

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of: \*  
\*  
BELMONT SCHOOL COMMITTEE \* Case Number: MUP-20-7867  
\*  
and \* Date Issued: October 8, 2021  
\*  
BELMONT EDUCATION ASSOCIATION \*  
\*\*\*\*\*

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

James M. Pender, Esq. – Representing the Belmont School Committee  
Jonathan M. Conti, Esq. – Representing the Belmont Education  
Association

HEARING OFFICER’S DECISION

SUMMARY

1 The issue in this case is whether the Belmont School Committee (School  
2 Committee) violated Section 10 (a)(5), and derivatively, Section 10(a)(1) of  
3 Massachusetts General Law Chapter 150E (the Law) by refusing to bargain with the  
4 Belmont Education Association (Union or BEA) when certain Union representatives were  
5 present. I find that the School Committee violated the Law as alleged.

STATEMENT OF CASE

7 On February 18, 2020, the Union filed a charge of prohibited practice (Charge)  
8 with the Department of Labor Relations (DLR) alleging that the School Committee had  
9 violated Sections 10(a)(1), (2) and (5) of the Law. On June 5, 2020, a DLR Investigator

1 investigated the Charge. On July 22, 2020, the Investigator issued a one-count Complaint  
2 of Prohibited Practice and a Partial Dismissal (Complaint) alleging that the School  
3 Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On  
4 February 16, 2021, the School Committee filed its Answer to the Complaint. On April 16,  
5 2021, May 7, 2021, and June 4, 2021, I conducted a hearing by video conference during  
6 which the parties received a full opportunity to be heard, to examine and cross-examine  
7 witnesses, and to introduce evidence. Both parties filed post-hearing briefs.<sup>1</sup> Based on  
8 my review of the record, including my observation of the demeanor of the witnesses, I  
9 make the following findings of fact and render the following opinion.

10 STIPULATIONS OF FACT

- 11 1. The Town of Belmont ("Town") is a public employer within the meaning of G.L. c. 150E,  
12 § 1, and the Belmont School Committee is the collective bargaining agent of the Town for  
13 the purpose of dealing with school employees.  
14
- 15 2. The Belmont Education Association ("Union") is an employee organization within the  
16 meaning of Section 1 of the Law.  
17
- 18 3. The Belmont Education Association represents four separate bargaining units of  
19 employees of the Belmont Public Schools: Unit A (teachers), Unit B (administrators), Unit  
20 C (administrative assistants/secretaries and clerical aides), and Unit D (education support  
21 personnel).  
22
- 23 4. The Unit A contract and the Unit D contract had effective dates of September 1, 2017  
24 through August 31, 2020. The Unit B contract and the Unit C contract had effective dates  
25 of July 1, 2017 through June 30, 2020. The parties subsequently negotiated and agreed-  
26 upon one-year successor contracts for each of the four bargaining units such that the  
27 current Unit A and Unit D contracts expire on August 31, 2021, and the Unit B and Unit C  
28 contracts expire on June 30, 2021.  
29
- 30 5. On August 21, 2019, Union President John Sullivan sent a notice to Susan Burgess-  
31 Cox, Chair of the Belmont School Committee, indicating that the Union wished to modify  
32 and negotiate successor Unit A, B, C, and D collective bargaining agreements, and

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<sup>1</sup> The Union filed its brief timely on August 5, 2021. The School Committee filed its brief prior to 9:00 a.m. on the following day. The Union did not raise any objections to the late filing. I have read and considered both parties' briefs.

- 1 requested that the parties "use a coalitional interest based process similar to our  
2 bargaining the 2014-2017 contracts."  
3
- 4 6. In a letter dated September 4, 2019, Ms. Burgess-Cox responded to Mr. Sullivan's  
5 email and declined the Union's offer to engage in [a] coalition and interest-based  
6 bargaining process.  
7
- 8 7. On October 30, 2019, Mr. Sullivan sent a letter to Ms. Burgess-Cox stating that the  
9 Union's four bargaining teams were ready to exchange bargaining proposals and offered  
10 different available dates for bargaining for each individual unit.  
11
- 12 8. In Mr. Sullivan's October 30, 2019 letter, Mr. Sullivan also explained that the Union's  
13 respective negotiating teams would be comprised of designated "Core Speaking  
14 Representatives" and "Silent Bargaining Representatives" and explained the role and  
15 purpose of the silent representatives.  
16
- 17 9. On November 14, 2019, Attorney James Pender responded to Mr. Sullivan's October  
18 30, 2019 letter. Attorney Pender designated each of the Committee's four bargaining  
19 teams and recognized that the Union "may bring a certain number of silent bargaining  
20 representatives as part of its respective teams."  
21
- 22 10. On December 10, 2019, the Union and the Committee commenced negotiations for  
23 a successor Unit A contract. During the bargaining session, the Committee proposed  
24 ground rules. The parties did not agree on any ground rules during the December 10,  
25 2019 Unit A bargaining session.  
26
- 27 11. The parties met for a second Unit A bargaining session on December 18, 2019. The  
28 parties ultimately did not reach an agreement on any ground rules.  
29
- 30 12. On December 19, 2019, the Union and the Committee commenced Unit C  
31 negotiations. During the bargaining session, the Committee proposed ground rules. The  
32 parties ultimately did not reach agreement on any ground rules for Unit C.  
33
- 34 13. The Union brought Unit C member Gina Donaldson as its sole silent bargaining  
35 representative to the December 19, 2019 Unit C bargaining session.  
36
- 37 14. The parties met for a second Unit C bargaining session on January 8, 2020. The  
38 Union brought Ms. Donaldson as its sole silent bargaining representative.  
39
- 40 15. On January 24, 2020, Mr. Sullivan emailed Committee Chair Susan Burgess-Cox and  
41 asked whether the Committee would be interested in meeting as a "combined team to  
42 negotiate the common language items" because he believed it would be "more efficient  
43 and prevent complications."  
44
- 45 16. In an email dated January 24, 2020, Ms. Burgess-Cox responded to Mr. Sullivan,  
46 declining his suggestion, stating "Your suggested approach is a variation of the BEA's

1 prior request for coalition bargaining that the School Committee declined to engage in at  
2 the beginning of this process."  
3

4 17. On January 27, 2020, the Union and the Committee met for their first Unit D bargaining  
5 session. The Union brought Denise LaPolla, a member of Unit A, as a silent bargaining  
6 representative. Attorney Pender and the Committee objected to her presence as a silent  
7 representative.  
8

9 18. On January 30, 2020, the Union and the Committee met for their third Unit C  
10 bargaining session. The Union brought Ben DeLorio, a Unit A member, as a silent  
11 bargaining representative for Unit C.  
12

13 19. The School Committee objected to Mr. DeLorio's presence as a silent representative.  
14

15 20. After Mr. DeLorio left, the parties proceeded to engage in bargaining for the remainder  
16 of the January 30, 2020 Unit C bargaining session.  
17

18 21. The Union and the Committee engaged in subsequent Unit C bargaining sessions on  
19 February 13, 2020 and February 27.  
20

## 21 FINDINGS OF FACT

### 22 Background

23 The Union is the exclusive bargaining representative for four separate bargaining  
24 units of employees employed by the School Committee: Unit A (teachers), Unit B  
25 (administrators), Unit C (administrative assistants/secretaries and clerical aides), and Unit  
26 D (education support personnel).

27 The parties previously negotiated collective bargaining agreements (CBAs),  
28 effective 2017-2020 in all four units. Those negotiations led to litigation after the Union  
29 brought bargaining unit members to a February 15, 2017 bargaining session as silent  
30 representatives and the School Committee, objecting to the observers,<sup>2</sup> only agreed to

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<sup>2</sup> The Union maintained that the members were acting as non-core "silent" bargaining representatives, not mere observers. However, the Union did not explain that to the School Committee.

1 bargain if they left the room. On February 23, 2017, the Union filed a charge and the DLR  
2 issued a complaint, alleging that the School Committee violated the Law by refusing to  
3 bargain with the Union if silent representatives were present. After a hearing, the  
4 Commonwealth Employment Relations Board (CERB) issue a decision in the first  
5 instance, Belmont School Committee 45 MLC 185, MUP-17-5825 (June 7, 2019), finding  
6 that the School Committee did not violate the Law by refusing to bargain because the  
7 Union did not clarify the status of the silent representatives. Due to the Union's failure to  
8 notify the School Committee that the silent representatives were going to attend, and the  
9 resulting ambiguity of the identity of the purported silent representatives in the bargaining  
10 room, the CERB determined that the School Committees' refusal to bargain with the  
11 Union on February 15, 2017 did not amount to an unlawful refusal to bargain.

#### 12 Preparing for Successor Contract Negotiations

13 On August 21, 2019, Union President John Sullivan (Sullivan)<sup>3</sup> wrote to School  
14 Committee Chair Susan Burgess-Cox (Burgess-Cox) requesting to negotiate new CBAs  
15 for Units A, B, C and D. Sullivan requested that the parties use a "coalitional interest  
16 based process similar to our bargaining the 2014-2017 contracts."<sup>4</sup> On September 4,  
17 2019, Burgess-Cox replied that "the district declines your request for coalition and interest  
18 based bargaining. We prefer to proceed with traditional bargaining, as we did during the  
19 most recent round of collective bargaining for the current 2017-2020 contracts." Accepting

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<sup>3</sup> Sullivan is also a Special Education Teacher at Belmont High School.

<sup>4</sup>During the negotiations for the 2014-2017 CBA, all four bargaining units met together, using an outside facilitator, to discuss interests and options that ultimately resulted in a new CBA. The parties used traditional bargaining for the 2017-2020 CBA rather than an interest-based bargaining process and negotiated separately for each unit.

1 those terms, on October 30, 2019, Sullivan proposed specific dates for separate  
 2 bargaining for each of the four units. In addition, he wrote as follows:

3 Our Negotiating Teams will be comprised of a designated team of Core  
 4 Speaking Representatives and Silent Bargaining Representatives. The  
 5 composition of the BEA's Bargaining Team was voted on by the BEA  
 6 Representative Council on October 16. The Council specifically voted to  
 7 include Silent Bargaining Representatives on our Negotiating Teams. The  
 8 Core Speaking Representatives will speak during negotiations. Each  
 9 bargaining unit shall have its own Core Speaking Representatives as  
 10 follows:

11	<b>Unit A</b>	<b>Unit B</b>	<b>Unit C</b>	<b>Unit D</b>
12	Ben DeLorio	Liz Baker, Chair	Trish Ball	Bethany Fitzsimmons, Chair
13				
14	Meghan Gallagher	Arto Asadoorian	Lisa Fagan, Chair	Jackie Hardy
15	Cliff Gallant	Jon Hartunian	John Sullivan	Jitka Raidl
16	Denise LaPolla	John Sullivan	Philip Katz (MTA)	John Sullivan
17	Tracie Lockwood- Santiago	Philip Katz (MTA)		Philip Katz (MTA)
18	Craig McMahan			
19	John Sullivan, Chair			
20	Philip Katz (MTA) <sup>5</sup>			

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 32  
 33 The Core Speaking Representative will be charged with relaying the  
 34 concerns of the Silent Bargaining Representatives to the School Committee  
 35 team after a caucus. The Silent Bargaining Representatives will not speak  
 36 during negotiations, sitting silently and respectfully with the Core Speaking  
 37 Representatives. The Silent Bargaining Representatives will provide  
 38 feedback and information to the Core Speaking Representatives during  
 39 caucus that will inform the Core Speaking Representatives' discussion with  
 40 the Employer when the parties return from caucus to substantive  
 41 bargaining. The Silent Bargaining Representatives will also report back to

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<sup>5</sup> Philip Katz (Katz) was a Field Representative for the Massachusetts Teachers' Association.

1 their colleagues concerning the progress of negotiations. This will facilitate  
2 a more real-time discussion about contract negotiations with increased  
3 opportunities for 1:1 dialogue between our members and their  
4 representatives. More members will be reached and their concerns can be  
5 brought back to the Negotiating Team to inform future negotiations.  
6

7 The function and value of the Silent Bargaining Representatives of the  
8 BEA's Negotiating Team is important and multi-fold: they provide  
9 substantive feedback to the Core Speaking Representatives during  
10 negotiation; they ensure a wider breadth of members are reached for  
11 feedback on negotiations to ensure their concerns are represented; and  
12 they also work to support the BEA's broader objective and purpose of  
13 exposing more of its members to the bargaining process and identifying new  
14 and emerging leaders who may have fresh ideas or concerns that should  
15 be addressed in bargaining over terms and conditions of employment. Such  
16 widespread exposure not only assists the Union in its ability to survive,  
17 thrive and engage its members in a post-Janus era, it also ensures a degree  
18 of transparency, accountability and democracy that supports the Union's  
19 efforts to represent the varied interests, requests and concerns of the  
20 membership.  
21

22 We also expect that the parties, from time to time, may want to invite others  
23 for their unique perspective or expertise.  
24

25 Despite our past differences of opinion about the composition of our team  
26 we believe these negotiations can be a productive and result in the public  
27 schools Belmont deserves.  
28

29 At this point, the Union had not yet selected their silent representatives.

30 On November 14, 2019, James Pender (Pender), an attorney representing the  
31 School Committee, wrote to Sullivan to identify the School Committee's bargaining team,  
32 writing as follows:

33 Unit A: Susan Burgess-Cox, Michael Crowley, John Phelan, Michael  
34 McAllister, & Jim Pender  
35

36 Unit B: Michael Crowley, Amy Checkoway, Judy Malone Neville, Janice  
37 Darias, & Jim Pender  
38

39 Unit C: Kate Bowen, Andrea Prestwich, Judy Malone Neville, & Jim Pender  
40

41 Unit D: Susan Burgess-Cox, Michael Crowley, John Phelan, Janet Carey,  
42 & Jim Pender

1  
2 As his schedule permits, John Phelan<sup>6</sup> may also attend and participate in  
3 Unit B and Unit C negotiations as part of the School Committee's team.  
4

5 Pender further wrote;

6  
7 In addition to the BEA's core teams at the bargaining table, the School  
8 Committee recognizes that the BEA may bring a certain number of silent  
9 bargaining unit representatives as part of its respective teams. The parties'  
10 bargaining teams can address the specifics of bargaining at the initial  
11 meeting for each bargaining unit. Hopefully, the parties can reach  
12 agreement on ground rules to help foster productive, good faith  
13 negotiations.  
14

#### 15 Successor Contract Negotiations

16  
17 On December 10, 2019, the parties met for the first bargaining session for Unit A.  
18 In addition to the Union's core bargaining team, at least 8 silent representatives attended  
19 the session.<sup>7</sup> The silent representatives were not all from Unit A; Elizabeth Baker (Baker),  
20 a Curriculum Coordinator and a Unit B member, attended as a silent representative as  
21 did Bethany Fitzsimmons (Fitzsimmons), a paraprofessional and a Unit D member.<sup>8</sup> The  
22 Union had not informed the School Committee in advance that non-Unit A bargaining unit  
23 employees would be participating as silent representatives. Although the Union  
24 introduced all the individuals who were present, the Union did not explicitly inform the  
25 School Committee that some of the silent representatives were not from Unit A.

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<sup>6</sup> Phelan is the superintendent of schools in Belmont.

<sup>7</sup> Some, but not all, of the attendees signed a sign-in sheet. Sullivan testified that about 8 to 12 silent representatives attended, while Katz pegged it at 10 to 15 silent representatives. Phelan did not proffer a number of silent representatives at the session. The specific number of silent representatives is not material to my decision.

<sup>8</sup> Both Baker and Fitzsimmons served as Vice President of their respective bargaining units and served as core members of the bargaining team for their units.



1           The School Committee submitted proposed ground rules for Unit A negotiations,  
2 as follows:

3           All negotiating sessions are closed so that only designated bargaining  
4 committee members for each party shall attend. The BEA shall bring no  
5 more than \_\_\_<sup>9</sup> silent representatives who shall be consistent in composition  
6 throughout collective bargaining, unless a silent representative is unable to  
7 continue as part of the BEA's bargaining team and is replaced by another  
8 silent representative.

9  
10 The Union rejected this proposal.<sup>10</sup>

11           After the meeting, one member of the School Committee's bargaining team, Mike  
12 McAllister, Director of Human Capital, alerted the others on the team that two non-Unit A  
13 members sat in the back of the room during the negotiation session.

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<sup>9</sup> The School Committee did not specify an exact proposed number. Phelan testified that although the School Committee was open to having silent representatives, "we wanted to have an agreement on how many." Phelan further testified that the School Committee's understanding of the earlier CERB decision in Belmont School Committee was that the Union had the right to bring silent representatives from "that bargaining unit into the negotiations sessions at a reasonable number."

<sup>10</sup> Although Sullivan testified that the Union did not want to limit the number of silent representatives allowed at any given session, Katz testified that the Union decided to propose that 12 silent representatives should be able to attend each session. Katz wrote that number on his copy of the proposals. I credit Katz's testimony because of his specific recall and because his testimony was supported by documentary evidence. Sullivan and Katz provided concurring testimony that the Union would not agree that the silent representatives must remain consistent throughout the negotiations. The Union required flexibility. The silent representatives were present to give advice to the core bargaining team, so the Union wanted to select different silent representatives depending on what proposals were being negotiated. When the School Committee expressed concerns that having varied silent representatives may slow down bargaining, Katz explained it was the Union's responsibility to prepare the silent representatives before each session and get them "up to speed" on the status of the negotiations.

1           The parties met for the second Unit A session on December 18, 2019. The Union  
2 brought two silent representatives from Unit A; Carl Mitchell and M.A. Connors. The  
3 School Committee submitted revised ground rules for Unit A as follows:

4           All negotiating sessions are closed so that only designated bargaining  
5 committee members for each party shall attend. At any one session, the  
6 BEA shall bring no more than 10 silent representatives from the Union A  
7 bargaining unit from a total pool of 20 possible Unit A silent representatives  
8 throughout the course of collective bargaining.<sup>11</sup>

9  
10          The Union specifically objected to the idea of a pool of silent representatives.<sup>12</sup>  
11 The parties did not reach agreement for any ground rules for Unit A but subsequently  
12 engaged in substantive bargaining for Unit A's CBA.<sup>13</sup>

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<sup>11</sup> Phelan testified that the School Committee believed that 10 was a reasonable number, that all silent representatives should be from the unit at issue in the bargaining session, and that it was important to have a consistent pool of potential silent representatives. He noted that “[i]t didn’t matter who the 20 were as long as they were identified as a pool of folks that would come and go just so we had an idea of who we were working with from session to session.” Phelan further explained that “we wanted to have a clear understanding of who we were bargaining with across the table from session to session so we could, you know, just get the work done and get the contract negotiated and completed. We felt collectively that it was hard to bargain with different people at every session and also that we just wanted to be able to know who we were working with and that they were members of that unit and then get the work done.”

<sup>12</sup> Katz testified that the Union was willing to limit the total number of silent representatives to 10 or 12, and at some point, was also willing to limit the number of silent representatives from other bargaining units to three. But the Union rejected the idea of a consistent pool of silent representatives.

<sup>13</sup> The parties next met for Unit A negotiations on January 9, 2020. The Union brought seven silent bargaining representatives, all of whom were Unit A employees. Neither Mitchell nor Connors, who attended the previous session, were among the seven silent representatives. During the following Unit A session, on January 29, 2020, the Union brought four silent representatives from Unit A. Two of these representatives had not attended any previous Unit A session. At the next Unit A session, on February 12, 2020, the Union brought 12 silent bargaining representatives, at least 11 of whom had not attended any prior Unit A bargaining sessions. On March 3, 2020, the Union brought at least three Unit A silent representatives, two of whom had not previously attended any previous session. Phelan testified that he did not recall any complaints or disruptions in the flow of bargaining on account of the varying silent representatives.

1           On December 19, 2019, the parties commenced negotiations for Unit C. The Union  
2 brought one silent representative to this bargaining session, Gina Donaldson  
3 (Donaldson). Donaldson is a member of Unit C.<sup>14</sup> The School Committee submitted, in  
4 part, the following proposed ground rule for the Unit C negotiation:

5           All negotiating sessions are closed so that only designated bargaining  
6 committee members for each party shall attend. The BEA shall bring no  
7 more than \_\_\_<sup>15</sup> silent representatives from the Unit C bargaining unit who  
8 shall be consistent in composition throughout collective bargaining, unless  
9 a silent representative is unable to continue as part of the BEA's bargaining  
10 team and is replaced by another silent representative.

11  
12 The Union objected to the limitations on the silent representatives. The parties did not  
13 reach agreement and agreed to proceed without ground rules.<sup>16</sup>

14           On January 8, 2020, the parties met for a second Unit C bargaining session.  
15 Donaldson again attended as a silent representative. The parties engaged in substantive  
16 negotiations regarding proposals related to Unit C but did not reach an agreement.

17           On January 14, 2020, the parties met for their first negotiation session for Unit B.  
18 The School Committee proposed ground rules, including the following:

19           All negotiating sessions are closed so that only designated bargaining  
20 committee members for each party shall attend. The BEA's bargaining team  
21 shall consist of no more than 5 silent representatives from the Unit B  
22 bargaining unit throughout the course of collective bargaining.<sup>17</sup>

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<sup>14</sup> There is no evidence that the Union specifically announced that Donaldson was present as a silent representative. The School Committee did not object to her presence.

<sup>15</sup> No exact number was specified in the written proposal.

<sup>16</sup> Sullivan testified that the parties commenced negotiating over substantive contract proposals related to Unit C at this session, while Katz testified that there were no substantive negotiations until the next session. It is not necessary to resolve this dispute because it is not material to my decision.

<sup>17</sup> There are approximately 18 to 20 bargaining unit members in Unit B. Phelan testified that due to the relatively small number of members, and the School Committee's

1 The Union did not agree to the proposed ground rules.<sup>18</sup> The parties then commenced  
2 bargaining over the Union's substantive proposals for Unit B.<sup>19</sup>

3 On January 24, 2020, Sullivan emailed Burgess Cox and Phelan as follows:

4

5 Our teams met yesterday to review the common/across unit proposals.<sup>20</sup>

6 We would like to request that we meet as a combined team<sup>21</sup> to negotiate  
7 the common language items. This will be more efficient and prevent  
8 complications. What do you think?  
9

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understanding that silent representatives would only come from the bargaining unit being addressed at any particular session, the Union would not need as many silent representatives for Unit B as it would for other units. The School Committee therefore determined that five silent representatives would be an appropriate number to propose.

<sup>18</sup> Katz testified that the Union would agree to limit the number of silent representatives to five but would not agree that the silent representatives must be from Unit B or must be consistent from session to session.

<sup>19</sup> The Union's proposals were limited to Unit B proposals, although one proposal concerned layoff provisions which allowed Unit B administrators to "bump back" to Unit A. Otherwise, the Union did not condition any of its proposals pertaining to Unit B on the School Committee agreeing to any language regarding any other bargaining unit.

<sup>20</sup> Both the Union and the School Committee had made proposals that were identical or substantially similar for multiple bargaining units. For example, the School Committee included substantially similar proposals regarding health insurance premium splits and sick leave documentation in all four units, while the Union offered similar proposals in multiple units regarding the grievance and arbitration procedures, Family and Medical Leave, and flexible spending accounts.

<sup>21</sup> Katz testified that after exchanging proposals, it was clear that there were "many issues from both parties that were the same. And we thought it would be more efficient to bargain them together rather than having each bargaining unit bargaining each of these things separately or having one bargaining unit feel pressure to accept something that another bargaining unit had already agreed to." Sullivan testified that "we didn't believe that it changed the traditional bargaining we were in. That it was simply a way to efficiently discuss topics together and then reach agreements back at the individual tables." He elaborated, "We didn't view it as coalition bargaining because anything we discussed would have to go back to the main table that -- as part of the entire package for that particular unit. And it would have to be ratified by the members of that bargaining unit. So it was not one package. It was individual items we believed that we were discussing for efficiencies sake because they kept coming up at each bargaining table, and we were having the same conversations and replicating the same exact conversation four times."

1 Burgess-Cox responded,  
2

3 Your suggested approach is a variation of the BEA's prior request for  
4 coalition bargaining that the School Committee declined to engage in at the  
5 beginning of this process.  
6

7 Negotiations are underway with each bargaining unit and we expect that  
8 process to move forward effectively. Any common proposals will be  
9 addressed as part of all proposals for each of the bargaining units. The  
10 School Committee does not wish to alter the current bargaining process.  
11

12 The Union did not further pursue its suggestion to negotiate the similar proposals jointly  
13 and separate bargaining for each unit continued.

14 January 27 Bargaining Session for Unit D  
15

16 On January 27, 2020, the parties commenced negotiations for the Unit D  
17 successor CBA. In addition to the core bargaining team, the Union brought LaPolla, a  
18 member of Unit A,<sup>22</sup> as silent representative. She did not sit at the bargaining table but  
19 sat in a row of chairs reserved for the silent bargaining representatives that were placed  
20 behind or beside the table. Because this was the first negotiations session for Unit D,  
21 everyone in the room introduced themselves, including LaPolla.<sup>23</sup>

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<sup>22</sup> LaPolla is the Treasurer for the Union and a core negotiating team member for Unit A. Previously, LaPolla had served as the Union's Vice President for all four units.

<sup>23</sup> Phelan first testified that, "[w]hen we began the process of preparing to bargain, we had inquired at some point as to why Denise was in the room if she was not a Unit D member. There was no announcement of her being in the room at any other point in the beginning. She just sat in the back until it was discussed, and we asked why would she be in the room as a non-Unit D member." At a later point in his testimony, when asked if LaPolla participated when the attendees introduced themselves, he replied "I believe she did when she was – yeah, when she was acknowledged as sitting not at the table but behind the group, she said who she was." Both Sullivan and Katz confirmed that LaPolla introduced herself at the start of the session along with the other attendees. Based on the weight of the evidence, I find that LaPolla introduced herself at the start of the bargaining session.

1 Pender objected to LaPolla's presence because she was not from Unit D.<sup>24</sup> Pender  
2 suggested that, by having her present during Unit D negotiations, the Union was trying to  
3 engage in coalition bargaining against the School Committee's wishes.<sup>25</sup> Sullivan and  
4 Katz explained that they were not trying to engage in coalition bargaining, and that LaPolla  
5 was there to support the efforts of reaching an agreement for Unit D. They further  
6 indicated that they would only address issues related to Unit D.

7 The discussion became a little contentious and at some point LaPolla, feeling  
8 unwelcomed, left the bargaining room. The parties then caucused. Because of the School  
9 Committee's objection, after the caucus, the Union agreed to continue bargaining without  
10 LaPolla.<sup>26</sup> Katz however, provided notice that the Union believed that they could bring  
11 silent representatives from other bargaining units to any future bargaining session.<sup>27</sup>

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<sup>24</sup> Although LaPolla was not currently in Unit D, she had previously held a Unit D position. In her current position as a special education teacher, LaPolla works with Unit D members often. She also had served on the Unit D bargaining team during earlier negotiations when she was the Union Vice President.

<sup>25</sup> During Phelan's testimony, he agreed that Pender made a statement that the School Committee was not interested in coalition bargaining or bargaining with a non-unit member present. He also answered in the affirmative when asked if the reason why the School Committee refused to bargain with LaPolla present was because she was not a member of the unit being bargained. Phelan further testified that he was not aware of any animosity between the School Committee and LaPolla.

<sup>26</sup> The testimony is contradictory regarding whether LaPolla returned with the Union's bargaining team after the caucus. Phelan could not recall. At one point, Katz testified that LaPolla, returned to the negotiations room after the caucus briefly so that she could then "leave sort of officially." However, at another point, Katz testified that it was possible that LaPolla did not return to the bargaining room after the caucus. I do not believe it is pertinent to my final decision in this case whether LaPolla left the bargaining room permanently prior to the caucus or if she returned from the caucus and then left.

<sup>27</sup> Katz testified that although the Union did not feel it was required to ask LaPolla to leave, because it had already provided sufficient notice to the School Committee, "the Union was doing that out of abundance of caution because of the Employer's concern about

1           After LaPolla left, the parties resumed bargaining. The Union only submitted  
2 proposals relative to Unit D. The Union did not condition acceptance of any of the School  
3 Committee's proposals on it making similar proposals for other units.

4 January 30 Bargaining Session for Unit C

5  
6           On January 30, 2020, the parties met for the third bargaining session for Unit C. In  
7 addition to the core bargaining team, the Union brought Ben DeLorio (DeLorio) as the  
8 only silent representative. DeLorio is a Unit A member. He also serves as the grievance  
9 chair for the Union on behalf of all four bargaining units.

10           At the start of the session, Katz introduced DeLorio as both a silent representative  
11 and a member from a different bargaining unit.<sup>28</sup> DeLorio was sitting in the seats  
12 designated for silent representatives. Pender objected to DeLorio's presence. He  
13 specifically objected to the presence of anyone who was not from Unit C participating as

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notice so that we then- I then gave notice to the Employer that we would be bringing silent  
reps from other bargaining units or at least reserving our rights to do so and that we might  
do that in the future for this bargaining unit or any other bargaining unit."

<sup>28</sup> Phelan testified that "[w]hen members of the BEA team walked in, member Phil Katz, as he walked in, introduced very clearly and explicitly that they were having Ben DeLorio in the meeting for this meeting. It was very clear that he wanted to make that very explicitly and some would say rather dramatic. He wanted to make sure that it was known that Ben DeLorio was going to be in the room as a Unit A member during this Unit C negotiations session." In his testimony, Sullivan explained why the Union made this announcement, saying "[s]o we had just bargained on Monday night and the silent representative we had felt attacked. And we wanted to be 100 percent transparent with the School Committee of who was in the room, so we felt like we had to state that Ben was a non-unit silent representative just so that we notified the School Committee of his presence." Katz too testified that he specifically introduced DeLorio as a Unit A member, explaining "I did that because it seemed like the employer thought that we were trying to pull a fast one, so to speak, before, and we just wanted to be really clear this time and – and make sure that the School Committee knew what we were doing." Katz further testified that "I thought it was only fair as well to explain to the employer what the ramifications would be around refusing to bargain with us and asserting – and that I asserted the union's rights about who our representatives would be."

1 a silent representative.<sup>29</sup> The Union representatives stated that they had the right to have  
2 DeLorio in the room and if he was not allowed to remain, they would file a charge with the  
3 DLR. Katz and Pender then discussed, and disagreed about, whether it was legal or not  
4 for the Union to insist on having a non-unit member serve as a silent representative. The  
5 School Committee caucused.<sup>30</sup> Upon their return, the parties continued to disagree about  
6 DeLorio's presence. The School Committee's representatives expressed concerns that  
7 the Union was attempting to engage in coalition bargaining by including a member from

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<sup>29</sup> Phelan testified that he is not aware of any personal animosity between the School Committee and DeLorio. He explained, though, that the School Committee believed it was improper for the Union to bring silent representatives from other units, saying, "[W]e really weren't thinking that other unit members would come into a different unit negotiation until we ended that first Unit A meeting in the '19/'20 negotiations, and we realized that Liz Baker and Bethany Fitzsimmons were present in that Unit A meeting, and they were not part of Unit A. Then kind of our sensor was up that we not only now needed to kind of pay attention to how many silent reps would be there, but also is it appropriate to have people from other units present. So we discussed trying to be vigilant on where our thought was on that, and we didn't feel it was within the guidelines of the DLR case that it was okay to have unit members from another unit in another unit's session. So when it became apparent that the BEA was looking to do that by the presence of Unit A members in a Unit C session or a Unit A member in a Unit D session, we felt that that was not in line with what the DLR had said, and we felt that they were, again, moving towards a different type of bargaining and imposing a different type of bargaining on us that we didn't feel they had the right to do. So that's why we felt the need to set a limit on that, that's why we were trying to create ground rules that would support knowing what both parties were going to do, and ultimately, when we had no ground rules and they insisted on bringing other unit members, we objected."

<sup>30</sup> The bargaining session began at 5:00 p.m. A 5:10 p.m. the School Committee left for a caucus, returning at 5:25 p.m.



1 a different bargaining unit.<sup>31</sup> Both Sullivan and Katz attempted to reassure the School  
2 Committee that that was not their intent.<sup>32</sup>

3 The School Committee continued to object to DeLorio's presence.<sup>33</sup> The Union  
4 caucused briefly.<sup>34</sup> Upon their return to the bargaining room, the Union indicated that it  
5 would file a charge if the School Committee did not agree to bargain with DeLorio present.  
6 The School Committee did not change its stance and continued to refuse to bargain with

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<sup>31</sup> Phelan testified that Pender stated words to the effect that by including a member from a different bargaining unit in the negotiations, the Union was "unilaterally imposing coalition bargaining." Sullivan questioned how it could be coalition bargaining. Phelan's contemporaneous bargaining notes reflect the following statement, "we feel non-unit members are a push toward coalition bargaining." Phelan testified that he could not recall if someone said this, or whether this just reflected his thoughts at the time.

<sup>32</sup> Sullivan testified that "[t]hey (the School Committee) expressed concern that we were trying to push an agenda to have coalition bargaining and that it was – it violated collective bargaining laws for us to bring someone and to push an option that they had already rejected." To reassure the School Committee, Sullivan testified that they explained that DeLorio "was there only to represent Unit C and to provide feedback in terms of their language and no one else's contract language." Sullivan further testified that he explained "that we were only there for Unit C and Ben was going to advise Unit C. And I believe I asked if they could see our perspective that we were there to only bargain a Unit C contract and that Ben was there to support administrative assistance (sic) in getting their contract settled." Katz agreed, testifying that he and Sullivan both "said things to the effect of its not coalition bargaining if we're not talking about other bargaining units and explained that – that Ben DeLorio was a good team member here to discuss on this bargaining unit." Phelan's contemporaneous bargaining notes also reflect the Union's assurances that DeLorio's role was to support Unit C, indicating that Sullivan said "Ben's [DeLorio's] role is to support Unit C members." Katz added that "Ben can give us advice - it is our right to decide who bargains – not SC."

<sup>33</sup> Katz testified that Pender said that if DeLorio remained, the School Committee would refuse to bargain with the Union. Phelan's testimony and bargaining notes reflect that after the Union explained they were not attempting to engage in coalition bargaining, Pender simply responded that "Ben is not subject to to (sic) the Unit C contract." When Katz asked if Pender was refusing to bargain with DeLorio in the room, Pender responded, "we will not have the conditions unilaterally imposed [on] us."

<sup>34</sup> Phelan's bargaining notes indicate that the Union caucused at 5:35 p.m., returning at 5:40 p.m.

1 DeLorio present.<sup>35</sup> The Union informed the School Committee that it would file a charge  
2 with the DLR and then asked DeLorio to leave so the parties could continue the  
3 negotiations. After DeLorio left, the parties began substantive negotiations. The  
4 negotiations were exclusively for Unit C's CBA. The Union made proposals only for Unit  
5 C and did not condition acceptance of any of the School Committee's proposals upon the  
6 School Committee agreeing to any specific language for the other three units.

7 Negotiations for the CBAs Continue Through March 2020

8 The parties continued to negotiate the four collective bargaining agreements.  
9 Although the Union brought silent representatives as members of its bargaining team, the  
10 Union did not bring any silent representatives from a different bargaining unit to any of  
11 the bargaining sessions after January 30, 2020. The Union continued to vary the

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<sup>35</sup> According to Phelan's testimony and his bargaining notes, when the Union returned from caucus at 5:40 p.m., Katz said that they were "ready to bargain with Ben in the room. If you don't, we will file a charge. If you say no – we will file charge & then ask Ben to leave." Phelan's notes are a little unclear at the point, suggesting that the School Committee was willing to bargain. However, other testimony and even the notes themselves seemingly contradict that the School Committee ever agreed to bargain with DeLorio present. The notes reflect that DeLorio left the bargaining room just two minutes later, at 5:42 p.m. Although the notes are not clear on exactly what was said that prompted DeLorio to leave the bargaining session, Phelan admitted during his testimony that the School Committee refused to bargain with DeLorio present. When asked if the reason the School Committee refused to bargain with either LaPolla or DeLorio present was because they were not in the bargaining unit that was being discussed, Phelan answered in the affirmative. Additionally, Katz testified that the School Committee refused to bargain if DeLorio remained. Sullivan also testified that the Union and the School Committee could not resolve their disagreements over this issue and "[w]e agreed to disagree and proceed with bargaining without Ben in the room...we asked Ben to leave and notified the School Committee that we'd be filing a charge...about silent representatives and if we could bring someone from another unit to a bargaining session." The weight of the evidence supports my conclusion that the School Committee refused to bargain with the Union while DeLorio remained in the room.

1 composition of the silent representatives from session to session. At no point did any  
2 silent representative speak at the negotiations table.

3 The parties suspended their negotiations in March 2020, due to the COVID-19  
4 pandemic, and ultimately agreed to a one-year extension of the 2017-2020 CBAs.

5 OPINION

6 Section 6 of the Law requires a public employer to meet with the exclusive  
7 representative and negotiate in good faith with respect to wages, hours, and other terms  
8 and conditions of employment. Such obligation does not compel either party to agree to  
9 a proposal or make a concession. School Committee of Newton v. Labor Relations  
10 Commission, 388 Mass. 557 (1983). Section 2 of the Law guarantees to employees the  
11 right to bargain collectively through representatives of their own choosing. Upper Cape  
12 Cod Regional Vocational Technical School District, 8 MLC 1214, MUP-4120 (October 9,  
13 1981). As a general rule, the selection of a union's bargaining team is an internal matter  
14 that does not justify a refusal to bargain. Southern Worcester Regional Vocational School  
15 District v. Labor Relations Commission, 377 Mass. 897, 904 (1979).

16 I find that the School Committee refused to bargain with the Union on both January  
17 27, 2020 and January 30, 2020. The record reveals that the School Committee objected  
18 when the Union brought LaPolla, a Unit A employee, to the Unit D negotiation session on  
19 January 27, 2020. Although the Union had already informed the School Committee that  
20 it may bring any silent representative to any bargaining session, the Union agreed to have  
21 LaPolla leave. The Union did not force the issue during that session, but instead restated  
22 its intention to, or at the very least reserved its right to, bring silent representatives from  
23 other bargaining units to future bargaining sessions. Given the Union's relatively quick

1 decision to ask LaPolla to leave, the School Committee's refusal to bargain on January  
2 27 is not as clear as its refusal to bargain on January 30. However, the parties stipulated  
3 that the School Committee objected to LaPolla's presence as a silent representative.  
4 Moreover, during that bargaining session, Pender stated that the School Committee was  
5 not interested in coalition bargaining or with bargaining with a non-unit member present.  
6 Further, Phelan agreed during his testimony that the School Committee refused to  
7 bargain with LaPolla in the room because she was not a Unit D member. Accordingly, I  
8 find that the School Committee refused to bargain with the Union while LaPolla was  
9 present based on the fact that she was a member of a different bargaining unit.

10 The facts are even clearer that the School Committee refused to bargain when  
11 Ben DeLorio, a Unit A member, attended the Unit C negotiations on January 30, 2020.  
12 The Union made a point to introduce DeLorio as both a silent representative and a  
13 member of a different unit than the unit being discussed. The School Committee objected.  
14 To alleviate the School Committee's concerns, the Union explained that it was not  
15 attempting to engage in coalition bargaining, stating its intent to limit negotiations to Unit  
16 C's CBA. Nevertheless, the School Committee would not bargain with the Union while  
17 DeLorio was present. It was only after he left that the parties engaged in substantive  
18 bargaining for Unit C.

19 The School Committee maintains that it did not violate the Law, arguing that on  
20 January 27 and January 30, 2020, the Union included silent representatives in a manner  
21 inconsistent with: (1) the holding of the Belmont School Committee decision; (2)  
22 maintaining separate negotiations between respective bargaining teams for the four

1 bargaining units in question; and (3) negotiating in good faith. I will address each of the  
2 School Committee's concerns in turn.

3 The Union's Actions Were Not Inconsistent with the CERB's Belmont School Committee  
4 Decision.

5  
6 The School Committee justifies its refusal to bargain by asserting that the Union's  
7 selection of silent representatives went beyond the scope recognized by the CERB in  
8 Belmont School Committee, by including members from different bargaining units and by  
9 varying the number and composition of silent representatives from session to session. I  
10 disagree.

11 In Belmont School Committee, the Union only sent one email indicating that it  
12 "may" bring other representatives to a bargaining session. The CERB found that this was  
13 insufficient to clarify the status and role of the unannounced individuals in the back of the  
14 room during the 2017 bargaining session. The CERB determined that an employer could  
15 lawfully refuse to bargain until the union removed any ambiguity as to the identity of the  
16 purported bargaining representatives.

17 Here, the facts are very different. There was no ambiguity about the identity or role  
18 of the silent representatives in the bargaining sessions. At the very beginning of the  
19 negotiations, on October 30, 2019, Sullivan explained that the Union's negotiation teams  
20 would include silent representatives and clarified both their function and value to the  
21 Union. On November 14, 2019, Pender specifically recognized that the Union may bring  
22 silent representatives as part of the Union's respective bargaining teams. Thereafter,  
23 during ground rules negotiations, the Union objected to any School Committee proposals  
24 that would have required that the Union's silent representatives remain consistent  
25 throughout the process or could only be drawn from a certain consistent pool of silent

1 representatives. The Union rejected those proposed ground rules, explaining that it  
2 needed flexibility to select differing representatives depending on what proposals were  
3 being addressed at any given session. The Union also would not agree to the School  
4 Committee's proposed ground rules limiting the silent representatives to only those in the  
5 unit being bargained.<sup>36</sup> The parties ultimately agreed to proceed to substantive bargaining  
6 without ground rules.

7 Throughout the negotiations for the successor CBAs, the Union consistently  
8 reserved the right to bring silent representatives without the School Committee's  
9 proposed limitations. The Union then acted accordingly when it brought silent  
10 representatives from various units to the December 10, 2019 bargaining session and  
11 again when it brought LaPolla to the Unit D negotiations on January 27, 2020.<sup>37</sup> Although  
12 the Union agreed to have LaPolla leave that session due to the School Committee's  
13 objections, Katz once again provided clear notice that the Union would bring silent  
14 representatives from other bargaining units to future negotiations, or at least reserved its  
15 right to do so. Just three days later, DeLorio attended the January 30, 2020 bargaining  
16 session. At the outset of the session, Katz explicitly explained that DeLorio, a Unit A  
17 member, was attending as a silent representative. He sat in the seats designated for silent  
18 representatives. There was no ambiguity regarding who DeLorio was and why he was

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<sup>36</sup> The Union did consider agreeing to a ground rule that would limit the number of silent representatives that the Union could bring from other bargaining units, but the parties never reached agreement on that proposal.

<sup>37</sup> Although the Union did not specifically announce LaPolla as a silent representative, the School Committee clearly understood that she was present as a silent representative. The School Committee was aware that she was not on the core bargaining team for Unit D, and she was sitting in the seats reserved for the silent representatives. At no point did the School Committee argue that it was unsure of her status on January 27, 2020.

1 present. Accordingly, the concerns expressed by the CERB in Belmont School Committee  
2 were not present here. The School Committee clearly understood that DeLorio and  
3 LaPolla were present at the negotiations sessions as silent representatives on the Union's  
4 negotiation team.

5 The Union did not specifically inform the School Committee in advance about  
6 which silent representatives it would be bringing to any specific negotiation session, but  
7 it was not obligated to do so. As the CERB noted in Belmont School Committee,

8 In so holding, we do not suggest that the Union was obligated to provide the  
9 Employer with advance notice of the names of the silent representatives  
10 who would be attending the February 15, 2017 bargaining session. It is well-  
11 established that an employer may not insist on knowing the names of  
12 bargaining team members in advance of negotiations. Id. at 192.

13 The School Committee asserts that Belmont School Committee stands for the  
14 proposition that the Union could only bring silent representatives from the same  
15 bargaining unit. I disagree with that interpretation. In support of its argument, the School  
16 Committee cites the following language from that decision:

17 [A]lthough a union has the right to designate a reasonable number of  
18 *bargaining unit members* to serve on its bargaining team in roles that need  
19 not include face-to-face bargaining, in this case, the Union never informed  
20 the School Committee in advance of the bargaining session that it had taken  
21 a vote to include silent representatives on its bargaining team, or that seven  
22 of so unannounced individuals in the bargaining room that day were  
23 *bargaining unit members* who had volunteered to serve in this capacity." Id.  
24 at 185 (emphasis added).  
25

26 However, importantly, the issue of whether the Union could have representatives  
27 from a different bargaining unit on its bargaining team was not before the CERB in that  
28 case. I do not interpret the CERB's statement that a Union has the right to designate unit  
29 members as silent representatives to mean that the Union can *only* bring bargaining unit

1 members as silent representatives. The CERB made clear that it was only addressing the  
2 facts presented in that case. In a footnote, the CERB wrote,

3 This statement is limited to the facts before us, where approximately seven silent  
4 representatives were present. We need not and expressly do not reach the issue  
5 of whether the principles enunciated in those decisions would apply if a  
6 significantly larger number of bargaining unit members volunteered to serve as  
7 silent representatives and showed up at the bargaining session.” Id. at 191, n.20.

8  
9 Similarly, the issue of silent representatives from other bargaining units was not in front  
10 of the CERB and thus was not addressed.<sup>38</sup> Although the School Committee argues that  
11 its legitimate concerns about the legality and appropriateness of the Union’s attempts to  
12 bring members from a bargaining unit other than the one under discussion to serve as a  
13 silent representative was rooted in Belmont School Committee, in fact the CERB has not  
14 specifically addressed this issue in that case, or in any other case.

15 The National Labor Relations Board (NLRB), though, has addressed similar  
16 issues.<sup>39</sup> The NLRB has long held that, as a general rule, unions are entitled to determine  
17 the composition of its own bargaining team and an employer, absent extraordinary  
18 circumstances, is required to negotiate with the Union’s designated representatives.  
19 General Electric Co. v. NLRB, 412 F.2d 512 (2d Cir., June 9, 1969); Minnesota Mining  
20 and MFG Co. V. NLRB, 415 F.2d 174, 178 (8<sup>th</sup> Cir, 1969). For instance, in Harley

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<sup>38</sup> The CERB wrote “[w]e hold *only* that under the circumstances of this case, and the nature of the communications throughout the early stages of the parties’ negotiations, the Union would have been well-advised to clearly notify the Employer that silent representatives would attend the February 15<sup>th</sup> session and the role that they would play in bargaining. Having failed to do so, the Employer’s refusal to bargain on a single occasion was not a violation of the Law.” Id. at 192 (emphasis added).

<sup>39</sup> Although NLRB precedent is not binding on the CERB, it can provide useful guidance. Alliance, AFSCME, SEIU and Luther E. Allen, Jr., 8 MLC 1518, SUP-2024, 2025 (November 13, 1981).



1 Davidson Motor Co., Inc., 214 NLRB 433 (1974), the Union informed the employer that it  
2 planned to bring representatives from outside the bargaining unit to serve on its  
3 bargaining committee. The employer, objecting to the “outsiders,” refused to bargain. The  
4 Union provided assurances that the bargaining committee, including the non-employee  
5 representatives, would only bargain over the contract before them. The NLRB reiterated  
6 that, generally, each party has the right to choose whomever it wants to represent it during  
7 collective bargaining, and the other party has a correlative duty to negotiate with the  
8 designated agents. Therefore, the NLRB found that the employer violated the National  
9 Labor Relations Act (NLRA) because it could not refuse to bargain with the Union’s  
10 designated bargaining team, even when it included “outsiders,” provided the Union was  
11 bargaining solely on behalf of the bargaining unit in question. Similarly, in NLRB v. Indiana  
12 and Michigan Electric Co., 599 F.2d 185 (7th Cir. 1979), the Seventh Circuit upheld a  
13 NLRB decision that the employer’s refusal to allow members of the union’s collective  
14 bargaining team, who were members from other bargaining units, sufficient leave to  
15 attend negotiations, violated the NLRA by interfering with the union’s right to select its  
16 own bargaining representatives.

17         The School Committee argues that both of those cases are distinguishable from  
18 the facts here. In both of the NLRB cases, the Union informed the employer in advance  
19 that non-bargaining unit employees would be present and the employers objected prior  
20 to the start of negotiations. The School Committee contrasts that scenario with its  
21 acceptance of the Union’s four core bargaining teams, and its acceptance, in general, of  
22 the idea of silent bargaining representatives. The School Committee argues it only  
23 objected when the Union later changed the composition of its silent representatives from

1 one session to the next, and included silent representatives from different units, without  
2 notice or explanation. I disagree with the School Committee's contention that the Union  
3 included silent representatives and changed the composition of its silent representatives  
4 from one session to the next without notice or explanation to the School Committee. As  
5 previously noted, the Union made clear during the ground rules negotiations that it would  
6 not agree to limit silent representatives to just those in the bargaining unit under  
7 discussion, would not agree to limit the silent representatives to a "pool" of specific  
8 individuals, and would not agree to keep the silent representatives consistent from  
9 session to session. The School Committee was aware in advance that the Union planned  
10 to bring silent representatives to at least some of the bargaining sessions and that those  
11 silent representatives could vary from session to session. Additionally, after the School  
12 Committee objected to LaPolla's presence on January 27, the Union provided specific  
13 notice that the Union believed that it could bring silent representatives from other  
14 bargaining units to any future bargaining sessions. The School Committee was clearly on  
15 notice. Furthermore, the fact that the School Committee's refusal to bargain took place  
16 later in the negotiations rather than upfront does not constitute a meaningful distinction  
17 between the NLRB cases and the facts here, where all the cases involved employers  
18 refusing to bargain due to the inclusion of non-members on the union's negotiating team.

19 The School Committee also attempts to distinguish the NLRB cases because they  
20 did not involve silent representatives.<sup>40</sup> The School Committee suggests that it would not

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<sup>40</sup> The School Committee also distinguishes the NLRB cases because they do not contain analogous facts where the parties were previously involved in litigation or involved the application of 150E. Clearly, no NLRB case involves the application of 150E yet the CERB has determined that such cases provide useful guidance. I find that the cited NLRB cases have sufficiently analogous facts to provide useful guidance, even though those cases

1 have objected if a speaking member of the Union's core bargaining team was from a  
2 different unit but found it untenable to include a silent representative from another unit.  
3 In its brief, the School Committee claims that if the Union had informed the School  
4 Committee that DeLorio was a member of both Unit A and Unit C's core bargaining team,  
5 or if the Union had informed the School Committee on January 30, 2020 that it was  
6 modifying its Unit C bargaining team to include DeLorio for the remainder of successor  
7 negotiations, it is likely that the School Committee would not have opposed his inclusion.  
8 Apparently, it would have bargained with him present under those circumstances but  
9 would not bargain with the Union if DeLorio remained quiet during the session, sitting in  
10 the seats designated for silent representatives. However, this distinction is not easily  
11 understandable, and the School Committee fails to explain why silent representatives  
12 from other units are problematic while core members of the bargaining team from other  
13 units are not.<sup>41</sup>

14 Moreover, even though the parties have not cited, and I have not found, any CERB  
15 or NLRB cases that directly address whether a union may include silent representatives  
16 from outside the bargaining unit on its negotiation team, the NLRB has addressed  
17 whether an employer was free to refuse to bargain when "outside" representatives were

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did not involve previous litigation like here. Moreover, I have already determined that the CERB's decision in Belmont School Committee, which was the result of that previous litigation, does not permit the School Committee's refusal to bargain in the circumstances present in the instant case.

<sup>41</sup> By arguing that the School Committee would have accepted DeLorio if he was added to the core team for Unit C for the remainder of the sessions, the School Committee suggests that the varying composition of the Union's team from session to session is a main concern. I address that issue later in this decision.

1 non-voting representatives or otherwise had no control over the negotiations at the table.  
2 For instance, in General Electric Co., 412 F.2d 512, the NLRB determined that the  
3 employer violated the NLRA when it refused to bargain because the Union brought  
4 representatives from seven other unions that had contracts with the employer to serve as  
5 “non-voting” members of its bargaining team, even though they were there solely to aid  
6 in the current negotiations and not to represent their own unions. Similarly, in Indianapolis  
7 Newspapers, Inc., 224 NLRB 1490 (1976), the NLRB found the employer’s refusal to  
8 bargain with the union because it included members of outside unions on its bargaining  
9 team as non-voting members was unlawful, finding no valid distinction between the non-  
10 voting members and the rest of the bargaining team. See also, Minnesota Mining &  
11 Manufacturing Co. v. NLRB, 415 F.2d 174(Union’s team lawfully included individuals from  
12 other of the employer’s plants and members of other unions, who acted as consultants  
13 who had “no vote or control over negotiations”). I see no meaningful difference between  
14 the makeup of those bargaining teams and the Union’s bargaining team here which  
15 included silent representatives, such that it that would permit the School Committee to  
16 lawfully refuse to bargain with the Union.

17 The Union Did Not Improperly Attempt to Force Coalition Bargaining

18  
19 The School Committee also maintains that it was justifiably concerned that the  
20 Union was acting in a way that was inconsistent with “maintaining separate negotiations  
21 between respective bargaining teams for the four bargaining units in question; and ...  
22 negotiating in good faith.” In this regard, the School Committee expressed its belief that  
23 the Union was “improperly and unlawfully attempting to unilaterally effect a modified form  
24 of coalition bargaining, contrary to the clear, express position of the School Committee  
25 and without its consent.” The School Committee argues that “[b]lurring the lines between

1 and among the BEA's respective bargaining teams through the use of a rotating cast of  
2 silent representatives is not supported by...Chapter 150E, constitutes bad faith  
3 bargaining, and can readily constitute a form of coalition bargaining unilaterally-imposed  
4 by the BEA if there are effectively no strictures on the BEA designation of silent  
5 representatives at any given bargaining session." The School Committee has not  
6 persuaded me that the Union improperly attempted to force coalition bargaining.

7 The NLRB has consistently held that an employer is not lawfully entitled to refuse  
8 to deal with the Union's bargaining team, even if it includes non-unit members, as long  
9 as the bargaining team seeks to bargain solely on behalf of the bargaining unit for which  
10 the union is the representative. General Electric Co., 412 F.2d 512; Harley Davidson Motor  
11 Co. Inc., 214 NLRB 433; Standard Oil Company, 322 F.2d 40 (6<sup>th</sup> Cir. 1963). For instance,  
12 in Indianapolis Newspapers, Inc., 224 NLRB 1490, eight of the ten unions which  
13 represented employees at the employer's facility requested joint bargaining on certain  
14 matters of common concern. The employer rejected that request. When the Printer's  
15 Union subsequently included various members from other in-plant unions on its  
16 bargaining team, the employer refused to bargain, claiming that the union was seeking to  
17 force coalition bargaining. The union assured the employer that it was only going to  
18 bargain over issues affecting the Printers Union. The NLRB determined that the mere  
19 inclusion of representatives from other unions did not constitute an unlawful attempt to  
20 compel the employer to engage in coalition bargaining.

21 Similarly, here, although the Union did request coalition bargaining at the outset,  
22 the evidence does not demonstrate that it attempted to force collation bargaining when it  
23 included LaPolla and DeLorio on its bargaining teams on January 27 and January 30,

1 2020. It is undisputed that on August 21, 2019, Sullivan requested that the parties use a  
2 coalitional process for the upcoming contract negotiations. The School Committee  
3 declined that request, which the Union accepted. The parties then set up separate  
4 bargaining sessions for each unit. Prior to the two sessions at issue in this matter, the  
5 parties had met three times to negotiate for Unit A, twice to negotiate for Unit C, and once  
6 to negotiate for Unit B. No evidence was provided that the Union attempted to bargain  
7 over different units during any of these bargaining sessions.

8         Thereafter, on January 24, 2020, the Union proposed to meet as a combined team  
9 to negotiate certain common language items in an effort to be more efficient. The School  
10 Committee rejected that request. The Union accepted the School Committee's refusal,  
11 dropped its request, and continued with separate bargaining for each unit.

12         January 27, 2020 was the first bargaining session after that request. It is  
13 understandable that the School Committee could have been concerned that the Union  
14 was attempting coalition bargaining when it saw LaPolla at the Unit D negotiations.  
15 However, the Union expressly assured the School Committee that it was not attempting  
16 to engage in coalition bargaining and that she was present only to support Unit D in  
17 negotiating their CBA. Similarly, after the School Committee objected to DeLorio's  
18 presence on January 30, Sullivan and Katz made clear that they were bargaining for Unit  
19 C only. No evidence was presented that the Union attempted to bargain over any unit  
20 other than Unit D on January 27. No evidence was presented that the Union attempted  
21 to bargain over any unit other than Unit C on January 30. Moreover, there is no evidence  
22 that the Union conditioned any proposal, or acceptance of any of the School Committee's  
23 proposals, on the School Committee making or agreeing to certain proposals for any of

1 the other units. Thus, the School Committee has not demonstrated that its fears that the  
2 Union planned to engage in a type of coalition bargaining were justified. See NLRB v.  
3 Indiana and Michigan Elec. Co., 599 F.2d 185, 189-191 (7th Cir. 1979) (upholding the  
4 NLRB's finding that the union was not insisting on bargaining as a single unit where there  
5 was "no evidence that the Union threatened to reject all of the Company's bargaining  
6 offers in the four units unless common offers were received, or that it withheld ratification,  
7 or otherwise threatened economic pressure to force commonality of Company offers.")

8 It is important to note that the School Committee did not allow bargaining to  
9 proceed to see if its concerns about coalition bargaining were justified. Instead, at the  
10 outset of both the January 27 and the January 30 bargaining sessions, the School  
11 Committee refused to bargain due to its objections to the inclusion of LaPolla and DeLorio  
12 on the Union's bargaining teams. The NLRB's findings in Harley Davidson Motor Co. Inc.  
13 are instructive. As previously noted, in that case the employer refused to bargain with the  
14 union when it included non-employees on its bargaining team. The employer claimed that  
15 the union was seeking to force it into coalition bargaining. There, as here, the union clearly  
16 stated that the non-employee bargaining representatives were present only to bargain  
17 over the contract before them. The NLRB found that, in light of the union's express  
18 disclaimer of such a purpose, the employer had not carried its "considerable burden" to  
19 justify its refusal to bargain, writing:

20 [i]t may be that the Respondent genuinely apprehended, notwithstanding  
21 the Union's express disclaimer, that the Union's expanded bargaining  
22 committee would direct its energies toward coalition bargaining. But this did  
23 not excuse the Respondent's refusal to meet with the committee . . .  
24 Respondent's refusal was premature. Id. at 438.  
25

1 Here too, the School Committee acted prematurely when it refused to bargain with the  
2 Union. See Minnesota Mining & Mfg. Co. v. NLRB, 415 F.2d at 178. (“The mere possibility  
3 of future abuse ... is no justification for an anticipatory refusal to bargain.”)

4 The Union did not attempt to engage in coalition bargaining on either January 27  
5 or January 30, 2020. When the School Committee expressed those concerns, the Union  
6 reassured the School Committee that was not its intent. Nevertheless, the School  
7 Committee preemptively, and unlawfully, refused to bargain due to the presence of  
8 LaPolla and DeLorio.

9 The School Committee Has Not Demonstrated that the Union Engaged in Bad Faith  
10 Actions Which Justified its Refusal to Bargain.

11  
12 Each parties’ right to select its own bargaining representative is not absolute, but  
13 “...the narrowness and infrequency of approved exceptions to the general rule  
14 emphasizes its importance.” General Electric Company, 412 F.2d. at 517. Exceptions to  
15 the general rule that each party has the right to choose its own representatives are  
16 “...rare and confined to situations so infected with ill will, usually personal, or conflict of  
17 interest, as to make good faith bargaining impractical.” Id.; See also, Belmont School  
18 Committee, 45 MLC at 190 (citing Dilene Answering Service, 257 NLRB 284 (1981) for  
19 the proposition that once the union informs the employer that the disputed employees  
20 were union representatives, absent a question that the employees “were disqualified by  
21 reason of ill will or conflict of interest, the employer was ‘foreclosed from further inquiry.’”)  
22 Due to the importance of this general rule, a “considerable burden” rests on the party who  
23 refuses to bargain due to the presence of an undesired person on the other party's  
24 bargaining team to establish that the participation of that person would create a “clear



1 and present danger to the collective-bargaining process.” General Electric Company, 412  
2 F.2d. at 517 (quoting NLRB v. David Buttrick Co., 399 F.2d 505, 507 (1<sup>st</sup> Cir. 1968)).

3 In its brief, the School Committee asserts that the Union engaged “in bad faith  
4 chicanery by attempting to surprise the School Committee, without notice or explanation,  
5 with a claimed “silent representative” from a different bargaining unit.” The School  
6 Committee further claims that having LaPolla and DeLorio attend bargaining sessions for  
7 units other than their own, without notice or explanation, was contrary to the Union’s  
8 obligation to bargain in good faith and violated the Law. I am not persuaded that the Union  
9 failed to bargain in faith.<sup>42</sup> As explained above, the Union did explain the roles of its silent  
10 representatives and notified the School Committee that it may bring silent representatives  
11 from other units, including explicitly on January 27, 2020, just three days before the  
12 School Committee refused to bargain due to DeLorio’s presence. The Union alleviated  
13 any ambiguity as to LaPolla and DeLorio’s roles as required by Belmont School  
14 Committee. The School Committee has not provided any evidence, or even alleged, that  
15 either LaPolla or DeLorio had any conflict of interest or that there was any personal  
16 animosity which would have precluded successful negotiations. In fact, the School  
17 Committee did not object to bargaining with the Union when LaPolla and DeLorio were  
18 on the core negotiating teams. Accordingly, the School Committee has failed to meet its

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<sup>42</sup> I take administrative notice that the School Committee filed a prohibited practice charge against the Union, in Case No. MUPL-20-8130, alleging that the Union failed to bargain in good faith, in violation of Section 10(b)(2) and 10(b)(1), by 1) bringing a silent representative from a different bargaining unit as a means of implementing a form of coalition bargaining without the consent of the School Committee; 2) bringing a silent representative who was not a bargaining unit member; and 3) not maintaining a consistent composition of its bargaining team from one session to the next. The DLR investigator did not find probable cause to believe there was any violation of the Law and dismissed the charge on April 1, 2021. The School Committee did not appeal the decision.

1 “considerable burden” to explain how LaPolla and DeLorio’s presence, as silent  
2 representatives, would make good faith bargaining impractical or in any way endanger  
3 the collective bargaining process.

4 Further, I am not persuaded by the School Committee’s suggestion that the  
5 Union’s inconsistent composition of silent representatives constituted bad faith  
6 bargaining. The Union did bring an inconsistent number and composition of silent  
7 representatives to various bargaining sessions. However, the School Committee did not  
8 cite any case law to support its contention that the varied composition of the Union’s silent  
9 representatives constituted bad faith bargaining or otherwise justified its refusal to  
10 bargain. The NLRB’s holding in Indianapolis Newspapers, 224 NLRB 1490, is instructive  
11 on the issue. In that case, the Union brought its core team of six members and an  
12 additional two non-voting members from other unions to one bargaining session. A few  
13 days later, the Union brought its core bargaining team and four new non-voting members.  
14 The Union altered its team again four days later when it brought two new non-voting  
15 bargaining team members who had not attended any previous sessions. In that case, like  
16 here, the Union varied the number and composition of its bargaining team. The NLRB did  
17 not find that the varied composition of the non-voting members justified the employer’s  
18 refusal to bargain. Instead, the NLRB found the employer’s refusal to bargain at any of  
19 the bargaining sessions to be unlawful. Id. at 1496. I too do not find that the Union’s  
20 inconsistent composition of its silent representatives justified the School Committee’s  
21 refusal to bargain.<sup>43</sup>

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<sup>43</sup> It should be noted that because January 27, 2020 was the first bargaining session for Unit D, the School Committee cannot demonstrate that the Union altered the composition of its Unit D bargaining team as of that date. Therefore, even if the Union’s varied

1 I also note that the Union altered its bargaining team from session to session  
2 throughout the 2019-2020 bargaining, usually without complaint by the School  
3 Committee. The School Committee did not refuse to bargain when the Union varied the  
4 composition of its silent representatives when those silent representatives were from the  
5 unit being negotiated.<sup>44</sup> Phelan testified that he did not recall any complaints or  
6 disruptions in the flow of bargaining on account of the varying silent representatives.  
7 Accordingly, it appears that the School Committee's paramount issue, and the true reason  
8 it refused to bargain when LaPolla and DeLorio were present, was not because they had  
9 not attended previous bargaining sessions for the unit being discussed, but because they  
10 were not members of that unit.

11 The School Committee Did Not Otherwise Justify its Refusal to Bargain.

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composition of its bargaining team from session to session was a valid reason for the School Committee's refusal to bargain, and I find that it is not, it would not excuse the School Committee's refusal to bargain on January 27, 2020 due to LaPolla's presence.

<sup>44</sup> On December 18, 2019, during the second Unit A negotiation session, the Union brought two Unit A members as silent representatives. During the next Unit A session on January 9, 2020, the Union brought seven new Unit A silent bargaining representatives. On January 29, 2020, the Union brought four silent representatives, all from Unit A. Two of these representatives had not attended any previous Unit A session. On February 12, 2020, at least 11 of the Union's 12 Unit A silent representatives had not attended any prior Unit A bargaining sessions. On March 3, the Union brought at least three silent representatives from Unit A, two of whom had not previously attended any of the bargaining sessions. The School Committee did not refuse to bargain during any of these sessions even though there was a wide variation in the number and composition of the silent representatives. In contrast, the School Committee did refuse to bargain when there was a change in the one silent representative who attended Unit C's negotiations. The Union brought Donaldson as its silent representative to the first two sessions. The School Committee refused to bargain when the Union brought a different silent representative, DeLorio, to the third session.

1 I am not persuaded by any of the School Committee's other arguments that it was  
2 justified when it refused to bargain.<sup>45</sup> The School Committee asserts that it would be  
3 difficult to bargain with different people at every session, and that it just wanted to be able  
4 to know who they were working with, and that they were members of that unit. I have  
5 already addressed the fact that there is no need for the Union's bargaining  
6 representatives to be members of the unit. It is also undisputed that the School Committee  
7 knew who LaPolla and DeLorio were. The School Committee has not demonstrated that  
8 it would be difficult to bargain under these circumstances. The Union, not the School  
9 Committee, was obligated to keep the silent representatives up to speed. The Union  
10 explained this during ground rules negotiations on December 10, 2019. Moreover, neither  
11 LaPolla nor DeLorio, as silent representatives, would even speak at the table. Therefore,  
12 their presence at a bargaining session would not add any obligation onto the School  
13 Committee. Further, there was no evidence that bargaining with new silent  
14 representatives extended the Union's caucus times or otherwise delayed the progress of  
15 the negotiations. Even if, somehow, their presence would make bargaining slightly more  
16 difficult for the School Committee, that is a wholly insufficient reason to refuse to bargain  
17 with the Union's designated representatives.

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<sup>45</sup> Although not specifically claiming this as a defense, the School Committee asserts that the Union brought DeLorio to the January 30, 2020 session in a deliberate attempt to "provoke the requisite response from the School Committee's Unit C bargaining team as a basis for filing the underlying prohibited practice charge..." Of course, had the School Committee allowed bargaining to proceed, to determine if in fact the Union would force coalition bargaining or to see if LaPolla or DeLorio would otherwise disrupt bargaining, then the Union would not have needed to file this Charge to protect its right to designate its own representatives.



- 1        2. Take the following affirmative actions that will effectuate the purpose of the Law:  
2  
3            a. Bargain with the Union’s designated bargaining team, regardless of whether  
4            the team includes silent representatives from other bargaining units, or if the  
5            composition of the silent representatives varies from session to session.  
6  
7            b. Sign and post immediately in conspicuous places employees usually  
8            congregate or where notices to employees are usually posted, including  
9            electronically, if the School Committee customarily communicates to its  
10           employees via intranet or e-mail, and maintain for a period of thirty (30)  
11           consecutive days thereafter signed copies of the attached Notice to  
12           Employees;  
13  
14           c. Notify the DLR within ten (10) days after the date of service of this decision  
15           and order of the steps taken to comply with its terms.

16 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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Gail Sorokoff, 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 become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

# NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE  
MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Belmont School Committee violated Sections 10(a)(5) and derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain with the Belmont Education Association (BEA) when certain silent representatives were included on BEA's bargaining team. The Law gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities. Based on these rights, the Belmont School Committee assures its employees that:

**WE WILL NOT** refuse to bargain with the BEA by refusing to negotiate with the BEA's designated bargaining team solely because it includes members from other bargaining units as silent representatives or because the composition of the silent representatives varies from session to session;

**WE WILL** bargain with the BEA's designated bargaining team, regardless of whether the team includes silent representatives from other bargaining units, or if the composition of the silent representatives varies from session to session;

**WE WILL NOT** otherwise interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under the Law.

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Belmont School Committee

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Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Lafayette City Center, 2 Avenue de Lafayette, Boston MA 02111 (Telephone: (617) 626-7132).