

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
MASSACHUSETTS DEPARTMENT OF * Case No.: SUP-14-3576
TRANSPORTATION * SUP-14-3640
*
and * Date Issued: May 25, 2018
*
UNITED STEELWORKERS *
LOCAL 5696 *
*

Hearing Officer:

Kerry Bonner, Esq.

Appearances:

- James F. Norton, Esq. - Representing the Massachusetts Department
of Transportation
- Alfred Gordon O'Connell, Esq. - Representing the United Steelworkers Local
5696

HEARING OFFICER'S DECISION ON COMPLIANCE

SUMMARY

1
2 The issue in this case is whether the Massachusetts Department of
3 Transportation (MassDOT or Employer) has complied with the remedy that the
4 Commonwealth Employment Relations Board (CERB) ordered in its July 31, 2017
5 decision in the above-captioned case (Order). I find that the Employer did not comply
6 with portions of the Order.

STATEMENT OF THE CASE

1
2 On March 18 and April 15, 2014, the United Steelworkers, Local 5696 (Union)
3 filed two Charges of Prohibited Practice with the Department of Labor Relations (DLR)
4 alleging that the Employer had engaged in prohibited practices within the meaning of
5 Sections 10(a)(1), 10(a)(3), 10(a)(4), and 10(a)(5) of the Law. The DLR docketed the
6 charges as SUP-14-3576 and SUP-14-3640. After an investigation, a DLR investigator
7 issued a Consolidated Complaint of Prohibited Practice on December 17, 2014.
8 Following the Union's Motion to Amend the Complaint, the investigator issued an
9 Amended Complaint of Prohibited Practice on September 1, 2015 (Complaint).

10 I conducted a hearing on September 22, October 13, and November 20, 2015,
11 and January 7, 2016, and issued a decision on September 8, 2016. In my decision, I
12 found that the Employer: 1) transferred unit work to non-unit employees in violation of
13 Section 10(a)(5) of the Law; and 2) retaliated against Peter Fimognari (Fimognari) and
14 Douglas Haskins (Haskins) for their protected activity in violation of Section 10(a)(3) of
15 the Law. To remedy the violations, I ordered the Employer to: 1) return the transferred
16 duties to the bargaining unit; 2) immediately rescind the District I promotion and award
17 the position to Haskins and make him whole; and 3) rescind the District II promotion,
18 repeat the interview and selection process with a different interview panel, taking into
19 account only lawful considerations, and make Fimognari whole if he was the selected
20 candidate.

21 The Employer appealed my decision on the retaliation allegations to the CERB,
22 and in a decision dated July 31, 2017, the CERB upheld my decision and order.

1 On February 13, 2018, the Union filed a request for enforcement of the CERB's
2 Order, alleging that the Employer was not in compliance with certain portions of the
3 Order. The Employer responded on February 28, 2018, acknowledging that it had not
4 been in full compliance with the Order, but contending that the parties had been
5 engaged in extensive negotiations seeking an amicable resolution. It also requested
6 additional time to comply with the CERB's Order. In response, the Union alleged that
7 the parties' negotiations had concluded over six weeks prior. By letter dated March 6,
8 2018, the DLR denied the Employer's request for additional time to comply with the
9 Order, and also notified the parties that it would hold a one-day mediation session,
10 which was held on March 26, 2018. By letter dated March 26, 2018, the Union
11 contended that the Employer refused to rescind the promotion of John Bieg to PC III in
12 District 2, and requested that the DLR immediately institute court proceedings to secure
13 enforcement of the Order, or permit the Union to seek enforcement in court. By letter
14 dated March 27, 2018, the Employer stated that it was preparing a notice of rescission
15 of Bieg's promotion, which would be delivered to Bieg the following day. By letter dated
16 April 12, 2018, the Union renewed its request that the DLR institute court proceedings to
17 secure enforcement of the Order, or permit the Union to seek enforcement in court. The
18 DLR then determined that there was a genuine dispute as to compliance and ordered a
19 compliance hearing. See DLR Rule 16.08, 456 CMR 16.08.

20 The parties agreed that a full compliance hearing was not necessary, and instead
21 submitted a Joint Stipulated Record to me on May 14, 2018. I advised the parties that
22 the stipulated record should address the portions of the Order which the Union had

1 alleged that the Employer had not complied with in its request for enforcement.¹ Based
2 on the stipulated record, I make the following findings of fact and render the following
3 opinion.

4 STIPULATIONS OF FACT²

5 1. MassDOT returned the following duties to the bargaining unit as described
6 below:³

7
8 a. District 1 – Lee Garage:

- 9
10 - *Taking incoming calls to prioritize the repair of equipment and scheduling*
11 *repair work*
12 - *Deciding when equipment would be contracted for repairs*
13 - *Making recommendations regarding the purchase of new equipment*
14

15 These duties were performed by Doug Haskins while he was Garage
16 Foreman⁴ prior to his promotion and transfer to Unit D in or around
17 November 2017. Since that time, Mr. Haskins was directed to no longer
18 perform these duties and to allow them to be performed by the new Unit B
19 Garage Foreman, and he has complied.

20
21 b. District 2 – Chicopee Garage

- 22
23 - *Tracking and reporting vehicle mileage*
24

25 The Garage Foreman tracks mileage using computer program Maximo
26 when vehicles are in for repairs and/or service.

- 27
28 - *Tracking the assignment of staff to certain locations*
29

¹ The Union had alleged that the Employer had not complied with the following portions of the Order: restore the transferred duties to the bargaining unit, rescind the promotion of Bieg, rerun the promotional process in District 2, post the required notice, and report to the DLR the steps taken to comply with the Order.

² The footnotes within the Stipulations of Fact section include supplemental information that I have taken from my decision and the CERB's decision and Order in this case, and are not part of the parties' stipulations.

³ The italicized portions of Stipulation 1 are the specific duties that the CERB ordered the Employer to return to the bargaining unit in each garage.

⁴ The position of Garage Foreman is a bargaining unit position.

1 The Garage Foreman decides who will be reassigned if needed to another
2 garage.

3
4 - *Consulting with the fleet supervisor regarding the purchase of new*
5 *equipment*

6
7 The Garage Foreman makes recommendations to Chuck Labbee⁵ or his
8 designee, although some recommendations from the Garage Foreman go
9 through the PC III.

10
11 - *Identifying and coordinating training needs*

12
13 The Garage Foreman determines and provides a list of designated
14 mechanics for needed training. All District 2 Garage Foremen lists are
15 sent to the District Equipment Coordinator (PC III) who sets up training for
16 all District Garage personnel.

17
18 c. District 3 – Auburn Garage:

19
20 - *Auction and purchasing decisions*

21
22 The Garage Foreman *along with many others* makes recommendations to
23 Chuck Labbee as to what vehicles and equipment should be auctioned
24 and what vehicles and equipment would be purchased.

25
26 - *Coordinating training*

27
28 Training programs often accompany the purchase of new equipment and
29 the Garage Foreman coordinates training for the mechanics. The Garage
30 Foreman also initiates training for the mechanics as appropriate and
31 necessary.

32
33 - *Paperwork for accident reports*

34
35 The Garage Foreman processes accident paperwork.

36
37 - *Resolving transponder issues*

38
39 The only interaction the Garage Foreman has with regard to transponders
40 is to retrieve a bad one and replace it with a new one when notified by
41 Chuck Labbee's office. The Garage Foreman performs this function.

42
43 - *Overtime reports*

44

⁵ Chuck Labbee is the Supervisor of Motor Equipment.

1 The Garage Foreman maintains the overtime report that tracks all
2 overtime worked, refused and unavailable, so that overtime can be issued
3 fairly and equitably.
4

5 d. District 6 – South Boston and Charlestown Garages
6

- 7 - *Assessing vehicles for purchase and auctions*
- 8 - *Prioritizing repairs*
- 9 - *Conducting evaluations of mechanics*

10 All duties were returned to the Garage Foreman.
11

- 12
- 13 2. The parties' settlement negotiations regarding this matter ended on January 16,
14 2018. The Union filed its Request for Compliance on February 13, 2018.
15 MassDOT rescinded the promotion of John Bieg on March 26, 2018.⁶ As
16 reported previously, Mr. Bieg was made the Acting PC III pending the reselection
17 process for the position. Mr. Bieg therefore continued to perform the duties and
18 functions of the PC III position in an acting capacity until the reselection process
19 was completed.
20
- 21 3. MassDOT repeated the interview and selection process for the PC III position in
22 District 2. Interviews were conducted on April 17, 2018 by Joseph Foti,
23 MassDOT Chief of Operations and Maintenance, Scott Wilson, MassDOT
24 Director of Roadway Operations, and Marleny Polanco, MassDOT Human
25 Resources Specialist. John Bieg was the selected candidate.
26
- 27 4. The parties' settlement negotiations regarding this matter ended on January 16,
28 2018. The Union filed its Request for Compliance on February 13, 2018.
29 MassDOT physically posted the Notice to Employees at locations where
30 bargaining unit employees work on or before April 12, 2018. MassDOT sent a
31 copy of the posting electronically to all bargaining unit members for whom it has
32 an email address on or before April 12, 2018. The original emailed posting was
33 unsigned, but after the Union notified MassDOT of that issue, MassDOT resent
34 the signed posting on April 12, 2018, and thus the electronic posting of a signed
35 notice was completed on April 12, 2018.
36
- 37 5. On May 11, 2018, the Union notified MassDOT of the following:
38
 - 39 • At 185 Kneeland St. in Boston, the Notice is posted in a locked, glass
40 bulletin board and only first page is posted.⁷
 - 41 • In the Driscoll Building in Weston, the Notice is posted in a locked, glass
42 bulletin board and only first page is posted.

⁶ The Employer had promoted John Bieg to the PC III position in District 2.

⁷ The posting consists of two pages.

- There is no posting at 10 Park Plaza, 3rd floor.
- There is no posting at the Chelsea Engineering location.

In response to this notice from the Union, MassDOT Labor Relations Office notified the MassDOT District 6 office and the liaison in that office for the purpose of coordinating the postings, and has requested that the postings at 185 Kneeland Street and in the Driscoll Building be examined to determine if the allegations are true, and to rectify the allegations if true.

A notice was posted at 10 Park Plaza, 3rd Floor, with a notation that the Notice was posted on May 11, 2018.

A notice was posted in the Chelsea offices where District 6 Engineering personnel sign in each day, with a notation that the notice was posted on May 14, 2018.

The Union is unaware whether MassDOT ever provided the DLR with a complete list of posting locations, and MassDOT notes that the Order does not direct MassDOT to provide a complete list of posting locations to the DLR.

6. MassDOT has otherwise complied with the remainder of the CERB Order dated July 31, 2017.

OPINION⁸

Section 11 of the Law authorizes the CERB to issue orders "requiring the charged party to cease and desist from such prohibited practice and take such further affirmative action as will comply with the provision of this section." This language gives the CERB broad discretion in fashioning a remedy that is designed to effectuate the purposes of the Law and vitiate the effects of the violation. Boston Police Patrolmen's Association, Inc., 8 MLC 1993, 2002, MUPL-2049, MUPL-2050 (February 2, 1982 and March 23, 1982); Secretary of Administration and Finance v. Labor Relations Commission, 434 Mass. 340 (2001). The CERB has a strong interest in preventing

⁸ This section also includes supplemental facts and information that I have taken from my decision and the CERB's decision and Order.

1 parties from gaining an advantage by committing prohibited practices and reaping a
2 benefit from their unlawful actions. Amesbury School Committee, 13 MLC 1196, 1197,
3 MUP-5254 (October 9, 1986)(supplementary decision and order on compliance); City of
4 Everett, 2 MLC 1471, MUP-2126 (May 5, 1976), aff'd, Labor Relations Commission v.
5 City of Everett, 7 Mass. App. Ct. 826 (1979).

6 I will address each portion of the Order which the Union alleged that MassDOT
7 has not complied with below.

8 Return of Bargaining Unit Duties

9 The Order details which duties the Employer must return to the bargaining unit in
10 Districts 1, 2, 3, and 6. The stipulations show that the Employer has returned the
11 transferred duties to the bargaining unit in compliance with the Order in Districts 1, 2,
12 and 6.

13 Although Stipulation 1(c), which refers to the District 3 Auburn Garage, states
14 that the Garage Foreman, along with many others, makes recommendations about
15 which vehicles to auction and purchase, there is insufficient evidence as to whether the
16 "others" are outside of the bargaining unit. In addition, the stipulations state that the
17 only interaction the Garage Foreman has with regard to transponders is to retrieve a
18 bad one and replace it; however, that was the extent of this duty as evidenced at the
19 hearing and set forth in my decision.⁹ Accordingly, I find that the Employer has also
20 complied with the Order in District 3.

⁹ The decision states that the PC III handles transponder issues, "such as sending a non-functioning transponder back," which was previously handled by the Garage Foreman.

1 District 2 PC III Promotion

2 The CERB ordered the Employer to rescind the promotion of Bieg to the PC III
3 position in District 2, and to repeat the interview and selection process, with interviewers
4 who were not on the 2013 interview panel. According to the stipulations, Bieg's
5 promotion was rescinded on March 26, 2018,¹⁰ and interviews for the PC III position
6 were conducted on April 17, 2018. The interview panel did not include anyone who was
7 on the panel in 2013.¹¹ I therefore conclude that the Employer has complied with this
8 portion of the Order.

9 Postings

10 The Order directs the Employer to post a signed copy of the Notice to
11 Employees, which is attached to the CERB's decision, immediately in all conspicuous
12 places where members of the Union's bargaining unit usually congregate and where
13 notices to these employees are usually posted, including electronically, if the Employer
14 customarily communicates to its employees via intranet or email, and maintain for a
15 period of thirty (30) consecutive days thereafter. The stipulations show that, although it
16 has taken quite some time for the Employer to post complete and signed notices in all
17 necessary locations, the only locations for which the Employer has not been able to
18 establish its current compliance with this portion of the Order are 185 Kneeland Street in

¹⁰ The stipulations establish that the Employer then made Bieg the Acting PC III, a position in which he performed the duties and functions of the PC III position. Because the Order did not direct MassDOT to return Bieg to his prior position or to assign the duties to another employee, MassDOT's actions were in compliance with the Order.

¹¹ Steve Doyle, Robin Wanar, and Ken Burke were on the 2013 interview panel.

1 Boston and the Driscoll Building in Weston.¹² Thus, with the exception of these two
2 locations, I find that MassDOT has now complied with this portion of the Order.

3 CONCLUSION

4 MassDOT significantly delayed complying with the CERB's July 31, 2017 Order.
5 However, based on the stipulated record, and for the reasons explained above, I
6 conclude that as of May 14, 2018, MassDOT has complied with all aspects of the
7 CERB's Order except for the notice posting portion of the Order at 185 Kneeland Street
8 in Boston and the Driscoll Building in Weston.¹³

9 ORDER

10 WHEREFORE, based upon the foregoing, it is hereby ordered that MassDOT
11 shall:

- 12
13 1) Post immediately in all conspicuous places where members of the Union's
14 bargaining unit usually congregate and where notices to these employees are
15 usually posted, at 185 Kneeland Street, Boston and at the Driscoll Building,
16 Weston, and maintain for a period of thirty (30) consecutive days thereafter,
17 signed copies of the CERB's 2-page Notice to Employees from its 2017
18 Decision and Order; and
19
20 2) Post immediately in all conspicuous places where members of the Union's
21 bargaining unit usually congregate and where notices to these employees are
22 usually posted, including electronically, if the Employer customarily
23 communicates to its employees via intranet or email, and maintain for a
24 period of thirty (30) consecutive days thereafter, signed copies of the
25 attached Notice to Employees; and
26
27 3) Notify the DLR within ten days of this decision of the steps taken to comply
28 herewith.

SO ORDERED.

¹² Although the stipulations state that the Union is unaware whether MassDOT ever provided the DLR with a complete list of posting locations, the Order did not require this.

¹³ Although the Union has understandably been frustrated with MassDOT's delay in complying with the Order, my role is only to determine whether or not compliance has occurred.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KERRY BONNER, 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 Executive Secretary of 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 the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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 has held that the Massachusetts Department of Transportation has failed to comply with a 2017 decision and order of the Commonwealth Employment Relations Board in Case No. SUP-14-3576 and SUP-14-3640. MassDOT posts this Notice to Employees to comply with the hearing officer's compliance order.

WE WILL COMPLY with the CERB's decision in Case No. SUP-14-3576 and SUP-14-3640 by posting the CERB's Notice to Employees at 185 Kneeland Street, Boston and at the Driscoll Building, Weston.

Massachusetts Department of Transportation

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, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).