

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

In the Matter of:

ANDOVER EDUCATION ASSOCIATION

and

ANDOVER SCHOOL COMMITTEE

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Case No.: MUPL-22-9378

Date Issued: March 4, 2024

CERB Members Participating:

Marjorie F. Wittner, Chair
Kelly B. Strong, CERB Member
Victoria B. Caldwell, CERB Member

Appearances:

Ryan McGovern Quinn, Esq. - Representing the Andover Education Association

John Foskett, Esq. - Representing the Andover School Committee

CERB DECISION IN THE FIRST INSTANCE

SUMMARY

1 The issue before the Commonwealth Employment Relations Board (CERB) is
2 whether the Andover Education Association (AEA or Union) failed to bargain in good faith
3 and violated Section 10(b)(2) of M.G.L. c. 150E (the Law) when it bypassed the School
4 Committee by advocating for a warrant article at a Special Town Meeting that provided
5 for a “one-time pandemic stipend and retention premium for educational support
6 professionals” to be funded out of Federal Coronavirus State and Local Fiscal Recovery

1 Funds authorized under the American Recovery Plan Act (ARPA). For the reasons
2 outlined below, we find that the Union's efforts to seek wage increases through the Town
3 Meeting process, outside of collective bargaining, violated the Law as alleged.

4 STATEMENT OF THE CASE

5 On June 21, 2022, the Andover School Committee (School Committee or
6 Employer) filed a charge of prohibited practice with the Department of Labor Relations
7 (DLR), alleging that the Union had violated Sections 10(b)(1) and 10(b)(2) of Mass.
8 General Laws, Chapter 150E (the Law). On July 5, 2022, the Union filed a motion to
9 dismiss the charge and a response to the charge. The DLR denied the motion to dismiss
10 on July 8, 2022, without prejudice, and allowed the motion to be renewed at the
11 investigation. After the investigation, on November 1, 2022, the DLR Investigator denied
12 the motion in part, issuing a complaint and partial dismissal.

13 The complaint alleges that the Union, in violation of Section 10(b)(2) and
14 derivatively, of Section 10(b)(1), bypassed the School Committee and attempted to utilize
15 the Town Meeting process to achieve an objective that it failed to reach at the bargaining
16 table several months earlier. The Investigator, however, dismissed an allegation that the
17 Union had also independently violated Section 10(b)(1).¹ Specifically, the complaint
18 alleges that the Union violated the Law in campaigning for the Board of Selectmen to
19 authorize a vote at a Special Town Meeting that would approve a warrant article providing
20 an \$800 stipend for Instructional Assistants (IAs) to be paid out of federal Coronavirus

¹ The School Committee did not appeal the Investigator's decision to dismiss the independent 10(b)(1) allegation and the complaint before us concerns only the 10(b)(2) and derivative 10(b)(1) allegations outlined in the complaint.

1 relief funds and by sending the School Committee a demand to bargain over finalizing the
2 distribution of the stipends after the Special Town Meeting voted to approve the warrant
3 article.

4 On November 13, 2023, the School and the Union agreed to waive their rights to
5 an evidentiary hearing and jointly petitioned the CERB to exercise its discretion and
6 decide the complaint in the first instance pursuant to 456 CMR 13.03(1)(b). The joint
7 petition included a written statement of stipulated facts, fourteen joint exhibits, as well as
8 post-hearing briefs from both parties. On December 1, 2023, the CERB issued a written
9 ruling granting the parties' request.

10 FINDINGS OF FACT

11 Stipulations of the Parties

- 12 1. The Town of Andover ("the Town") is a public employer within the meaning of G.L.
13 c. 150E, § 1. In the case of employment relations with all persons employed by the
14 Andover Public Schools ("APS") whose terms and conditions of employment are
15 determined by collective bargaining agreements, the Committee is the Town's
16 collective bargaining representative, with the Town Manager also participating and
17 voting as a member of the Committee.
18
- 19 2. The Union is an employee organization within the meaning of G.L. c. 150E, § 1.
20 The Union is the exclusive bargaining representative for certain categories of
21 positions held by employees of APS, including Instructional Assistants ("IA's"),
22 Educators/Teachers, and Secretaries. The Union is a local affiliate of the
23 Massachusetts Teachers Association ("MTA").
24
- 25 3. The Committee and the Union are parties to a collective bargaining agreement
26 ("CBA") which governs the terms and conditions of employment of the IA's.
27
- 28 4. During the period June 2021 – January 2022, the Committee and the Union were
29 involved in extensive negotiations for a successor CBA for the IA's, including the
30 use of a mediator assigned by the Department of Labor Relations. During these
31 negotiations, proposals were exchanged by the parties regarding a one-time
32 payment to the IA's. All but one of these proposals involved a payment of \$300.
33 One proposal verbally transmitted by the mediator was for a one-time payment of
34 \$800. The last proposal that included any one-time payment was made on January

- 1 19, 2022. None of the one-time payment proposals was tied to federal ARPA
2 funds.
3
- 4 5. Following the mediator's issuance of a fact-finding report in February 2022, the
5 Committee and the Union met for another bargaining session on March 5, 2022
6 and reached agreement on a Memorandum of Agreement ("MOA") that determined
7 the terms of the successor CBA. The MOA did not include a one-time payment to
8 the IA's. Jt. Exhibit 1.
9
- 10 6. The terms of the MOA were ratified and the successor CBA was executed on
11 March 17, 2022, covering the period September 1, 2020 – August 31, 2023. Jt.
12 Exhibit 2; Jt. Exhibit 3.
13
- 14 7. In early April 2022, several residents of the Town filed a petition requiring a Special
15 Town Meeting to be held in connection with the upcoming Annual Town Meeting.
16 The petition specified six petitioned articles to be placed on the warrant and voted
17 on at the Special Town Meeting.
18
- 19 8. Among the six petitioned warrant articles was an article pertaining to certain
20 categories of APS employees, including the IA's. When the warrant articles were
21 published, this article was designated as "Article 1". Jt. Exhibit 4.
22
- 23 9. The Special Town Meeting was scheduled to be held in connection with the first
24 day of the Annual Town Meeting on May 17, 2022.
25
- 26 10. On April 21, 2022, the Town held the required "tri-board" joint hearing of its Select
27 Board, Finance Committee, and Planning Board on the articles in the Town
28 Meeting warrant, including those in the Special Town Meeting warrant. During the
29 hearing regarding Article 1, reference was made by Town Counsel to a public
30 opinion by Committee counsel regarding the legality of Article 1. On April 22, 2022
31 a member of the Union's bargaining team during negotiation of the IA's successor
32 CBA who had spoken in favor of Article 1 at the hearing requested a copy of the
33 public opinion from the Committee. On April 25, 2022 the Committee responded
34 by forwarding the opinion to her. Jt. Exhibit 11.
35
- 36 11. During the period leading up to the Special Town Meeting, the Union's Facebook
37 page contained posts regarding the Special Town Meeting. Jt. Exhibits 6, 7, and
38 8.
39
- 40 12. During the period leading up to the Special Town Meeting, the Union also
41 published a letter to its members regarding the Special Town Meeting. Jt. Exhibit
42 5.
43
- 44 13. Andover Citizens for Transparency ("ACT") is a citizens' "coalition" that was formed
45 to support adoption of articles in the Special Town Meeting warrant, including
46 Article 1. During the period leading up to the Special Town Meeting, ACT's

1 Facebook page published posts regarding the Special Town Meeting. Jt. Exhibits
2 12, 13, and 14.
3

4 14. At the Special Town Meeting on May 17, 2022 Article 1 was adopted by a vote of
5 250-231.
6

7 15. On May 27, 2022, the Union forwarded three letters to the Committee that
8 referenced the Special Town Meeting vote on Article 1. Jt. Exhibit 9.
9

10 16. On June 8, 2022, the Committee forwarded a response to the Union's letters. Jt.
11 Exhibit 10.
12

13 17. The payments referred to in Article 1 were not made.
14

15 Additional Findings of Fact Based Upon the Joint Exhibits
16

17 The MOA signed by the parties on March 5, 2022, included under the signature
18 line for the Union, the signature of Holly Currier (Currier), a member of the AEA's
19 negotiating team. The MOA included provisions providing for retroactivity of wage
20 increases, percentage increases to the hourly rates for IAs, as well as a \$100 increase in
21 pay for IAs with sixteen or more years of service. The amended collective bargaining
22 agreement executed after the MOA also includes Currier's signature on behalf of the
23 Union.

24 Article 1 on the Warrant for the Special Town Meeting scheduled for May 17, 2022
25 provided as follows:

26
27 **ARTICLE 1 COVID-19 STIPEND FOR EDUCATIONAL SUPPORT**
28 **PROFESSIONALS**
29

30 Authorize a one-time pandemic stipend and retention premium for educational
31 support professionals (instructional assistants, food service workers,
32 administrative assistants, custodians, and any other hourly education support
33 professional) providing in-person essential work since March 20, 2020, in the
34 flat sum of \$800 per person. The Pay shall be distributed pursuant to Federal
35 Coronavirus State and Local Fiscal Recovery Funds Final Guidelines for
36 "eligible workers."

1 If the above eligible workers are deemed ineligible for the receipt of the above
2 funding for any reason, then the Town shall transfer \$300,000 from the most
3 recent certification of free cash to a reserve to be distributed by the School
4 Committee subject to collective bargaining and in accordance with the above
5 Federal Guidelines.

6
7 The Final Rule provides that "Premium pay" must be entirely additive to a
8 workers' regular rate of wages and compensation and may not be used to
9 reduce or substitute for a worker's normal earnings.

10
11 Prior to the Special Town Meeting, the Union sent a letter to its members that
12 included the AEA's logo at the top with the words "Special Town Meeting Endorsed by
13 the AEA." The letter provided as follows:

14 Dear MTA member,

15
16 We're tired of town government ignoring the people and the school committee
17 disrespecting educators. We should all have a say in decisions that affect our
18 work and our community.

19
20 So a group of MTA members and other concerned citizens got together and
21 created six Articles to help people in need, give town employees a voice,
22 support small business, and give community members a chance to decide how
23 to invest millions in COVID-19 relief funds.

24
25 More than 1000 residents signed the petition, so now the Articles will be
26 presented at Special Town Meeting.

- 27
28
 - Article 1: \$800 pandemic stipend for low-paid school workers
 - 29 • Article 4: 1 million to Mental Health Services
 - 30 • Article 6: community input on 109 million in COVID-19 relief funds

31
32 Special Town Meeting is a rare and unique opportunity for MTA members to
33 push for change from the ground up. Andover deserves transparency and
34 accountability.

35
36 In Solidarity,

37
38 The Andover Education Association Executive Board

39 For questions, contact:

40 Holly Currier [email address]

41 Susan Greco [email address]

42
43 Follow our coalition [Facebook](#) page! Andover Citizens for Transparency

VOTE YES

- ✓ **Community input on 10.9 million COVID-19 relief funds**
 - ✓ **COVID-19 stipends for Education Support Professionals**
 - ✓ **\$1 Million for Mental Health Services**
 - ✓ **Employee feedback on Town Manager & Superintendent**
 - ✓ **Posting no-bid agreements**
 - ✓ **Prohibiting Employee Gag Orders (NDAs)**
- (emphasis in original)

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10 The letter included a summary of the six articles and indicated that Article 1 would be
11 presented by Currier and Susan Greco (Greco)² at the Special Town Meeting to be held
12 at the Andover High School Field House on Tuesday, May 17, 2022 at 7 p.m. It
13 encouraged people to stay through Article 6 “which goes hand in hand with Article 1.”

14 On April 6, 2022, John Foskett, labor counsel for the School Committee, sent a
15 memorandum to Town Counsel, Thomas J. Urbelis, in response to Town Counsel’s
16 request for an opinion on the legality of Article 1. The memorandum concluded that Article
17 1 was unlawful.³

18 On May 11, 2022, the AEA posted a notice on its Facebook page with the date and
19 time of the meeting and the message “Vote for transparency in Andover.” On May 12,
20 2022, the AEA posted another notice with the date and time of the meeting, this time
21 including the location – the “AHS Field House” with the message “Vote YES on Articles
22 1-6.” In the early morning of May 17, 2022, the AEA shared a post by the Andover
23 Citizens for Transparency urging attendance at the Special Town meeting along with the
24 following post:

25 **Why Special Town Meeting?**

² Greco is a member of the Union’s Executive Board.

³ The legal opinion refers to the provision as Article 5, but the text is identical to what was published as Article 1 on the Special Town Meeting Warrant for May 17, 2022.

1 The purest form of democratic governing is practiced in a Town Meeting, which
2 has been in use for over 300 years and still today in our Town. We consider it
3 as the People's Town Meeting because it has been proven to be a valuable
4 means for many MA taxpayers to voice their opinions and directly effect (sic)
5 change in our beautiful community, Andover. It is where your voice can be
6 heard as you, your neighbor and other residents decide the course of our
7 government with your vote.

8
9 Per MA General By-laws, citizens can call for a Special Town Meeting.

10
11 Please consider voting **YES** for:

- 12 -Article 1: COVID-19 stipends for Educational Support professionals
- 13 -Article 2: Prohibiting use of non-disclosure agreements (NDAs)
- 14 -Article 3: Employee Feedback on Town Manager & Superintendent
- 15 -Article 4: Mental health and wellbeing general fund
- 16 -Article 5: Public posting of no-bid agreements
- 17 -Article 6: Community input on \$10.9 million COVID-19 relief funds

18
19 Citizen articles represent our values of respect, open and transparent
20 government and our community, residents, small businesses and employees.
21 (emphasis in original)

22 Also prior to the Special Town Meeting on May 17, 2022, the AEA together with
23 the Andover Citizens for Transparency (ACT), created a coalition Facebook page and
24 began posting information about the Special Town Meeting and encouraging people to
25 vote yes on Article 1 and the other articles. The ACT Facebook page listed Greco as its
26 moderator/administrator.

27 After Article 1 was approved at the Special Town Meeting, the Union President, on
28 May 27, 2022, sent a letter to the Chair of the School Committee on behalf of the AEA
29 that stated in relevant part as follows:

30 . . . [W]e would like to formalize the compensation of our members in a manner
31 that is consistent with fulfilling the parties' collective bargaining roles. We
32 believe that the most efficient way to achieve this would be for the School
33 Committee to permit the Town to execute a one-time transfer [of] funds directly
34 to the relevant employees, with an agreement that preserves the bargaining
35 role of the Committee. We inform you in advance that, as the collective
36 bargaining representatives of many of the recipient employees, we agree to
37 these payments.

1 executing the MOA, it sought additional compensation for IAs through the Town Meeting
2 process, thereby bypassing the School Committee in an effort to obtain what it could not
3 obtain through negotiations. This is precisely what the Supreme Judicial Court found to
4 be the opposite of good faith bargaining in Anderson v. Board of Selectmen of Wrentham,
5 406 Mass. 508, 512, n.8 (1990). In Anderson, the Supreme Judicial Court favorably citing
6 Weymouth School Committee, 9 MLC 1091, MUP-4293 (July 2, 1982), noted that:

7 [P]ermitting resort to the town meeting on a subject of mandatory collective
8 bargaining [health insurance contribution rates] would enable a party to the
9 negotiations to circumvent the bargaining process altogether. If a party was
10 unable to achieve the desired contribution rate through collective
11 bargaining, it could simply put the issue before town meeting and pack the
12 meeting with voters who supported its position. 406 Mass. at 512, n. 8.

13
14 The facts here are strikingly similar to those present in Town of Hudson, supra.
15 There, the CERB, in affirming a hearing officer's decision, held that the union's conduct
16 constituted an unlawful attempt to bypass the employer's bargaining representatives
17 when it petitioned Town Meeting to appropriate funds to increase minimum staffing
18 beyond the level provided in a memorandum of agreement the parties had negotiated. 48
19 MLC at 140-142. The case for finding that the AEA engaged in an unfair labor practice
20 is even more compelling here than in Town of Hudson, as here the attempt to gain a wage
21 increase in the form of a \$800 stipend involves a mandatory subject of bargaining – wages
22 – and one that is typically the central focus of any contract negotiation. The Union's
23 attempt to place a wage increase (albeit in the form of a stipend funded by federal COVID-
24 19 relief monies), contravenes the deal reached just a few months earlier. The parties
25 bargained over wages, including stipends for IAs, and reached an agreement that did not
26 include any across-the-board stipend for IAs. The Union leadership's campaign to
27 encourage the Special Town Meeting to adopt the warrant granting stipend payments to

1 IAs clearly undermines the collective bargaining process in much the same manner as an
2 employer's direct dealing with employees on mandatory subjects of bargaining or making
3 a unilateral change. If permitted, the Union's actions would render the Law's requirement
4 that the parties bargain in good faith pointless.

5 Here, the Union engaged in a clear bypass of the School Committee when it sought
6 a stipend that it was unable to achieve through collective bargaining, through the
7 legislative body. Since the School Committee, like the Board of Selectmen in Anderson,
8 is the exclusive bargaining representative responsible for negotiating with the Union, the
9 Town Meeting has no role under the Law in the negotiation of wage increases, including
10 stipends funded through federal COVID-19 relief awarded to the Town. Anderson, 406
11 Mass. at 511-512. While town meetings have a role as the legislative body responsible
12 for funding the costs of contract settlements reached by employers and unions, the Law
13 requires that wages be negotiated by the union representing the employees and the
14 employer's statutory representative for purposes of collective bargaining, in this case the
15 School Committee. Attempting to set wage rates, or other subjects of bargaining outside
16 of this process, whether by a union, or by an employer, is an unfair labor practice because
17 it violates the duty to bargain set forth in Section 6 of the Law. As we stated in Town of
18 Hudson, once an MOA is finalized, the Union is "obliged to live by its terms" and can only
19 seek to change them through the bargaining process – not by resort to Town Meeting.
20 Id. at 141-142.

21 The Union argues, however, that the holding in Weymouth School Committee,
22 supra, supports its position that it is entitled to seek the stipends through Town Meeting
23 because only Town Meeting can accept and distribute the federal funding. In Weymouth,

1 the CERB, noting that the Civil Service Law was not listed in Section 7(d) of the Law,
2 found that the employer was free to bypass the union and place the revocation of the
3 Town's acceptance of the Civil Service Law on the ballot because it was not something
4 that could be legally achieved through collective bargaining and a ballot measure was its
5 only recourse for achieving this change. 9 MLC at 1096-1097. Relying on Weymouth, the
6 Union argues that the source of the funding – federal COVID-19 relief funds – allows it to
7 petition Town Meeting without violating the Law because the benefit it was seeking was
8 one that could not be obtained by bargaining with the School Committee. The Union
9 contends that its actions were no different than the employer's in Weymouth, and as such,
10 not unlawful. We disagree.

11 First, the CERB has long held that an employer has an obligation to bargain with
12 a union over the wages of employees regardless of the source of funding for them. See,
13 e.g., Board of Regents of Higher Education Southeastern Massachusetts University, 11
14 MLC 1486, SCR-2171 (March 1, 1985) (CERB will not deprive employees of collective
15 bargaining rights based on the source of funding for their salaries).

16 Second, unlike the employer in Weymouth, the AEA was able to and in fact did
17 pursue (albeit unsuccessfully) stipend payments through the collective bargaining
18 process. The source of the funding for the stipends does not change this analysis.
19 Stipends are a form of wages, and wages are mandatory subjects of bargaining under
20 Section 6 of the Law.⁶ Thus, where the Union was fully capable of obtaining an \$800

⁶ General Laws c. 150E, § 6, states, in pertinent part:

1 stipend for the IAs at the negotiating table, the reliance on Weymouth is misplaced. In
2 fact, the Union did bargain over stipends for IAs, but none (other than a \$100 increase in
3 the stipend for the top step of the salary scale) made it into the parties' MOA.

4 Nor does the inclusion of a savings clause in the warrant language change our
5 view of the Union's efforts here. The clause provides that if the "eligible workers" are
6 "deemed ineligible" for the funding provided for in the warrant article, "the Town shall
7 transfer \$300,000" from free cash "to be distributed by the School Committee subject to
8 collective bargaining." With or without the allocation of federal funds, the Union was
9 advocating that Town Meeting appropriate additional funds to pay for stipends, beyond
10 what was required to fund the parties' collectively bargained MOA and have the
11 agreement reopened even though the parties had never agreed to any reopening
12 language. As the Court concluded in Anderson, this is not bargaining in good faith as it
13 would allow "a party to the bargaining process to come to the table with a fait accompli."
14 Anderson, 406 Mass. at 512, fn. 8. Further, this limited provision for collective bargaining
15 applied only if the employees were deemed "ineligible." The first sentence of the article
16 contained no such contingency, but rather authorized Town Meeting to provide the
17 payment without engaging in collective bargaining. As we explained in Town of Hudson,
18 this interferes with Chapter 150E's statutory scheme, which leaves no role for Town
19 Meeting in setting the working conditions of a municipality's employees. Town of Hudson,
20 48 MLC at 140.

The employer and the exclusive representative ... shall negotiate in good faith with respect to wages, hours, standards or productivity and performance, and any other terms and conditions of employment...

1 The Union's letter to the School Committee following Town Meeting's approval of
2 the warrant article further supports the conclusion that the Union has failed to bargain in
3 good faith. Although the Union argues that the letter's intent was to inform the School
4 Committee that it was waiving its right to bargain over the stipend and that it was not a
5 demand to bargain, clearly the letter attempted to use the Town Meeting vote to reopen
6 the contract to change the financial terms to include the increase. The letter is simply the
7 culmination of the Union's efforts to receive a wage increase outside of the collective
8 bargaining process.

9 The Union also contends that any attempt by the CERB to enforce the Law
10 requiring bargaining rather than the efforts it undertook here infringes on its rights of
11 petition and free speech. Having recently rejected a similar challenge in Town of Hudson,
12 we find no reason to view the circumstances present here as requiring any other
13 conclusion. Id. at 141-142. A decision finding that the Union engaged in an unfair labor
14 practice by promoting the passage of a warrant article at a Special Town Meeting for a
15 wage increase it was unable to secure at the bargaining table does not infringe on any of
16 its constitutionally protected rights. The Union's right to engage in collective bargaining
17 as the exclusive representative is a statutory grant, a grant which comes with conditions
18 as to how the process will be conducted. Along with this right, however, come certain
19 requirements as to the nature of the bargaining process between public employers and
20 unions. While the Law does not restrict the Union's ability to advocate for its positions on
21 issues before Town Meeting or other public bodies, it cannot attempt to sidestep the
22 mutual bargaining obligation it has with the School Committee to obtain a benefit that it
23 could have achieved through collective bargaining without running afoul of Section 6 of

1 the Law. As such, the Union's actions here in seeking a wage increase through a warrant
2 article constitute a violation of Section 10(b)(2) and, derivatively, Section 10(b)(1) of the
3 Law.

4 In their respective briefs, both parties address the implications of Commissioner of
5 Administration & Finance v. CERB, 477 Mass. 92 (2017) (Commissioner of A&F). There,
6 the SJC held that the employer did not violate its duty to bargain in good faith when,
7 pursuant to Section 7(b) of the Law, it submitted a funding request for a collective
8 bargaining agreement it had entered nearly a year earlier along with a summary of the
9 fiscal consequences of funding the cost items. The CERB viewed the letter that
10 accompanied the request as a violation of the employer's duty to support its collectively-
11 bargained agreements, but the SJC disagreed, stating that Section 7(b) and Section
12 10(a)(5) of the Law contemplate two different timeframes, and that the duty to bargain in
13 good faith under Section 10(a)(5) of the Law necessarily examines only the period of
14 bargaining. The Court therefore concluded that a violation of Section 7(b) of the Law,
15 standing alone, is not a violation of the duty to bargain in good faith. It added however,
16 that:

17 That is not to say, however, that the form, contents, or legality of a Section
18 7(b) request may not be probative of whether the employer negotiated in
19 good faith. Under certain circumstances, a Section 7[b] request may
20 indicate that the employer engaged in bad faith negotiations. For example,
21 a particularly negative letter requesting an appropriation but recommending
22 rejection sent shortly after negotiations concluded would be probative of a
23 lack of good faith during negotiations. Such circumstances might constitute
24 evidence that the employer had entered into the agreement with the
25 intention of repudiating it before the legislative body.

26 477 Mass at 100-101.

27 The Union contends that this decision has two implications for its decision here.

28 First, that a union's need to seek funding for a collectively-bargained agreement has "only

1 become more acute in the years following the SJC's reversal of the CERB's 'duty to
2 support' doctrine." Second, that Commissioner of A&F controls the outcome here
3 because if the SJC held that an employer does not violate its duty to bargain in good faith
4 by its post-negotiation conduct, a union must be held to the same standards. In response,
5 the School Committee contends that the Union misunderstands the holding in
6 Commissioner of A&F and states that the decision provides further reason to find that the
7 Union bargained in bad faith when it commenced a campaign to secure funding for
8 bargaining unit member stipends so close in time to concluding negotiations for the MOA.

9 We agree with the School Committee that Commissioner of A&F does not control
10 the outcome of this case. That decision addressed the relationship between an
11 employer's statutory duty to seek funding for an agreement pursuant to Section 7(b) of
12 the Law and an employer's duty to bargain in good faith. This case is about a party
13 bypassing its statutory bargaining partner to seek benefits that it was unable to achieve
14 during successor contract negotiations.. This conduct violates the duty to bargain in good
15 faith for all the reasons stated above.

16 Even if we were to view this case through the Commissioner of A&F lens, we would
17 agree with the School Committee that the Union's campaign to promote the passage of
18 the warrant, bby using mailings, social media posts, independently and in conjunction
19 with its coalition partner ACT, so closely following the completion of contract negotiations,
20 also demonstrates that the Union was not bargaining in good faith when it agreed to the
21 MOA and executed the amendment to its collective bargaining agreement with the School
22 Committee. As suggested in Commissioner of A&F, the Union's conduct reflects an

1 attempt to contravene the financial terms of the contract it had only recently negotiated
2 and is evidence of its bad faith at the MOA bargaining table. 477 Mass. at 100-101.

3 CONCLUSION

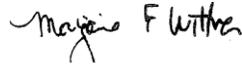
4 For the foregoing reasons, we conclude that the Union violated the Law with
5 respect to its actions in promoting and supporting the warrant article seeking stipends for
6 IAs through the Special Town Meeting, and we issue the following Order:

7 ORDER

8 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Union
9 shall:

- 10 1. Cease and desist from:
- 11 a. Failing to bargain in good faith by bypassing the School Committee, as the
12 bargaining representative for school employees, and promoting the passage of
13 a warrant article to provide \$800 stipends to instructional assistants; and
14
- 15 2. Take the following affirmative action that will effectuate the purpose of the Law:
- 16
- 17 a. Bargain in good faith with the School Committee by dealing only with it as to
18 matters of collective bargaining.
19
- 20 b. Post immediately in all conspicuous places where members of the Union's
21 bargaining unit usually congregate, or where notices are usually posted,
22 including electronically if the Union customarily communicates with its
23 members via intranet or email, and display for a period of thirty (30) days
24 thereafter, signed copies of the attached Notice to Employees.
25
- 26 c. Notify the DLR in writing of the steps taken to comply with this Order within
27 thirty (30) days of receipt.
28

29 **SO ORDERED.**



MARJORIE F. WITTNER, CHAIR



KELLY B. STRONG, CERB MEMBER



VICTORIA B. CALDWELL, CERB MEMBER

APPEAL RIGHTS

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

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
NOTICE TO EMPLOYEES

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

The Commonwealth Employment Relations Board has held that the Andover Education Association (Union) violated Section 10(b)(2) and, derivatively, Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) by bypassing the School Committee and promoting the passage of a warrant article at Town Meeting to increase compensation for instructional assistants outside of the collective bargaining process.

The Union posts this Notice in compliance with the CERB's Order.

WE WILL NOT fail and refuse to bargain in good faith with the School Committee by bypassing it and promoting the passage of a warrant article at a Special Town Meeting to increase compensation for instructional assistants outside of the collective bargaining process.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce the School Committee in the exercise of its rights guaranteed under the Law.

WE WILL bargain in good faith with the School Committee by dealing only with it as to matters of collective bargaining.

Andover Education 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, 2 Avenue de Lafayette, Boston, MA 02111 (Telephone: (617) 626-7132)).