

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

In the Matter of:

BOSTON SCHOOL COMMITTEE

and

BOSTON TEACHERS UNION, LOCAL 66

Case No.: MUP-20-7886

Date issued: January 29, 2026

CERB Members Participating:

Lan T. Kantany, Chair

Kelly B. Strong, CERB Member

Victoria B. Caldwell, CERB Member

Appearances:

Jeff R. Smith, Esq. - Representing the Boston School Committee

Harold Jones, Esq. - Representing the Boston Teachers Union

**CERB DECISION ON APPEAL OF HEARING OFFICER'S SUPPLEMENTAL
DECISION**

SUMMARY

1 The Boston School Committee (School Committee or Employer) has appealed
2 from a Department of Labor Relations (DLR) Hearing Officer's supplemental decision and
3 order on remand, which found that the School Committee violated Section 10(a)(5), and
4 derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by
5 unlawfully transferring the job duty of implementing discipline in response to student
6 behavior, which was previously performed by Boston Teachers Union, Local 66 (Union or
7 BTU) bargaining unit members, to the non-unit position of Climate and Culture Manager.

1 To remedy the violation, the Hearing Officer ordered the School Committee to return the
2 job duty to the bargaining unit and bargain over any further decisions, and the impacts of
3 those decisions, to transfer said job duty prospectively. The School Committee filed an
4 appeal seeking review from the Commonwealth Employment Relations Board (CERB),
5 arguing that the Hearing Officer's order conflicts with the CERB's unit clarification (CAS)
6 decision regarding the Climate and Culture Manager. After reviewing the hearing record
7 and the parties' arguments on appeal, we find that the Hearing Officer's supplemental
8 decision and order does not conflict with our CAS decision, and we affirm it.

9 BACKGROUND¹

10 Prior DLR Proceedings

11 On February 28, 2020, the Union filed a charge of prohibited practice (Charge)
12 with the DLR alleging that the School Committee violated Section 10(a)(5), and
13 derivatively, Section 10(a)(1) of the Law. On June 18, 2020, a DLR Investigator issued a
14 Complaint of Prohibited Practice (Complaint) alleging that the School Committee violated
15 Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law, by transferring bargaining
16 unit work to non-unit positions. On January 26, 2021, a DLR Hearing Officer conducted a
17 hearing during which the parties received a full opportunity to be heard, to examine and
18 cross-examine witnesses and to introduce evidence.

19 On November 28, 2022, the Hearing Officer issued a decision finding, among other
20 things, that the Union's allegation that the School Committee unlawfully transferred
21 bargaining unit work performed by the bargaining unit members in the position of

¹ On this appeal, the parties do not contest the Hearing Officer's factual findings. We recite only the facts pertinent to the parties' arguments on this appeal.

1 Community Field Coordinator/Assistant Unit Leader (CFC/AUL) to the non-unit position
2 of Climate and Culture Manager, was untimely.² The Union appealed the decision to the
3 CERB. On March 13, 2024, the CERB issued a decision on the Union's appeal, found
4 that the allegation was timely, and remanded the matter back to the Hearing Officer to
5 make subsidiary findings and determine whether the School Committee transferred the
6 BTU's bargaining unit work to the non-unit Climate and Culture Manager at Charlestown
7 High School in violation of Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law,
8 as alleged in the Complaint.³

9 Prior to the Hearing Officer's decision on remand, on May 21, 2024, the CERB
10 issued its CAS decision in Boston School Committee, 50 MLC 195, CAS-21-8555, CAS-
11 21-8795 (May 21, 2024). At issue in that case were CAS petitions filed by the BTU and
12 the Boston Association of School Administrators and Supervisors (BASAS) seeking to
13 accrete 10 newly created non-unionized positions, including the Climate and Culture
14 Manager, into their bargaining units. Both petitions were filed in 2021. Noting that the
15 "determination is a close one," the CERB observed that:

16 Both units include positions that, like the disputed positions, are responsible
17 for developing and implementing programs and initiatives relating to school
18 culture and climate, discipline, restorative justice, family outreach, and
19 social and emotional learning.
20

² The Hearing Officer's decision is reported at 49 MLC 191 (November 28, 2022).

³ The Hearing Officer also found that the School Committee did not violate the Law by transferring bargaining unit work to the non-unit position of Transportation Operational Leader. The Union appealed this portion of the decision as well. However, the CERB affirmed the Hearing Officer's decision to dismiss this portion of the Complaint. The Union did not file a Notice of Appeal related to this final order. The CERB's March 13, 2024 decision and order is reported at 50 MLC 128 (March 13, 2024).

1 Boston School Committee, 50 MLC at 201. Ultimately, the CERB held that seven of the
2 petitioned-for positions, including the Climate and Culture Manager, belonged in the
3 BASAS unit because the positions were 12-month, building-based positions, similar to
4 other positions within the BASAS bargaining unit. In contrast, the CERB found that most
5 of the BTU's positions that focused on school climate and culture were district-wide, not
6 school-level, and were 10-month positions.

7 Hearing Officer's Supplemental Decision and Order and Request for Review

8 On May 5, 2025, the Hearing Officer issued the supplemental decision and order
9 on remand at issue here, pursuant to the CERB's March 13, 2024 decision and order.⁴
10 The Hearing Officer found that one of the CFC/AULs' primary job duties at Charlestown
11 High School was implementing discipline, and that the CFC/AULs' role in discipline was
12 centered around reacting to student behavior. The Hearing Officer also determined that
13 the CFC/AULs' job duties of implementing discipline, community outreach, and school-
14 wide support were shared with other non-unit employees.

15 The Hearing Officer concluded that a calculated displacement of the shared job
16 duty of implementing discipline in response to student behavior occurred where the
17 CFC/AUL positions at the high school were eliminated at the end of the 2018-2019 school
18 year, and there was no evidence that their work was also eliminated. Rather, the evidence
19 demonstrated that while the Climate and Culture Manager position, created at the
20 beginning of the 2019-2020 school year, was focused on using a proactive approach to
21 prevent disciplinary issues, explore restorative justice practices, and improve school

⁴ The Hearing Officer's Supplemental Decision and Order is reported at 51 MLC 193 (May 5, 2025).

1 culture, the position was also responsible for implementing discipline in response to
2 student behavior. Thus, the School Committee had a duty to bargain the transfer of such
3 work from the CFC/AULs to the non-unit Climate and Culture Manager. However, she did
4 not find that the Union met its evidentiary burden to prove a calculated displacement of
5 the job duties of community outreach and school-wide support.

6 The Hearing Officer concluded that there was an adverse impact on the bargaining
7 unit where the School Committee eliminated three CFC/AUL positions, and that the
8 School Committee failed to provide the Union with notice and an opportunity to bargain
9 before it transferred the duty of implementing discipline to the non-unit Climate and
10 Culture Manager, in violation of Section 10(a)(5), and derivatively, Section 10(a)(1) of the
11 Law. To remedy the violation of the Law, the Hearing Officer ordered the School
12 Committee to return the job duty of implementing disciplinary action in response to
13 student behavior to the BTU bargaining unit and bargain over any further decisions, and
14 the impacts of those decisions, to transfer said job duties prospectively.

15 On May 14, 2025, the School Committee filed a request for review of the Hearing
16 Officer's supplemental decision and order. The School Committee does not contest the
17 Hearing Officer's factual findings or conclusion that the School Committee violated the
18 Law. Rather, it argues that because the CERB determined in the CAS decision that the
19 BASAS unit held student discipline duties, it would have to dislodge the Climate and
20 Culture Manager position from the BASAS unit and place it in the BTU unit in order to
21 comply with the Hearing Officer's order. The School Committee contends that the Hearing
22 Officer's decision should be reversed because the CERB's CAS decision placed the

- 1 duties within the BASAS unit, making it impossible to comply with the Hearing Officer's
- 2 order and remedy without conflicting with the CERB's decision.

3 The Union responded in opposition to the appeal on May 22, 2025. The Union
4 argues that the Hearing Officer found that the Union substantiated that a calculated
5 displacement of bargaining unit work occurred regarding one shared job duty, that it had
6 an adverse impact, and that the School Committee did not provide the Union with an
7 opportunity to bargain. It argues that the Hearing Officer's order to return the job duty to
8 the BTU and to bargain as a remedy for the School Committee's violation of the Law does
9 not direct or require the School Committee to move any positions to a different bargaining
10 unit and therefore does not conflict with the CERB's CAS decision.

OPINION⁵

12 We agree with the Union that there is no conflict between the Hearing Officer's
13 order and the CERB's CAS decision, and thus we affirm the Hearing Officer's
14 supplemental decision and order.

15 The issue in the CERB's CAS decision was which bargaining unit shared a greater
16 community of interest with the Climate and Culture Manager. We determined that most
17 of the disputed positions, including the Climate and Culture Manager, had a greater
18 community of interest with the BASAS unit because, similar to the other BASAS positions,
19 the disputed positions were building-based, 12-month positions. We acknowledged that
20 this was a "close" determination, and that the BTU and BASAS bargaining units had
21 positions that performed similar duties, including the duty related to discipline which is at
22 issue in this matter. As such, the School Committee is incorrect in stating that we

⁵ The CERB's jurisdiction is not contested.

1 determined that student discipline work belonged in the BASAS unit. The CERB's CAS
2 decision cannot be construed, as the School Committee argues, as assigning or
3 transferring the student disciplinary job duty at issue here to positions within the BASAS
4 unit.

5 We discern no conflict in our CAS decision and the Hearing Officer's order. The
6 Hearing Officer's order requires the School Committee to return the duty of implementing
7 disciplinary action in response to student behavior that the Climate and Culture Manager
8 position now performs to the BTU bargaining unit, to the extent that this shared duty had
9 been displaced from the CFC/AULs. The School Committee is not required to dislodge
10 the Climate and Culture Manager position from the BASAS unit in order to accomplish
11 this and comply with the Hearing Officer's orders.⁶

12 The Hearing Officer's bargaining order and order to return to the status quo until
13 the matter is bargained is the traditional remedy for a unilateral transfer of bargaining unit
14 work in violation of Section 10(a)(5) of the Law, a violation which the School Committee
15 does not contest here. Commonwealth of Massachusetts, 35 MLC 105, 110, SUP-04-
16 5054 (December 10, 2008). We acknowledge that the CFC/AULs were eliminated at the
17 2018-2019 school year, however, this does not mean that the Hearing Officer's decision
18 and order conflict with the CERB's decisions or is otherwise improper. Where the Labor

⁶ We make no finding as to whether, with the change, it remains appropriate for the Climate and Culture Manager to remain in BASAS. As the Union argued, the description and scope of bargaining units is a permissive subject of bargaining. Boston Police Patrolmen's Association, 8 MLC 1993, MUPL-2049, MUPL-2050 (1982), aff'd sub nom. Boston Police Patrolmen's Association, 16 Mass. App. Ct. 953 (1983); City of Quincy, 26 MLC 190, 190, MUP-9928 (April 3, 2000).

1 Relations Commission⁷ has previously ordered employers who unilaterally transferred
2 bargaining unit work to restore the work performed by a vacant or eliminated position to
3 the bargaining unit, we see no reason to depart from the traditional remedy here. Board
4 of Regents of Higher Education, 14 MLC 1469, 1481-1487, SUP-2894, CAS-2613
5 (January 29, 1988); Massachusetts Community College Council, SUP-4047, CAS-3076
6 (June 26, 1997) (unpublished decision).⁸ We acknowledge that returning the work to the
7 BTU bargaining unit may be internally difficult, but the onus is on the School Committee
8 to determine how to comply with this order where the School Committee has violated its
9 bargaining obligation. See Massachusetts Board of Regents, 10 MLC 1196, 1205, SUP-
10 2673 (Sept. 8, 1983) (recognizing that “implementation of a settlement agreement may
11 sometimes be internally difficult..” but that “...does not vitiate the employer's obligation to
12 aggressively implement the letter and the spirit of any agreement it negotiates with its
13 employees' collective bargaining representative.”)

14 CONCLUSION

15 We affirm the Hearing Officer's supplemental decision and order and find that
16 the School Committee violated Section 10(a)(5), and derivatively, Section 10(a)(1) of the
17 Law, by transferring BTU bargaining unit work to the non-unit Climate and Culture
18 Manager, without providing the Union prior notice and opportunity to bargain to resolution
19 or impasse over the decision and the impacts of its decision. Therefore, we issue the
20 following order consistent with the Hearing Officer's decision and order.

⁷ The Labor Relations Commission is the predecessor agency to the DLR and CERB.

⁸ This unpublished decision can be accessed through the Social Law Library's online database.

ORDER

WHEREFORE, based on the foregoing, it is hereby ordered that the School Committee shall:

1. Cease and desist from:
 - a. Transferring the job duty of implementing discipline in response to student behavior as performed by BTU bargaining unit employees to non-bargaining unit employees without first giving the Union notice and an opportunity to bargain to resolution or impasse about the decision and the impacts of the decision;
 - b. In any like manner, interfering, restraining and coercing its employees in any right guaranteed by Law.
2. Take the following affirmative action that will effectuate the purpose of the Law:
 - a. Restore to the bargaining unit the duty of implementing discipline in response to student behavior at Charlestown High School;
 - b. Upon demand, bargain in good faith with the Union to resolution or impasse about the decision and the impacts of the decision to transfer the duty referenced in paragraph 2(a) to non-bargaining unit members;
 - c. Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the School Committee customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees;
 - d. Notify the DLR in writing of the steps taken to comply with this order within thirty (30) days of receipt of this decision.

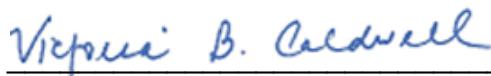
SO ORDERED

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Sam Kantany
SAM KANTANY, CHAIR



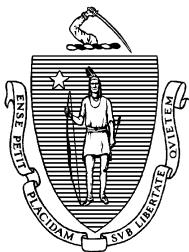
KELLY B. STRONG, MEMBER



VICTORIA B. CALDWELL, MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To obtain such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



NOTICE TO EMPLOYEES

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

In Case No. MUP-20-7886, the Commonwealth Employment Relations Board has determined that the Boston School Committee violated Sections 10(a)(5) and, derivatively 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law or Chapter 150E) by unilaterally transferring Boston Teachers Union, Local 66's (Union) bargaining unit work from Community Field Coordinators/Assistant Unit Leaders to Climate and Culture Managers at Charlestown High School without fulfilling its bargaining obligations.

Section 2 of Chapter 150E 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.

WE WILL NOT transfer the job duty of implementing discipline in response to student behavior as performed by bargaining employees to non-bargaining unit employees without first giving the Union notice and an opportunity to bargain to resolution or impasse about the decision and the impacts of the decision.

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

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

- Restore to the bargaining unit the duty of implementing discipline in response to student behavior at Charlestown High School;
- Upon demand, bargain in good faith with the Union to resolution or impasse about the decision and the impacts of the decision to transfer the duty to non-bargaining unit employees.

For the Boston School Committee

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 the 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).