

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

In the Matter of

ANDOVER EDUCATION ASSOCIATION

and

ANDOVER SCHOOL COMMITTEE

Case No. MUPL-22-9378

Issued: April 29, 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 RULING ON RESPONDENT'S MOTION TO STAY ENFORCEMENT OF CERB
ORDER PENDING APPEAL

1 Summary

2 The Andover Education Association (Union) moves to stay the enforcement of the
3 order issued by the Commonwealth Employment Relations Board (CERB) in the above-
4 captioned matter. The Andover School Committee (School Committee) opposes the
5 motion. For the following reasons, the CERB grants the motion.

6 Background

On March 4, 2024, the CERB issued a decision holding that the Union violated Section 10(b)(2) and, derivatively, Section 10(b)(1) of M.G.L. c. 150E (the Law) when it bypassed the School Committee and advocated for a Town Meeting warrant article that would provide a one-time pandemic stipend and retention premium for bargaining unit members.

The CERB issued the following order (Order) to remedy the violation:

1) *Cease and desist from:*

a) *Failing to bargain in good faith by bypassing the School Committee, as the bargaining representative for school employees, and promoting the passage of a warrant article to provide \$800 stipends to instructional assistants;*

2) *Take the following action that will effectuate the purpose of the Law:*

a) *Bargain in good faith with the School Committee by dealing only with it as to matters of collective bargaining.*

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

c) *Notify the DLR in writing of the steps taken to comply with this Order within thirty (30) days of receipt.*

The Notice to Employees referenced in Section 2(b) of the Order stated in pertinent part:

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.

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

5
6 *WE WILL NOT in any like or similar manner interfere with, restrain, or*
7 *coerce the School Committee in the exercise of its rights guaranteed under*
8 *the Law.*

9
10 *WE WILL bargain in good faith with the School Committee by dealing only*
11 *with it as to matters of collective bargaining.*

12 On April 2, 2024, the Union filed two documents with the DLR -- a Notice of Appeal
13 pursuant to Section 11 of the Law, and a motion to stay that is the subject of this ruling.

14 On April 3, 2024k pursuant to Section 2(c) of the Order, the Union notified the DLR
15 that it had complied with all aspects of the CERB's Order except the posting requirement
16 in Section 2(b), which it stated was the primary focus of its motion to stay.

17 In support of the motion to stay, the Union cites the standard set forth in the
18 CERB's ruling in Commonwealth of Massachusetts, SUP-19-7352 (June 14, 2021),¹ i.e.,
19 that "administrative agencies faced with motions to stay their own orders pending judicial
20 review . . . consider whether the consequences of the decision are far-reaching, whether
21 the immediate impact upon affected parties is substantial, and whether any significant
22 legal issues will be involved in any judicial proceeding." Commonwealth of
23 Massachusetts, slip. op. at 7 (citing G.A. McDonough, Administrative Law & Practice,
24 §24:14 (May 2020)). In applying this standard, the Union argues that there are significant
25 legal issues involved in this proceeding, namely whether the "DLR may prohibit unions'

¹ This ruling is not published in the MLC reporters but may accessed through a public document search on the DLR's website, <https://pubinfo.dlr.state.ma.us>, and other online databases.

1 political speech protected by the First Amendment and Articles XVI and XI of the
2 Massachusetts Declaration of Rights.”

3 The School Committee opposes the motion. While it acknowledges the CERB’s
4 discretionary right to stay its own orders, it disputes that this appeal raises significant legal
5 issues. It contrasts the facts of this case to those in a different CERB ruling,
6 Commonwealth of Massachusetts, SUP-19-7599 (June 14, 2021),² where, in granting a
7 stay of its order, the CERB noted that it was faced for the first time with construing portions
8 of the Paid Family Medical Leave Act, which was then a relatively new statute that had
9 yet to undergo appellate scrutiny. The CERB further considered that there were 22 unfair
10 labor practice cases that the DLR had held in abeyance pending the Appeals Court’s
11 ruling. The School Committee asserts that in the instant matter, the CERB simply applied
12 well-established precedent when it held that neither party can resort to Town Meeting to
13 obtain a benefit that would otherwise be subject to mandatory bargaining.

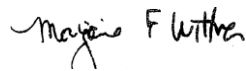
14 We agree with the School Committee that the CERB’s decision in this case
15 involved the application of well-established principles. This would ordinarily dictate
16 against granting a stay of our Order. Moreover, we do not find, and the Union does not
17 argue, that requiring it to comply with the notice posting portion of the Order would cause
18 either party to suffer immediate or substantial harm. Nevertheless the Union’s arguments
19 regarding its ability to petition Town Meeting as a matter of protected political speech

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1 directly implicate Chapter 150E's bargaining scheme. Although, for the reasons stated in
2 the decision, the CERB believes these arguments are without merit, they nevertheless
3 raise significant legal issues that the appellate courts have yet to squarely consider. For
4 this reason, we stay Section 2(b) of our Order pending conclusion of the appeal. The
5 other portions of the Order remain in effect and are not subject to this stay.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KELLY B. STRONG, MEMBER



VICTORIA B. CALDWELL, MEMBER