COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
BOARD OF HIGHER EDUCATION/ MASSASOIT COMMUNITY COLLEGE	*	Case No.: SUP-14-4030
and	*	Date Issued: September 13, 2016
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 93, AFL-CIO	*	

Hearing Officer:

Will Evans, Esq.

Appearances:

Anna Fletcher, Esq.	-	Representing AFSCME, Council 93
Carol W. Fallon, Esq.	-	Representing the Board of Higher Education

HEARING OFFICER DECISION

SUMMARY

The issue is whether the Board of Higher Education/Massasoit Community College (Employer) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by implementing written guidelines for staff members in the registrar's office without first providing the American Federation of State, County, and Municipal Employees, Council 93, AFL-CIO (Union or AFSCME) with notice and an opportunity to bargain to resolution or impasse over the

impacts of the decision on employees' terms and conditions of employment. Based on the record and for the reasons explained below, I find that the Union's charge is time-barred and dismiss the above-referenced matter.

STATEMENT OF THE CASE

On September 24, 2014, the Union filed a charge with the Department of Labor Relations (DLR) alleging that the Employer had engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. A duly designated DLR investigator conducted an investigation of the matter on December 5, 2014. On February 6, 2015, the investigator issued a Complaint of Prohibited Practice (Complaint), alleging that the Employer had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to bargain in good faith by not providing the Union with prior notice and an opportunity to bargain to resolution or impasse over the impacts of its decision to implement written guidelines in the registrar's office on employees' terms and conditions of employment. On February 17, 2015, the Employer filed its answer to the Complaint raising timeliness, among other things, as an affirmative defense.

Whitney Eng Coffey, Esq., a duly designated hearing officer formerly employed by the DLR, conducted a hearing on November 17, 2015, where both parties had the opportunity to be heard, to examine witnesses, and to introduce evidence. On January 8, 2016, the parties filed post-hearing briefs. On May 13, 2016, Hearing Officer Eng Coffey left employment at the DLR, who reassigned the matter to Will Evans, Esq., a

duly designated hearing officer at the DLR.[1] After careful review of the record evidence, which included reading and listening to the transcript of witness testimony, stipulations of fact, and documentary exhibits, and in consideration of the parties' arguments, I make the following findings of fact and render the following opinion.

STIPULATION OF FACTS

The parties stipulated to the following facts:

1) The Board of Higher Education is a public employer within the meaning of Section 1 of the Law; Massasoit Community College is the Employer as the appointing authority of employees at Massasoit Community College.

2) The American Federation of State, County, and Municipal Employees, Council 93, AFL-CIO (AFSCME or Union) is an employee organization within the meaning of Section 1 of the Law.

3) The Union is the exclusive bargaining representative for certain AFSCME staff in the registrar's office at Massasoit Community College.

4) On March 14, 2014, the Employer, through its Registrar Jannie Gilson, held a meeting with staff in the registrar's office that was attended by Massasoit AFSCME representative Sheila Fitzpatrick (now Kearns) and by AFSCME staff representative Diane Byrnes.

5) On about March 18, 2014, the Employer sent bargaining unit members in the registrar's office a written email.

[1] On April 27, 2016, the DLR notified the parties that Hearing Officer Eng Coffey would be leaving the DLR's employ and gave them the option either to re-try the case or to authorize the DLR to assign the case to a different hearing officer for a decision. Both parties subsequently agreed to allow a different hearing officer to decide the case based on the transcript, the hearing exhibits, and the parties' briefs.

FINDINGS OF FACT

Shelia Kearns (Kearns) has been employed at Massasoit Community College since September 1985 and currently works as a Graphic Arts Technician II. She is a member of the Union and serves as Chief Steward for Unit 1 and AFSCME Local 1067 Parliamentarian. In her capacity as Chief Steward, Kearns attended a pre-disciplinary hearing on March 14, 2014 with Union Staff Representative Diane Byrnes (Byrnes) involving a Union member working in the registrar's office (Grievant A) who was accused of improperly backdating her daughter's request to drop a class. Registrar Jannie Gilson (Gilson), Associate Registrar Katherine Walo, Dean Nancy Sullivan, Vice-President David Tracy, and Human Resources Vice-President Lisa Lowery were present at the pre-disciplinary hearing on behalf of the Employer. At the hearing, which was held in the vice-president's conference room, the Employer and the Union discussed the alleged backdating, as well as various day-to-day policies and procedures within the registrar's office. The parties discussed the Family Educational Rights and Privacy Act of 1974 (FERPA) and, in particular, the rules against giving family access to student records without written authorization and giving out student information over the telephone to callers.

Immediately following the pre-disciplinary hearing on March 14, 2014, Gilson held a meeting for staff in the registrar's office in the same conference room. Both Kearns and Byrnes stayed for the staff meeting. Gilson reviewed the requirements of FERPA and various things that staff in the registrar's office should and should not do, including but not limited to, servicing and processing requests from family and friends,

holding seats for students, running test programs using their own information, and giving out information to parents without written authorization. Everything reviewed at the staff meeting had been told to staff by the Employer at some point before, either verbally or in writing. Kearns understood the meeting to be a clarification of existing oral policies and procedures in the registrar's office.

A few days after the staff meeting, Gilson sent an email on March 18, 2014 to all staff in the registrar's office reiterating the points discussed at the meeting:

> *To follow up from our staff meeting on Friday, I just want to reiterate the points we discussed in the meeting and emphasize their importance. As you know, FERPA is a federal mandate that restricts access to student records for privacy concerns. Only the student is eligible to review and/or have access to their records. Parents, family, and friends should not have access to these records. This includes, but is not limited to, family and friends of registrar staff or Massasoit employees. In order to protect ourselves, here is the list of expectations:*
>
> *1. There should be no transactions on personal, family, or friend accounts. Please encourage use of their MyMassasoit account and provide instructions as necessary.*
>
> *2. Personal accounts should not be used for testing purposes such as transcript issues.*
>
> *3. There should be no unauthorized backdating. The Registrar and Associate Registrars must sign off on all exceptions before processing. If unavailable for approval, then the student will need to wait.*
>
> *4. All approved backdating will need to include a note in SPACMNT and appropriate documentation in BDMS.*
>
> *5. All approvals, such as overrides or waivers, should include a note on SPACMNT and appropriate documentation in BDMS.*
>
> *6. Transcripts should not be printed for personal, family, or friend accounts. Please give request to another staff member or supervisor for processing.*

> *7. Registration is handled on a first-come, first-served basis. There should be no holding of seats for students.*
>
> *8. Requests made by faculty or staff on behalf of a student cannot be processed without proper documentation and the student's approval. Any requests made without documentation or approval should be directed to the Registrar for follow up.*
>
> *9. If you see or know of any ethics violations, FERPA violations, misuse of position or any other impropriety, then it is your duty to report it to one of your supervisors.*
>
> *If circumstances arise that you are unsure of, please ask one of your supervisors. We will continue FERPA training for our office on a periodic basis. If you have any questions or concerns in the meantime, please feel free to ask.*
>
> *Please respond to this email once you have read and understood these guidelines.*

Gilson's March 18, 2014 email provided the same information that she reviewed with college employees and union representatives at the March 14, 2014 staff meeting.[2] Gilson received responses from eight staff members in the registrar's office indicating that they read and understood the guidelines. Kearns learned about Gilson's email from a Union member within a couple days later; however, she did not receive a copy of the email until after Gilson forwarded it to her on April 24, 2014. Kearns responded on behalf of the Union, "Thanks, Jannie," on April 24, 2014 after receiving Gilson's email.

[2] No evidence was presented challenging Gilson's claim in her email that the written guidelines were just a reiteration of the points discussed at the meeting. The Union presented no evidence suggesting that the contents of the March 18, 2014 email differed in any way from the discussion that took place at the March 14, 2014 staff meeting.

OPINION

Section 15.03 of the DLR's Rules and Regulations states: "Except for good cause shown, no charge shall be entertained by the [DLR] based upon any prohibited practice occurring more than six months prior to the filing of a charge with the [DLR]." 456 CMR 15.03. A charge of prohibited practice must be filed with the DLR within six months of the alleged violation or within six months from the date the violation became known or should have become known to the charging party, except for good cause shown. Felton v. Labor Relations Commission, 33 Mass. App. Ct. 926 (1992) (affirming dismissal of charge because grievant should have known union did not demand arbitration of his grievance). The six-month period of limitations for filing charges with the DLR begins to run when the party adversely affected receives actual or constructive notice of the conduct alleged to be an unfair labor practice. Town of Middleborough, 18 MLC 1409, 1411, MUP-8320 (May 6, 1992); Town of Lenox, 29 MLC 51, 52, MUP-01-3214, MUP-01-3215 (September 5, 2002); Wakefield School Committee, 27 MLC 9, 10, MUP-2441 (August 16, 2000); City of Boston, 10 MLC 1120, MUP-4907, MUP-4759 (August 23, 1983).

The facts demonstrate that the Union knew or should have known of any alleged changes to the guidelines in the registrar's office at the March 14, 2014 staff meeting. Both Kearns and Byrnes attended the March 14, 2014 staff meeting when Gilson presented the guidelines for the registrar's office. No evidence contradicted Gilson's testimony that her March 18, 2014 email provided the same information that she reviewed with college employees and union representatives at the March 14, 2014 staff

meeting. Nor did the Union argue that the contents of the March 18, 2014 email differed in any way from the discussion that took place at the March 14, 2014 staff meeting. After receiving a copy of Gilson's March 18, 2014 email reiterating the points discussed at the meeting, Kearns did not engage in any discussions with the Employer regarding the contents of Gilson's email and replied only "Thanks, Jannie." Because the Union did not file its charge until September 24, 2014, more than six months after it knew or should have known of the alleged unlawful conduct, the Union's charge is time-barred.

The Union did not address the Employer's timeliness argument, or argue that the period of limitations began to run at some point after March 14, 2014. As already discussed, given the presence of Chief Steward Kearns and Union Staff Representative Byrnes at the registrar's office staff meeting, the Union received constructive notice of any alleged changes to the guidelines on March 14, 2014. Gilson's March 18, 2014 email was merely a reminder of what was discussed. The fact that Gilson followed up the guidelines discussed at the March 14, 2014 staff meeting in writing does not reset the clock for purposes of calculating the six-month limitations period.[3] Nothing in the Law requires the Employer to provide notice in writing. Gilson gave notice to the Union of any alleged changes to guidelines in the registrar's office at the March 14, 2014 staff meeting; her follow up email on March 18, 2014 was merely a procedural mechanism for enforcing pre-existing work rules. Duxbury School Committee, 25 MLC 22, 24, MUP-1446 (August 7, 1998) (holding that a public employer may alter procedural

[3] Even if such an argument could be made that placing the guidelines *in writing* triggered a new violation of the Law, the Union acknowledged that it was aware of Gilson's email within a few days of March 18, 2014.

mechanisms for enforcing existing work rules without bargaining, if the employer's actions do not change underlying conditions of employment). In the present case, no evidence was presented demonstrating that reducing pre-existing guidelines to writing impacted or affected terms and conditions of employment. Finally, the Union submitted no evidence establishing that it had good cause to file the charge late or that the alleged unlawful conduct was a continuing violation. Boston Police Superior Officers Federation v. Labor Relations Commission, 410 Mass. 890 (1991); Miller v. Labor Relations Commission, 33 Mass. App. Ct. 404 (1992); Suffolk County Sheriff's Department, 27 MLC 155, MUP-1498 (June 4, 2001).

CONCLUSION

For the reasons stated above, I find that the Union's charge is time-barred and dismiss the Complaint. Because I have dismissed the Complaint as time-barred, it is unnecessary to decide whether the Employer's conduct substantively violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

WILL EVANS, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the DLR within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.