

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

ANDOVER SCHOOL COMMITTEE

and

ANDOVER EDUCATION ASSOCIATION

Case No.: MUP-20-7795

Date issued: December 18, 2025

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Jennifer King, Esq. - Representing the Andover School
Committee

Mark Hickernell, Esq - Representing the Andover Education
Association

HEARING OFFICER'S DECISION ON COMPLIANCE

SUMMARY

1 The issue in this case is whether the Andover School Committee (School
2 Committee or the Employer) has complied with the remedy in the March 15, 2024 hearing
3 officer decision and order in the above-captioned case (Order). I find that the School
4 Committee did not comply with certain portions of this Order.

5 Statement of the Case

6 On January 15, 2020, the Andover Education Association (AEA or Union) filed a
7 charge of prohibited practice with the Department of Labor Relations (DLR) alleging that
8 the School Committee had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of

1 M.G.L. c.150E (the Law). After an investigation, a DLR investigator issued a complaint
2 on July 15, 2021, alleging that the School Committee violated Sections 10(a)(5) and (1)
3 of the Law by removing case management time from the high school special education
4 (SPED) teachers' schedules without providing the AEA with prior notice and an
5 opportunity to bargain to resolution or impasse over the decision and the impacts of the
6 decision on bargaining unit members' terms and conditions of employment.

7 I conducted a videoconference hearing on April 7 and May 31, 2022 and issued a
8 decision on March 15, 2024. In my decision, I found that the School Committee had
9 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner
10 alleged in the Complaint and issued the Order to remedy the violation. I ordered the
11 School Committee to:

- 12 a) provide SPED teachers at the High School specific blocks of time to perform their
13 case management duties during their work weeks that were equal in duration to
14 the time that they previously had to perform those duties during the H2-H5
15 schedule blocks during the 2018-2019 school year. The time would be designated
16 as case management time and would not displace any other time that SPED
17 teachers received or were assigned for a specific purpose. The School Committee
18 could delay implementation of any schedule changes consistent with the order until
19 the beginning of the 2024-2025 school year.
20
- 21 b) bargain in good faith to resolution or impasse with the Union about ceasing to
22 provide teachers at the High School with designated time to perform case
23 management duties.
24
- 25 c) immediately post signed copies of the attached Notice to Employees in all
26 conspicuous places where members of the Union's bargaining unit usually
27 congregate, or where notices are usually posted, including electronically, if the
28 School Committee customarily communicates with these unit members via intranet
29 or email and display for a period of thirty (30) days thereafter, signed copies of the
30 attached Notice to Employees.

31 On August 28, 2024, the Union filed a petition for compliance (petition) alleging
32 that the School Committee had failed to reinstate unit members' case management time

1 and that the School Committee had failed to post the Notice to Employees (March 15,
2 2024 Notice) electronically or to post the March 15, 2024 Notice in all places where unit
3 members usually congregate. On September 6, 2024, the School Committee filed its
4 response to the petition contending that: a) the parties had negotiated to impasse over
5 the elimination of the SPED teachers' case management time, b) the School Committee
6 did not communicate electronically with unit members regarding legal matters, and c) the
7 School Committee instead complied with the Order by posting the March 15, 2024 Notice
8 in faculty lounges at its schools.

9 On March 13, 2025, I conducted a compliance hearing at which both parties had
10 the opportunity to be heard, to examine witnesses, and to introduce evidence. The parties
11 filed post-hearing briefs on May 30, 2025. Upon review of the entire record, including my
12 observation of the demeanor of the witnesses, I make the following findings of fact and
13 render the following opinion.

14 Stipulated Facts

- 15 1. The Town of Andover ("Town") is a public employer within the meaning of Section
16 1 of the Law.
- 17 2. The Andover School Committee ("Committee") is the collective bargaining
18 representative of the Town for the purposes of dealing with school employees
19 employed by the Town.
- 20 3. The Andover Education Association ("Union") is an employee organization within
21 the meaning of Section 1 of the Law.
- 22 4. The Union is the exclusive bargaining representative for teachers employed by the
23 Town.
- 24 5. On March 15, 2024, the Department issued an order ("Order") in this matter. The
25 Order contained four separate remedies as follows:
26 a) Provide SPED teachers at the High School specific blocks of time to perform their
27 case management duties during their work weeks that are equal in duration to the
28
29
30
31
32

1 time that they previously had to perform those duties during the H2-H5 blocks.
2 That time will be designated as case management time and shall not displace any
3 other time that SPED teachers receive or are assigned for a specific purpose. The
4 School Committee may delay implementation of any changes consistent with this
5 order until the beginning of the 2024-2025 school year.
6

- 7 b) Bargain in good faith to resolution or impasse with the Union about ceasing to
8 provide SPED teachers at the High School with designated time to perform case
9 management duties.
10
- 11 c) Immediately post signed copies of the attached Notice to Employees in all
12 conspicuous places where members of the Union's bargaining unit usually
13 congregate, or where notices are usually posted, including electronically, if the
14 School Committee customarily communicates with these unit members via intranet
15 or email and display for a period thirty (30) days thereafter, signed copies of the
16 attached Notice to Employees.
17
- 18 d) Notify the DLR in writing of the steps taken to comply with this decision within ten
19 (10) days of receipt of this decision.
20
- 21 6. The Committee did not email copies of the Order's Notice electronically, instead
22 posting them in school buildings.
23
- 24 7. On March 22, 2024, former School Committee Chair Tracey Spruce ("Spruce")
25 sent Union President Matthew Bach ("Bach") an email concerning the outcome of
26 the Order.
27
- 28 8. On April 9, 2024, Committee Vice-Chair Sandis Wright ("Wright") sent Mr. Bach an
29 email with a letter attachment concerning bargaining the outcome of the Order.
30
- 31 9. On May 4, 2024, Committee Vice Chair Sandis Wright ("Wright") sent Mr. Bach an
32 email with a letter attachment concerning bargaining the outcome of the Order.
33 Later that day, the Union's Massachusetts Teachers Association (MTA) Field
34 Representative/Organizer Eric Blanchet ("Blanchet") responded to Mr. Wright.
35
- 36 10. Between May 10, 2024 and May 20, 2024, Committee Labor Counsel Elizabeth
37 Valerio ("Valerio") and Union counsel Mark Hickernell ("Hickernell") communicated
38 via email regarding bargaining the outcome of the Order.
39
- 40 11. On June 12, 2024, the Committee and Union met to discuss case management
41 time as a result of the Order. The Committee made certain proposals, which were
42 rejected by the Union.
43
- 44 12. On June 13, 2024, Mr. Wright sent a letter to Mr. Bach which conveyed the
45 Committee's position that the parties reached impasse.

Findings of FactBackground

The Andover Public School system is comprised of one high school, three middle schools, five elementary schools, and one pre-school. The AEA is the exclusive bargaining representative in its Unit A for the teachers working at those schools, including SPED teachers at the High School.

Relevant Facts Reprinted from the 2004 Decision*Case Management Duties*

Each SPED teacher at the High School is responsible for performing case management duties for approximately eighteen students. The SPED teachers' case management responsibility is to be the liaison between an assigned student, the student's family, and the student's general education (Gen Ed) teachers. The primary job of a case manager is to become a trusted adult to the student and the student's family. They build a rapport with the students and work with them on the goals in the students' individualized education plans (IEPs). The case manager is a point of contact for families if there is a problem at the school, and they communicate with their students' families to discuss the students' educational progress. They also communicate with their assigned students' Gen Ed teachers to ensure that those teachers are familiar with the students' IEP goals, that the student receives the accommodations and assistance that they need, and to learn how the student is doing in their classes. In addition to the relational aspects of the case management responsibility, SPED teachers are responsible for handling SPED-related paperwork, i.e. completing IEP progress reports four times per year as well as IEP goals and objectives.

High School Schedule

Beginning in the 2017-2018 school year, the High School implemented an eight-day rotating schedule referred to as the 7+H schedule. Each school day has five periods, and the students do not have two of their classes. The eighth or - "H"- slot is called H Block, and it is a support period for students. Because there are only five classes per day, there is no H Block period on three days during the eight-day rotational cycle.

H Block

There are two components to H Block: H1 and H2-5. H1 is an advisory-type program that focuses on social-emotional learning and skills for success. Two teachers meet with a group of approximately 24-28 students in a classroom, and students stay with the same H1 teachers for all four years of high school. H1 advisory groups include both SPED students and Gen Ed students, and SPED teachers co-lead advisory groups with Gen Ed teachers. H2-H5 is an academic time for students and teachers to use for intervention and enrichment. H2-H5 also are time periods on certain days during the 8-day cycle where a student can sign up to see a particular teacher or a teacher can contact a student to provide extra help.

Allotted Time for Case Management in the 2018-2019 and 2019-2020 School Years

In the 2018-2019 school year, the SPED teachers used the H2-H5 portions of their schedules for case management time. The SPED teachers' total case management time for the 2018-2019 school year was 95 hours.

In the 2019-2020 school year, SPED teachers had no specific time periods in their schedules which were designated for case management duties and had to perform case management duties during their preparation periods or after school.

1 Facts from the Compliance Hearing

2 *Parties' Post Decision Communications from March through May 2025*

3 On March 22, 2024, nine days after the issuance of the hearing officer decision,

4 Spruce sent an email to Bach stating in pertinent part:

5 The email shall constitute notice that the Andover School Committee is
6 offering to bargain with the Andover Education Association ("AEA") about
7 the Andover Public Schools ceasing to provide special education teachers
8 at Andover High School with designated time to perform case management
9 duties.

10

11 The School Committee will propose dates to commence this bargaining
12 after the Town election on Tuesday, March 26, 2024 but if the AEA would
13 like to propose dates before then, please forward them to the Committee
14 care of Alison Phelan at ____.

15 On April 9, 2024, Wright sent a letter to Bach stating in pertinent part:

16 Former School Committee Chair, Tracey Spruce, sent an email to you on
17 March 22, 2024, offering to bargain with the Andover Education Association
18 ("AEA") about the Andover School Committee ceasing to provide special
19 education teachers at Andover High School with designated time for case
20 management. This letter confirms the notice from former School Committee
21 Chair Spruce. The Andover School Committee is offering the following
22 dates and times for negotiations: [a grid was enclosed with dates, start times
23 and locations],

24

25 Please let me know which dates are acceptable to the AEA or if the AEA
26 has additional dates to propose.

27 On May 4, 2024, Wright sent an email to Bach stating in pertinent part:

28 Attached is a second request with updated dates to schedule a bargaining
29 session for case management time. Since the original request was sent on
30 April 9th, some dates have become unavailable so additional dates have
31 been provided (with remote zoom options to allow more flexibility in
32 scheduling).

33

34 I look forward to hearing from you.

1 Later, in a May 4, 2024 email, Blanchet responded to Wright by stating that the Union had
2 a different interpretation of the decision than the School Committee, and that the Union's
3 counsel would be in touch.

4 On May 10, 2024, Valerio sent an email to Hickernell stating in pertinent part:

5 ... I am writing to you as counsel to the AEA in this matter. The School
6 Committee has made three offers since March to bargain with the AEA over
7 ceasing to provide high school special education teachers with designated
8 case management time. ...
9

10 Absent hearing back from you or the AEA by Friday May 17, 2024, the
11 [School] Committee will understand that the AEA is waiving its right to
12 impact bargain over this change and will move forward accordingly as
13 schedules for the 2024-2025 school year are being developed at this time.
14

15 Thank you for your attention to this matter.

16 In a May 14, 2024 letter to Valerio, Hickernell responded by stating that: "Nothing we
17 [AEA] do or not do should suggest to you a waiver of rights at any point. I'll try to be in
18 touch tomorrow." On May 17, 2024 at 1:37 p.m., Valerio replied to Hickernell by stating in
19 pertinent part:

20 We have repeatedly offered dates to bargain with the AEA, and the AEA has
21 not accepted any of the dates, offered alternatives, or even indicated that it
22 wants to bargain. Several of the dates that we offered have now passed;
23 however, the following dates remain available for bargaining.
24

- 25 ○ May 23 at 3:30 p.m. (by Zoom)
- 26 ○ May 30 at 7:00 p.m. (by Zoom)
- 27

28 As I stated in my email to you on May 10th, schedules for the 2024-2025
29 school year are being developed at this time. If the AEA declines to bargain
30 with us, it is waiver by inaction.
31

32 On May 17, 2024 at 2:27 p.m., Hickernell responded:

33 I will be in touch on Monday. It is my understanding that bargaining over an
34 established past practice should be done when the contract is open;
35 however, I think a conversation could be productive. ...

1 Valerio replied approximately ten minutes later that:

2 ... There is nothing in the law or the decision in MUP-20-7795 that requires
3 that the bargaining wait until the contract is open. The [School] Committee
4 has been offering to bargain the change since March.

5 On May 23, 2024, Valerio sent an email to Hickernell stating in pertinent part:

6 I can confirm June 12th for in-person bargaining at 3:30 p.m. I reserved the
7 School Committee room (where the parties usually meet). The AEA can
8 also use the School Committee room for any caucuses and the Committee's
9 team will move to the small conference room for caucuses.

10 June 12, 2024 Meeting

11 On June 12, 2024, representatives from the School Committee and the AEA met
12 for approximately two hours regarding case management time. Valerio, Wright, Julie
13 Riley, the Assistant Superintendent for Teaching and Learning, Nancy Koch, the SPED
14 Director for the school district, and Kerrilyn McCarthy, the SPED Program Head for the
15 High School, attended on behalf of the School Committee. Blanchet, Bach, Liz Terrell, a
16 teacher and an AEA officer, and Sally Mandelbaum, a teacher and a unit member,
17 attended on behalf of the AEA. Hickernell also was available by telephone for
18 consultation with the AEA. When the meeting began, Valerio inquired whether the Union
19 had a response to the School Committee's proposal, referenced in the emails above, to
20 cease providing case management time. The AEA rejected the School Committee's
21 proposal and sought a return to the status quo which existed prior to the 2019-2020 school
22 year, by providing SPED teachers with four blocks of case management time.

23 The School Committee then verbally proposed that it provide SPED teachers with
24 two H blocks to perform case management duties. The AEA requested that the School
25 Committee reduce the proposal to writing. The School Committee then went to caucus
26 to prepare the written proposal. Valerio typed the proposal but initially experienced

1 problems connecting to the internet and emailing the document to the printer. Because of
2 technological delays, the School Committee's caucus lasted between thirty and forty-five
3 minutes. The School Committee presented the AEA with the following written proposal
4 (June 12, 2024 proposal) when it returned from the caucus:

5 AEA Negotiations Regarding H.S. Special Education Teachers Case
6 Management Time
7

8 In lieu of ceasing all case management time for certain Special Education
9 Teachers at the High School, the Committee proposes that High School
10 Special Education Teachers [footnote omitted] who have case management
11 responsibilities will be provided with the following H Blocks for case
12 management responsibilities: H3 and H5 starting in the 2024-2025 school
13 year. They will be assigned students in H1 (Advisory), H2, and H4.

14 Valerio informed the AEA that the H3 and H5 blocks were both sixty-two minutes in length
15 for a proposed total of one-hundred and twenty-four minutes of case management time
16 per week and eighty hours per school year.

17 The AEA then went to a caucus for approximately fifteen minutes during which
18 Blanchet contacted Hickernell. The AEA returned from its caucus and informed the
19 School Committee that it was not interested in the School Committee's proposal.
20 Blanchet also asked if the School Committee was going to move the SPED teachers' case
21 management time from the H Block to another time in the school day, as the AEA could
22 have an obligation to bargain over the impacts of that change. The School Committee
23 responded that it did not intend to move the case management time. Blanchet then
24 informed the School Committee that the School Committee's proposal was not consistent
25 with the AEA's understanding of the Order and the decision, and that the attorneys were
26 going to have to deal with the matter. The meeting then ended.

1 On June 13, 2024, Wright sent a letter (June 13, 2024 letter) to Bach stating in
2 relevant part:

3 In response to the hearing officer's decision in MUP-20-7795 issued on
4 March 15, 2024, then School Committee chair, Tracey Spruce, sent an email
5 on March 22, 2024, to you informing you, as the AEA President, of the
6 Committee's offer to bargain the cessation of time perform case
7 management for High School Special Education teachers. When you did not
8 respond to Ms. Spruce's offer, I sent offers to bargain on April 9 and May 4,
9 2024, offering dates to bargain. It was not until the District's attorney
10 contacted the MTA's attorney that the AEA agreed to meet.

11
12 On June 12, 2024, the School Committee's team met with you, AEA
13 representatives, and your MTA representative to bargain the Committee's
14 proposal to cease providing time for case management. During this meeting,
15 the AEA rejected the Committee's proposal to cease providing time for case
16 management duties. The Committee then offered the following:

17
18 In lieu of ceasing all case management time for certain
19 Special Education Teachers at the High School, the
20 Committee proposes that the High School Special Education
21 Teachers who have case management responsibilities will be
22 provided with the following H Blocks for case management
23 responsibilities: H3 and H5 starting in the 2024-2025 school
24 year. They will be assigned students in H1 (Advisory), H2,
25 and H4.

26
27 The AEA, through your MTA representative, rejected the Committee's
28 proposals, you made no counter proposals and continued to insist that the
29 Committee not reduce in any way the case management time previously
30 provided by practice, and the parties reached an impasse.

31 The AEA did not reply to the School Committee's June 13, 2024 letter. On August
32 28, 2024, the AEA filed its petition for compliance. During the 2024-2025 school year, the
33 School Committee provided the High School SPED teachers with one-hundred and
34 twenty-four minutes of case management time each week during the H3 and H5 blocks
35 of the schedule,¹ as described in the School Committee's June 12, 2024 proposal.

¹ Mid-year in the 2024-2025 school year, certain SPED teachers agreed to perform their case management duties in blocks other than H3 or H5 because some of their students,

1 School Committee's Distribution of DLR Notices to Employees

2 *Email*

3 After the Employer received the hearing officer's decision and the March 15, 2024
4 Notice in this case, Keith Taverna (Taverna), the Assistant Superintendent for Finance
5 and Administration,² whose duties include oversight of legal matters, investigated whether
6 the Employed previously had emailed copies of earlier DLR notices to unit members.
7 Assisted by Alison Phelan (Phelan), the Executive Assistant to the Superintendent, and
8 the human resources director,³ Taverna reviewed his offices' physical files looking for DLR
9 decisions. The physical files covered a ten-year period. He also requested that Valerio's
10 law firm provide him with copies of any DLR decisions that the law firm had regarding the
11 AEA. He submitted the case numbers of those decisions to the Employer's IT
12 Department, which used the numbers to search the email system. The search turned up
13 one DLR notice that the Employer had emailed to AEA unit members in the period from
14 2020-2022 (2020-2022 notice). Taverna claimed at hearing that certain emails⁴ showed
15 that Phelan⁵ mistakenly had emailed the 2020-2022 notice to AEA unit members prior to

who were in specialized programs, were unavailable to meet with their teachers during other H blocks. Bach indicated at hearing that "he was anecdotally aware" of the change. However, the record does not show that the Union took any further action on the matter or does not identify the blocks when those teachers performed their case management duties.

² Taverna became the Assistant Superintendent for Finance and Administration in 2022.

³ The record does not identify the human resources director.

⁴ The School Committee did not submit the departmental emails to which Taverna referred into the record.

⁵ Phelan did not testify at the hearing.

1 consulting with the then superintendent.⁶ Bach recalled receiving at least one prior DLR
2 notice that the School Committee had emailed unit members in the period from 2021 to
3 2023.⁷ The School Committee did not email the March 15, 2024 Notice to AEA unit
4 members.

5 *Placement on Bulletin Boards*

6 Taverna opined at the hearing that the School Committee did not customarily email
7 unit members regarding legal matters, including DLR matters, and that the School
8 Committee posted earlier DLR notices in its schools' faculty lounges.⁸ The High School
9 has six or seven faculty lounges, which are aligned with teachers' academic disciplines,
10 although teachers can use the other faculty lounges as well. Bach, who is a history

⁶ In the absence of Phelan's testimony or the emails that Taverna reviewed that caused him to conclude that Phelan had sent the 2020-2022 notice in error, I decline to make that finding, especially since Taverna had not yet started to work for the Employer when Phelan emailed the 2020-2022 notice.

⁷ Bach testified that he had received "at least one, maybe more" previous DLR notice(s) that the Employer had emailed. Because Bach only made the general statement that he might have received more than one earlier notice via email and because his testimony is consistent with the results of the School Committee's search its of paper and computer files, I conclude that in the last ten years, the School Committee only emailed one notice, the 2020-2022 notice, to unit members.

⁸ On direct examination, Taverna stated that the Employer posted copies of the March 15, 2024 Notice in each school's faculty lounges. In response to a question on cross-examination, Taverna agreed that the March 15, 2024 Notice was posted in "one location" at each school but did not elaborate any further. The phrase one location is ambiguous because it could refer to one site or the same site in multiple areas, which would be consistent with Taverna's testimony on direct examination. The AEA argues in its post-hearing brief that one location meant one faculty lounge in each school. However, because one location could refer to multiple faculty lounges in a school, I decline to find that the Employer only posted the March 15, 2024 Notice in one faculty lounge per school. Further, the record is devoid of any other information concerning how many faculty lounge(s) that each school has other than the High School.

1 teacher at the High School, utilizes the Social Studies Faculty Lounge, where he saw a
2 few previous DLR notices⁹ on the bulletin board and where he also put up a copy of an
3 earlier DLR notice on the bulletin board.¹⁰

4 On May 22, 2024, Phelan sent out an email to the Employer's principals stating in
5 pertinent part:

6 Please see attached. This notice [Notice] from a decision by the
7 Department of Labor Relations, involving the AEA, We are required to post
8 this information where Unit A members congregate-break rooms,
9 lunchrooms, etc.-dependent on your school's location for staff.¹¹ This needs
10 to remain posted for 30 days-(if you post it today that would be June 22,
11 2024). **This requires to be posted right away.** (Emphasis in original).
12

13 Please confirm receipt, that you have posted and when it was posted.

14 In a May 24, 2024 email to the principals, Phelan stated in pertinent part:

15 I am reaching out to you again today. So far, I've only heard from 3 schools
16 I need to have your confirmation via email that this **Notice has been**
17 **posted TODAY.** (Emphasis in original). Please email me to let me know if
18 you have posted this notice.
19

20 On May 28, 2024, Phelan sent an email to Taverna¹² stating in pertinent part:

21 As of today, all principals have posted this notice at the schools.

22 Taverna relied on Phelan's email and did not personally check to see if the March
23 15, 2024 Notice had been posted in the High School's faculty lounges. Bach looked but

⁹ Bach did not indicate the number of prior DLR notices that he had seen on the bulletin boards.

¹⁰ The prior DLR notice pertained to a prohibited practice charge with an unidentified case number that the AEA had filed against the School Committee.

¹¹ On May 21, 2024, the Chair of the School Committee Lauren Conoscenti signed the March 15, 2024 Notice.

¹² Phelan also sent the email to Nicole Kieser, whose job title is not referenced in the record.

1 did not see that the March 15, 2024 Notice had been posted in the Social Studies Faculty
2 Lounge. He also did not notify the Employer that the March 15, 2024 Notice was not
3 posted there. On May 28, 2024, Valerio notified the DLR in writing that the School
4 Committee had posted copies of the March 15, 2024 Notice in all its schools.

5 Opinion

6 Section 11 of the Law authorizes the Commonwealth Employment Relations Board
7 (CERB) to issue orders “requiring the charged party to cease and desist from such
8 prohibited practice and take such further affirmative action as will comply with the
9 provision of this section.” This language gives the CERB broad discretion in fashioning a
10 remedy that is designed to effectuate the purposes of the Law and vitiate the effects of
11 the violation. Boston Police Patrolmen’s Association, Inc., 8 MLC 1993, 2002, MUPL-
12 2049, MUPL-2050 (February 2, 1982 and March 23, 1982); Secretary of Administration
13 and Finance v. Labor Relations Commission, 434 Mass. 340 (2001). The CERB has a
14 strong interest in preventing parties from gaining an advantage by committing prohibited
15 practices and reaping a benefit from their unlawful actions. Amesbury School Committee,
16 13 MLC 1196, 1197, MUP-5254 (October 9, 1986) (supplementary decision and order on
17 compliance); City of Everett, 2 MLC 1471, MUP-2126 (May 5, 1976), aff’d, Labor
18 Relations Commission v. City of Everett, 7 Mass. App. Ct. 826 (1979).

19 Below, I will address the Union’s arguments that the School Committee has not
20 complied with each portion of the Order.

21 Failure to Fully Restore Case Management Time

22 *Duty to Bargain*

1 First, the Union contends that the School Committee was obligated to fully restore
2 ninety-five hours of case management time at the start of the 2024-2025 school year, as
3 referenced in paragraph (a) of the Order, before the Employer could seek to bargain over
4 its proposal to eliminate case management time, as referenced in paragraph (b) of the
5 Order. Conversely, the Employer contends that there was no language in the Order which
6 required the Employer to restore the case management time before it sought to bargain
7 over the proposed change. A plain reading of the Order supports the Employer's
8 interpretation. Further, if the Union disagreed with the Order as written, it should have
9 filed an appeal to the CERB after I issued the decision and Order.

10 Next, I reject the Union's claim that the Employer could not seek to bargain over
11 proposed changes to case management time during the pendency of the parties'
12 collective bargaining agreement. The records of the prohibited practice hearing and the
13 compliance hearing are devoid of any evidence showing that the parties' collective
14 bargaining agreement addresses case management time. Additionally, the Union at both
15 hearings failed to present any evidence that the parties' collective bargaining agreement
16 contained any language that clearly, unequivocally, and specifically allows the Union to
17 refuse to bargain about a new subject during mid-term bargaining, i.e. a broadly worded
18 zipper clause. See City of Westfield, 25 MLC 163, 166. MUP-9697 (April 20, 1999).

19 *Impasse*

20 In the 2018-2019 school year, the school year prior to the Employer's unlawful
21 elimination of the case management time, the Employer provided the SPED teachers with
22 a total of ninety-five hours of case management time that took place during the H2-H5
23 blocks of the 7+H High School schedule. The June 12, 2024 proposal provided the SPED

1 teachers with a total of eighty hours of case management time during the H3 and H5
2 blocks. The Employer's implementation of the June 12, 2024 proposal reduced the SPED
3 teachers' case management time by fifteen hours from the ninety-five hours of case
4 management time that SPED teachers received prior to the Employer's unlawful unilateral
5 change.

6 However, the Employer asserts that it complied with the Order despite the ultimate
7 reduction in case management time because it negotiated to impasse with the Union and
8 then implemented its last pre-impasse proposal. Impasse in negotiations occurs only
9 when "both parties have negotiated in good faith on all bargainable issues to the point
10 where it is clear that further negotiations would be fruitless because the parties are
11 deadlocked." Town of Plymouth, 26 MLC 222, 223, MUP-1465 (June 7, 2000);
12 Commonwealth of Massachusetts, 25 MLC 201, 205, SUP-4075 (June 4, 1999); see also
13 School Committee of Newton, 388 Mass 557, 574 (1983) (describing impasse as a
14 question of fact that requires a consideration of the totality of the circumstances to decide
15 whether despite their good faith, the parties are simply deadlocked). To determine
16 whether impasse has been reached, the CERB considers the following factors: bargaining
17 history, the good faith of the parties, the length of negotiations, the importance of the
18 issues to which there is disagreement, and the contemporaneous understanding of the
19 parties concerning the state of the negotiations. Id. Although the CERB has considered
20 an employee organization's unilateral expression of desire to continue bargaining as
21 evidence that the parties may not have bargained to impasse, see e.g. Commonwealth
22 of Massachusetts, 25 MLC at 206; City of Boston, 21 MLC 1350, 1361, MUP-8372
23 (October 17, 1994), the ultimate test remains whether there is a likelihood of further

1 movement by either side and whether the parties have exhausted all possibility of
2 compromise. City of Boston, 28 MLC 175, 184, MUP-1087 (November 21, 2001).

3 Here, the parties met for one bargaining session for approximately two hours, of
4 which approximately forty-five minutes was spent in caucuses. At the beginning of the
5 session, the Employer reiterated verbally the proposal that it had made earlier in its March
6 22, April 9, and May 4, 2024, emails to eliminate case management time completely. The
7 Union rejected that proposal stating that it was contrary to the outcome of the prohibited
8 practice charge, which ordered the SPED teachers' case management time to be
9 restored. The Employer then proposed providing SPED teachers with two H periods or
10 sixty-two minutes of case management time each week. After caucusing and consulting
11 with its labor counsel, the Union rejected the proposal. Blanchet commented that the
12 School Committee's proposal was not consistent with the AEA's understanding of the
13 decision and the Order and that the attorneys were going to have to deal with the matter.
14 The meeting then ended. The next day the School Committee declared impasse citing
15 the Union's failure to agree with the School Committee's proposals or to make
16 counterproposals.

17 Upon review of the facts before me, I decline to find that the parties were at
18 impasse. The parties only met for one two-hour session on the pivotal issue of the amount
19 of time that SPED teachers would have available to devote to the performance of their
20 case management duties. Further, although the AEA presented no proposal at the
21 session, the AEA did not end the session by refusing to engage in further bargaining.
22 Instead, Blanchet stated that the attorneys were going to have deal with the matter, which
23 implied that both parties' counsel would have further discussions about the matter and

1 potentially could make progress on the issue. However, the School Committee declared
2 impasse the next day before there was any opportunity for the parties' counsel to have
3 any further discussion. Although the School Committee may have believed that it needed
4 to conclude negotiations to finalize the details of the High School schedule for the next
5 school year, the School Committee never provided the Union with a specific deadline or
6 explained why it needed to implement its proposal less than twenty-four hours later. See
7 generally Essex North Agricultural and Technical School, 50 MLC 76, 82, MUP-8072
8 (October 20, 2023) (finding that an employer artificially shortened negotiations and
9 declared impasse regarding changes in employees' summer work schedules even though
10 the end of the school year was the implicit deadline.) Accordingly, the Employer failed to
11 comply with the Order by prematurely invoking impasse and implementing its June 12,
12 2024 proposal that only restored a portion of the SPED teachers' case management
13 time.¹³

14 Failure to Email the Notice to Unit Members¹⁴

15 The Order, in part, compelled the Employer to post the March 15, 2024 Notice
16 electronically if the Employer customarily communicated with unit members via email.
17 Here, it is undisputed that the Employer did not email the Notice to Unit A members. As
18 a defense, the Employer asserts that with one exception involving the 2020-2022 notice,
19 it had not previously emailed Unit A members regarding legal matters, including DLR
20 matters. Moreover, the AEA did not present clear evidence showing that the Employer

¹³ Because I do not find that the parties negotiated to impasse, I need not address the AEA's claim in its post-hearing brief that the Employer engaged in surface bargaining.

¹⁴ The AEA did not claim that the Employer previously distributed notices to unit members via the intranet, and thus, I do not consider that issue.

1 emailed DLR notices to unit members on more than one occasion. A single instance of
2 the Employer emailing the 2020-2022 notice does not support a conclusion that the
3 Employer customarily emailed DLR notices to unit members. Therefore, because the
4 Employer had not usually emailed unit members DLR notices, the Employer did not fail
5 to comply with the Order by not emailing the March 15, 2024 Notice to unit members.

6 Failure to Post the March 15, 2024 Notice in the High School Faculty Lounges

7 Here, the Union contends that the Employer failed to post copies of the March 15,
8 2024 Notice in the six or seven faculty lounges at the High School.¹⁵ Bach credibly
9 testified that the March 15, 2024 Notice was not posted in the Social Studies Faculty
10 Lounge that he frequented. Conversely, the Employer relied on emails and the testimony
11 of Taverna, who admittedly did not carry out a first-hand inspection, to support its claim
12 that it had posted copies of the March 15, 2024 Notice in the High School's faculty
13 lounges. 456 CMR 16.08(5) states that: "At any hearing concerning the alleged non-
14 compliance, the party required to comply shall have the burden of proving such
15 compliance by a preponderance of the evidence." Based on the record before me, I
16 conclude that the Employer has failed to establish by a preponderance of the evidence
17 that it posted copies of the March 15, 2024 Notice in all the High School faculty lounges.

18 Accordingly, the Employer has failed to fully comply with the Order requiring it to
19 post the March 15, 2024 Notice where unit members usually congregate.

¹⁵ Because the AEA did not allege that the Employer failed to comply with the Order by not posting the March 15, 2024 Notice at the middle schools, elementary schools and the pre-school, I make no finding about those locations.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2

ORDER

WHEREFORE, based upon the foregoing, it is hereby ordered that the Employer shall:

- 1) Immediately provide SPED teachers at the High School with specific blocks of time to perform their case management duties during their work weeks that are equal in duration to the time that they previously had to perform their duties during the H2-H5 blocks in the 2018-2019 school year for an annual total of ninety-five hours per school year.
- 2) Bargain in good faith to resolution or impasse with the AEA about ceasing to provide SPED teachers at the High School with designated time to perform case management duties.
- 3) Immediately adhere to the following posting requirements:
 - a) Post signed copies of the March 25, 2024 Notice in all High School faculty lounges and maintain for a period of thirty consecutive days thereafter, and
 - b) Post the attached Notice to this Compliance Decision (Compliance Notice) in all conspicuous places where members of the AEA's bargaining unit usually congregate and where notice to those employees are usually posted and maintain for period of thirty (30) consecutive days thereafter.

- 1 4) Notify the DLR in writing of the steps taken to comply with this decision within ten
2 (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
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.