

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

In the Matter of

MENTAL HEALTH LEGAL ADVISORS
COMMITTEE

and

OPEIU, LOCAL 6

Case No. SCR-21-8964

Date issued: March 30, 2022

CERB Members Participating:

Marjorie F. Wittner, Chair
Joan Ackerstein, CERB Member
Kelly Strong, CERB Member

Appearances:

James M. Pender, Esq. - Representing the Mental Health Legal
Advisors Committee
Lynn V. Alexis, Esq. - Representing OPEIU, Local 6
Luke Liacos, Esq.

CERB DECISION IN THE FIRST INSTANCE

Summary

1 On November 30, 2021, the Office and Professional Employees International
2 Union, Local 6 (Union) filed the above-captioned petition with the Department of Labor
3 Relations (DLR). The Union seeks certification as the exclusive representative of “all full-
4 time and regular part-time employees” employed by the Mental Health Legal Advisors
5 Committee (MHLAC or Committee). On December 3, 2021, the DLR sent the parties a
6 letter stating that it was unclear from the petition whether the Committee was an

1 “employer or public employer,” or whether the petitioned-for employees were “public
2 employees,” within the meaning of Section 1 of the M.G.L. c. 150E (the Law). The DLR
3 therefore asked the parties to show cause why the petition should not be dismissed for
4 lack of jurisdiction. The DLR asked the parties to address three CERB decisions in their
5 responses: Commonwealth of Massachusetts Chief Administrative Justice and
6 Massachusetts Defenders Staff Association, 5 MLC 1699, SCR-2121 (March 9, 1979);
7 Committee for Public Counsel Services, 20 MLC 1201, SCR-2212 (September 29, 1993);
8 and Committee for Public Counsel Services, 42 MLC 87, WMAP-15-4647 (August 31,
9 2015).

10 Both parties filed timely responses to the letter, and the MHLAC filed a rebuttal to
11 the Union’s response. After reviewing all the responses, the Commonwealth Employment
12 Relations Board (CERB) concludes that because the MHLAC is not an employer within
13 the meaning of Section 1 of the Law, the petitioned-for employees are not public
14 employees entitled to collective bargaining rights under the Law. We therefore dismiss
15 the petition for lack of jurisdiction.

16 Background

17 MHLAC

18 The MHLAC was established in 1973 to advance the rights and opportunities of
19 persons with mental health challenges through legal and policy advocacy, and training
20 and education programs. It has offices in Quincy, Massachusetts. As set forth in its
21 enabling statute, M.G.L. c. 221, §34E, the MHLAC is comprised of fourteen practicing
22 attorneys from each of the Commonwealth’s mental health regions. The Supreme
23 Judicial Court (SJC) appoints the members to the Committee for four-year terms.

1 Committee members serve without compensation (except for reimbursable travel costs)
2 and may be removed by the SJC. M.G.L. c. 221, §34E.

3 The MHLAC's website, <https://mhlac.org> (last accessed March 22, 2022),
4 describes its mission, policy initiatives, and the services that it provides in support of those
5 initiatives to individuals with mental health challenges, public counsel, legal services
6 attorneys, social workers, judges, and the general public.¹ These services include its
7 Employment Discrimination and Advocacy Project, which provides legal counseling and
8 representation to low income people living with mental illness, and its Family Law Project,
9 which provides legal representation and assistance to low income parents diagnosed with
10 a mental illness or psychiatric disability who are seeking to access or regain custody of
11 their children. The MHLAC also represents students with disabilities in education issues,
12 such as entitlement to special education services and discipline matters. In addition to
13 representing individuals, its legal services include engaging in class-based litigation and
14 filing amicus briefs in appellate cases where important mental health issues are raised.
15 The MHLAC maintains a 24/7 telephone intake line, and provides intake forms on its
16 website.

17 The other major component of the MHLAC's work is engaging in legislative and
18 administrative advocacy and public education efforts related to the rights of persons with

¹ The MHLAC referenced its website in its response to the show cause letter.

1 disabilities.² The MHLAC may engage in such efforts alone or in conjunction with
2 community groups, coalitions or task forces.³

3 Funding

4 The MHLAC is funded by a combination of public and private funding. It is one of
5 seven agencies or entities within the judiciary that receives annual appropriations under
6 a line item from the state legislature.⁴ In FY 2022, the Legislature appropriated
7 \$2,272,480.00 to the MHLAC for wages and salaries, employee benefits and operating
8 expenses.⁵ In addition to state funding, the MHLAC “shall be eligible for federal funds
9 and may accept gifts, donations, grants, contributions or appropriations, which may be
10 received from any source, public or private, to be held, used or expended for any purpose
11 related to the duties of the committee and, in the case of a grant, in accordance with the
12 terms and conditions of such grant.” M.G.L. c. 221, §34E, Para. 8. Such funds must be
13 deposited in the Mental Health Legal Advisors Committee Trust. Id.

14 Staff

² See M.G.L. c. 221, §34E, Para. 4 (“It shall be the duty of the committee to conduct a continuing program of information with regard to the legal rights of patients and residents at all mental health and intellectual disability facilities in the commonwealth”)

³ The statute permits the Committee to “enter into contracts to provide or receive services with any federal or state entity, with any group or individuals, whether for profit or non-profit, or with any voluntary or charitable group, association or organization including any bar association or foundation.” M.G.L. c. 221, §34E, Para. 8.

⁴ The other six are the: 1) SJC, 2) Commission on Judicial Conduct, 3) Board of Bar Examiners, 4) Committee for Public Counsel Services, 5) Appeals Court, and 6) Trial Court. See generally <https://budget.digital.mass.gov/summary/fy22/enacted/judiciary?tab=budgetsummary>. (last accessed on March 22, 2022).

⁵ See <https://budget.digital.mass.gov/summary/fy22/enacted/judiciary/mental-health-legal/03212000> (last accessed on March 22, 2022).

1 petitioned-for employees are statutory employees within the meaning of Section 1 of the
2 Law.

3 This is a two-part inquiry. We must first consider whether the MHLAC staff are
4 persons in the executive or judicial branch of a government unit. The CERB first
5 considered this issue in 1979 with respect to employees employed by the now-defunct
6 Massachusetts Defenders Committee (MDC),⁷ an organization quite similar to the
7 MHLAC that was established by M.G.L. c. 221, §34D for the purpose of providing counsel
8 for indigent criminal defendants. Commonwealth of Massachusetts, 5 MLC at 1699. The
9 CERB determined that employees of the MDC were employed in the judicial branch of
10 government because, among other things, the SJC could appoint and remove MDC
11 committee members; the MDC's budget was included as a line item in the budget for the
12 judicial branch;⁸ and the SJC, acting through the MDC's committee members, had the
13 responsibility for the oversight and supervision of the MDC. Id. at 1703. Finding no
14 evidence of a "significant relationship" between the MDC and either the executive or
15 legislative branches, the CERB concluded that the MDC was properly treated as part of
16 the judicial branch of government. Id. Based on virtually identical factors, the same result
17 must obtain here.

⁷ M.G.L. c. 221, 34D was repealed in 1983 by St. 1983, c. 673, §3. The Committee for Public Counsel Services, which performs similar services, was established the same year by St. 1983, c. 673, §1. In Committee for Public Counsel Services, supra, the CERB dismissed a petition filed by the National Association of Government Employees (NAGE) seeking to represent these employees. NAGE argued that the petitioned-for employees were "state employees" employed by the Commissioner of Administration, w the statutory employer for employees of the executive branch under Section 1 of the Law. The CERB rejected this argument, finding "scant" evidence of any authoritative relationship between CPCS employees and the Commissioner of Administration. 20 MLC at 1205-1206.

⁸ As is the case now, this section of the budget included the MHLAC. 5 MLC at 1700.

1 Therefore, we must next examine whether the petitioned-for employees are
2 employed by a public employer. Section 1 of the Law states in pertinent part that “in the
3 case of judicial employees, the employer shall be the court administrator of the trial court
4 or any individual who is designated by him to represent him or act in his interest in dealing
5 with judicial employees.” Here, there is no evidence and the Union does not dispute that
6 the court administrator of the trial court is not the employer of the petitioned-for
7 employees. Pursuant to M.G.L. c. 211B, §12, the court administrator is appointed by the
8 SJC and exercises “executive control” over the office of court management within the trial
9 court, “to support judicial functions, performance and management of the trial court.”
10 There is no evidence that the MHLAC is part of the trial court, that its employees work
11 within the office of court management or that the court administrator exerts any control
12 whatsoever over the MHLAC staff. Thus, treating the court administrator as the statutory
13 employer and requiring him or her to bargain with employees without having the ability to
14 set working conditions would obstruct effective bargaining. Commonwealth of
15 Massachusetts, 5 MLC at 1706. Moreover, because the MHLAC staff regularly advocate
16 for their clients before court employees, bargaining with its staff could place the court
17 administrator in the position of improperly restricting through collective bargaining the
18 resources available to advocates in the court system or improperly being too lenient and
19 not fulfilling the court administrator’s statutory functions. Id.

20 The Union argues that the Commonwealth of Massachusetts and Committee for
21 Public Counsel Services decisions do not control the outcome of this case, however,
22 because it did not name the court administrator as the statutory employer on its petition
23 – it named the MHLAC itself. It argues that pursuant to Section 1, the statutory employer

1 for judicial employees includes individuals designated by the court administrator to
2 “represent him or act in his interest.” The Union states that in this case, “the court
3 administrator as appointed by the [SJC] has ‘designated’ the [MHLAC] to ‘act in his
4 interest in dealing with judicial employees.’” As such, the Union claims that the MHLAC
5 “controls all aspects of the conditions and terms of employment for its employees who
6 are tasked with fulfilling its mission, as designated pursuant to M.G.L. c. 221, §34E.”

7 The problem with this argument is that there is no evidence that the court
8 administrator ever designated the MHLAC to act in its interest. Rather, the evidence
9 shows that the SJC appoints the Committee, which in turn appoints an Executive Director.
10 There is no evidence that the MHLAC answers to, takes direction from, consults with, or
11 otherwise represents the court administrator in any respect in its dealings with the
12 MHLAC’s employees. Rather, the MHLAC is granted statutory discretion over the funds
13 it receives and over hiring staff. To the extent the Union is suggesting that a relationship
14 between the court administrator and the MHLAC exists because both are appointed by
15 the SJC, that fact, without more, fails to establish any type of relationship, much less an
16 agency relationship, between the two. Further, the court administrator designating the
17 MHLAC to “act in its interest” would trigger the same policy concerns addressed above
18 due to the nature of the advocacy work that the MHLAC staff performs and the MHLAC’s
19 ability, as agent for the court administrator, to restrict or expand through collective
20 bargaining, the resources available to those advocates.

21 We note finally that the Legislature has been aware since at least 1979 that the
22 CERB has declined to extend collective bargaining rights to judicial branch employees,
23 who, like the MHLAC staff, do not work under the control of the statutory employer for

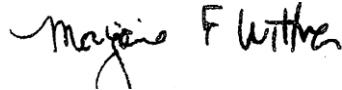
1 judicial branch employees under Chapter 150E. The Legislature had the opportunity to e
2 2011, when, as part of the 2011 Court Reorganization Act, Chapter 93 of the Acts of 2011,
3 it created the position of court administrator and amended Section 1 of the Law to replace
4 the Chief Administrative Justice with the court administrator as the statutory employer for
5 employees of the judicial branch. That the Legislature did not expand the statutory
6 definition to include the MHLAC or entities like it, lends further support to our conclusion
7 that the MHLAC is not an employer within the meaning of Section 1 of the Law and,
8 therefore, that the petitioned-for employees are not public employees with rights to form
9 or join a union under Chapter 150E.

10 CONCLUSION

11 For the reasons set forth above, we dismiss the petition for lack of jurisdiction.

12 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



JOAN ACKERSTEIN, CERB MEMBER



KELLY STRONG, CERB MEMBER