

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: May 5, 2025

Hearing Officer: Sara Skibski Hiller, Esq.

Appearances:

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

Harold Jones, Esq. - Representing the Boston Teachers Union

SUPPLEMENTAL DECISION AND ORDER ON REMAND

SUMMARY

1 The issue that the Commonwealth Employment Relations Board (CERB)
2 remanded to the Hearing Officer in this case is whether the Boston School Committee
3 (School Committee) violated Section 10(a)(5), and derivatively, Section 10(a)(1) of
4 Massachusetts General Law Chapter 150E (the Law) by unlawfully transferring
5 bargaining unit work to non-unit Climate and Culture Managers at Charlestown High
6 School without providing the Boston Teachers Union, Local 66 (Union or BTU) with prior
7 notice and an opportunity to bargain to resolution or impasse over its decision and the
8 impacts of its decision on bargaining unit members' terms and conditions of employment.
9 As addressed herein, I find that the School Committee unlawfully transferred the job duty
10 of implementing discipline in response to student behavior, which was previously

1 performed by bargaining unit members, to the non-unit position of Climate and Culture
2 Manager. I do not find that the School Committee unlawfully transferred other bargaining
3 unit work to the Climate and Culture Manager position.

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.

15 On November 28, 2022, I issued a Hearing Officer's Decision finding that the
16 School Committee did not violate the Law by transferring bargaining unit work to the non-
17 unit position of Transportation Operational Leader. I further found the allegation that the
18 School Committee unlawfully transferred bargaining unit work to the non-unit position of
19 Climate and Culture Manager was untimely. The Union appealed my decision to the
20 CERB. On March 13, 2024, the CERB issued a Decision on Appeal of Hearing Officer's
21 Decision (Decision on Appeal), affirming the dismissal of the allegation that the School

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

1 Committee unlawfully transferred bargaining unit work to the non-unit position of
2 Transportation Operational Leader. The CERB further found that the allegation with
3 respect to the Climate and Culture Manager is timely. It remanded the matter to me to
4 make subsidiary findings regarding the issue of whether the School Committee
5 transferred bargaining unit work to Climate and Control Managers at Charlestown High
6 School, and if so, to render a decision on the issue of whether the School Committee
7 violated Section 10(a)(5) and, derivatively, Section 10(a)1) of the Law as alleged in the
8 Complaint. In compliance with the CERB's directive, I issue this Supplemental Decision,
9 set forth below. Moreover, I order the School Committee to return the job duty of
10 implementing discipline in response to student behavior to the bargaining unit and bargain
11 upon demand with the Union over the decision to transfer bargaining unit work to non-
12 unit employees and the impacts of that decision.

13 SUPPLEMENTAL FINDINGS OF FACT²

14 *CFC / AUL Job Duties*

15 At all relevant times, William Thomas (Thomas) served as Head of School at
16 Charlestown High School (High School), a school within the Boston Public School District
17 (District). Prior to 2019, the School Committee employed bargaining unit members in the
18 position of Community Field Coordinator (CFC) at the High School. Some CFCs also
19 served as Assistant Unit Leaders (CFC / AUL), a mid-level leadership position that
20 supports students and families and assists small learning community leaders. Generally,
21 the job duties of CFC / AULs employed at the High School vary based on the small

² Further reference may be made to the facts set out in the CERB's Decision on Appeal of Hearing Officer's Decision, reported at 50 MLC 128 (March 13, 2024).

1 learning community they are assigned to. Further, the job descriptions for the different
2 CFC / AUL positions at the High School vary greatly based on their assignment.³
3 Notwithstanding these variations, implementing discipline in response to student behavior
4 is one of the CFC / AUL's primary job responsibilities.⁴ While the CFC's job duties vary
5 by position and school, the job duties generally include providing school-wide support and
6 community outreach.⁵ Community outreach is defined as talking to families about services
7 that the High School provides.⁶

8 *Transfer of Bargaining Unit Work*

9 At a meeting of the High School Site Council (SSC) on January 8, 2019, Thomas
10 told the SSC his plan to eliminate the CFC / AUL positions and create managerial

³ At the hearing, the parties offered into evidence a job description for a CFC / AUL at the High School, the CFC / AUL for Students with Disabilities. When shown this job description, Thomas testified that the job description is "specific for the one covering the student with disabilities. It doesn't cover all of the other ones, because each one has their own unique specialist on what they do, because the small learning communities...have a different need."

⁴ During the hearing, Thomas testified that the CFC / AUL's job duties were different than those of the Climate and Culture Manager position at the High School because the CFC / AUL's role in implementing discipline focused on disciplinary action in response to student behavior. Specifically, Thomas stated "the main focus of the culture and climate [manager]... it's less about student discipline per se and more about preventative measures. Instead of being reactive, it's being more proactive in the academic aspects. And so it's more on the culture of the school and really thinking about how to improve the culture of the school, rather than focusing on waiting for something to happen and jumping on it. Those are the main differences between the two."

⁵ This statement of fact is noted in Stipulation Number 6 of the Hearing Officer's Decision, dated November 28, 2022.

⁶ Thomas testified to the definition of "community outreach" but did not provide a definition of "school-wide support."

1 positions.⁷ The agenda for this meeting stated “Restructure AULs position, convert into
2 managerial so they can support summer work (current indiv[iduals] in position must
3 reapply).” Subsequently, the SSC voted and approved the budgetary changes necessary
4 to implement this change. For the start of the 2019-2020 school year, the School
5 Committee, through Thomas, created the position of Climate and Culture Manager. While
6 the Climate and Culture Manager position also engaged in implementing discipline,
7 community outreach and school-wide support, the job duties primarily focused on using
8 a proactive approach to prevent disciplinary issues, explore restorative justice practices
9 and improve school culture.⁸

10 *Similar Job Duties of Other Employees at Charlestown High School*

11 Several other employees at the High School perform the job duty of implementing
12 discipline in response to student behavior. Specifically, the managerial position of Dean
13 of Discipline oversees all disciplinary action. The Dean of Discipline is supervised by the
14 Assistant Principal, who is overseen by Thomas, as Head of School. Thomas’s role in
15 discipline is limited to the higher levels of disciplinary action, generally expulsion. In
16 addition, small learning community leaders, who lead small learning communities with the
17 assistance of CFC / AULs, issue some levels of discipline.

⁷ Thomas testified “I told them [the SSC] what I’d planned on doing with the AUL positions and deleting them and creating managerial positions.”

⁸ At the hearing, when asked “is a climate and culture manager the same job as an assistant unit leader?” Thomas stated “It’s not the same job. There’s differences in there. I mean, there’s some similarities but...it’s not the same.”

1 Almost every single employee of the High School engages in community
2 outreach.⁹ Some examples of managerial positions at the High School that engage in
3 community outreach include the: Dean of Students, Head of School, Small Learning
4 Community Leaders, Family Liaisons, Partnership Coordinators, Early College
5 Coordinators, and more generally, Principals, Assistant Principals, Deans and
6 Operational Managers.¹⁰ In addition, almost all non-paraprofessional employees at the
7 High School perform school-wide support.¹¹ At the High School, managerial positions that
8 perform school-wide support include the: Student Support Coordinator, Dean of
9 Discipline, Assistant Principal,¹² Special Education Director, Dean of Culture, Culture
10 Operations Manager, instructional coaches, and generally, Principals, Coordinators,
11 managerial positions, BASAS positions, and teachers.

12 In addition, for the 2018 - 2019 school year, the School Committee maintained a
13 position titled English Language Learners (ELL) Coordinator at Charlestown High School
14 whose general duties include assisting with the social emotional well-being of the
15 students in the Sheltered English Immersion Program. The job description for the position
16 indicates that the position performs community outreach by “establishing and maintaining
17 contact with parents / guardians to better ensure success” and engages in school-wide

⁹ At the hearing, Thomas testified that the term “community outreach” is “pretty broad” and “almost every single person in the school does community outreach.”

¹⁰ The School Committee also presented evidence that the bargaining unit position of CFC for Student Recruitment engages in community outreach. There is no evidence in the record that the CFC for Student Recruitment is an Assistant Unit Leader.

¹¹ When asked if he knew non-paraprofessional employees that do school-wide support, Thomas testified “it’s almost everyone.”

¹² The Assistant Principal is a position within the BASAS, a separate bargaining unit.

1 support by “support[ing] communication between students and teachers when
2 necessary.”¹³ The position is managerial and not included in a bargaining unit, and
3 requires a bachelor’s degree or equivalent experience with at least three years of
4 experience in education, customer service and/or the youth development field.

5 *Similar Job Duties of Employees at Other District Schools*

6 The School Committee maintains six other managerial positions at various schools
7 throughout the District who engage in community outreach and/or school-wide support.
8 At the Paul A. Dever Elementary School, the School Committee maintains a position titled
9 Dean of School Culture. The job description states that the Dean of School Culture “will
10 play an instrumental role in establishing and reinforcing high expectations for positive
11 student behavior,” and “maintain consistent and constructive communication with
12 teachers, administrators, and student families in an effort to ensure effective and
13 consistent implementation of the school’s Positive Behavioral Intervention and Supports
14 (PBIS) system.” The job description also states the position will “establish and maintain a
15 positive, safe and college-going school culture” by “supervis[ing] the consistent and fair
16 administration of school policies regarding school conduct and discipline...” and
17 “enforc[ing]behavioral expectations through the school day...” The position requires a
18 bachelor’s degree in an academic background such as education, social work,
19 psychology, counseling or a related field.

20 At the Dennis C. Haley Pilot School, the School Committee maintains a position
21 titled Coordinator of School Culture. The Coordinator of School Culture job description

¹³ The ELL Coordinator job description does not reference implementing discipline in response to student behavior or any job duties related to discipline.

1 states that “[t]he Coordinator will play an instrumental role in establishing and reinforcing
2 high expectations for positive student behavior. The Coordinator will maintain consistent
3 and constructive communication with teachers, administrators, and student families in an
4 effort to ensure effective and consistent implementation of the school’s Positive
5 Behavioral Intervention and Supports (PBIS) System.” The position requires a bachelor’s
6 degree in an academic background such as Education, Special Education, Social Work,
7 Psychology, Counseling or a related field.

8 At the Boston Latin Academy, the District maintains a position titled Climate and
9 Culture Coordinator. The Climate and Culture Coordinator’s job description describes its
10 primary job duties as “[c]ollaborate with the school team to implement systematic
11 approaches to managing and intervening in student discipline issues based on the BLA
12 discipline practices and protocols aligned to the BPS Code of Conduct.” The job
13 description shows that the position performs community outreach by “strengthen[ing] and
14 engag[ing] families as partners in planning and problem solving.” The position requires a
15 “minimum of three years of professional experience working with students in an urban
16 setting” but does not require a degree.

17 At the Elliot K-8 School, the District maintains a position titled School Climate and
18 Culture Coordinator. The job description for the School Climate and Culture Coordinator
19 notes that it “[works] with school staff to continue to implement strategies and programs
20 designed to improve culture and climate” and “work[s] with school staff to effectively
21 engage families in academically focused activities as well as the work required to build a
22 strong school culture and climate.” The position requires “graduation from an accredited

1 college or university” and a “minimum of three years of instructional experience or
2 minimum five years’ experience as a social worker, psychologist or counselor.”

3 At Irving Middle School, the School Committee maintains a position titled Director
4 of Data, Development and School Culture, whose primary responsibilities include
5 professional development and data inquiry, school culture and student support. The job
6 description for the position notes that it engages in school-wide support by “support[ing]
7 teachers in holding all students to high and consistent expectations...serving as a
8 resource with regards to discipline, relationships with students, classroom management
9 and school culture.”¹⁴ The position requires a master’s degree in a related field and at
10 least three years of successful teaching experience.

11 At the Lower School / Lee K-8 School, the District maintains a position of Manager
12 of Climate & Discipline / Dean of Students. The position’s job description indicates that
13 its primary responsibilities include “collaborat[ing] with school staff to provide professional
14 development and support implementation of strategies and programs designed to
15 improve culture and climate including creating and deploying a restorative practices
16 program for managing student accountability; “develop[ing a] system for school staff to
17 implement restorative practices, regularly monitor school culture and climate, and work
18 to ensure that the school is safe in addition to supporting learning and setting expectations
19 for staff and students to perform at high levels;” and “work[ing] with school staff to
20 effectively engage families in academically focused activities as well as the work required
21 to build a strong school culture and climate.” The position requires a bachelor’s degree

¹⁴ The job description does not make any reference to community outreach or other contact with parents or family.

1 and at least 2 to 3 years of experience managing adolescent programs and data
2 collection, and at least 3 years of experience in an urban school system with an ethnically
3 diverse student body.

4 *Prior Notice and Bargaining*

5 The School Committee did not give the Union notice and an opportunity to bargain
6 prior to announcing its plan at the SSC meeting on January 9, 2019, or before it exceeded
7 CFC / AUL positions at the end of the 2018 – 2019 school year and hired Climate and
8 Culture Managers for the start of the 2019 – 2020 school year.

9 OPINION

10 Section 10(a)(5) of the Law requires a public employer to give the exclusive
11 collective bargaining representative of its employees' prior notice and an opportunity to
12 bargain before transferring bargaining unit work to non-bargaining unit personnel.
13 Commonwealth of Massachusetts v. Labor Relations Commission, 60 Mass. App. Ct.
14 831 (2004); City of Boston, 26 MLC 144, MUP-1085 (March 10, 2000); Town of
15 Bridgewater, 25 MLC 103, 104, MUP-8650 (Dec. 30, 1998). To determine whether a
16 public employer has unilaterally transferred bargaining unit work to non-unit personnel,
17 the union must establish that: (1) the employer transferred bargaining unit work to non-
18 unit personnel; (2) the transfer of unit work to non-unit personnel had an adverse impact
19 on individual employees or the unit itself; and (3) the employer failed to give the union
20 prior notice and an opportunity to bargain over the decision to transfer the work and the
21 impacts of that decision. Commonwealth of Massachusetts, 60 Mass. App. Ct. at 833;
22 Higher Education Coordinating Council (HECC), 23 MLC 90, 92, SUP-4090 (Sept. 17,
23 1996); City of New Bedford, 15 MLC 1732, 1736, MUP-6488 (May 31, 1989). The Union

1 carries the burden of proof as to each prong of the test. *Id.* at 1737 (citing City of Boston,
2 6 MLC 1117, 1126, MUP-2863 (June 4, 1979)).

3 *Transferred Work*

4 The Union contends that the School Committee eliminated CFC / AUL positions at
5 the High School and transferred all of their job duties to the newly created position of
6 Climate and Culture Manager at the High School. Conversely, the School Committee
7 argues that the job duties of the Climate and Culture Manager are different from the job
8 duties of the CFC / AULs at the High School. After a review of the record, I find that while
9 several of the Climate and Culture Manager's job duties differ from the duties of the CFC
10 / AULs, they share some primary responsibilities. It is undisputed that while the job duties
11 for each CFC / AUL vary based on their assignment within the High School, they generally
12 include providing community outreach and school-wide support. The record also shows
13 that implementing discipline was one of the CFC / AUL's primary job responsibilities. At
14 the hearing, Thomas testified that the CFC / AUL's role in implementing discipline is
15 centered around reacting to student behavior.

16 The School Committee presented evidence that the Climate and Culture
17 Manager's position is focused on using a proactive approach to prevent disciplinary
18 issues, explore restorative justice practices and improve school culture. These job duties
19 are reflected in the job description.¹⁵ However, the job description also contains some job
20 duties associated with implementing discipline in response to student behavior.
21 Specifically, the job description states that the position is "responsible for creating

¹⁵ The Climate and Culture Manager job description is listed in the facts reported in the CERB's Decision on Appeal reported at 50 MLC 128 (March 13, 2024).

1 behavior systems, protocols and consequences in conjunction with the principal.” The job
2 description also indicates that the position “manage[s] and align[s] school community on
3 school culture expectations including interventions, discipline and incentives.” These job
4 duties indicate the Climate and Culture Manager establishes the consequences for
5 student behavior, participates in interventions, and imposes discipline in response to
6 student behavior. Further, the job description states that the position “develop[s] and
7 maintain[s] a behavior system that supports students who have been temporarily
8 removed from their classes due to poor behavior, following protocols established by the
9 school leadership team...” This statement, in and of itself, indicates that the Climate and
10 Culture Manager’s behavior system includes responding to incidents with students who
11 have been removed from classrooms for poor behavior.¹⁶ In addition, the parties do not
12 dispute that the Climate and Culture Manager’s job duties include community outreach
13 and school-wide support. The job description states that the Climate and Culture Manager
14 shall “invest parents and families in their children’s academic success through regular
15 communication of successes and challenges” and “collaborate with colleagues...” and
16 work with school staff to “develop a system for school staff to implement restorative
17 practices,” “revising staff and student handbooks” and “create and distribute the school’s
18 safety plan.”

19 At the hearing, Thomas, in reviewing the job description for the Climate and Culture
20 Manager, testified that the job descriptions for the positions have some “similarities” but

¹⁶ Although the CFC / AUL for Students with Disabilities job description does not reflect the job duties of all CFC / AULs at the High School, I note that the job description contains several provisions about implementing discipline which are comparable to the Climate and Culture Manager’s job description.

1 are not the exactly the same. While the scope of the Climate and Culture Manager's job
2 duties are clearly much broader than the CFC / AULs, the Climate and Culture Manager,
3 like the CFC / AUL, is responsible for implementing discipline in response to problematic
4 student behavior, engaging in community outreach and providing school-wide support.

5 *Shared Work*

6 In cases where job duties have traditionally been shared by bargaining unit
7 members and individuals who are not members of that bargaining unit, the CERB has
8 held that the work at issue is not exclusive bargaining unit work. Higher Education
9 Coordinating Council, 23 MLC at 92. The Union argues that the CFC / AUL job duties at
10 issue are not shared work, but job duties exclusively performed by bargaining unit
11 members. However, the School Committee argues that the CFC / AUL's job duties at
12 issue, namely implementing discipline, community outreach and school-wide support, are
13 not exclusive to the bargaining unit, but work that is shared with other managerial
14 employees employed by the School Committee.

15 The School Committee also argues that in determining the issue of shared work, I
16 should examine the job duties of various positions at other schools within the District and
17 compare them to the work performed by the CFC / AUL at the High School. In support of
18 its position, the School Committee points to the CERB's holding in City of Boston, 29 MLC
19 122, 124-25, MUP-2419 (2003). The School Committee offered job descriptions for
20 managerial positions at the Paul A. Dever Elementary School, the Dennis C. Haley Pilot
21 School, the Boston Latin Academy, the Elliot K-8 School, the Irving Middle School, and
22 the Lower School / Lee K-8 School. The Union conversely argues that the work is
23 geographically defined, and that the job duties are particular to individual schools.

1 Based on the evidence in the record, I disagree that City of Boston is applicable to
2 the facts at hand. In City of Boston, the CERB, considering a transfer of bargaining work
3 from an assistant to a supervisor in the South Boston District Court, determined that it
4 should examine the pattern of work as it existed at all of the City's District Courts, rather
5 than narrowing the analysis to the South Boston District Court. Id. at 124-25. The CERB
6 reasoned "because all of the assistants to the supervisor of cases perform the same
7 duties regardless of the courts where they are assigned, we conclude that it is more
8 appropriate to examine the City's pattern of assigning those duties at all of the courts
9 rather than looking only at South Boston District Court. Id. (citing Town of Norwell, 13
10 MLC 1200, 1208, MUP-5655 (October 15, 1986)). Here, there is no evidence to
11 substantiate that a similar pattern of work assignments exists at other schools in the
12 District. Neither party offered evidence to show that CFC / AULs, who perform the same
13 job duties of the CFC / AULs at the High School and are members of the bargaining unit,
14 are employed at the Paul A. Dever Elementary School, the Dennis C. Haley Pilot School,
15 the Boston Latin Academy, the Elliot K-8 School, the Irving Middle School, and the Lower
16 School / Lee K-8 School. The job descriptions offered by the School Committee only show
17 that managerial employees, who are not members of the bargaining unit, perform some
18 work that is similar to implementing discipline, community outreach and school-wide
19 support at these other schools.¹⁷ Without information about whether CFC/ AULs are

¹⁷ I also note that some of the managerial job titles and duties at other schools in the District offered by the School Committee are similar to the Climate and Culture Manager at the High School. The School Committee argues that the Climate and Culture Manager is different than the CFC / AUL bargaining unit position. Further, the School Committee did not raise the argument of timeliness based on an established past practice of having transferred bargaining unit work to Climate and Culture Managers or Coordinators in the past at other schools in the District.

1 employed at these schools and what work they perform, it is impossible to discern whether
2 a pattern of shared work existed and if a calculated displacement of work occurred. See
3 Commonwealth of Massachusetts, 27 MLC 52, 56, SUP-4091 (November 21, 2000). For
4 these reasons, I decline to extend the shared work analysis to consider a pattern of work
5 performed at other schools in the District and limit it to examining whether non-unit
6 employees at Charlestown High School performed the three duties at issue.¹⁸

7 *1. Implementing Discipline*

8 The Union argues that the job duty of implementing discipline is exclusively
9 performed by CFC / AULs, and that no other employees performed this task concurrently
10 with the CFC / AULs. The School Committee presented evidence that a number of
11 positions at the High School also engaged in implementing discipline. Specifically,
12 Thomas testified that the managerial position of the Dean of Discipline oversaw the
13 overall implementation of discipline and that the Assistant Principal supervises the Dean
14 of Discipline and thus implements discipline. Further, Thomas testified that as Head of
15 School, he implements student discipline at the highest level, the expulsion phase, and
16 that small-learning community leaders, who lead small learning communities with the
17 assistance of CFC / AULs, impose some levels of discipline. Thomas's description of his
18 role indicates that he implements discipline in response to student behavior. The Union
19 offered no evidence to rebut this. Clearly, a supervisory order exists through the Head of

¹⁸ In addition, the job descriptions offered by the School Committee also show that the managerial positions at other schools which it alleges perform shared work with the CFC / AUL at the High School, vary in job title, job duties, supervisory level and education requirements. In this respect, even if the School Committee had established a pattern of assignment amongst CFC / AULs at these schools, the ascertainable percentage of shared work between bargaining unit members and other managerial employees at these school would be different in each school.

1 School, Assistant Principal, Dean of Discipline, Small-Learning Community Leaders, and
2 CFC / AULs, all of whom may implement discipline in response to student behavior. For
3 this reason, I find that the CFC / AUL's duties of implementing discipline in response to
4 student behavior is work that is shared with these other positions.

5 *2. Performing Community Outreach and School-wide Support*

6 The Union further argues that the CFC / AUL job duties of performing community
7 outreach and school-wide support are not shared work. The School Committee contends
8 that other managerial positions and positions in other bargaining units at the High School
9 perform community outreach including: Dean of Students, Head of School, Small
10 Learning Community Leaders, Family Liaisons, Partnership Coordinators, Early College
11 Coordinators, Principals, Assistant Principals, Deans and Operational Managers.¹⁹ In
12 addition, the School Committee offered evidence that a number of managerial positions
13 or positions in other bargaining units at the High School engage in school-wide support,
14 including: Student Support Coordinator, Dean of Discipline, Assistant Principal, Special
15 Education Director, teachers serving as instructional coaches, Dean of Culture, Culture
16 Operations Manager, Principals, Coordinators, managerial positions, BASAS positions
17 and teachers. Consequently, I find that the duties of community outreach and providing
18 school-wide support are shared with other employees at the High School.

19 *Calculated Displacement*

20 In shared work situations, the duty to bargain arises only if there has been
21 a calculated displacement of unit work. Town of Bridgewater, 23 MLC 103, 104, MUP-

¹⁹ The School Committee also presented evidence that the CFC for Student Recruitment, a paraprofessional position in the Union, engages in community outreach.

1 8650 (December 30, 1998). Whether there has been a calculated displacement of unit
2 work is determined by examining whether bargaining unit members performed an
3 ascertainable percentage of work, and the employer has taken action that results in a
4 significant reduction in that percentage, with a corresponding increase in the percentage
5 of work performed by non-unit personnel. Commonwealth of Massachusetts, 27 MLC at
6 56; City of New Bedford, 15 MLC at 1737. “To prevail in a shared work situation, a
7 charging party must demonstrate that a previous pattern of work existed, and that the
8 employer unilaterally altered that pattern without notice to the union and prior bargaining.”
9 City of Boston, 6 MLC at 1126. Most importantly, the charging party has the burden of
10 proving the allegations of the Complaint by a preponderance of the evidence. 456 CMR
11 13.03(e). If bargaining unit members traditionally have performed an ascertainable
12 percentage of the work, a significant reduction in the portion of work performed by unit
13 employees coupled with a corresponding increase in the work performed by non-unit
14 employees may demonstrate a calculated displacement of unit work. City of Boston, 26
15 MLC at 146.

16 *1. Implementing Discipline*

17 Based on a preponderance of the evidence, the Union has substantiated that a
18 calculated displacement of bargaining unit work occurred. Thomas admitted in his
19 testimony that the CFC / AULs would be eliminated and replaced with the non-unit
20 managerial positions of Climate and Culture Managers. For the 2019 - 2020 school year,
21 three CFC / AUL positions remained vacant and unfunded which demonstrates a
22 decrease in the amount of work performed by bargaining unit members and an increase
23 in the amount of work performed by non-unit members. See Town of Hanson, 29 MLC

1 71, MUP-2488, (October 9, 2002) (employee transferred to non-unit position continued to
2 perform previous bargaining unit work and former bargaining unit position remained
3 unfunded and unfilled). Since the School Committee completely eliminated the CFC / AUL
4 positions, they could no longer perform any percentage of the job function of
5 implementing discipline in response to student behavior. For these reasons, the Union
6 has shown that a calculated displacement of the shared job duty of implementing
7 discipline in response to student behavior occurred and thus, the School Committee had
8 a duty to bargain the transfer of such work to non-unit employees.

9 *2. Performing Community Outreach and School-Wide Support*

10 The Union argues that the terms “community outreach” and “school-wide support”
11 are sweeping objectives rather than specific job responsibilities. The School Committee
12 also defines these job duties as broad and ubiquitous. When asked if he knew non-
13 paraprofessional employees that do school-wide support, Thomas testified “it’s almost
14 everyone.” Further, at the hearing, Thomas testified that the term community outreach is
15 “pretty broad” and “almost every single person in the school does community outreach.”
16 The School Committee provided no factual description or details about the actual job
17 functions performed by other employees at the High School that fall within these broad
18 categories, with the exception of the ELL Coordinator at the High School.²⁰

²⁰ The job description for the ELL Coordinator shows that the position engages in community outreach “by “establishing and maintaining contact with parents / guardians to better ensure success” and engages in school-wide support by “support[ing] communication between students and teachers when necessary.” These statements are vague and do not accurately describe the specific job duties associated with providing community outreach and school-wide support.

1 More importantly, the Union provided no evidence describing the specific job duties
2 performed by a CFC / AUL that fall into the broader categories of school-wide support
3 and community outreach. Without this information, I am unable to discern whether there
4 has been a calculated displacement of this work. See Commonwealth of Massachusetts,
5 27 MLC at 56; City of New Bedford, 15 MLC at 1737. The CERB held similarly in
6 Commonwealth of Massachusetts, where it found that certain job duties of residential
7 supervisors described as “advocating for clients; identifying, evaluating, and analyzing
8 the effective utilization and deployment of staff; developing plans to ensure quality life for
9 clients; ensuring continuity of services and facilitating their placement; and contacting
10 families,” were too broadly defined and made it impossible to determine whether unit
11 members performed an ascertainable percentage of them. Commonwealth of
12 Massachusetts, 27 MLC at 56. In the Commonwealth case, the union argued in part that
13 the transfer of these job duties, shared with program managers, constituted a calculated
14 displacement of work. Id. at 56. As examples, the CERB highlighted that “every employee
15 at the [Department of Mental Retardation] had to report cases of suspected abuse and
16 neglect and thus shared the responsibility to advocate for clients,” that
17 “numerous...employees...developed plans to ensure quality of life for clients and
18 continuity of services;” that “every member on the [Individual Service Plan] team had
19 contact with clients’ families during team meetings.” Similarly, here, the broad description
20 of the duties and the fact that almost every employee performs community outreach and
21 school-wide support to some degree, renders it impossible to discern a calculated
22 displacement of work. For this reason, I do not find that the Union has met its evidentiary

1 burden to prove a calculated displacement of the job duties of community outreach and
2 school-wide support.

3 *Adverse Impact*

4 As addressed herein, I find that that the Union has substantiated by a
5 preponderance of the evidence that the School Committee transferred the CFC / AUL's
6 job duty of implementing discipline in response to student behavior to the Climate and
7 Culture Manager, and that there has been a calculated displacement of this shared work.
8 I next analyze whether the transfer of this duty had an adverse impact on either the
9 bargaining unit members or the unit itself. The CERB holds that adverse impacts in
10 transfer cases occur whenever the bargaining unit loses the opportunity to perform the
11 disputed work. Town of Norwell, 13 MLC at 1208; Lowell School Committee, 28 MLC 29,
12 32, MUP-2074 (June 22, 2001). Moreover, the adverse impact standard is the same
13 whether the work transferred is shared work or exclusive to one bargaining unit. City of
14 New Bedford, 15 MLC at 1739. It is undisputed that at the end of the 2018 - 2019 school
15 year, the School Committee eliminated three CFC / AUL positions at the High School.²¹
16 The School Committee's conduct in deleting or eliminating the CFC / AUL positions for
17 the 2019 – 2020 school year adversely impacts the bargaining unit. There is no evidence
18 to indicate that when the CFC / AULs positions were eliminated, their work went undone.
19 Compare Chief Justice for Admin. and Management of Trial Court v. Commonwealth

²¹ In its Decision on Appeal, the CERB noted that the Excess List from May of 2019 identified two bargaining unit members, Goncalves and Turner, in the position of CFC / AUL Regular Ed/ Other at the High School and one bargaining unit member, Rizzo, employed as CFC / AUL in School Admin – Principal's Office at the High School. The CERB noted, "[t]he School Committee does not dispute that this list included the three paraprofessional CFCs whose positions were eliminated as a result of the January 8, 2019 SSC meeting."

1 Employment Relations Board, 79 Mass. App. Ct. 374, 387 (2011). Further, losing the
2 opportunity to perform unit work in the future is a sufficient detriment to the unit to trigger
3 a bargaining obligation. See, Town of Saugus, 29 MLC 208, 210, MUP-2621 (May 14,
4 2003).

5 *Prior Notice and Opportunity to Bargain*

6 I next consider whether the School Committee satisfied its obligation to give the
7 Union prior notice and an opportunity to bargain before implementing its decision. The
8 CERB determined in its Decision on Appeal that the Union became aware of the transfer
9 in or around January of 2020 when it attended an arbitration hearing and learned that a
10 CFC / AUL position no longer existed but had been converted into a managerial position
11 outside of the bargaining unit. There is no evidence in the record to indicate that the
12 School Committee fulfilled its bargaining obligations prior to implementing its decision for
13 the start of the 2019 - 2020 school year. Accordingly, I find that the School Committee did
14 not provide the Union with notice and an opportunity to bargain before it transferred the
15 duty of implementing discipline to the non-unit Climate and Culture Manager.

16 CONCLUSION

17 For the above reasons, I find that the School Committee violated Section 10(a)(5),
18 and derivatively, Section 10(a)(1) of the Law by transferring the job duty of implementing
19 discipline in response to student behavior, previously performed by bargaining unit
20 members, to the Climate and Culture Manager without providing the Union prior notice
21 and an opportunity to bargain to resolution or impasse over its decision and the impacts
22 of its decision. The Union has failed to prove by a preponderance of the evidence that the
23 School Committee unlawfully transferred the job duties of community outreach and

1 school-wide support or any other job duties performed by the CFC / AUL to the Climate
2 and Culture Manager.

3 REMEDY

4 Remedies are designed to restore employees to the same position that they would
5 have been in but for the employer's unlawful action. Town of Lexington, 37 MLC 115,
6 MUP-08-5313 (December 9, 2010). The traditional remedy where a public employer has
7 unlawfully refused to bargain over a decision to transfer unit work is an order to restore
8 the status quo ante until the employer has fulfilled its bargaining obligation and to make
9 all affected employees whole for any economic losses they may have suffered.
10 Commonwealth of Massachusetts, 35 MLC 105, 110, SUP-04-5054 (December 10,
11 2008). The Union seeks the standard remedy of a bargaining order and return to the
12 status quo until the matter is bargained. Because I found that the School Committee
13 unlawfully transferred the job function of implementing disciplinary action in response to
14 student behavior to the Climate and Culture Manager without fulfilling its bargaining
15 obligations, I order the School Committee to return the job duty to the bargaining unit and
16 bargain over any further decisions, and the impacts of those decisions, to transfer said
17 job duties prospectively.

18 Nevertheless, I decline to order a compensatory remedy. As addressed herein, I
19 do not find that all of the CFC / AUL's job duties were unlawfully transferred to the non-
20 unit position. Further, the Union provided no evidence of permanent economic loss to its
21 bargaining unit members. The only evidence in the record which identifies the specific
22 bargaining unit members whose positions were excessed is the Excess List provided to

1 the Union in May of 2019.²² However, because the Excess List does not indicate
2 permanent loss of employment, I am unable to discern whether there was any financial
3 loss to these bargaining unit members based on the Excess List alone. See, City of New
4 Bedford, 39 MLC 126, 130, MUP-09-5582 (November 15, 2012) (CERB declined to order
5 reinstatement where they found that the record is not clear that the affected bargaining
6 unit member would have been the bargaining unit employee retained to perform the
7 work).²³ Thus, the Union has failed to substantiate that its bargaining unit members
8 suffered a permanent economic loss as a direct result of the School Committee's unlawful
9 conduct.

10 ORDER

11 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the School
12 Committee shall:

13
14 1. Cease and desist from:

- 15
16 a) Transferring the job duty of implementing discipline in response to student
17 behavior as performed by bargaining employees to non-bargaining unit
18 employees without first giving the Union notice and an opportunity to bargain
19 to resolution or impasse about the decision and the impacts of the decision;
20
21 b) In any like manner, interfering with, restraining and coercing its employees in
22 any rights guaranteed under the Law;

23
24 2. Take the following action that will effectuate the purposes of the Law:
25

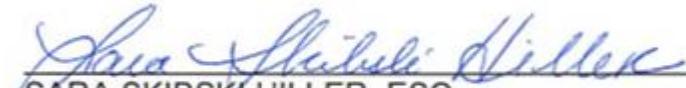
²² The Excess List identifies Goncalves and Turner as bargaining unit members whose positions were excessed at the end of the 2018-2019 School Year. The record shows that while Rizzo's position was also excessed, he resigned from employment during the 2018-2019 school year.

²³ The record is clear that although excessed paraprofessionals no longer have a right to the position from which they were excessed, excess lists do not indicate whether a position has been permanently eliminated. Excessed employees may have a right to another job, depending on seniority. Historically, paraprofessionals seeking to transfer to another location can also place themselves on the excess list.

- 1 a) Restore to the bargaining unit the duty of implementing discipline in response
2 to student behavior at Charlestown High School;
- 3
- 4 b) Upon demand, bargain in good faith with the Union to resolution or impasse
5 about the decision and the impacts of the decision to transfer the duties
6 referenced in paragraph 2(a) to non-bargaining unit members;
- 7
- 8 c) Post immediately in all conspicuous places where members of the Union's
9 bargaining unit usually congregate, or where notices are usually posted,
10 including electronically, if the School Committee customarily communicates
11 with these unit members via intranet or email and display for a period of thirty
12 (30) days thereafter, signed copies of the attached Notice to Employees.
- 13
- 14 d) Notify the DLR in writing of steps taken to comply with this decision within ten
15 (10) days of receipt of this decision.
- 16

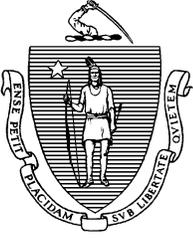
17 SO ORDERED.

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.



NOTICE TO EMPLOYEES

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

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held in Case No. MUP-20-7886 that the Boston School Committee violated Section 10(a)(5), and derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by unilaterally transferring 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 M.G.L. Chapter 150E gives public employees the following rights:

to engage in self-organization to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

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.

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 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).