COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
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MASSACHUSETTS NURSES ASSOCIATION	*	
	*	Case No. MUPL-19-7246
and	*	
	*	Date Issued: December 18, 2020
CAMBRIDGE HEALTH ALLIANCE	*	
	*	

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

Kristen Barnes, Esq.:	Representing the Massachusetts Nurses Association
Anthony Rizzotti, Esq. and Kevin Burke, Esq:	Representing the Cambridge Health Alliance

HEARING OFFICER'S DECISION

SUMMARY

The issue in this case is whether the Massachusetts Nurses Association (MNA) violated Section 10(b)(2) and, derivatively, 10(b)(1) of Massachusetts General Laws Chapter 150E (the Law) by failing to bargain with the Cambridge Health Alliance (CHA) over the cost sharing of a dental plan, pursuant to Article 10.03 of the parties' collective bargaining agreement (CBA), separately from successor contract negotiations. Based on the record and for the reasons explained below, I find that the MNA violated the Law as alleged.

STATEMENT OF THE CASE

On April 2, 2019, the Cambridge Health Alliance (CHA) filed a charge of prohibited practice with the Department of Labor Relations (DLR) alleging that MNA had violated Section 10(b)(2) and, derivatively, Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law). On July 15, 2019, a DLR investigator issued a Complaint of Prohibited Practice and Partial Dismissal (Complaint). On July 23, 2019, MNA filed an Answer to the Complaint. I conducted a hearing by video conference during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On October 30, 2020, the parties filed timely 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 OF FACT

1. The Cambridge Health Alliance ("Employer" or "CHA") is a public employer within the meaning of Section 1 of M.G.L. c. 150E (the "Law").

2. The Massachusetts Nurses Association ("MNA" or "Union") is an employee organization within the meaning of Section 1 of the Law.

3. The MNA is the exclusive representative of a bargaining unit of RNs employed by the Employer at Cambridge Hospital ("Cambridge Hospital" or the "Hospital").

4. The MNA and the Hospital are parties to a collective bargaining agreement ("CBA") effective from July 1, 2018, through June 30, 2019.

5. On July 26, 2018, the Union's Cambridge Hospital unit filed a Step 1 Grievance (the "Grievance") contending the Hospital violated Article 10.03 of the CBA.

6. On August 15, 2018, the Hospital held a Step 1 Grievance hearing.

7. On September 13, 2018, the Hospital provided its Step 1 Grievance response.

8. The Union advanced the Grievance to Step 2 of the CBA's grievance procedure.

9. On September 28, 2018, the Hospital held a Step 2 Grievance hearing.

10. On October 15, 2018, the Hospital provided its Step 2 Grievance response.

11. On October 19, 2018, the Union advanced the Grievance to Step 3 of the CBA's grievance procedure.

12. On November 8, 2018, the Hospital held a Step 3 Grievance hearing.

13. On January 15, 2019, the Hospital provided its Step 3 Grievance response.

FINDINGS OF FACT

Background

CHA consists of three hospitals, Cambridge Hospital, Somerville Hospital and Everett Hospital. The issue in this case pertains to Cambridge Hospital. The City of Cambridge owned and operated Cambridge Hospital until 2009. MNA represents approximately 350 registered nurses (RNs) working at Cambridge Hospital. There are two separate dental plans that cover Cambridge Hospital employees. One plan, referred to as the public plan, covers those employees who were on the payroll in 2009. The public plan covers approximately 90 RNs. The other dental plan, referred to as the private plan, is for employees who were hired or transferred to Cambridge Hospital after 2009.[1] CHA provides dental insurance benefits directly to the RNs in the private plan. CHA receives an invoice from the City of Cambridge for the cost of dental insurance for RNs on the public plan and CHA collects those RNs' contributions for their public

[1] These employees are on the "Somerville payroll."

plan premiums through payroll deductions. The dispute at issue in this matter relates to the public plan.

MNA employs Associate Directors who negotiate agreements and participate in grievances on behalf of bargaining unit employees. In 2018, Roland Goff (Goff), MNA Director of Strategic Campaigns, was serving as the Associate Director for the MNA bargaining unit at Cambridge Hospital. Associate Directors work directly with bargaining unit leadership at the local level. They have authority to attend labor-management meetings, negotiate agreements, participate in grievance hearings, and recommend grievances for arbitration. They have authority to bind MNA by signing memorandum of agreements and collective bargaining agreements with the facilities at which they are assigned. In his role as Associate Director, Goff had day-to-day responsibilities to represent the bargaining unit employees at Cambridge Hospital. CHA was aware of Goff's role overseeing day-to-day responsibilities on behalf of the bargaining unit employees.

In addition to Goff, MNA also has other elected representatives. Susan Wright-Thomas (Wright-Thomas) is an RN who serves as MNA's grievance chair. In this role, she is authorized to file and process grievances. Wright-Thomas does not have independent authority to move grievances to arbitration.[2]

Bargaining Agreements

[2] No evidence was introduced regarding Wright-Thomas's ability to negotiate agreements on behalf of MNA.

The parties negotiated a CBA effective July 1, 2013 through June 30, 2017.[3] Article 10 of the CBA covers Health and Welfare Benefits. Article 10.03 covers dental and vision insurance and reads in its entirety:

> Effective upon adoption by the Dental and Vision Fund (formerly known as the Health and Welfare Fund) of the Guardian Dental Plan or its equivalent, all nurses working 20 or more hours shall be eligible for this Dental Plan. The costs of this plan will be shared 75% by the Hospital and 25% by the Employee. The Hospital's contribution will be capped at $10.00 per week per employee. The Employee's contribution will be capped at $3.50 per week per employee. If the percentage contribution of either party would exceed their respective cap, the parties agreed to negotiate an appropriate sharing of the excess costs.
>
> The Vision plan shall remain as currently established by the Dental and Vision Fund (formerly known as the Health and Welfare Fund).
>
> The existing Dental and Vision plan will continue until the above new plan is effective.

Because the parties spent almost three years negotiating the 2013-2017 CBA, the parties agreed to limit their focus to a few specified topics, with the main focus on wages and seniority, when negotiating an extension of their agreement for the July 1, 2017 to June 30, 2018 time period. The negotiations for this one-year agreement took approximately four to five months. The parties reached agreement in May 2017. No changes were made to Article 10 or Article 21.

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[3] Article 21 of the CBA covers employment and contract security. Article 21.01, entitled Continuity of Benefits, provides as follows:

> The transfer of The Cambridge Hospital from the City of Cambridge ("City") to the Cambridge Public Health Commission (d/b/a CHA) shall not lessen any benefits nurses have enjoyed under the City, provided that the City continues to provide such benefits. None of these benefits can be lessened except through negotiations during bargaining for a successor collective bargaining agreement.

When negotiating the next extension of their CBA, in 2018, the parties once again agreed to limit the topics to be negotiated. This time, they agreed to limit negotiations to two issue, wages and the date to begin successor agreement negotiations. Goff served as the MNA's lead negotiator during these negotiations, which took one day. On August 20, 2018, the parties sign a Memorandum of Agreement to extend their CBA for one-year through June 30, 2019. The parties agreed to a wage increase and to begin contract negotiations for a successor agreement on January 22, 2019.

Dental Plan Grievance and the Request to Bargain

On July 26, 2018, Wright-Thomas filed a grievance on behalf of all Cambridge Hospital RNs on the Somerville payroll who were covered by the private dental plan. The grievance alleged that "[t]he Cambridge Hospital is in violation of Article 10.03 (Dental/vision Insurance) by charging nurses on the "Somerville Payroll" more than the capped limit contribution of $3.50 per week."

Wright-Thomas spoke with Goff about the grievance. She also copied Goff and other MNA representatives on her Sep 1 grievance. Wright-Thomas and Jean Mazzola (Mazzola), RN and Co-chair, attended the grievance meeting, along with Vennesa Graure (Graure), Director of Labor and Employee Relations, and Donna Laurin, Benefits Manager.

Graure consulted with Joy Curtis (Curtis), Senior Vice President and Chief Human Resources Officer, regarding this grievance. Although the grievance regarded the private plan, while researching the grievance Graure realized that CHA was paying more than the $10 cap provided for in the CBA for the employees on the public plan. The total weekly premium for the

public plan was $24.99. MNA employees under the public plan were paying a premium of $3.50 with CHA paying the remainder, $21.49.[4] After Curtis and Graure reviewed the CBA language, Curtis instructed Graure to put a bargaining demand in the grievance response.[5]

On September 13, 2018, Graure denied the grievance, noting that the long-standing practice was that the RNs on the private plan paid the "cost sharing formula that was offered to them when they were offered their employment positions with CHA." Graure also noted that RNs on the public plan had not been paying the 25% of the dental plan as envisioned in Article 10.03. Graure wrote: "This grievance is denied. However, pursuant to Article 10.03 of the collective bargaining agreement, CHA hereby requests a date in the immediate future to meet and negotiate the cost sharing of the Dental Plan." [6]

[4] The CHA had been paying more than $10 towards the dental premiums for the public dental plan for some time, since at least 2016 or 2017. Curtis acknowledged that CHA could have been paying in excess of the cap even earlier.

[5] Curtis testified that prior to this instance, CHA had never sent a request to bargain in a grievance response to MNA.

[6] Although the bargaining request did not specify that the request was to bargain over the public plan only, Curtis credibly testified that CHA's intent was to negotiate over the public plan only. I credit Curtis's testimony on this matter. No testimony or evidence was presented to dispute her contention. Additionally, CHA had previously raised the RN's contributions for the private plan's premiums but had not raised the RN's contributions towards the public plan's premiums. Accordingly, it is reasonable that CHA was only requesting to bargain over the public plan because that was the plan for which CHA was paying in excess of the contractual cap.

CHA sent a copy of the grievance response to Wright-Thomas, Mazzola and Human Resources. Goff was not copied on the response.[7] The elected representatives, rather than the Associate Directors, generally processed grievances at Step 1 and Step 2. Goff would generally "check in on it occasionally" and "often will take a quick look at step grievance responses just to see if it's been affirmed or denied." Goff does not recall viewing this grievance response in September 2018 but says he may have received a copy of it. No evidence was provided that Goff ever received or reviewed a copy of this grievance response.

MNA did not respond to the request to bargain.

MNA advanced the grievance to the 2nd step.[8] Wright-Thomas and Mazzola represented MNA at the September 28, 2018 Step 2 grievance meeting. When Dennis McCarthy (McCarthy), Senior Director Labor/Employee Relations and Benefits, met with Curtis regarding the second step grievance, Curtis instructed him to reiterate the CHA's demand to bargain. He did so when he denied the grievance.

On October 15, 2018, McCarthy, in his grievance response, added the following,

> Of note, the request by CHA in the Step 1 Grievance answer, dated September 13, 2018, to meet and negotiate the cost sharing of the Dental Plan has garnered no response from the MNA. Therefore, I am again requesting dates by October 30, 2018 for the purpose of meeting and negotiating cost sharing. This is in accordance with the labor agreement.

[7] CHA contends that the response was also sent to Goff. However, that is not evident on the face of the response and no testimony or documentary evidence was presented during the hearing which supports this contention. Therefore, I decline to find that CHA provided the grievance response containing the bargaining request to Goff.

[8] The Step 2 grievance was not submitted as evidence during the hearing.

McCarthy's second step response was addressed to MNA, but it does not specifically indicate who received the response. Goff credibly testified that the did not see the second step response at that time.[9]

Once again, MNA did not respond to the demand to bargain.

On October 19, 2018, Wright-Thomas advanced the grievance to the third step. On November 8, 2018, Curtis met with Goff and Wright-Thomas for the Step 3 grievance meeting. CHA's demand to bargain was not discussed during this third step meeting.[10]

On January 15, 2019, Curtis submitted her third step grievance response to Goff and Wright-Thomas and copied other MNA representatives. She denied the grievance.[11] Curtis did

[9] No testimony or evidence was submitted that contradicted Goff's claim that he did not recall seeing the second step response prior to preparing for the hearing in this matter.

[10] Curtis explained that she did not raise the demand to bargain because the CHA had already submitted a demand to bargain twice and her focus was on the subject matter of the grievance.

[11] In her response, Curtis asserted that the CBA article did not apply to those RNs on the "Somerville Payroll" enrolled in the private plan. She wrote,

> First, please note that the section makes reference to "the Dental and Vision Fund (formerly known as the Health and Welfare fund) of the Guardian Dental Plan". This fund is in reference to a City of Cambridge plan only available to public employees and not those on the "Somerville Payroll". It is managed by the City of Cambridge, not CHA. Nowhere does the article reference the benefits available to those employees hired after May 1, 2009 on the private payroll (aka "Somerville Payroll"). The contract is silent about that plan. However, there is a long standing past practice (i.e., since May 1, 2009) of charging those nurses on the "Somerville Payroll" more than $3.50. With the contract silent about the contributions for these nurses, past practice prevails. As a result, CHA stands on this consistent past practice and the lack of contract language as the basis for denying this grievance.

not reiterate CHA's request to bargain; Curtis explained at the hearing that she was focused on answering the grievance. Because CHA had already twice requested to bargain pursuant to Article 10.03, she did not see a need to make another request in the grievance response.

The MNA filed for arbitration.[12]

On February 25, 2019, Curtis emailed Goff and others with the subject line "request to negotiate." Curtis wrote as follows:

> Both Vennesa Graure and I have requested to negotiate an appropriate sharing of excess cost of the City of Cambridge dental plan for public payroll employees pursuant to article 10.03 of the Cambridge Hospital MNA contact. To date, we have not heard back from you. Therefore I am sending this request to negotiate to you again. Please provide us with possible dates and the names of your bargaining team within 14 days. We look forward to meeting soon. Please contact me if you have any questions.

Although Curtis wrote that she had requested to negotiate, along with Graure, in fact she had not. It was McCarthy who had submitted the second bargaining request.[13]

On February 25, 2019, Goff responded as follows, "Joy, I do not recall receiving the first notice. I will review upon my return on March 1." Curtis informed him that the request came in the grievance response. On March 1, 2019, Goff responded, writing:

> Joy, I reviewed your response to the Dental Insurance Grievance. There is no demand to bargain in the response, and the MNA has filed for arbitration over this issue. CHA may bring any proposal it wishes regarding this issue(s) to current negotiations for a successor agreement.

[12] As of the date of the hearing, the arbitration had not taken place.

[13] Curtis admits this statement in her email was inaccurate. During the hearing, she indicated that she was confused when she wrote it, explaining that she knew that CHA had requested to bargain twice and that she "attributed it to me rather than Dennis McCarthy."

Later that day, clarifying when CHA had requested to bargain, Curtis emailed the following response to Goff:

> [t]he demand was in Vennesa's step 1 response which is attached. While we may very well have a dental proposal for full negotiations, we have the right to separately negotiate cost sharing of the excess cost as noted in Article 10.03 of the contract. Therefore please supply us with dates for this negotiation and let us know who will be on your team.

Goff responded minutes later, writing, "Joy, the parties are engaged in successor contract negotiations, and the MNA is willing to negotiate dental insurance rates at the dates and times already agreed upon."

On March 4, 2019, Curtis responded to Goff as follows:

> While we will likely put forth a dental rate proposal in successor negotiations, the contract language is clear. In the event that the cost exceeds either parties' contribution rate as set forth in the contract, which is currently the case, 'the parties agreed to negotiate an appropriate sharing of the costs.' As a result, I respectfully urge you to reconsider our offer to bargain with respect to the rates now so that this issue can be addressed promptly.
>
> Tony, whom I have copied, and I will be at negotiations this morning so feel free to speak to us further should you need to discuss.

The record does not contain any evidence of a response to this request. The parties did not engage in any single-issue midterm bargaining over the public dental plan.[14]

Contract negotiations

[14] In uncontroverted testimony, Curtis explained that during mid-term bargaining, CHA wished to propose a 75/25 split for dental benefit contributions for RNs on the public plan until such time as the parties agreed to another split for dental benefit contributions during successor negotiations.

As noted above, on August 20, 2018, the parties signed a Memorandum of Agreement to extend their CBA through June 30, 2019. The parties agreed to begin contract negotiations for a successor agreement on January 22, 2019.

The parties commenced successor negotiations in late January 2019.[15] During the successor negotiations, CHA proposed that the parties share the cost of the dental benefit 50/50 for employees on the public plan. Negotiations for the successor agreement were still ongoing as of the date of the hearing in this matter. Both parties testified that the successor agreement negotiations were not close to completion.

At the time of the hearing in this matter, the weekly premium for the private plan was $29.50, with the RNs paying $3.50 and CHA paying the difference, $26.00 per week.

OPINION

The issue in this case is whether MNA violated Section (b)(2) and, derivatively, Section 10(b)(1), of the Law by refusing to bargain over the cost sharing of the public plan other than through successor contract negotiations.[16]

Section 6 of the Law obligates employers and employee organizations to negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment. The statutory obligation to bargain in good faith

[15] Neither parties provided an exact date when negotiations actually commenced.

[16] CHA alleges in its brief, for the first time, that MNA repudiated Article 10.03. Because CHA had not alleged a repudiation during the investigation, and never sought to amend the complaint to add this allegation, and because this allegation was not fully litigated at the hearing, I decline to consider it. See Town of Norwell, 18 MLC 1263, MUP-6962 (January 22, 1992).

includes the duty to comply with the terms of a collective bargaining agreement. Commonwealth of Massachusetts, 30 MLC 43, 45, SUP-4768 (September 17, 2003). Section 6 of the Law does not compel either party to agree to a proposal or to make a concession but only to bargain in good faith. Town of Plymouth, 33 MLC 88, MUP-4391 (November 29, 2006).

MNA was on notice of CHA's desire to negotiate

CHA first requested to bargain over the cost sharing of the public plan pursuant to Article 10.03 of the CBA in its September 13, 2018 grievance response to a related grievance dealing with the costs of the private plan. On October 15, 2018, CHA again requested to bargain over the cost of the private plan in its second step grievance response. It is undisputed that MNA did not respond to either request.[17]

MNA defends its failure to respond because Goff, who was acting as the Associate Director and responsible for the day-to-day activities in this unit, was unaware of the two bargaining requests. Goff credibly testified that he did not see CHA's second request. He also testified that he did not recall seeing the first response but acknowledged that he may have

[17] MNA argues that no consideration should be given to CHA's September 13, 2018 request to bargain and MNA's failure to respond because these actions took place outside the six-month time limit for filing a prohibited practice charge under 456 CMR Section 15.04. MNA explains that because CHA knew or should have known that MNA had not responded with "immediate dates" as requested, more than six months before CHA filed their charge, the allegation was untimely filed. I disagree. After MNA failed to respond to CHA's first request to bargain, CHA reasonably submitted a second request, asking for a response by October 30, 2018. Under these circumstances, there is no plausible argument that the violation took place before October 30, 2018. Accordingly, the April 2, 2019 charge was timely filed. MNA's full course of conduct, including its failure to respond to the first two bargaining requests, may certainly be considered when evaluating whether it violated the Law in this matter.

received a copy of it. However, it is undisputed that Wright-Thomas received the responses. The face of the first bargaining request clearly demonstrates that other MNA officials were also copied on the response. Nevertheless, neither Wright-Thomas nor any other MNA official responded to the requests or ensured that Goff was made aware of the bargaining requests.

The Commonwealth Employment Relations Board (CERB)[18] addressed a similar situation in Commonwealth of Massachusetts, 5 MLC 1509, SUP-2091 (December 21, 1978), where it considered an employer's contention that it had not received a proper request to bargain because the union requested bargaining during grievance hearings. In that case, the employer argued that the bargaining request was insufficient because it was addressed to the representative designated by the employer to hear such grievances but not to respond to bargaining demands. The CERB rejected this argument, determining that the employer's labor relations officials were acting as agents of the employer and that "their obligation is either to bargain or to acknowledge their lack of authority and refer union representatives to the management official who, in fact, possesses the authority to bargain." The CERB further noted that a demand for bargaining need not be in any particular form and that a request is sufficient "if it makes it clear to the employer that the union demands to bargain." Here, the demand was clear.[19] The first request stated that "pursuant to Article 10.03 of the collective bargaining

[18] References in this decision to the Commonwealth Employment Relations Board (CERB) include the former Labor Relations Commission.

[19] The MNA argues that CHA was not clear whether it wished to bargain the cost sharing of the public plan, the private plan or both. However, it is clear that CHA wished to bargain over the cost sharing of the dental benefits and any confusion about which specific plan was at issue could have been addressed if MNA had responded to the bargaining requests.

agreement, CHA hereby requests a date in the immediate future to meet and negotiate the cost sharing of the Dental Plan." The second request noted that MNA had failed to respond to CHA's first request to bargain. Therefore, CHA provided a more specific date for a response in its second request by "requesting dates by October 30, 2018 for the purpose of meeting and negotiating cost sharing. This is in accordance with the labor agreement." MNA cannot reasonably argue that the requests to bargain were insufficiently clear.

Thus, although the requests were placed within a grievance response rather than as stand-alone requests to bargain, CHA clearly made known its desire to negotiate over cost sharing pursuant to Article 10.03 in September and October 2018, and MNA was obligated to respond. The record is silent on whether Wright-Thomas had authority to negotiate on behalf of MNA. However, even if she did not have such authority, she could have forwarded the request to Goff or informed CHA that she did not have authority to bargain on behalf of MNA and request that CHA submit the request directly to Goff. No evidence was provided regarding why Wright-Thomas or any other MNA official failed to take these actions. Instead of taking any of these actions, MNA remained silent and provided no response to CHA's two bargaining requests in September and October 2018.

MNA refused to bargain over the cost sharing other than through successor agreement negotiations.

MNA compounded its failure to respond to the first and second bargaining requests by refusing to bargain upon the third request other than at the "main table" during successor CBA negotiations. On February 25, 2019, after waiting a number of months to hear from MNA regarding its bargaining request, CHA reiterated its bargaining request for the third time. This

time, CHA sent the request directly to Goff. After Goff denied knowledge of the previous bargaining requests, he noted that CHA could bring up its proposals during successor agreement negotiations. CHA, though, wished to negotiate separately regarding the sharing of the excess cost of the public plan pursuant to Article 10.03 of the CBA. Therefore, CHA asked that MNA offer dates for separate negotiations. Goff's only response was that MNA was willing to negotiate over the dental insurance during successor negotiations. Once again, on March 4, 2019, Curtis urged MNA to "reconsider our offer to bargain with respect to the rates now so that this issue can be addressed promptly." The record is devoid of any response from MNA. MNA's actions, and inactions, are tantamount to a refusal to engage in the separate negotiations requested by CHA.

The Law does not prohibit either a public employer or union from proposing to bargain over terms and conditions of employment separate from successor negotiations. City of Boston, 31 MLC 25, MUP-1758 (August 2, 2004). The CERB has found that a party's insistence on bargaining over terms and conditions of employment apart from on-going successor contract negotiations can constitute a refusal to bargain in good faith. City of Leominster, 23 MLC 62, 66, MUP-8528 et al. (August 7, 1996); Boston School Committee, 35 MLC 277, 286, MUP-03-3886 (May 20, 2009). MNA asserts that because the parties were engaged in successor negotiations when Goff became aware of the CHA's bargaining requests, MNA could properly insist that bargaining only take place within the context of those successor negotiations.

Here, however, CHA did not first request to bargain after the parties commenced successor negotiation. CHA requested to bargain on September 13, 2018 and on October 15, 2018; the parties were not scheduled to commence successor negotiations until months later, on January 22, 2019. MNA argues that even if, as I have found, it was adequately aware of the September and October 2018 bargaining requests, those requests were still sufficiently close in time to the January 2019 successor contract bargaining that MNA was free to refuse to bargain cost sharing other than during successor negotiations, citing City of Boston, 33 MLC 1, MUP-02-3491 (June 22, 2006) (an employer must bargain over its proposal for a 28-day work period as a part of imminent successor contract negotiation's where the union had request to commence successor negotiations prior to receiving the proposal) and Town of South Hadley, 27 MLC 161, MUP-1834 (June 12, 2001)(a union properly insisted that bargaining over reimbursement of training costs be handled as a part of overall contract negotiations where those negotiations were to begin in 5 weeks). I am not persuaded by MNA's arguments that CHA's first two requests to bargain were so close in time to the scheduled beginning of successor negotiations as to excuse it from separate bargaining over the cost sharing provisions. Here, the negotiations for a successor agreement were not imminent or a mere 5 weeks away. Successor negotiations were not to commence for more than four months after the first bargaining requests and more than three months after the second bargaining request.

Even assuming, *arguendo*, that the first two bargaining requests were sufficiently close in time to the scheduled start of successor negotiations, the facts here are

distinguishable from the cases cited by MNA to justify its actions, because here the bargaining dispute pertains to a specific provision in the CBA which requires bargaining to commence once a certain threshold is met. When a bargaining dispute concerns a provision within a negotiated agreement, the CERB looks at the specific language at issue when determining whether a party can lawfully insist on bargaining outside of successor negotiations. For instance, in City of Boston, the CERB rejected the employer's argument that the parties were obligated to bargain apart from successor negotiations regarding details, where the relevant contract provisions contemplated that the existing procedure for assigning and filling details was to continue during the life of the parties' agreement. The CERB determined that the arbitration award, which noted that "[t]he parties agree to discuss certain aspects of details during the life of the agreement," only required a discussion, not negotiations, and did not alter the language of the agreement which specifically provides that the assignments to paid details would be made in accordance with the parties' "existing procedure." 31 MLC at 32.

Here, the language in the CBA requires a different result. CHA requested to bargain pursuant to a negotiated provision within the CBA which reserves the right to bargain over the cost sharing when the cost of the dental insurance reached a certain level. The CBA provisions provides that "if the percentage contribution of either party would exceed their

respective cap, the parties agreed to negotiate an appropriate sharing of the excess costs." Once those circumstances arose, the parties were obligated to bargain.[20]

Although MNA is correct that the language in Article 10.03 does not explicitly indicate that negotiations must occur apart from successor negotiations, and that CHA failed to introduce evidence of bargaining history to demonstrate that the language required single-issue bargaining outside of contract negotiations, the necessary implication is that bargaining can be required once the specified threshold is met. There would be no reason to include this language if the parties meant that once the threshold was met, then the matter could be bargained during successor negotiations. Clearly, even without this language, it would be appropriate to bargain over cost sharing as part of any successor negotiations. Parties are

[20] The holding in Boston School Committee is distinguishable because the language permitting negotiations in that case differs significantly from the language requiring negotiation in the instant case. In Boston School Committee, the parties agreed that during the life of the agreement, the employer would not make changes to matters not covered by the agreement without negotiating with the union and "[i]n any matter not covered in this Agreement which is a mandatory subject for collective bargaining, the Union may raise such issue with the Committee for consultation and negotiation…" Evaluating this language, the CERB wrote that "[e]ven assuming the parties' contract allowed the School Committee to insist on side table bargaining, it had no right to insist on bargaining only over the impact of its insurance decisions. Furthermore, the contract language providing that the parties will bargain mid-term over matters not covered by the contract does not mean that the School Committee was free to dictate where the bargaining would take place. Rather… the bargaining should have taken place at the main table, since the parties were in the midst of successor bargaining. The contract does not provide otherwise." In the instant case, though, I find the contract does provide otherwise and allows for bargaining apart from main table negotiations.

generally free to raise any bargainable issues during successor negotiations. City of New Bedford, 38 MLC 239, n. 35, MUP-09-5581, MUP-09-5599 (April 3, 2012).

I find that the language in Article 10.03 clearly contemplates single-issue bargaining over the discrete question of dental premium cost-sharing; the provision would otherwise be unnecessary and meaningless. It is fundamental that the statutory obligation to bargain in good faith includes the duty to comply with the terms of their negotiated agreements. See Commonwealth of Massachusetts, 30 MLC at 45, City of Chelsea, 13 MLC 1144, MUP-6211 (September 22, 1986). Therefore, I find that because the parties specifically agreed in Article 10.03 to bargain over an appropriate sharing of the excess costs if the percentage contribution of either party exceeds their respective cap of $3.50 for employees or $10.00 for the employer, that once that threshold was met, the parties were obligated to bargain at the time of the request rather than waiting for successor negotiations.[21]

[21] Under the circumstances present here, to require a party to wait for the completion of successor negotiations would not only render Article 10.03 meaningless, it would unfairly require a party to continue paying an excessive share of the cost of the dental plan for a prolonged period of time. The successor agreement would not be effective until July 2019 at the earliest, some 9 months after CHA's first request. Although the MNA correctly points out that in City of Boston, the CERB rejected an employer's claim that it could insist on bargaining separately over changes because contract negotiations typically took a year to complete, in that case, there was no agreement requiring negotiations when a certain threshold was met. Here, given the language that the parties agreed to, which applies equally to both parties, the resulting delay if CHA is required to continue paying in excess of the capped amount for a prolonged period of time until successor negotiations are completed, would be untenable and unjust. At the time of the hearing, successor negotiations were still ongoing, 18 months after successor negotiations commenced, and 22 months after CHA first asked to negotiate over this matter.

MNA further argues that there are additional reasons that permitted it to insist on bargaining over dental benefits only as a part of successor negotiations.[22] First, MNA argues that other language in the CBA permitted its refusal to bargain over the cost sharing of dental premiums apart from successor negotiations. Article 21 of the CBA covers employment and contract security. Section 21.01, entitled Continuity of Benefits, provides as follows:

> The transfer of The Cambridge Hospital from the City of Cambridge ("City") to the Cambridge Public Health Commission (d/b/a CHA) shall not lessen any benefits nurses have enjoyed under the City, provided that the City continues to provide such benefits. None of these benefits can be lessened except through negotiations during bargaining for a successor collective bargaining agreement.

This provision was not modified when the parties later extended the CBA. The City provides the dental benefits to those RNs on the public plan. MNA argues that CHA attempted to diminish a benefit provided by the City by increasing the cost of the dental benefits to the RNs, and therefore, under Article 21.01, MNA could lawfully insist that bargaining over this matter only occur during successor negotiations. However, in the same CBA, the parties specifically agreed, in Article 10.03, to bargain over the dental plan if the percentage

[22] In its brief, MNA seemingly objects that CHA did not raise the issue of cost sharing of the excess cost during negotiations for the 2018-2019 agreement, which was signed approximately 3 weeks after the July 2018 grievance was submitted and which called for successor negotiations to commence in January 2019. MNA fails to specifically explain why or how CHA's failure to bring up the topic during the 2018-2019 negotiations would prohibit it from later requesting to bargain over the cost sharing of the public plan pursuant to Article 10.03. Moreover, Curtis testified that CHA realized it was paying more than required under Article 10.03 when investigating the grievance, however, she did not provide specific dates. Consequently, it is unclear if CHA realized this before or after the date that the one-year agreement was finalized. Moreover, the parties had agreed to limit the negotiations for the August 2018 one-year agreement to only salaries and the date for the successor agreement. No evidence was presented that CHA was cognizant that it was paying more than required under the CBA at the time the parties agreed to limit the topics for those negotiations.

contribution of either party would exceed the specified cap. As noted above, the only rational interpretation of this provision is that the parties agreed to bargain at the time of the demand. Accordingly, Article 10.03 is a carve out of the general proposition that CHA could not make changes to the established benefits until bargained in successor negotiations.

Next, MNA argues that it was excused from mid-term bargaining over dental benefits because, in 2011, CHA unilaterally increased contributions for RNs on the private plan above the contractual cap. MNA asserts that it was presented with "what amounted to a fait accompli foreclosing the sort of good faith bargaining required under the Law." In support of this argument, MNA alleges that the CBA contains a single provision covering dental benefits. Article 10.03 extends coverage to all nurses and does not contain any language restricting its coverage to only a segment of MNA's bargaining unit, specially to those RNs on the public plan. Accordingly, MNA maintains that the plain language of Article 10.03 covers dental insurance premiums for RNs on both the public and private plans, yet CHA had previously increased the cost of the dental benefits for the RNs on the private plan without negotiations. When an employer makes a change in working conditions, and presents the union with a fait accompli, the union is excused from demanding bargaining over that subject. MNA argues that it should similarly be excused from engaging in bargaining under these circumstances where CHA unilaterally made certain changes to the cost-sharing for dental benefits, because CHA's actions restricted the parties' ability to engage in good faith bargaining.

Although MNA claims that the cost sharing cap set forth in Article 10.03 applies to both the private plan and public plan, CHA does not agree. CHA did not address its position

on this during the proceedings in this case but it's responses to MNA's grievance demonstrate CHA's belief that Article 10.03 only applies to the private plan.[23] I make no finding on whether Article 10.03 applies to both plans as that issue was not fully litigated. However, I credit CHA's contention that its bargaining request was directed only towards the public plan. Regardless of whether CHA acted improperly when raising the employee contributions on the private plan, a matter that is not before me, it is undisputed that CHA did not unilaterally make any changes to the public plan and that is the matter that CHA wished to bargain. Accordingly, I find that CHA did not present MNA with a fait accompli which excused MNA from bargaining over cost sharing of the public plan.

CONCLUSION

Based on the record and for the reasons explained above, I find that MNA violated Section 10(b)(2) and, derivatively 10(b)(1) of the Law when it failed to respond to CHA's requests to bargain over the cost sharing of the public plan pursuant to Article 10.03 of the CBA, and then refused to bargain over that matter other than during successor bargaining.

REMEDY

The DLR has broad authority to formulate remedies for violations of the Law. Labor Relations Commission v. Everett, 7 Mass. App. Ct. 826 (1979). A primary goal of DLR remedies is to give the parties the benefit of their bargain. Id. When a party refuses to bargain,

[23] In CHA's response to the third step grievance, CHA noted that Article 10.03 refers to "the Dental and Vision Fund (formerly known as the Health and Welfare fund) of the Guardian Dental Plan" which is the City of Cambridge plan only available to public employees. This plan was not offered to those on the private or "Somerville" payroll. Accordingly, CHA maintains the contract is silent about the private plan.

the usual remedy includes an order to bargain and to return the parties to the positions they would have been in if the violation had not occurred. City of Boston, 31 MLC at 33.

CHA advocates that, to afford it the benefit of its bargain, the DLR should order MNA to bargain over the single issue of excess premium cost sharing, separate and apart from ongoing negotiations. Moreover, CHA contends that due to the extensive period of time that has elapsed since its initial demand to bargain more than two years ago, the DLR should also order MNA to reimburse CHA for the cost of premium contributions in excess of its contractual 75% during that period. CHA asserts that only such a monetary remedy can truly place CHA in the position it was in before MNA's refusal to bargain. In contrast, MNA claims that such a remedy would be inappropriately speculative.

MNA correctly asserts that the DLR routinely declines to issue monetary make whole awards in bargaining cases, as speculative, where it is not possible to definitively determine what terms the parties would have reached but for the alleged inappropriate conduct, and when those terms would have been reached. In Watertown School Committee, 9 MLC 1301, MUP-4449 (September 21, 1982), the CERB rejected a request for a monetary remedy for bargaining unit employees because "[w]e have no way of knowing when a new contract would have been arrived at but for the Employer's unlawful action or what its terms would have been". See also Town of Marion, 30 MLC 11, 15, MUP-02-3329 (August 20, 2003) (rejecting monetary remedy where it was speculative to conclude that bargaining unit employees suffered financial harm as a result of a transfer of bargaining unit work).

I agree with MNA's assertion that any monetary remedy here would be inappropriate and speculative. Although CHA planned to propose a 75/25 split for dental benefit contributions for RNs on the public plan, there is no way to know if the parties would have agreed to that split during mid-term bargaining, or when any such agreement would have been reached. Because the financial harm is speculative, I do not order any monetary damages.

Although the parties have been negotiating over dental benefits as part of successor negotiations since early 2019, because those negotiations are not complete, it is appropriate to order the parties to engage in single issue bargaining over the dental benefits for those RNs on the public plan, separate and apart from ongoing successor negotiation.

ORDER

WHEREFORE, based upon the foregoing, it is hereby ordered that MNA shall:

1. Cease and desist from:

    a) Failing and refusing to bargain in good faith with CHA to resolution or impasse concerning the cost sharing of the public dental plan, separate and apart from ongoing successor agreement negotiations; and

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

    a) Bargain in good faith with CHA to resolution or impasse in a single-issue agreement, separate from ongoing successor agreement negotiations, regarding cost sharing of the public dental plan;

    b) Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, <u>including electronically</u>, if MNA customarily communicates with these unit members via intranet or email, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees; and

c) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OFMASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

Gail Sorokoff

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Gail Sorokoff, Esq.
Hearing Officer

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.

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 Massachusetts Nursing Association violated Section 10(b)(2) and, derivatively, Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it failed and refused to bargain in good faith with the Cambridge Health Alliance over cost sharing of the public dental plan, separate and apart from successor agreement negotiations. The Massachusetts Nursing Association posts this Notice to Employees in compliance with the hearing officer's order.

WE WILL NOT fail or refuse to bargain in good faith with the Cambridge Health Alliance to resolution or impasse, over cost sharing of the public dental plan separately from successor agreement negotiations.

WE WILL bargain in good faith to resolution or impasse with the Cambridge Health Alliance over cost sharing of the public dental plan separate and apart from successor agreement negotiations.

_____ _____

Massachusetts Nursing Association 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, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).