

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

BOSTON SCHOOL COMMITTEE

and

BOSTON TEACHERS UNION, LOCAL 66

Case No.: MUP-20-7886

Issued: November 28, 2022

Hearing Officer: Sara Skibski Hiller, Esq.

Appearances:

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

Harold Jones, Esq. - Representing the Boston Teachers Union

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Boston 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 eliminating bargaining unit
4 positions and transferring their job duties to non-unit positions without providing the
5 Boston Teachers Union, Local 66 (Union or BTU) with prior notice and an opportunity to
6 bargain to resolution or impasse over the decision and the impacts of the decision on
7 bargaining unit members' terms and conditions of employment. As addressed herein, I
8 find that the allegation that the School Committee unlawfully transferred bargaining unit
9 work to the non-unit position of Climate and Culture Manager is untimely because the
10 Union had notice of the prohibited practice more than six months prior to the date the

1 charge was filed. I further find that the Union did not meet its evidentiary burden to show
2 that the School Committee violated the Law by transferring bargaining unit work to the
3 non-unit position of Transportation Operational Leader.

4 STATEMENT OF THE CASE

5 On February 28, 2020, the Union filed a charge of prohibited practice (Charge)
6 with the Department of Labor Relations (DLR) alleging that the School Committee had
7 violated Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law. On June 18,
8 2020, a DLR Investigator issued a Complaint of Prohibited Practice (Complaint) alleging
9 that the School Committee violated Section 10(a)(5), and derivatively, Section 10(a)(1) of
10 the Law by transferring bargaining unit work to non-unit positions. On June 26, 2020, the
11 School Committee filed its Answer to the Complaint. On January 26, 2021, I conducted a
12 hearing by videoconference during which the parties received a full opportunity to be
13 heard, to examine and cross-examine witnesses and to introduce evidence.¹ On February
14 26, 2021, the parties filed post-hearing briefs. Based on my review of the record, I make
15 the following findings of fact and render the following opinion.

16 STIPULATIONS OF FACT

- 17 1. The City of Boston is a public employer within the meaning of Section 1 of the law.
- 18
- 19 2. The Boston School Committee is the City’s collective bargaining representative for
- 20 the purposes of dealing with employees of the Boston Public Schools.
- 21
- 22 3. The Boston Teachers Union is an employee organization withing the meaning of
- 23 Section 1 of the Law.
- 24
- 25 4. The Union is the exclusive bargaining representative for a unit of paraprofessionals
- 26 employed in the Boston Public Schools.
- 27

¹ I conducted the hearing remotely pursuant to Governor Baker’s teleworking directive to executive branch employees.

1 5. The community field coordinator is a position within the bargaining unit described
2 in stipulation number 4.

3
4 6. The community field coordinator's job duties vary by position and school, but the
5 job generally involves providing school wide support and community outreach.

6 ADDITIONAL FINDINGS OF FACT

7 The School Committee and the Union are parties to a collective bargaining
8 agreement, effective September 1, 2018 to August 31, 2021 (CBA). Charlestown High
9 School (High School) is a school within the Boston Public School District (District) under
10 the jurisdiction of the School Committee. At all relevant times, William Thomas (Thomas)
11 served as Head of School of the High School.

12 Prior to the Spring of 2019, the School Committee employed several bargaining
13 unit members in the positions of Community Field Coordinator (CFC) at the High School.
14 Some of the CFC's employed at the High School were also Assistant Unit Leaders (AUL)
15 to a team of employees who serve a small learning community, as determined by grade
16 level or subject area (CFC / AUL). While the job duties of each CFC / AUL vary depending
17 on their assignment and the role they serve on their team, generally CFC / AULs handle
18 student disciplinary issues within their small learning community and provide school wide
19 support and community outreach.² Specifically, the job description for the CFC / AUL for
20 Students with Disabilities includes a number of duties specific to addressing student
21 behavior, including co-constructing intervention plans, observing classrooms, maintaining

² The District maintains a number of non-unit positions that also perform community outreach, including the Dean of Students, Lead Dean, Head of School, Family Engagement Liaison, Partnership Coordinator and Early College Coordinator, and various other principals, assistant principals, operations managers. Further, many non-unit positions in the District perform school wide support, including the Student-Support Coordinator, the Dean of Discipline, Assistant Principal, Special Education Director, and teachers who are Instructional Coaches.

1 disciplinary records, and coordinating discussions between students, parents, and
2 teachers.

3 Article III of the CBA establishes a School Site Council (SSC) for each school in
4 the District as a central governing body to allow the Union to engage in school-based
5 management and shared decision making.³ Generally, SSCs are composed of the
6 Principal, Headmaster or Head of School, and a number of union, parent, and student
7 representatives.⁴ The role of the SSC includes making decisions on school policies,
8 overseeing strategic planning, conducting hiring, approving spending discretionary funds
9 in the school budget and occasionally making staffing decisions. SSCs can also take part
10 in a waiver process established under the CBA, which allows the Union to waive a
11 provision of their CBA by vote of the Union membership.

12 Under Article III of the CBA, the operations of SSCs are monitored by a Steering
13 Committee, comprised of the Superintendent, Union President, bargaining unit members,
14 parents and student representatives. Article III, Section C, part 2(c) states, “the Steering
15 Committee will monitor the operation of School Site Councils and may recommend action
16 to deal with Councils that do not operate in compliance with the terms of this collective
17 bargaining agreement or where Councils are frequently unable to reach decisions by
18 consensus, or where the principal / headmaster repeatedly exercises a veto over the
19 votes of a majority of the council members.”⁵ In addition, Article III requires “notice of all

³ Article III is in the Teacher’s contract of the CBA. The teachers and paraprofessional units of the Union share a leadership structure, including a Union President, Vice President and Executive Board.

⁴ Bargaining unit members who serve on the SSC are elected by secret ballot by the Union membership at each school.

⁵ The Steering Committee last met in 2017 or 2018.

1 actions taken by the School Site Councils be distributed to all BTU Building
2 Representatives, the president of the Faculty Senate, and to the Chairs of the Parent and
3 Student Councils, within five days following a council meeting.”

4 On or about January 8, 2019, Thomas attended a meeting of the SSC for the High
5 School. As Head of School at the High School, Thomas serves as a co-chair to the SSC.
6 A number of bargaining unit members were also present, including Alex Kalamaroff,
7 Caitlyn Castillejo, Lauren Brett, Alex Weir, and Francis Pina.⁶ During the meeting, while
8 discussing the overall budget, Thomas told the SSC his plan to eliminate the CFC / AUL
9 positions and create managerial positions.⁷ Subsequently, the SSC unanimously
10 approved the budget for the High School, which approved the budgetary changes
11 necessary to implement Thomas’ changes to the CFC / AUL positions.

12 On or about March 19, 2019, Director of Staff for the District Hannah Hall provided
13 the Union with an excess list, a list of bargaining unit members’ positions which the School
14 Committee did not intend to fill for the following school year. This list indicated that
15 bargaining unit members Amarildo Goncalves (Goncalves) and Ezzard Turner (Turner),
16 both employed at the High School as CFC / AUL’s in Regular Ed. / Other, were to be
17 excessed and would not be kept on payroll for the 2019 - 2020 school year. In addition,
18 bargaining unit member Michael Rizzo (Rizzo), employed at the High School as a CFC /

⁶ Bargaining Unit Member Alex Kalamaroff is employed as a CFC / AUL in the High School.

⁷ A summary of Thomas’ statement was included in the SSC’s agenda for the January 8, 2019 meeting. Specifically, the agenda read “Restructure AULs position, convert into managerial so they can support summer work (current indiv[iduals] in position must reapply).”

1 AUL in School Admin – Principal’s Office, resigned before the end of the 2018-2019
2 school year, leaving his position vacant for the upcoming school year.⁸

3 For the start of the 2019-2020 school year, the School Committee, through
4 Thomas, created the non-unit position of Climate and Culture Manager. Generally, the
5 job duties of the Climate and Culture Manager include some of the work of CFC / AUL’s,
6 such as imposing discipline, community outreach, and school wide support. In addition,
7 the School Committee maintains a position of Transportation Operational Leader at the
8 High School.⁹ The job description for the Transportation Operational Leader is identical
9 to the job description for the AUL/CFC for Students with Disabilities, with the exception of
10 the additional job duty regarding professional development for staff using a software
11 program.¹⁰

12 In or around January of 2020, the Union attended an arbitration proceeding
13 contesting disciplinary action for a bargaining unit member. During this proceeding, the
14 Union sought to have the member restored to his former CFC / AUL position at the High
15 School. Subsequently, the Union learned that the position previously held by the
16 bargaining unit member no longer existed but had been converted to a managerial

⁸ The excess list does not indicate whether a bargaining unit member employed as a CFC / AUL for Students with Disabilities was excessed.

⁹ The record is unclear as to whether the position of Transportation Operational Leader opened up for the 2019-2020. There is also no evidence to indicate whether a non-unit employee was hired to that position.

¹⁰ At the hearing, Thomas testified that prior to 2016, the Special Education Director, a member of a different bargaining unit, performed the job duties described in the Transportation Operational Leader job description. Further, Thomas stated that approximately four years ago, the Special Education Director delegated the job duties to a CFC / AUL.

1 position outside of the bargaining unit. In response, the Union filed the present charge of
2 prohibited practice.

3 OPINION

4 Timeliness

5 The School Committee argues that the allegations of the Complaint are untimely
6 because the Union knew or should have known of the alleged violation more than six
7 months before it filed the charge of prohibited practice on February 28, 2020. Specifically,
8 the School Committee argues that the Union became aware of the alleged violation on
9 January 8, 2019, when Thomas informed the SSC of his plan to eliminate AUL positions
10 and transfer their work to new managerial positions. Conversely, the Union argues that it
11 first learned of the transfer of bargaining unit work at an arbitration proceeding in January
12 of 2020 when the School Committee informed the Union that a bargaining unit member's
13 CFC / AUL position had been eliminated.¹¹

14 The Commonwealth Employment Relations Board (CERB) holds that "except for
15 good cause shown, a charge of prohibited practice must be filed with the [DLR] within six
16 months of the alleged violation." See 456 CMR 15.04. Absent a showing of good cause,
17 a charge must either be filed within six months of the alleged violation, or within six months
18 of the time at which the charging party knew or should have known about the incident in
19 order to be timely. Id; See also Felton v. Labor Relations Commission, 33 Mass. App. Ct.
20 926 (1992); Town of Lenox, 29 MLC 51, MUP-01-3214 and MUP-01-3215 (September 5,

¹¹ The Union did not present any evidence elaborating on what they had learned at the arbitration proceeding in January of 2020, including which CFC / AUL position was eliminated, the job duties for that position, or to which managerial position the employee's job duties were allegedly assigned.

1 2002) (citing Town of Dennis, 26 MLC 203, 205, MUP-1868 (April 21, 2000)). An employer
2 can claim untimeliness as an affirmative defense if it is able to show that the charging
3 party had knowledge of the alleged violation prior to the expiration of the six-month
4 limitations period. Diane McCormick v. Labor Relations Commission, 412 Mass. 164, 171,
5 n. 13 (1992); Commonwealth of Massachusetts, 35 MLC 268, 269, SUP-07D-5371
6 (December 31, 2008); Town of Dennis, 28 MLC 297, 301, MUP-2634 (April 3, 2002);
7 Town of Dennis, 26 MLC at 205 In raising the affirmative defense of timeliness, the
8 respondent has the burden of proof. City of Boston, 29 MLC 122, MUP-2419 (January
9 15, 2003); See also City of Boston, 26 MLC 177, 1881, MUP-1431 (March 23, 2000);
10 Town of Wayland, 5 MLC 1738, 1741, MUP-2294 (March 29, 1979).

11 Here, the School Committee has substantiated that the Union knew or should have
12 known of Thomas' plan to transfer bargaining unit work from CFC / AUL positions to the
13 Climate and Culture Manager position more than a year before the date the charge of
14 prohibited practice was filed.¹² At the hearing, the School Committee presented evidence
15 that Thomas explained his plan to the SSC at their meeting on January 8, 2019.
16 Subsequently, the SSC voted to approve the school's budget, which implemented the
17 changes Thomas sought. Five bargaining unit members, who serve as union
18 representatives on the SSC, including one member who is employed as a CFC / AUL,
19 were present for the January 8, 2019 SSC meeting. The meeting agenda further
20 summarized Thomas' presentation to the SSC in writing, indicating "restructure AULs
21 position; convert into managerials so they can support summer work (current indiv[iduals])

¹² The evidence does not show that the Union was so informed of the School Committee's intent to transfer bargaining unit work from the CFC / AUL for Student with Disabilities position to the Transportation Operational Leader position.

1 in position must reapply).” Information about a proposed change acquired by union
2 officers or agents will be imputed to the union. City of Cambridge, 5 MLC 1291, 1293,
3 MUP-2799 (September 27, 1978). The Union presented no evidence in rebuttal and did
4 not call any of the bargaining unit members who attended the January 8, 2019 SSC
5 meeting to testify at the hearing. Thus, through Thomas’ statements to the SSC, the Union
6 knew or should have known that the School Committee intend to implement the transfer
7 of bargaining unit work from CFC / AULs to the Climate and Culture Manager positions
8 without giving the Union prior notice and an opportunity to bargain.¹³ Moreover, the SSC’s
9 vote on the budget to fund the implementation of Thomas’ plan shows that the School
10 Committee had no intention of satisfying its bargaining obligations prior to implementing
11 the transfer of bargaining unit work. Town of East Bridgewater, 38 MLC 164, MUP-07-
12 5095, MUP-07D-5115 (January 13, 2012) (If a union is notified of an impending change
13 to a mandatory subject of bargaining, and while implementation has not occurred it is
14 clear the employer will implement without satisfying it bargaining obligation, notice of the
15 impending change starts the clock on the period of limitations.)

16 The only argument that the Union offered in response to the City’s position on
17 timeliness is that bargaining unit members on the SSC did not constitute representatives
18 of the Union for the purposes of collective bargaining and therefore, their knowledge
19 cannot be imputed to the Union. With the exception of the waiver process laid out in the

¹³ The School Committee also argues that the Union knew of the alleged violation when the School Committee shared an excess list with the Union in March of 2019 indicating certain CFC/AUL bargaining unit members would be excessed for the following school year. While the excess list reveals further implementation of Thomas’ plan, standing alone, it does not contain information sufficient to demonstrate that bargaining unit work was transferred from excessed CFC/AUL positions to new managerial positions.

1 contract, Union representatives on the SSC do not engage in collective bargaining with
2 the School Committee. However, in considering the issue of timeliness, I am persuaded
3 that knowledge of the School Committee's prohibited practice, as acquired by Union
4 representatives on the SSC, can be imputed to the Union. First, bargaining unit members
5 who serve on the SSC are representatives of the Union, as they are elected by the Union
6 membership to speak and act on behalf of the Union's interests. In this instance, the
7 paraprofessional and teacher units share Union leadership. Second, the Union
8 representatives on the SSC are not isolated or removed from contract administration. On
9 the SSC, Union representatives discuss and vote on policies, strategic planning,
10 budgetary decisions, hiring and occasionally staffing decisions. By nature of their
11 participation, it is intended that such representatives acquire information from the
12 administration about school-based decisions that may affect the Union's interests and
13 report back to high-ranking Union officials. The CBA requires in Article III that "notice of
14 all actions taken by the School Site Councils be distributed to all BTU Building
15 Representatives, the president of the Faculty Senate, and to the Chairs of the Parent and
16 Student Councils, within five days following a council meeting." And third, as evidenced
17 by language in the CBA, the parties previously contemplated that SSC's may engage in
18 conduct that forms the basis of a grievance or a charge of prohibited practice. For this
19 reason, the parties mutually agreed to establish a Steering Committee, comprised of the
20 Superintendent and President of the Union, amongst other representatives of the parties,
21 to be charged with "monitor[ing] the operations of School Site Councils" and
22 "recommend[ing] action to deal with Councils that do not operate in compliance with the
23 terms of this collective bargaining agreement." Even though the Steering Committee has

1 not met in some time, the language plainly shows that high-ranking Union officials
2 recognized the importance of communicating with its Union representatives on the SSC
3 to receive information about the SSC's business, including that which may form the basis
4 of a grievance or prohibited practice. Their failure to do so in the matter at hand does not
5 excuse the late filing of the charge of prohibited practice where the Union should have
6 known of the information received by its representatives on the SSC. Felton, 33 Mass.
7 App. Ct. at 927.

8 Accordingly, I find that the Union had notice of the School Committee's transfer of
9 bargaining unit work from the CFC / AUL's to the Climate and Culture Manager more than
10 six months before it filed the charge on February 28, 2020. No evidence was presented
11 to establish that good cause existed to excuse the delay in filing. Id. Moreover, the alleged
12 unlawful conduct was a discrete and finite event rather than a continuing violation. Boston
13 Police Superior Officers Federation v. Labor Relations Commission, 410 Mass.
14 890 (1991); Miller v. Labor Relations Commission, 33 Mass. App. Ct. 404 (1992); Suffolk
15 County Sheriff's Department, 27 MLC 155, MUP-1498 (June 4, 2001).

16 Transfer of Bargaining Unit Work

17 The remaining allegation of the Complaint is that School Committee, through
18 Thomas, violated Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law by
19 eliminating union positions and transferring the job duties of those positions to the non-
20 unit position of Transportation Operational Leader. Section 10(a)(5) of the Law requires
21 a public employer give the exclusive collective bargaining representative of its employees'
22 prior notice and an opportunity to bargain before transferring bargaining unit work to non-
23 bargaining unit personnel. Commonwealth of Massachusetts v. Labor Relations

1 Commission, 60 Mass. App. Ct. 831 (2004); City of Boston, 26 MLC 144, MUP-1085
2 (March 10, 2000); Town of Bridgewater, 25 MLC 103, 104, MUP-8650 (Dec. 30, 1998).
3 To determine whether a public employer has unilaterally transferred bargaining unit work
4 to non-unit personnel, the union must establish that: (1) the employer transferred
5 bargaining unit work to non-unit personnel; (2) the transfer of unit work to non-unit
6 personnel had an adverse impact on individual employees or the unit itself; and (3) the
7 employer failed to give the union prior notice and an opportunity to bargain over the
8 decision to transfer the work, and the impacts of that decision. Commonwealth of
9 Massachusetts, 60 Mass. App. Ct. at 833; Higher Education Coordinating Council
10 (HECC), 23 MLC 90, 92, SUP-4090 (Sept. 17, 1996); City of New Bedford, 15 MLC 1732,
11 1736, MUP-6488 (May 31, 1989). The Union carries the burden of proof as to each prong
12 of the test. Id. at 1737 (citing City of Boston, 6 MLC 1117, 1126, MUP-2863 (June 4,
13 1979)).

14 The Union argues that the School Committee exceeded bargaining unit members
15 in CFC / AUL positions and transferred their job duties to the non-unit position of
16 Transportation Operational Leader. In support of its position, the Union offered, and the
17 parties entered as a Joint Exhibit, a job description for the position of CFC / AUL for
18 Students with Disabilities and a job description for a position titled Transportation
19 Operational Leader. When comparing the job descriptions, it is undeniable that all of the
20 job duties for the CFC / AUL for Students with Disabilities are also listed on the job
21 description for the Transportation Operational Leader. However, the Union did not provide
22 any additional evidence or testimony on the issue. During the hearing, Thomas, a witness
23 called by the School Committee, was the only witness to offer testimony about the

1 Transportation Operational Leader position.¹⁴ In this testimony, Thomas could not
2 affirmatively recall if the position was created or opened up for the 2019-2020 school year
3 and whether a non-union or managerial employee was performing the work.¹⁵

4 While Thomas recalled that approximately four years ago the Special Education
5 Director delegated the transportation work to a CFC / AUL, the record is silent about
6 whether the School Committee excoed the bargaining unit member as alleged in the
7 Complaint or instructed them to stop performing the work and whether the job duties
8 formerly performed by the bargaining unit member were subsequently performed by a
9 non-union employee. The job descriptions, standing alone, are insufficient to show that
10 the Transportation Operational Leader actually performed bargaining unit work that was
11 formerly performed by the CFC / AUL for Students with Disabilities. On this basis, the
12 Union has not met its evidentiary burden to substantiate that the School Committee
13 unlawfully transferred bargaining unit work. Therefore, I find that the School Committee
14 did not violate Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law in the
15 manner alleged.

16 CONCLUSION

17 Based on the record and for the reasons stated above, I find that the School
18 Committee did not violate Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law

¹⁴ The Union was given the opportunity to cross-examine Thomas and declined.

¹⁵ When shown the job description and asked if this was a position that opened up at the high school for the 2019-2020 school year, Thomas responded "I don't know if it opened up...each small-learning community was given a little bit of an opportunity to kind of craft what's happening with individuals, with the understanding that... we give them parameters that were the main crux of what its supposed to do, and then they kind of work it to make it fit within their...small learning community."

1 by transferring bargaining unit work. The allegation that the School Committee transferred
2 bargaining unit work from CFC / AUL positions to the non-union position of Climate and
3 Culture Manager is untimely. Further, the Union did not meet its evidentiary burden to
4 substantiate that the School Committee unlawfully transferred bargaining unit work from
5 the CFC / AUL for Student with Disabilities to the Transportation Operational Leader.
6 Accordingly, I dismiss the Complaint.
7 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


SARA SKIBSKI HILLER, 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.