COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of BOSTON SCHOOL COMMITTEE and BOSTON TEACHERS UNION, LOCAL 66	Case No.: MUP-23-9773 Date Issued: July 28, 2025

Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

Nicholas Pollard, Esq. – Representing the Boston Teachers Union

Bader Abu-Eid, Esq. – Representing the Boston School Committee

HEARING OFFICER'S DECISION

SUMMARY

There are two issues in this case: 1) whether the Boston School Committee (School Committee) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain in good faith by requiring the Coordinator of Special Education (COSE) bargaining unit members to attend training without giving the Boston Teachers Union, Local 66 (Union) prior notice and an opportunity to bargain to resolution or impasse over the decision to require training and the impacts of the decision on bargaining unit members' terms and conditions of employment; and 2) whether the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by directly dealing with unit members by surveying a subsection of the unit members regarding their opinions on holding

Transportation Compensation Meetings. Based on the record and for the reasons explained below, I conclude that the School Committee violated the Law as alleged.

STATEMENT OF CASE

On December 22, 2022, the Union filed a charge with the Department of Labor Relations (DLR) alleging that the School Committee had engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On April 13, 2023, a DLR Investigator investigated the Charge. On May 24, 2023, the Investigator issued a two-count Complaint of Prohibited Practice and Partial Dismissal (Complaint) alleging that the School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.[1] On June 11, 2023, the School Committee filed its Answer to the Complaint.

On September 19, 2024, and October 8, 2024, I conducted a hearing during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On January 3, 2025, the parties filed post-hearing briefs. Based on my review of the record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

Stipulations

1.) The School Committee is the City's collective bargaining representative for the purpose of dealing with school employees.

2.) The Union is an employee organization within the meaning of §1 of G.L. c. 150E.

[1] The Investigator dismissed the Union's allegation that the School Committee violated the Law by unilaterally transferring transportation-based compensatory service coordination and oversight from Assistant Directors of Special Education to Coordinators of Special Education.

3.) The Union is the exclusive bargaining representative for a unit of school employees including Coordinators of Special Education ("COSEs").

4.) On or about November 10, 2022, the Employer issued a memorandum addressed to all school leaders, Coordinators of Special Education, and special education staff regarding compensatory services and reimbursement for transportation.

5.) By email dated November 15, 2022, the Union issued a demand to bargain with the Employer regarding transportation [and] compensatory services.

FINDINGS OF FACT

General Information

The Union is the exclusive representative for employees of the School Committee including, but not limited to, COSEs. The Union and the School Committee are parties to a collective bargaining agreement (CBA) dated September 1, 2021 to August 31, 2024. In the parties' CBA, Article V(2)(d): Staff Training states:

> All staff must participate in professional development so that the entire district can move forward with a common understanding of how we are structuring special education services. This would include specialized training for Coordinators of Special Education, but also include all staff, school leaders, related service providers, school psychologists and special and general education teachers.

Historically, COSEs are required to attend professional development training district-wide once a month. The School Committee provides the schedule for the COSEs' professional development training to the unit members at the beginning of the school year. By providing the training schedule to the COSEs at the beginning of the school year, staff can block time for the professional development sessions and minimize conflicts with performing other job duties. Each monthly professional development training session is approximately six hours long. At the onset of each monthly training, the COSEs are required to sign in to the training and complete an "exist ticket" which includes answering

questions about the training. If a COSE is unable to attend mandatory training for illness or another reason, they must notify their supervisor.

COSEs

The School Committee employs approximately 125 COSEs who are responsible in some capacity for ensuring students receive certain specialized education services. The School Committee employs several types of COSEs (i.e. equitable service COSEs, compliance COSEs, central-based COSEs, and school-based COSEs). School-based COSEs are supervised by their respective principals and the Office of Special Education Assistant Directors. COSEs that are not assigned to a school are supervised by the Assistant Directors of Compliance.

All COSEs share the same job description which lists the following job duties:

1.) Developing Individual Educational Plans (IEPs) for these students;

2.) Consult with and support special education teachers and related service providers in their responsibilities to chair annual reviews and develop IEPs for these students when the Boston School Committee has satisfied its bargaining obligations to have Special Education Teachers and Related Service Providers chair the annual review meetings;

3.) Collaborate with the Principal/Headmaster, and the teachers and related service providers, to manage activities relating to compliance with all state and federal special education regulations and Section 504 of the Rehabilitation Act;

    a. scheduling of assessments and meetings
    b. consents from parents
    c. notices and invitations to families and providers
    d. presenting and tracking IEPs
    e. monitoring for parent signatures
    f. progress reports from teachers and service providers
    g. management reports and other required reports
    h. older transfer and maintenance.

4.) Collaborating with Principals in aligning student schedules with IEPS and 504 plans.

Massachusetts Department of Elementary and Secondary Education

Pursuant to G.L. c. 71B, § 3 and various regulations, the School District (District) is required to provide transportation to its students. Additionally, the District must provide or arrange for transportation for students with disabilities whose IEPs indicate that they require transportation as a related service. If there is an interruption of a service for a student's 504 or an IEP plan, which would interfere with a student receiving a free and appropriate public education, the IEP team needs to reconvene and determine whether or not various compensatory services are warranted.

By letter dated November 3, 2022, the Massachusetts Department of Elementary and Secondary Education (DESE) informed Mary Skipper (Skipper), the Superintendent for the District, that DESE's Problem Resolution System Office (PRS) received a statement of concern involving the District. Specifically, DESE received the following complaints about the District including, but not limited to, its alleged systematic failure to provide transportation services to students with disabilities who are entitled to transportation services pursuant to their respective IEPs. In the November 3 letter, DESE explained that PRS would investigate these claims pursuant to G.L. c. 71B, section 5, and several other cited regulations. Additionally, DESE instructed Skipper to submit certain detailed information in its report.

By letter dated February 24, 2023, DESE informed Skipper that after reviewing the submitted information on the complaints, it had determined that the District had not complied with certain requirements, such as G.L. c. 71B, §§ 3, 5; 603 CMR 28.05(7)(b); 603 CMR 28.06(8); 603 CMR 28.07(6); and 34 C.F.R. § 300.34. The District also failed to comply with 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.101(a) for at least some students

with disabilities.[2] In the February 2 letter, DESE informed the District that it must submit to DESE for its review and approval, a two-part detailed Corrective Action Plan. Additionally, DESE informed the District that its plan must, at a minimum, address certain components and be submitted to DESE for its review and approval no later than March 15, 2023. DESE cited several components that must be addressed by March 15, including training.

Specifically, DESE instructed the District to provide it with a description of the District's plan for training COSEs and members of the District's Transportation Department regarding the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students. Additionally, the District must inform DESE of the District's processes and expectations for monitoring transportation services, including any required accommodations for eligible students. Also, the District must address any transportation services missed because of the District's failure to provide transportation services, including the potential need for compensatory services. Finally, DESE informed the District that it must submit a list of COSEs and members of the Transportation Department and indicate whether they received the required training, the dates of training, the name of the trainer, topics covered, materials used, and attendance sheets, by April 14, 2023.

Demand to Bargain

On or about November 10, 2022, the School Committee's Office of Special Education and Department of Transportation sent all special education staff and COSEs

[2] G.L. c. 71B, §§ 3, 5; 603 CMR 28.05(7)(b); 603 CMR 28.06(8); 603 CMR 28.07(6); 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101(a); and 34 C.F.R. § 300.34 are Massachusetts and federal laws and regulations that govern special education and related services to eligible students with disabilities.

a memo addressing "procedures for deciding how and when to notify parents/caregivers of a student's eligibility for compensatory services as a result of transportation-related service interruptions." The memo also outlined "the District's transportation reimbursement procedures for families who transport their child to/from school due to an uncovered route for a special education student that receives transportation as a related service on their IEP." The November 10 memo further stated that "each COSE shall notify parents of an interruption and their student's eligibility for compensatory services no later than after the third missed day or fifth missed service block. Compensatory services are determined on a case-by-case basis."

On or about November 15, 2022, the Union and the School Committee met to bargain over various issues pertaining to the COSEs. During the meeting, the Union verbally demanded to bargain with the School Committee over its assignment of new job duties to the COSEs. At the meeting, the Union argued that the School Committee's November 10 letter referenced the COSEs performing new job duties. By letter dated November 15, 2022, legal counsel for the Union, Nick Pollard (Pollard), sent S. Michael Pidani (Pidani), legal counsel for the School Committee, a "Demand to Bargain." Pollard informed Pidani that:[3]

> During a November 15th bargaining session between the Boston Teachers Union and the District relating to Coordinators of Special Education ("COSE"), the Union orally demanded to bargain over the imposition of new work duties on COSEs. Specifically, the Union became aware of a November 10, 2022 memorandum from the Office of Special Education and Department of Transportation (attached for reference) ordering COSE[s] to alert parents of any interruptions in services caused by transportation issues, to convene a student's IEP team, and determine what compensatory services are due to the student. This would

[3] The record does not reflect whether the parties met after the November 15 Demand to Bargain to discuss this issue.

> constitute a new job responsibility for COSEs, and also dramatically increase their already high workload, both of which are mandatory subjects of bargaining. Accordingly, the Union hereby memorializes its demand to bargain; additionally, in order to avoid the establishment of a fait accompli, the District must rescind the memorandum and take no action that would require the performance of these additional duties unless and until it bargains with the Union to resolution or impasse. As the parties are already engaged in bargaining about issues relating to COSEs, the Union would again propose that this matter be incorporated into that ongoing bargaining.

By email dated December 1, 2022, Christine Panarese (Panarese), an Assistant Director of Special Education for the School Committee for Region 2, sent several Region 2 bargaining unit COSEs the following message:[4]

> We have been asked to try and get an approximate number of our COSEs who are opposed to the holding of the Transportation Compensation Meetings. There is currently a grievance and they wanted some numbers of how many people are opposed to holding these meetings before 10:00 a.m. If you want to help provide this information - Please do not respond individually - please select one person who is not a BTU member - maybe Kara - or another representative to G-Chat the total number to me and I will forward that number to our [Special Education Department] leaders. Thank you all for your hard work and know that you are appreciated.

Transportation and Compensatory Service Training

By email dated March 23, 2023, Keith Guyette (Guyette), Manager of Compliance for the District, informed all COSEs that:

> We need everyone to attend a mandatory virtual PRS corrective action training with our legal counsel Paige Tobin on April 12th from 11 AM to 12 PM. This is regarding transportation issues and the resulting compensatory services. We will take the hour off of our next professional

[4] The District is broken into Regions. Each Assistant Director of Special Education is assigned a Region within the District. Additionally, neither Panarese nor her supervisor Kim Crowley (Crowley), a supervisor from the Office of Special Education, testified in this proceeding. The School Committee did not dispute that Panarese sent this email. Neither party provided a copy of the grievance or any further information on the grievance referenced in this communication at the hearing.

> development session on April 26th, which will now end at 1PM. My apologies for this late notice and any inconveniences.

Guyette included the hyper link to the training in this communication.

By email dated March 23, 2023, COSE Helena Rayne (Rayne) replied to Guyette stating that: "Not sure if anyone else has responded, but my [COSE] schedule doesn't have P[rofessional] D[evelopment] on the 26th, we just have new [COSE] [professional development] on April 5 and all [COSE] [professional development] is April 12, or at least that is what I have. Just double checking." By email dated March 23, 2023, Kim Crowley (Crowley), informed Rayne that:

> There was a notice informing all [COSEs] of the "All [COSE Professional Development]" on April 12th date change to the 26th a couple of months ago when we moved to the BTU Hall due to space availability. We now have to hold an hour on 4/12 due to a prs complaint deadline. The 4/26 date is still on for "All [COSE Professional Development]" - but will end hour sooner due to the 4/12 need to meet 11-12 [p.m.].

By email dated later that same day, Guyette responded to Rayne that: "had to change when we moved to union hall, they were booked."

On April 12, 2023, the District hosted mandatory training for COSEs on transportation issues and the resulting compensatory services. During the April 12 one-hour training, the School Committee educated the COSEs on the District's obligations under state and federal laws and regulations to provide transportation services for transportation-eligible students. By email dated April 12, 2023, Nina Sprinkle (Sprinkle), the Assistant Director of Compliance, provided all COSEs with links to the recordings for the training earlier that day for those who could not make the training. As the April 12 training lasted one-hour, the School Committee reduced the length of the already scheduled monthly COSE professional development training on April 26, 2023.

Opinion

Direct Dealing

It is well-established that the duty to bargain collectively with the employees' exclusive bargaining representative prohibits the employer from dealing directly with employees in the bargaining unit on matters that are properly the subject of negotiations with the bargaining unit's exclusive representative. City of Lowell, 28 MLC 157, 158, MUP-2478 (October 15, 2001) (citing Millis School Committee, 23 MLC 99, 99-100, MUP-9038 (October 8,1996)). An employer's direct dealing with the employees in the bargaining unit undermines the effectiveness of the bargaining representative and creates the possibility of conflict between individually negotiated gains and the terms of the contract. Millis School Committee, 23 MLC at 100 (citing Lawrence School Committee, 3 MLC 1304, 1312, MUP-2287(December 7,1976)).

Direct dealing is impermissible for at least two reasons. First, direct dealing violates the union's statutory right to speak exclusively for the employees who have elected it to serve as their sole representative. Suffolk County Sheriff's Department, 28 MLC 253, 259, MUP-2840 (January 30, 2002) (citing Service Employees International Union v. Labor Relations Commission, 431 Mass. 710, 715 (2000)). Second, direct dealing undermines employees' belief that the union actually possesses the power of exclusive representation to which the statute entitles it. Suffolk County Sheriff's Department, 28 MLC at 259; Service Employees International Union, 431 Mass. at 715. The employer's duty to bargain about mandatory subjects of bargaining goes hand-in-hand with its duty to refrain from bargaining directly with individual employees represented by the union. City of Springfield, 17 MLC 1380, 1384- 85, MUP-6905 (December 28,1990).

However, there are limits on what is considered direct dealing. An employer does not engage in impermissible direct dealing by merely communicating its bargaining position to employees. Service Employees International Union, 431 Mass. at 715. Surveys of employees as to mandatory subjects of negotiation are a different matter, at least if bargaining discussions have begun or are expected to begin. Id. at 716. Exchanging information about employees' views on these subjects is a crucial element of any negotiation between an employer and a union. Id. Employers who solicit this information directly from employees vitiate the union's role as the exclusive voice of employees in negotiations. Id. They also obtain a valuable index of employees' willingness to consider a combination of bargaining terms from the employer. Id.

On December 1, 2022, Panarese sent several COSEs who were assigned to the region Panarese supervised the following email:

> We have been asked to try and get an approximate number of our COSEs who are opposed to the holding of the Transportation Compensation Meetings. There is currently a grievance and they wanted some numbers of how many people are opposed to holding these meetings before 10:00 a.m. If you want to help provide this information - Please do not respond individually - please select one person who is not a BTU member - maybe Kara - or another representative to G-Chat the total number to me and I will forward that number to our [Special Education Department] leaders. Thank you all for your hard work and know that you are appreciated.

Panarese's email constitutes a survey of a subsection of unit members regarding their opinions on holding Transportation Compensation Meetings, which was the subject of an outstanding grievance. It is clear from the face of the email that Panarese was attempting to secure opinions from unit members on whether they supported the Union's grievance on Transportation and Compensation meetings. In this case, Panarese did not simply communicate to the unit members the School Committee's position regarding the

grievance but attempted to solicit unit members' stance on the topic to determine whether the employees agreed with the grievance. As such, Panarese's action undermines the Union's position in the grievance process and the Union's role as the exclusive bargaining representative for the unit members.

In addition to undermining the Union's role as the exclusive representative in the grievance process, Panarese's actions undermined the Union's statutory right to speak exclusively for the employees who have elected it to serve as their sole representative. As stated above, the Union had demanded to bargain with the School Committee over additional job duties dealing with transportation and compensation. Job duties are a mandatory subject of bargaining. Town of Danvers, 3 MLC 1559, 1576, MUP-2292 (April 6, 1997) (determining that job duties are a mandatory subject of bargaining). Despite the Union's demand to bargain over compensatory services and transportation job duties, Panarese subsequently requested the opinions of unit members on the topic of attending meetings on transportation and compensatory services. In Harris-Teeter Super Markets, Inc. and United Food and Commercial Workers Union, Local 204, 310 N.L.R.B. 216 (1993), the National Labor Relations Board (NLRB) held that an employer was engaged in direct dealing when a manager asked three unit members if they liked their temporary work schedule, if they had a comment, and who "was for it," as the employer was obligated to bargain with the union over that subject. According to the NLRB, "by soliciting the sentiment of the employees on a subject to be discussed at the bargaining table, the employer was usurping the union's function and attempting to arm itself for upcoming negotiations." Id.

The School Committee argued that Panarese's email did not constitute direct dealing because Panarese is not an employer under the Law. However, the parties stipulated that the School Committee is the City's collective bargaining representative for the purpose of dealing with school employees and that the City is a public employer under the Law. Moreover, it is not disputed that on December 2, 2022, Panarese was employed by the School Committee as an Assistant Director in the Office of Special Education for Region 2. Within the District, COSEs who are "school-based" often report to Assistant Directors as well as their respective principal. Additionally, COSEs who are not "school-based" also report to Assistant Directors. As such, the unit members who received Panarese's December 2 email could reasonably assume that Panarese had apparent authority to act on the Employer's behalf. Town of Chelmsford, 8 MLC 1913, 1916, MUP-4620 (March 12,1982) (the authority to act for and speak on behalf of the employer is determined by the employees' perception of actual, implied, or apparent authority).

Next, the School Committee argued that Panarese's email did not constitute direct dealing because Panarese did not supervise any COSEs, including those included on the December 2 communication. Specifically, the School Committee asserts that Assistant Directors cannot discipline or evaluate COSEs. Although Assistant Directors cannot evaluate or discipline COSEs, they still hold some supervisory authority over certain COSEs. Even if Panarese did not hold any supervisory authority over the COSEs included on the email, the School Committee did not provide any caselaw stating that the employer's representative must be a direct supervisor of the involved unit members for their actions to constitute direct dealing. More importantly, as explained above, Panarese was an Assistant Director for the Office of Special Education for Region 2, and the unit

members included on the email were assigned to Region 2. Again, the unit members would have reasonably believed that Panarese had apparent authority to speak on behalf of the School Committee.

Finally, the School Committee asserts that Panarese did not send the December 2 email at the direction of any individual who was a supervisor or "employer" of the COSEs. However, neither Panarese nor her direct supervisor, Kim Crowley, testified at hearing to corroborate the School Committee's assertion that it did not direct Panarese to send the December 2 communication.[5] Additionally, Panarese's email states that "*we* have been asked to try and get an approximate number of our COSEs who are opposed to the holding of the Transportation Compensation Meetings." (Emphasis added.) The December 2 email clearly indicates that Panarese was directed by another individual to collect information on this topic.

Even if no one from the School Committee instructed Panarese to send the email, the communication would still constitute direct dealing. As Panarese has some level of supervisory authority over certain COSEs as the Assistant Director for Region 2, the unit members would have reason to believe she had apparent authority to speak on behalf of the Employer, and she sent the email communication to the COSEs assigned into Region 2. Commonwealth of Massachusetts, 11 MLC 1206, SUP-2747 (October 3, 1984) (public employer is responsible for the actions of its supervisory employees and agents who act

[5] The School Committee's witnesses testified that they did not personally direct Panarese to send the December 2 email, nor did they know of anyone else who did. While I credit the School Committee's witnesses that they did not personally direct Panarese to send the email, no one testified to speaking with Panarese about why she sent the December 2 email. Because the School Committee did not call Panarese to testify in this matter, it did not present any first-hand knowledge of whether Panarese was directed to send the December 2 email.

within the scope of their apparent authority whether or not those acts were specifically authorized)). Furthermore, the School Committee did not provide any evidence that upon learning of the December 2 email it revoked Panarese's communication to the unit members. If Panarese had acted on her own accord, the School Committee should have informed the unit members to disregard the December 2 email, and that it would destroy any information that the unit members supplied in response.

For the above reasons, I find that Panarese's email constituted unlawful direct dealing in violation of Section 10(a)(5) of the Law.

Training

It is well-settled that public employers may not change a pre-existing condition of employment, or implement a new condition of employment, affecting a mandatory subject of bargaining without providing the exclusive collective bargaining representative with prior notice and an opportunity to bargain to resolution or impasse. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); City of Newton, 16 MLC 1036, 1041-42, MUP-6477 (June 15, 1989). However, some managerial decisions cannot be delegated by public employers or be made the subject of collective bargaining. Town of Dennis, 12 MLC 1027,1030, MUP-5247 (June 21,1985). For example, school committees have the exclusive prerogative to determine matters of educational policy without bargaining. School Committee of Boston v. Boston Teachers Union, 378 Mass. 65 (1979). Similarly, decisions determining the level of services that a governmental entity will provide lie within the exclusive prerogative of the public employer. Town of Danvers, 3 MLC 1560, MUP-2292, 2299 (April 6,1977). Also, when a third party over which the employer has no control exercises its authority to change employees' terms and

conditions of employment, the public employer may not be required to bargain over the decision to make that change. Lowell School Committee, 26 MLC 111, MUP-1775 (January 28, 2000).

A public employer's ability to act unilaterally regarding certain subjects or decisions does not, however, relieve that employer of all attendant bargaining obligations. In cases where an employer is excused from the obligation to bargain over a decision made by a third party, that employer is still required to bargain with the union representing its employees over the manner in which to implement the decision, as well as the impacts of the decision on mandatory subjects of bargaining, before it implements that decision. Higher Education Coordinating Council, 22 MLC at 1662,1670-1671, SUP-4078 (April 11, 1996); see also Massachusetts Correctional Officers Federation v. Labor Relations Commission, 417 Mass. 79 (1994). Likewise, employers must bargain the impacts of core governmental decisions, School Committee of Newton v. Labor Relations Commission, supra, and school committees must bargain over the impacts of decisions based on educational policy, See generally, Groton School Committee, 1 MLC 1221, 1224, MUP-702 (December 17,1974).

Decision

The School Committee argued that DESE required the District to provide it with a description of the District's plan for training COSEs and members of the Transportation Department regarding the District's obligations under state and federal laws and regulations to provide transportation services to eligible students by March 15, 2023. Additionally, the School Committee argued that DESE required the District to submit a list of COSEs that received the above-mentioned training, the dates of the training, name of

the trainer, topics covered, materials used, and attendance sheets, by April 14, 2023. Given DESE's requirements and the training deadline, the School Committee argued it did not have to bargain over its decision to conduct mandatory training for COSEs on April 12, 2023.

First, I agree with the School Committee that DESE, a third party, required it to provide COSEs with training on the District's transportation-related obligations under state and federal laws and regulations, and complete said training by April 14, 2023.[6] However, the School Committee was still required to bargain with the Union over how the required training would be implemented and the impacts of the training on the unit members' terms and conditions of employment.

The School Committee argued that it was necessary to conduct the training on April 12 because it needed to meet the deadline set by DESE. I disagree. While DESE required the training to be completed by April 14, it did not require the School Committee to conduct the training on a certain date.[7] The School Committee was free to bargain with

[6] The Union argued that the School Committee violated the Law because the April 12 training educated COSEs on how to perform the job duties related to transportation and compensatory services. The Union asserted that the School Committee's decision to train COSEs to perform such job duties presupposes that COSEs will be responsible for these tasks. Furthermore, the Union argues that DESE did not require COSEs perform compensatory service determinations. Despite the Union's arguments, the Investigator in this matter dismissed the Union's allegations that the School Committee violated the Law by assigning COSEs job duties for transportation-based compensatory services. As such, the Union' concerns surrounding the assignment of transportation and compensatory service job duties to COSEs are not part of the Complaint in this matter. However, the issue in the Complaint pertaining to the School Committee' requiring COSEs attend the April 12 training is addressed in this decision.

[7] The School Committee has argued that there was no time to include the one-hour training in one of the monthly training sessions. However, the School Committee was informed on February 24 that DESE required it to provide certain training to the COSES by April 14, 2023. Additionally, the School Committee did not provide the dates of the

the Union over the details of the training, such as the length of the training, the specific date and time of the training, whether the training was in-person or virtual, whether the COSEs were required to log on to the virtual training at a set time or review a pre-recorded session that the unit members could view on their own by a certain date, and the location of the training.

The record is clear that the School Committee chose to implement DESE's requirements by conducting the one-hour training session on April 12, 2023, yet it was not compelled to so on that date and time by a third party. Although conducting a one-hour training session on April 12 and shortening the regularly scheduled COSE professional development training on April 26 by an hour was one option to fulfill DESE's requirements, the School Committee could have chosen another option to achieve the same goal. As described above, the School Committee was obligated to bargain over the implementation of DESE's requirements for training COSEs on the District's transportation-related obligations.

The School Committee further argued that its decision to conduct the training on April 12 did not change the unit members' terms and conditions of employment because the CBA already required COSEs to attend professional development training. Despite requiring regular professional development sessions, the CBA does not explicitly state when the COSEs must attend professional development training or quantify the number of trainings that COSEs must attend each year. Moreover, the record reflects that the School Committee historically only required COSEs to attend professional development

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February and March month training sessions which would support its contention that it could not have included this information during a pre-scheduled professional training session.

training once per month, and that the schedule for the training was distributed at the beginning of the school year to minimize impacts on the COSEs' other job duties.

Previously, the School Committee had only required one scheduled professional training session per month. Now, the School Committee required COSEs to attend an additional, unscheduled training session in April of 2023. As such, the School Committee's decision to require COSEs attend the April 12, 2023 training changed the unit members' terms and conditions of employment.

Impacts

Compulsory training is a mandatory subject of bargaining. Town of Bridgewater, MUP-8634, unpublished op. (June 20, 1997); See also, City of Boston, 26 MLC 177, 181, MUP-1431(March 23, 2000). Here, the School Committee's decision to conduct the DESE required training on April 12, 2023 impacted the unit members' terms and conditions of employment. As explained above, the COSEs were historically only required to attend professional development training one day a month. However, the April 12 training resulted in COSEs attending two training sessions in one month. Also, the School Committee informs the COSEs of the schedule for the professional development training at the beginning of the school year. The new DESE-required training was unplanned, and the COSEs had a short amount of time to rearrange schedules and other job duties to attend it.

Despite this case involving a singular one-hour training session, I find that the impacts are not de minimus. First, COSEs' job duties affect the services provided to students with disabilities and require prior scheduling with a multitude of individuals. For example, COSEs chair IEP meetings, contact families, and collaborate with principals and

other providers to ensure that IEPs are being followed. Given that COSEs' job duties are vital in ensuring that students with disabilities receive services, and require advanced scheduling with many third parties, I find that rearranging a COSE's schedule at the last minute for a one-hour training session creates more than a de minimus impact.

As explained above, the School Committee notifies the COSEs at the beginning of the school year of the dates and times for all professional development training. Even when the School Committee needs to reschedule a professional development training, it provides the COSEs with several months' notice. For example, the School Committee notified the unit members several months ahead of time when it was necessary to reschedule the professional development training from April 12 to April 26. The School Committee's approach to providing substantial notice to the COSEs on scheduling professional development training proves that a singular one-hour training does not have a de minimus impact.

Notice and Opportunity to Bargain

The Union demonstrated that the School Committee did not provide the Union with notice and an opportunity to bargain prior to requiring the unit members to attend the April 12 training session. As previously noted, while the CBA states that the COSEs are required to attend monthly professional development training, the School Committee has only required the COSEs to attend one training session a month, and the schedule for the sessions is released at the beginning of the school year. On March 23, 2023, the School Committee informed COSEs that they would need to attend an additional training session on April 12, 2023.

The School Committee argues that it informed unit members of the April 12 training months prior to March 23. The School Committee asserts that Guyette's March 23 email chain demonstrates that the unit members were on notice of the training for months. I disagree. First, Guyette's March 23 email states, in reference to the April 12 training, "My apologies for this late notice and any inconveniences." Also, by email dated March 23, 2023, Guyette informed Rayne that: "There was a notice informing all [COSEs] of the "All [COSE] PD" on April 12th date change to the 26th a couple of months ago when we moved to the BTU Hall due to space availability. We now have to hold an hour on 4/12 due to a [PRS] complaint deadline." It is clear from the text of the email that the School Committee notified COSEs months prior that their regularly scheduled professional development training was being moved from April 12 to April 26, but did not, at that time, notify anyone of the training on April 12.

Furthermore, the School Committee did not provide any evidence that the notification about rescheduling the professional development session to April 26 occurred after DESE required the School Committee to train COSEs on certain topics. It is clear from the record that the School Committee did not notify the COSEs of the additional April 12 training until March 23, 2023. More importantly, although the School Committee informed the unit members of the April 12 additional training on March 23, there is nothing in the record to indicate that the School Committee directly informed the Union of the April 12 training or that a Union officer or representative was on the March 23 communication to the COSEs.

Next, the School Committee argued that the Union waived its right to bargain by inaction. The School Committee asserts it notified the Union of the April 12 training at the

latest on March 23 which gave it a reasonable amount of time to demand to bargain. Where a public employer raises the affirmative defense of waiver by inaction, it bears the burden of proving that the union had: 1) actual knowledge of the proposed change; 2) a reasonable opportunity to negotiate prior to the employer's implementation of the change; and 3) unreasonably or inexplicably failed to bargain or to request bargaining. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 570 (1983). Such a waiver will not be lightly inferred. Town of Natick, 2 MLC 1086, 1092, MUP-2098, 2102 (1975).

There is no record evidence to support this argument. As explained above, the School Committee did not establish that it provided the Union with notice of the additional training on April 12. As such, the School Committee did not demonstrate that the Union had actual knowledge of the change before April 13, 2023, when it was addressed at the investigation in this case. Even if I consider the March 23 email to the COSEs as notification of the additional training to the Union, the additional training was scheduled less than three weeks later, on April 12, 2023. As such, the School Committee did not provide a reasonable opportunity to negotiate prior to implementing the change. In sum, the School Committee never notified the Union or provided an opportunity to bargain prior to requiring the COSEs to attend an additional training session that month on the District's obligations to provide transportation services to eligible students. Therefore, the Union satisfied its burden of proof on this issue.

CONCLUSION

Based on the record and for the reasons explained above, I find that the School Committee violated Section 10 (a)(5), and derivatively, Section 10(a)(1) of the Law by: 1)

requiring unit members to attend the April 12, 2023 training on the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students as instructed by DESE without providing the Union with prior notice and an opportunity to bargain to resolution or impasse over how to implement the decision to require COSEs to receive said training and the impacts of the decision on the unit members' terms and conditions of employment, and 2) directly dealing with unit members by surveying a subsection of the unit members regarding their opinions on holding Transportation Compensation Meetings.

REMEDY

Section 11 of the Law grants the Commonwealth Employment Relations Board (CERB) broad authority to fashion appropriate orders to remedy unlawful conduct. Labor Relations Commission v. Everett, 7 Mass. App. Ct. 826 (1979); Commonwealth of Massachusetts, 22 MLC 1459, 1464, SUP-3922, SUP-3944 (February 2, 1996). In this case, the School Committee was obligated to bargain with the Union over how to implement DESE's requirement for training and the impacts of the compulsory training on the unit members' terms and conditions of employment before it decided to require unit members to attend the April 12, 2023 training session. Therefore, I direct the School Committee to bargain in good faith with the Union over the implementation of DESE's mandate to train COSEs on the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students and any impacts on bargaining unit members' terms and conditions of employment. Additionally, I direct the School Committee to refrain from dealing directly with employees represented

by the Union over matters that are properly the subject of negotiations and pending grievances with the Union.

ORDER

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

1. Cease and desist from:

   a. Failing or refusing to bargain in good faith with the Union to resolution or impasse over how to implement DESE's mandate to train COSEs on the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students and the impacts of that compulsory training on unit members' terms and conditions of employment;

   b. Dealing directly with employees represented by the Union over matters that are properly the subject of negotiations and pending grievances with the Union;

   c. In any like or similar manner interfering with, restraining or coercing employees in the exercise of their rights protected under the Law.

2. Take the following affirmative actions that will effectuate the purpose of the Law:

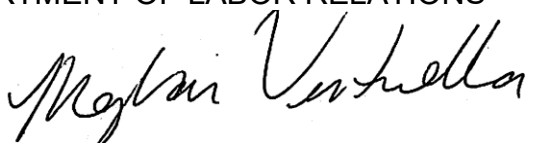
   a. Bargain with the Union in good faith to resolution or impasse over the implementation of DESE's mandate to train COSEs on the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students and the impacts of that compulsory training on unit members' terms and conditions of employment.

   b. Sign and post immediately in conspicuous places employees usually congregate or where notices to employees are usually posted, including electronically, if the Employer customarily communicates to its employees via intranet or e-mail, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees;

   c. Notify the DLR within ten (10) days after the date of service of this decision and order of the steps taken to comply with its terms.

ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MEGHAN VENTRELLA, 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 that the Boston School Committee (School Committee) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: 1) requiring unit members to attend a April 12, 2023 training on the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students as instructed by DESE without providing the Union with prior notice and an opportunity to bargain to resolution or impasse over how to implement the decision and the impacts of the decision on the unit members' terms and conditions of employment, and 2) dealing directly with unit members by surveying a subsection of the unit members regarding their opinions on holding Transportation Compensation Meetings.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; 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 refuse to bargain in good faith with the Union over the implementation of DESE's mandate for compulsory training for unit members on the District's obligations under state and federal laws and regulations to provide transportation services to transportation-eligible students, and the impacts on unit members' terms and conditions of employment.

WE WILL NOT directly deal with employees represented by the Union over matters properly the subject of negotiations and pending grievances with the Union.

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

WE WILL bargain in good faith with the Union over the implementation of DESE's mandate for compulsory training on the District's obligations to provide transportation services to transportation-eligible students, and the impacts on unit members' terms and conditions of employment.

_____ _____

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, 2 Avenue de Lafayette, Boston MA 02111.