judi Simonelli (Simonelli) has worked for the Employer for twenty-four years as a
3 paraprofessional. Currently, she is clerical paraprofessional,³² which means she supports
4 the office staff, and she performs lunchroom duty, which is one hundred minutes per day
5 for four different student lunch periods. She performs her lunchroom duty with two other
6 paraprofessionals. As part of her lunchroom duties, she addressed any student
7 behavioral issues that arose and would contact an administrator via a walkie-talkie, if
8 necessary. Simonelli attended the September 3, 2019 training and received the weekly
9 outlines for the Advisory Program lessons in her mailbox. The Employer assigned
10 Simonelli to meet her Advisory Program group in one of the teacher's lunchrooms. She
11 used the weekly outlines as a starting point for the discussions with her group but
12 described the discussions as being driven by the students' interests. She had no
13 behavioral problems with the students in her Advisory Group, except for one student who
14 had attendance issues, and she spoke with the Guidance Department about his lack of
15 attendance. She kept students from talking over one another and "goofing off" during the
16 Advisory Program. She made connections with the students and opined that some of the
17 issues that came up during the Advisory Program could be? the same issues that would
18 come up in the classroom. Like Cone and Racicot, Simonelli's participation in the
19 Advisory Program did not alter when she received lunch or the length of her workday.
20 She also did not grade or evaluate the students in her Advisory Program.

21 Union's Protests in September, October 2021

³² Simonelli previously had been a Title I paraprofessional and a SPED paraprofessional.

1 relate directly to a public employer's exclusive right to establish educational policy and to
2 decide how to best deliver educational services to its students are non-delegable and
3 thus, exempt from the obligation to bargain. Taunton School Committee, 28 MLC 378,
4 388, MUP-1632 (June 13, 2002) (citing Lowell School Committee, 26 MLC 111, MUP-
5 1775 (January 28, 2000)). Here, the School Committee's decision to implement the
6 Advisory Program at the Adams was a matter of educational policy over which it had no
7 obligation to bargain. However, even if a decision lies outside the sphere of collective
8 bargaining as a matter of educational policy, the Commonwealth Employment Relations
9 Board (CERB) still requires the public employer to bargain the impact of that managerial
10 decision if it affects employees' wages, hours, and other terms and conditions of
11 employment. Taunton School Committee, 28 MLC at 388-89. The issue before me is
12 whether the School Committee failed to give the Union notice and an opportunity to
13 bargain to resolution or impasse over the impacts of its decision to implement the Advisory
14 Program on the paraprofessionals' job duties and workload.³⁵

³⁵ Although the complaint alleges that the implementation of the Advisory Program impacted the job duties and workload of Unit D members, the Union in its post-hearing briefs sought to amend the complaint to instead allege that the Employer unilaterally imposed new job duties on Unit D members. Citing Town of Norwell, 18 MLC 1263, 1264, MUP-6962 (January 22, 1992), the Union argued that even if the allegation was not specifically pled in the complaint, the disputed conduct still could form a basis for finding a violation of the Law, because it was related to the general subject matter of the complaint and had been fully litigated. However, even if a newly raised allegation is related to the general subject matter of the complaint, it is not considered fully litigated when a charging party did not seek to amend the complaint until after the hearing was over and the record was closed. See City of Boston, 46 MLC 191, 197-198, MUP-17-6211, MUP-18-6629 (March 31, 2020) (denying charging party's motion to amend complaint to include retaliation allegations). Because the hearing record closed on December 3, 2020 and the parties filed their post-hearing briefs on February 19, 2021, the allegation was not fully litigated, and, thus, I deny the Union's request to amend the complaint.

1 Job Duties

2 It is well established that both job duties, see Town of Danvers, 3 MLC 1559, 1576,
3 MUP-2292, MUP-2299 (April 6, 1997) and workload, see Commonwealth of
4 Massachusetts, 27 MLC 70, 72, SUP-4503 (December 6, 2000), are mandatory subjects
5 of bargaining. Turning first to the allegation involving job duties, the Union asserts that
6 the Advisory Program altered the paraprofessionals' job duties by requiring them to: a)
7 meet with groups of students that the paraprofessionals were solely responsible for during
8 a fixed 25-minute period each week; b) take attendance and exercise sole responsibility
9 for student behavior in the group; and c) follow a lesson plan with a goal and suggested
10 activities, or to substitute another activity consistent with the goals of the program.
11 Additionally, the Union points out that because the Adams' clerical and security
12 paraprofessionals performed no academic support duties and instead provided
13 administrative support and security,³⁶ assigning them to lead discussions with groups of
14 students as part of the Advisory Program constituted new job duties for them. Conversely,
15 the Employer argues that the paraprofessionals' participation in the Advisory Program is
16 substantially similar to their regular duties, which is to provide support to students.
17 However, a review of the facts shows that the paraprofessionals' work with the Advisory
18 Program was a change in their job duties. As ESPs, Cone and Racicot worked with
19 general education and SPED teachers. While Cone and Racicot often worked with
20 students in small groups, they reinforced the lessons that the general education or SPED
21 teacher previously had presented, which included helping the students to study using

³⁶ Other than Meehan's statement that the vast majority of paraprofessionals were assigned to participate in the Advisory Program, the record does not identify individual security paraprofessionals who participated in the Advisory Program.

1 flash cards or their Chromebooks. In the Advisory Program, paraprofessionals were
2 required to work on their own with their groups of students, although Racicot and another
3 teacher had combined their groups. The paraprofessionals had to follow and present the
4 lesson outlines that Burke and Putnam had prepared, to their groups, or, in the alternative,
5 to develop their own content. The September 3, 2020 memorandum referred to the staff
6 members' duties in the Advisory Program, which included the paraprofessionals, as
7 acting as facilitators for student discussions. However, the paraprofessionals had not
8 worked as so-called facilitators before. The Employer's determination that it needed to
9 conduct the September 3, 2019 training to instruct the staff, including the
10 paraprofessionals, on how to perform their duties in the Advisory Program as well its use
11 of the coordinators to provide coaching thereafter supports the Union's assertion that
12 those duties were new. Finally, the requirement that the clerical and security
13 paraprofessionals meet in small groups with students is a departure from their academic
14 support duties, because previously if they took over classes, they were paid additional
15 compensation.

16 Additionally, the Employer contends that even if there were changes in the
17 paraprofessionals' job duties because of the Advisory Program, those changes were de
18 minimis. The CERB will not find an unlawful change to employees' terms and conditions
19 of employment where the action complained of is only a slight departure from what is
20 normally required. See Town of Danvers, 3 MLC at 1576-77. However, where the charge
21 is more than a slight departure, the CERB will not find the complained of action to be de
22 minimis. See Chief Justice and Administration and Management of the Trial Court, 35
23 MLC 230, 235, SUP-04-5126 (April 14, 2009). Here, the Employer contends that because

1 the Advisory Program only took place weekly for twenty-five minutes, any change in the
2 paraprofessionals' job duties was de minimis. However, the flaw in the Employer's
3 argument is that the Advisory Program continued each week for seven months, until the
4 COVID-19 pandemic ended in-person learning in the Employer's schools. Seven months
5 of performing, what I have already determined to be new duties, is more than a slight
6 departure from what the Employer previously expected the paraprofessionals to do.

7 Workload

8 Although I find that the Advisory Program impacted the paraprofessionals' job duties,
9 I do not find that it altered their workload. The record does not show that any of the
10 paraprofessionals' pre-existing duties increased after the Employer implemented the
11 Advisory Program. The Employer also did not require the paraprofessionals to lengthen
12 their workdays or give up their lunch periods to accommodate the new duties that they
13 were performing as part of the Advisory Program. Thus, I find that the Advisory Program
14 did not impact the workload of Unit D members and dismiss this portion of the complaint.

15 Waiver by Inaction

16 It is undisputed that the School Committee did not bargain with the Union to
17 resolution or impasse over the impacts of the implementation of the Advisory Program on
18 the paraprofessionals' job duties. However, the School Committee asserts that the Union
19 waived by inaction its right to seek bargaining over those impacts by not timely requesting
20 to bargain. A public employer that asserts the affirmative defense of waiver by inaction
21 must demonstrate that an employee organization had: 1) actual knowledge or notice of
22 the proposed action; 2) a reasonable opportunity to negotiate about the subject, and 3)
23 unreasonably or inexcusably failed to bargain or request bargaining. Town of Watertown,

1 32 MLC 54, 56, MUP-01-3275 (June 29, 2005). The Union argues that: a) Meehan did
2 not provide Murphy with notice that he intended to assign new Advisory Program duties
3 to the paraprofessionals; b) the principal also did not provide Murphy with a copy of
4 Meehan's June 3, 2019 memorandum on or about the time that Meehan issued it; and c)
5 Murphy did not become aware of the change in the paraprofessionals' job duties until
6 September 2019. A public employer does not need to provide the union with direct,
7 explicit notice of a proposed change to satisfy the first prong of the asserted defense.
8 Town of Milford, 15 MLC 1247, 1253, MUP-6670 (November 9, 1988); Scituate School
9 Committee, 9 MLC 1010, 1012, MUP-4563 (May 27, 1982). However, the evidence must
10 establish that the information acquired by the union was sufficiently clear to permit it to
11 make a judgment as to an appropriate response. Boston School Committee, 4 MLC 1912,
12 1915, MUP-2611 (April 27, 1978). Information about a proposed change acquired by
13 union officers or agents will be imputed to the union. City of Cambridge, 5 MLC 1291,
14 1293, MUP-2799 (September 27, 1978).

15 Here, Union and the Employer had negotiated contractual language in Article XVI
16 (K) of Unit A's 2018-2019 and 2019-2022 CBA's whereby both the Union and the
17 Employer each would appoint three members to the JLMS to discuss potential changes
18 to the Adams' Advisory Program. The Union designated Conte, who was a member of
19 the Union leadership team as the Union secretary and was an Executive Board member,
20 to be its representative on the JLMS along with two other Unit A members. Also, Murphy
21 periodically checked in with her to see how the JLMS was proceeding. Compare with
22 Town of Ludlow, 17 MLC 1191, 1200, MUP-7040 (August 3, 1990) (unit member's
23 knowledge of employer's planned health insurance change not imputed to union where

1 unit member did not represent the union and was not a high-ranking union officer). As a
2 member of the Union's leadership team and its designated representative on the JLMS,
3 the information that Conte acquired at the JLMS meetings can be imputed to the Union.
4 Conte was aware of the JLMS' final recommendations, which included utilizing all staff
5 building wide to meet with students as part of the Advisory Program, because she
6 reviewed and executed Meehan's June 3, 2019 memorandum. Further, Meehan
7 presented un rebutted testimony that the JLMS members discussed how the Employer
8 might need to utilize all staff members, including paraprofessionals, to meet with groups
9 of students in the Advisory Program to achieve the Employer's goal of having no more
10 than twelve students in each group. Applying DLR precedent, I find that as of June 3,
11 2019, the Union had acquired sufficient information to constitute actual notice that
12 Meehan had recommended that the School Committee assign Advisory Program duties
13 to the paraprofessionals. Accord City of Cambridge, 23 MLC 28, 37, MUP-9171 (June 28,
14 1996), aff'd sub nom., 47 Mass. Appt. Ct. 1108 (1999) (union's knowledge of and
15 opposition to City's home rule petition to create the managerial positions of
16 superintendent and deputy superintendent, which included making statements at a
17 legislative hearing about how the new positions would negatively impact unit members,
18 showed union had acquired sufficient information to constitute actual notice of City's
19 proposed transfer of unit work). Although Murphy expected Meehan to send him a copy
20 of the June 3, 2019 memorandum and that the Union would decide then whether to
21 request bargaining, Meehan's statements to the JLMS contradicted Murphy's
22 expectations. At the second JLMS meeting, Meehan told the attendees, including Conte,
23 that he expected that the Superintendent would accept the June 3, 2019 memorandum

1 without seeking changes, that it was not likely that the JLMS would meet again to discuss
2 the Advisory Program, and that the June 30, 2019 deadline remained for the Advisory
3 Program to be adopted for the next school year. Murphy also acknowledged at the
4 hearing that the Union previously was aware of the June 30, 2019 deadline. Accordingly,
5 I reject the Union's assertion that it was reasonable for it to assume that it would have a
6 later opportunity to demand bargaining over any impacts of the implementation of the
7 Advisory Program.

8 Having made this determination, I next examine the record to assess whether the
9 Union had a reasonable opportunity to negotiate over the impacts of the implementation
10 of the Advisory Program on the paraprofessionals' job duties, and unreasonably or
11 inexplicably failed to demand to bargain. Scituate School Committee, 9 MLC at 1013.
12 The record shows that the Union had twenty-six days to seek bargaining before the June
13 30, 2019 deadline for implementation of the Advisory Program. Further, because the
14 Union would be seeking to bargain over the impacts of the implementation rather than the
15 actual implementation, it also had the months of July and August to demand bargaining
16 over the proposed changes to the job duties of the paraprofessionals. Therefore, by
17 failing to timely demand negotiations, the Union waived its statutory right to bargain over
18 the impacts of the Advisory Program on the paraprofessionals' job duties. Therefore, I
19 dismiss the remaining portion of the complaint.

20 CONCLUSION

21 Based on the record and for the reasons stated above. I conclude that the School
22 Committee did not violate Section 10(a)(5) of the Law by failing to bargain to resolution

- 1 or impasse over the impacts of the implementation of the Advisory Program at the Adams
- 2 Middle School on Unit D members' job duties and workload.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



TIMOTHY HATFIELD, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with 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, this decision shall be final and binding on the parties.