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

In the Matter of	*	
	*	Case No.: SUP-19-7599
COMMONWEALTH OF MASSACHUSETTS/	*	
SECRETARY OF ADMINISTRATION AND FINANCE	*	Date Issued:
	*	March 30, 2021
	*	
and	*	
	*	
NATIONAL ASSOCIATION OF	*	
GOVERNMENT EMPLOYEES	*	

CERB Members Participating:

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

Appearances:

Melinda T. Willis, Esq.	-	Representing the Commonwealth of Massachusetts
Caroline M. O'Brien, Esq.	-	Representing the National Association of Government Employees

CERB DECISION IN THE FIRST INSTANCE

SUMMARY

On October 4, 2019, the Commonwealth of Massachusetts, acting through the Secretary of Administration and Finance (Employer or Commonwealth), began deducting the maximum amount of employee contributions permitted under the Paid Family and Medical Leave Act (PFMLA) from the paychecks of state employees represented by the National Association of Government Employees (NAGE or Union). The question before the Commonwealth Employment Relations Board (CERB) is whether the Commonwealth

implemented these deductions in compliance with its statutory bargaining obligation. The Union claims that the record evidence demonstrates that the Commonwealth decided well before bargaining that it would collect the largest amount permitted under the PFMLA from employees and never actually bargained over this amount, thus making an unlawful unilateral change in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L c. 150E (the Law). The Commonwealth does not dispute that the amount that employees contribute to the PFMLA trust fund is a mandatory subject of bargaining, nor does it dispute that it was not statutorily required to collect the largest employee contribution amount permitted under the PFMLA. It contends, however, that it bargained in good faith with NAGE over this issue, and defends the timing of its implementation of the maximum split on several grounds, including that the parties reached impasse as to this issue by October 1, 2019, the date it claims it was required to begin such deductions, and that exigent circumstances beyond its control compelled this deadline. The Commonwealth further asserts that it was willing to continue bargaining after October 1, 2019, but that the Union did not bargain in good faith and refused to engage in further bargaining. For the reasons set forth below, the CERB concludes that the parties were not at impasse, nor was the Commonwealth obliged to begin withholding any PFMLA contributions from employees' paychecks as of October 1, 2019. We therefore conclude that the Commonwealth violated the Law as alleged.

Statement of the Case

On October 3, 2019, the Union filed a charge with the Department of Labor Relations (DLR), alleging that the Commonwealth had engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

Following an in-person investigation that took place on January 29, 2020, a DLR investigator issued a Complaint of Prohibited Practice on May 21, 2020, alleging, among other things, that employee contributions to the cost of PFMLA benefits is a mandatory subject of bargaining and that the Commonwealth violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to "bargain in good faith by deducting contributions pursuant to the PFMLA from bargaining unit members' paychecks without bargaining to resolution or impasse about that decision and the impacts of that decision on employees' terms and conditions of employment."

On July 16, 2020, NAGE requested that the CERB hear the matter in the first instance pursuant to Section 11(f) of the Law. On July 20, 2020, the Commonwealth filed an opposition to NAGE's motion. On August 28, 2020, the CERB granted the motion to conduct the hearing in the first instance. On December 15, 2020 and December 17, 2020, the CERB, with Chair Marjorie Wittner presiding, conducted a remote hearing via the WebEx videoconference platform[1] during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The parties also stipulated to certain facts. On January 29, 2021, the parties filed post-hearing briefs. Based on the CERB's review of the record, including observation of the demeanor of the witnesses, and in consideration of the parties' arguments, the CERB makes the following findings of fact and renders the following opinion.

STIPULATED FACTS

1. The Commonwealth of Massachusetts, acting through the Secretary of Administration and Finance, is a public employer within the meaning of Section 1 of Chapter 150E.

[1] The CERB conducted the hearing remotely pursuant to Governor Baker's teleworking directive to Executive Branch employees.

2. The National Association of Governmental Employees (the Union) is an employee organization within the meaning of Section 1 of Chapter 150E.

3. The Union is the exclusive collective bargaining representative for employees in statewide bargaining units 1, 3, and 6. This includes professional administrative employees in Unit 6, building and trades employees in Unit 3, and non-professional administrative and clerical employees in Unit 1.

4. The Union and the Commonwealth are parties to collective bargaining agreements (CBAs) that are in effect, by their terms, from July 1, 2017 to June 30, 2020.

5. The CBAs each contain Articles titled "Duration," which provide that: This Agreement shall be for the three year period from July 1, 2017 to June 30, 2020 and terms contained herein shall become effective upon execution unless otherwise specified. It is expressly understood and agreed that subject to ratification by the NAGE membership, the predecessor collective bargaining agreement shall be voided and superseded by all aspects of this collective bargaining agreement. Should a successor Agreement not be executed by June 30, 2020, this Agreement shall remain in full force and effect until a successor agreement is executed or an impasse in negotiations is reached. At the written request of either party, negotiations for a subsequent agreement will be commenced on or after January 1, 2020.

6. Bargaining regarding successor CBAs commenced in February 2020 with in person meetings and is ongoing.

7. On June 28, 2018, the Massachusetts Legislature enacted Chapter 121 of the Acts of 2018, titled "An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday."

8. The Paid Family and Medical Leave Act (PFMLA) is codified as Chapter 175M of the Massachusetts General Laws.

9. The PFMLA also created a Department of Family and Medical Leave (DFML) within the Executive Office of Labor and Workforce Development. William Alpine is the director of the DFML.

10. The Union and the Commonwealth had bargaining sessions regarding the PFMLA on the following dates:
    - May 13, 2019
    - May 23, 2019
    - June 11, 2019

- August 15, 2019
- October 2, 2019

11. William Alpine attended the meetings on June 11, 2019 and October 2, 2019.

12. The Union filed the Charge on October 3, 2019.

Additional Findings of Fact

PFMLA – Generally

On June 28, 2018, Governor Baker signed Chapter 121 of the Acts of 2018, titled "An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday," also referred to as the "Grand Bargain." In addition to increasing the minimum wage and creating a permanent tax holiday, this legislation included the PFMLA, which is codified as Chapter 175M of the Massachusetts General Laws. The PFMLA provides for up to twelve weeks of job-protected family leave for covered workers to care for a family member with a serious health condition and to bond with a new child during the first twelve months after the child's birth, adoption, or foster care placement. It also authorizes up to 20 weeks of job-protected paid medical leave to manage the worker's own serious health condition and provides two types of family leave for covered workers with family members in the Armed Forces. Covered workers include those who meet the financial eligibility requirements of M.G.L. c. 151A, §24, and former employees who meet the same financial eligibility requirements and who have been separated from employment for not more than 26 weeks after the start of the former employee's family or medical leave. M.G.L. c. 175M, §1. The Commonwealth is an employer and Commonwealth employees are employees within the meaning of Section 1 of the

PFMLA.[2] [3] Municipalities, however, are not subject to the PFMLA unless they adopt the statute by majority vote of its authorized local legislative body or governing body. Id.; 458 CMR 2.02.

Department of Family and Medical Leave

The PFMLA established the Department of Family and Medical Leave (DFML) within the Executive Office of Labor and Workforce Development. The DFML is administered by a Director appointed by the Governor. M.G.L. c. 175M, §8. William Alpine (Alpine) is the DFML's first director.

The DFML's responsibilities include paying medical leave and family leave benefits to qualifying individuals, M.G.L. c. 175M, §§8(b) and 8(c); conducting public education campaigns to inform workers, employers and other covered individuals and entities about the availability of PFMLA benefits, M.G.L. c. 175M, §8(f); enforcing the PFMLA; and promulgating rules and regulations, M.G.L c. 175M, § 8(g).

As set forth below, the DFML issued preliminary regulations in March 2019 and "final" regulations in both July 2019 and July 2020.

PFMLA Effective Dates, Funding, and Remittance

[2] M.G.L. c. 175M, §1, Definitions, states in pertinent part that the term, "'Employer,' shall have the same meaning as provided in subsection (i) of section 1 of chapter 151A." M.G.L. c. 151A, §1(i) includes the Commonwealth within its definition of employer and further states that "For the purposes of this chapter, the commonwealth, including all its branches and departments and its hospitals and institutions of higher education, shall be deemed to be one employer."

[3] M.G.L. c. 175M, §1 similarly states that the term "'Employee,' shall have the same meaning as provided in subsection (h) of section 1 of chapter 151A." M.G.L. c. 151A, §1(h) defines "employee" as "any individual employed by any employer subject to this chapter and in employment subject thereto."

Although the PFMLA was enacted in 2018, benefit payments were not scheduled to begin until January 2021.[4] To accumulate the necessary funds for benefits and administrative costs, the 2018 session law initially required employers of over twenty-five employees[5] to make contributions of 0.63% of their workers' eligible wages to the Family and Security Trust Fund (Trust Fund).[6] See Chapter 121 of the Acts of 2018, §30.[7] The statute initially required employers to start withholding payroll deductions (if any) on July 1, 2019, id., but in June 2019, the Legislature and the Governor moved that date to October 1, 2019. See Section 9 of Chapter 21 of the Acts of 2019. To make up for the later start date, the DFML increased the contribution rate to 0.75% effective October 1, 2019, which was the rate at the time of the hearing. 458 CMR 2.05(1) (b). Further rate increases may occur – the PFMLA requires the DFML director annually to affix the contribution rates for the coming calendar year. M.G.L. c. 175M, §§6(a), 7(e).

Pursuant to Section 8(g) of the PFMLA, the contributions "shall be treated as taxes for administration and collection purposes." Pursuant to DFML regulation 458 CMR 2.04, employers are required to remit the required contributions on a quarterly basis through

[4] Benefits to care for a new child, take care of a sick or injured service member or for the worker's own serious health condition became available on January 1, 2021. Benefits to care for a family member with serious health condition will become available on July 1, 2021. Chapter 121 of the Acts of 2018, §§33, 34.

[5] Pursuant to M.G.L. c. 175M, §6(b), self-employed individuals are responsible for making their own contributions. Section 6(d) provides that employers employing less than 25 employees in the Commonwealth are not required to pay the employer portion of premiums for family and medical leave. M.G.L. c. 175M, §6(d).

[6] Pursuant to M.G.L. c. 175M, §7, the Trust Fund is administrated by the state treasurer and the state receiver general.

[7] The 0.63% rate consisted of 0.52% for medical leave and 0.11% for family leave. The record does not reflect the split for the 0.75% rate that was in effect at the time of hearing.

the Massachusetts Department of Revenue's MassTaxConnect system. In June 2019, the DFML issued an advisory indicating that the first remittances were due on January 31, 2020.

Employer/Employee Split

It is undisputed that while the PFMLA requires the employer to *remit* 100% of required contributions to the Trust Fund, both the statute and the regulations permit, but do not mandate, that employers and workers split them. Pursuant to Section 6(c)(1) of the PFMLA, an employer "shall not deduct more than 40 percent" of the required contribution for medical leave from employee wages. Pursuant to Section 6(c)(2), "an employer may deduct not more than 100 percent of the contributions required" for family leave.

The 2020 regulations are phrased somewhat differently, but reflect the permissive nature of the deductions, stating in 458 CMR 2.05(5)(a) that, "an employer . . .*may* deduct from an employee's wages. . . up to 40% of the medical leave contribution required" and in 458 CMR 2.05(5)(b), that an employer "*may* deduct . . . up to "100% of the family leave contribution required." (Emphasis added). Based on the respective contribution percentages for medical leave and family leave, employers who deduct the maximum contribution from employee paychecks will end up contributing roughly 50% of the requisite contribution amount, with employees contributing the other 50%. Employers who do not take any employee deductions remain responsible for paying the full amount.

Concurrent Payments and Reimbursements

Section 3 of the PFMLA addresses weekly benefits amounts, and when and whether such amounts are reduced when covered individuals receive wages or some

form of wage replacement from their employer or other sources during periods when they are also receiving weekly benefits. It also provides for reimbursements to employers under certain conditions. In particular, the second paragraph of Section 3(c) provides:

> The weekly benefit amount shall not be reduced by the amount of wage replacement that an employee receives while on family or medical leave under any of the following conditions, unless the aggregate amount an employee would receive would exceed the employee's average weekly wage: (i) a temporary disability policy or program of an employer; or (ii) a paid family, or medical leave policy of an employer. If an employer makes payments to an employee during any period of family or medical leave that are equal to or more than the amount required under this section, the employer shall be reimbursed out of any benefits due or to become due from the trust fund for family or medical leave benefits for that employee covering the same period of time as the payments made by the employer.

Employer Notice Requirements

Section 4(a) of the PFMLA requires employers to post a workplace notice "prepared or approved" by the DFML explaining the benefits provided by the statute and employee rights thereunder. The PFMLA did not specify the date that the notice first had to be posted or contain any restrictions on changing the notice. As described below, the DFML initially required employers to post a notice by May 31, 2019, but in June 2019 it delayed the posting by three months to September 30, 2019.[8]

Section 4(a) also requires employers to issue to each employee, "not more than 30 days from the beginning of the employee's employment," certain written information, including the employee's and the employer's respective contribution amounts and obligations under the PFMLA.

[8] In a footnote, the Commonwealth's post-hearing brief indicates that the DFML moved the dates for providing the notice from "May 30 [sic] to June 30 and ultimately to September 30, 2019." Although there is no record support for the movement from May 30 to June 30, this explains why the DFML's June 14 notice regarding the delay did not come after the first deadline expired.

Opt-out

Section 11(a) of the PFMLA gives employers that would otherwise be covered under the Act the option of applying to the DFML for approval to meet obligations under a private plan, which must confer all of the "same rights, protections and benefits provided to employees."

Penalties

Section 4(a) of the PFMLA imposes a civil penalty of $50 per employee and, for each subsequent violation, a civil penalty of $300 per employee for an employer's failure to comply with the Section 4(a) notice requirements.

The PFMLA also imposes a monetary penalty on employers who do not make the contributions required. Pursuant to Section 8(g), "an employer. . .who fails or refuses to make contributions as required in Section 6 shall be assessed an amount equal to its total annual payroll for each year, or the fraction thereof for which it failed to comply, multiplied by the then-current annual contribution rate required under subsection (a) of said section 6 in addition to the total amounts of benefits paid to covered individuals for whom it failed to make contributions."

No Discrimination or Retaliation

The PFMLA also provides certain protections to employees. Section 9(a) makes it unlawful for any employer to retaliate against employees for exercising any right under the statute or for filing complaints or participating in proceedings. Section 9(c) creates a statutory presumption that various types of adverse employment actions constitute unlawful retaliation if the adverse actions are taken during or within six months of when employees have taken PFMLA leave or have participated in PFMLA proceedings or

inquiries. Pursuant to Section 9(d), employees may bring suit under that section in Superior Court. Remedies for such action include reinstatement and all remedies available in common law tort actions.

Collective Bargaining

Section 2(h)(1) of the PFMLA states that it "shall not . . .(ii) in any way curtail the rights, privileges, or remedy of any employee under a collective bargaining agreement or employment contract."

The Commonwealth's three collective bargaining agreements (CBAs) with NAGE were in effect from June 2017 to July 2020. All CBAs contain detailed provisions for eligible employees' accrual of paid sick leave as well as provisions for paid and unpaid parental leave, and job protected family and medical leave under the Family and Medical Leave Act (FMLA). Key differences between the benefits available under the PFMLA and the CBAs include that employees using paid sick leave under the CBAs are paid their regular salary, while employees using PFMLA leave will receive only a percentage of their salary up to a maximum of $850 a week. The CBAs do not contain comparable anti-retaliation provisions and remedies, or a presumption that any adverse actions taken during or within six months of a family or medical leave were taken in retaliation for having used the leave. The CBAs also do not provide paid or unpaid leave benefits to former employees.

FY 2020 Budget

On January 23, 2019, the Governor proposed his recommended FY 2020 budget. The budget recommendation included an appropriation of $18 million:

> For a reserve to meet the costs of the commonwealth's contribution to the Family and Employment Security Trust Fund established under section 7 of chapter 175M of the General Laws.[9]

The House and Senate versions of the bill maintained the $18 million amount, but the House version added requirements that the Secretary of Administration and Finance provide certain information about the program that the subsequent Senate version did not. The final bill, approved on July 1, 2019, approved the original $18 million appropriation, as well as the information requirements contained in the House version.

It is undisputed that the $18 million appropriation roughly equals, and was intended only to fund, the Commonwealth's share of contributions to the Trust Fund if it deducted the maximum PFMLA contribution from all Commonwealth employees' paychecks based on a 0.63% contribution rate.[10] It is also undisputed that the Governor submitted his recommend budget before any bargaining over the employees' share of PFMLA contributions between NAGE and the Commonwealth took place. When the Baker administration filed its budget request in December 2018, it had not yet conveyed to John Langan (Langan), the Director of the Office of Employee Relations, which is the department within the Commonwealth's Human Resources division responsible for overseeing collective bargaining with the statewide unions, that it was making a budget request that was intended to cover only its minimum share of contributions to the Trust

[9] This included approximately $11 million in funding for the employer's contribution for Executive Department agencies and approximately $7 million for oversight agencies for whom the Secretary of Administration and Finance is not the statutory employer under Section 1 of the Law, i.e., the courts, the UMass campuses, the Board of Higher Education, and the County Sheriffs.

[10] The appropriation did not change after the contribution rate increased to 0.75%.

Fund. Langan first learned this at some point in March 2019 from Ron Arigo (Arigo), the Commonwealth's Chief Human Resources Officer.[11]

Bargaining, Information Requests and Notices

In late 2018, NAGE and the Commonwealth began discussing and bargaining over the PFMLA. A summary of their correspondence, telephone calls, and face-to-face meetings are set forth below in chronological order.

In December 2018, McGoldrick demanded to bargain over the staffing of the DFML, but not over any other aspect of the PFMLA. That bargaining, which is not at issue in this proceeding, was ongoing as of December 2020.

January – April 2019

Sometime in March 2019, Langan telephoned Preston to give him a "heads up" to "make sure" that Preston was aware of the PFMLA. Referring to the parties' respective share of contributions to the Trust Fund, Langan told Preston that the Commonwealth intended to impose the entire "tax" on Commonwealth employees, meaning deduct the maximum PFMLA contribution amount, but that the Commonwealth was willing to meet and discuss this with NAGE. Until this point, Preston, who admittedly had not yet done a "deep dive" into the PFMLA, believed that the PFMLA applied mainly to workers who,

[11] Although Langan testified that he first learned that the Commonwealth was seeking half the contributions from employees sometime in April 2019, NAGE State Director and Chief Negotiator for Executive Branch Employees Keven Preston (Preston) testified that Langan told him during an earlier phone conversation in "March or April" that the Commonwealth intended to assess the whole tax on employees. NAGE National Executive President and Unit 6 President Theresa McGoldrick (McGoldrick) testified that Preston told her about this conversation, which resulted in NAGE's March 21, 2019 demand to bargain, discussed infra. Based on this chain of events, we find it more likely that Langan first learned that the administration intended to withhold the maximum contributions from employees at some point before March 21, 2019, and not in April, as he testified.

unlike NAGE bargaining unit members, did not have paid sick leave or similar leave benefits. Preston was thus surprised that the Commonwealth was expecting NAGE workers to contribute to the cost of benefits that he felt his membership did not need. Neither Langan nor Preston made a formal demand to bargain at this time.

Preston relayed the substance of this call to McGoldrick, who was equally surprised that the Commonwealth expected NAGE members to contribute to the cost of the benefits. McGoldrick sent a formal bargaining demand on March 21, 2019 to Langan, which stated:

> As you know, the requirement contained in chapter 121 of the Acts of 2018 regarding employer/employee [sic] contributions for Paid Medical and Family Leave take[s] effect on July 1, 2019.
>
> Pursuant to G.L. chapter 150E, NAGE hereby demands to bargain as to the share of said contributions, if any, to be borne by employees.
>
> I would appreciate it if you would propose several dates for us to begin bargaining.

Langan did not respond directly to this request. Instead, on April 29, 2019, Langan sent a letter to NAGE National President David Holway (Holway) regarding the PFMLA, which stated in pertinent part:

> I am writing to inform you about the upcoming benefits associated with [PFML] pursuant to M.G.L c. 175M, effective in 2021, and to invite you to meet to review the employer and employee contributions into the fund, which are statutorily required to commence on July 1, 2019.
>
> * * *
>
> The PFML statute sets an initial overall contribution rate of 0.63% of all wages. . .The statute then divides responsibility for paying the overall contribution between employer and employees by setting a baseline under which the employer must remit the entire 0.63% contribution to the [DFML] but may deduct from the employees' wages up to 40% of the medical leave contribution and 100% of the family leave contribution. . .
>
> The Commonwealth intends to adopt the statute's baseline provision for dividing contributions between the employer and the employees. On or

> before May 31, 2019, employers are required to provide written notice to their current workforce of PFML benefits, contribution rates, and other provisions as outlined in M.G.L. c. 175M, sec 4.
>
> Accordingly, it is imperative that we meet as soon as possible. Please provide Suzanne Quersher with your first availability either this week or next.

May – June 2019

Bargaining

At some point after receiving this letter, NAGE made another demand to bargain, and the parties met for the first time on May 13, 2019.

May 13, 2019 Bargaining Session

Suzanne Quersher (Quersher), who was then serving as the Assistant Director at the Commonwealth's Office of Employee Relations (OER), was the Commonwealth's spokesperson at this meeting. Preston, whom McGoldrick had designated to lead negotiations on this issue, represented NAGE.[12] Quersher began the meeting by going over the history of the PFMLA as part of the Grand Bargain. She also described the poster that employers were required to post, what information had to be included, and stated that employees would have to be notified before any PFML deductions could begin.[13] She indicated that the Commonwealth intended to follow the baseline split in the statute.

[12] Also attending on behalf of the Commonwealth were Matt Hale (Hale), Paula DiMichele (DiMichele), who took notes for Quersher, and Joel Boone (Boone). Other NAGE attendees included Bobbi Kaplan and John Mann. McGoldrick did not attend the May 13 meeting.

[13] Quersher stated that the poster had to be posted by June 11, but the record does not reflect where that date came from.

NAGE did not make any formal counterproposals in the meeting. Preston did, however, raise several questions and concerns that he and other NAGE representatives repeated throughout negotiations and in subsequent information requests. Their questions and concerns related to why the Commonwealth had been included as an employer; whether the Commonwealth intended to apply for an exemption, i.e., opt out of the program pursuant to Section 11(a) of the PFMLA based on the CBAs' existing leave benefits; and whether the Commonwealth would consider delaying the start date for employee contributions until bargaining was completed.

Quersher repeated that the notices had to go out by a certain date. In response to Preston's question as to whether the Commonwealth had already decided on the contribution amount, Quersher stated that it was the Commonwealth's intention to follow the "baseline" of the regulations, but that she was willing to talk. Preston asked whether this was being presented as a "fait accompli," by which he meant an announcement with no bargaining. Quersher reiterated that they wanted to talk but would adhere to the baseline. Preston questioned whether the administration would "quibble" if the Union filed a prohibited practice charge, and Quersher responded that the Commonwealth understood that the Union had a job to do.[14]

At some point during the meeting, Preston asked whether the Commonwealth could "pay all of the tax," i.e., not require any employee contributions. Quersher agreed that it could. She further agreed that employers could bargain over the amount of the

[14] These findings are based on Preston's and Quersher's testimony as well as DiMichele's notes from the May 13 meeting. Before the notes were admitted into evidence, Quersher testified that she had reviewed them and that they presented an accurate account of the May 13 discussions.

contribution. Preston's overall impression of the meeting was that although the Commonwealth agreed to talk about the contributions, it nevertheless intended to deduct the maximum employee contributions regardless of what happened during bargaining sessions because the "administration" had made this decision.[15] Preston was also frustrated by the short period of time in which to negotiate over this issue before contributions would begin, particularly since benefits would not be starting until 2021 and the parties intended to start successor contract negotiations in or around January 2020, at which point Preston believed that the PFMLA issue could be a subject of bargaining.[16]

Throughout this and subsequent bargaining sessions, the Commonwealth attempted to persuade NAGE that the PFMLA provided good benefits for NAGE bargaining unit members without any accrued leave balances, and for which the Commonwealth believed NAGE unit members should pay. NAGE was concerned that its bargaining unit members' wages were already lagging and was admittedly not inclined to agree to anything that would reduce their wages if it did not also benefit its unit members.

The parties agreed to invite DFML Director Alpine to speak at the June 11th session.

May 23, 2019 Bargaining Session

[15] At several points during his testimony, Preston opined that the "Baker Administration," including Governor Baker and the Secretary of Administration and Finance, and the DFML were essentially the same entity for purposes of seeking funding for, enforcing and interpreting the statute.

[16] As of December 15, 2020, successor negotiations were in abeyance due to the COVID-19 pandemic, but Preston testified that he expected to go back to the table soon and that PFMLA issues would be on the table, along with "any other subject that would be appropriate for bargaining."

The parties held a second bargaining session on May 23 at the NAGE offices. McGoldrick led the meeting for NAGE,[17] and Quersher spoke for the Commonwealth. NAGE president Holway was also present for the first part of the meeting but left after he spoke.

Holway began the meeting by stating that the Commonwealth should not have been part of the PFMLA and that his members would not be paying any contributions to the Trust Fund. Quersher asked whether the Union had any questions or proposals. NAGE then went through a lengthy information request, which Quersher asked for in writing. The Commonwealth could not answer many questions regarding the PFMLA but indicated either that it or Alpine would attempt to do so at the June 11, 2019 meeting. McGoldrick stated that NAGE was dissatisfied with the Commonwealth's responses to questions as to why the Commonwealth had not sought an exemption and why the Commonwealth had adopted the maximum employee contribution.[18] Quersher replied with words to the effect that the statute permitted them to do this.

At some point during this meeting, Quersher also reminded NAGE that the April 29th letter was the Commonwealth's notice of what it intended to do. While conceding that bargaining could take place over this topic, Quersher stated words to the effect that they

[17] Preston and McGoldrick both testified that Preston was not present at this meeting. Although Quersher testified that he was, we do not credit this testimony given that Preston was more likely to remember accurately whether he attended a meeting, and, particularly on cross-examination, Quersher was unable to recall many other aspects of the meetings that she led.

[18] Although NAGE's counsel questioned the Commonwealth's use of the term "baseline" to refer to the maximum contribution amount that employers could deduct from employees' wages, noting that PFMLA did not contain that term, both parties used that term during their testimony.

could talk about the statute, but the Commonwealth was not there to bargain over the amount of the contribution because the amount had already been adopted by the Commonwealth and their intention was to move forward with implementing what was stated in the April 29, 2019 notice provided to the Union.[19]

Neither party veered from their positions on employee contributions at this meeting or made proposals regarding altering the amount of the split (e.g., 60/40 or 75/25 instead of 50/50).

May 24, 2019 Information Request

As a result of what McGoldrick believed to be a dearth of specific information from the Commonwealth regarding the PFMLA at the first two bargaining sessions, and in response to Quersher's request that NAGE put its questions in writing, on May 24, 2019, McGoldrick sent Quersher a 39-question information request. The questions included:

- Why NAGE members were included under the PFMLA. (Question 1).
- Whether the Commonwealth could be exempt from PFMLA, and the exemption process, including whether the Commonwealth had done any studies to determine whether it should be exempt from the PFMLA; whether the Commonwealth had studied other ways to make its leave benefits plan commensurate with the PFMLA; the appeals process for exemption denials and whether any employers had utilized it; and what proposals other public sector unions had made to implement a private plan to exempt their members from the PFMLA. (Questions 2, 3, 4, 6).
- Questions regarding the comparative value of existing leave benefits and the PFMLA. (Question 2, 5).
- Questions seeking statistics regarding NAGE members' use of paid and unpaid leave benefits, including federal FMLA leave, catastrophic leave and parental leave, vacation leave in lieu of sick leave, and the number of NAGE members with accrued leave in excess of 20 weeks, from 2016-2019. (Questions 28, 29, 30, 31, 32, 33, 34, 35, 36).
- Contribution rate and contribution share questions, including the basis of the Commonwealth's decision to impose the maximum amount for employees' share, possible rate increases, who made the determination to

[19] This finding is based on McGoldrick's unrebutted testimony regarding this bargaining session.

change the rate or employee share; the rate the Commonwealth intended to impose for managers, non-bargaining unit employees and contractors; the Commonwealth's estimated dollar contribution to the Trust Fund by January 2021 and July 2021, and whether the Commonwealth's share of the contribution would be charged back to the agencies or funded in the future through agency operating budgets; and criteria used to make this determination. (Questions 7, 8, 12, 13, 37, 38).

- Questions concerning the interaction between sick leave, the Commonwealth's Extended Illness Leave Bank (EILB), short term or long term disability and the PFMLA and additional questions regarding existing and future EILB benefits. (Questions 20, 21, 22, 23,24 25, 26).
- Questions regarding various PFMLA processes, including the application process, acknowledgement form, denials, appeals, and necessary medical information. (Questions 13, 14, 15, 16, 17, 18, 19, 20, 39).
- Questions regarding the composition of the DFML, including its steering committee and a list of all staff. (Question 9, 10,11).

At some point before the June 11 bargaining session, Quersher provided "preliminary responses," including suggesting that twelve of the questions (6, 7, 8, 11, 13-20) would be good to bring up with Alpine on June 11, asking why requests regarding the DFML steering committee were "relevant and reasonably necessary," and asking what NAGE meant by "independent agencies" in twelve different questions. McGoldrick's response indicated that it was acceptable for Alpine to answer some questions provided "there are answers to these questions already and we would like the responses . . . reduced to writing after the meeting." McGoldrick also answered the other two questions.

June 11, 2019 Bargaining Session[20]

The parties held two meetings on June 11, 2019 - one to discuss the DFML staffing issues, and the other to continue discussing the PFMLA. Quersher and Preston attended the PFMLA meeting, along with Alpine, who attempted to answer many of NAGE's

[20] The record does not reflect who was at this meeting other than Preston, Quersher and Alpine.

questions regarding such things as opting out due to a private plan. Alpine explained that in order to qualify for opting out, the private plan had to be as good or better in every respect than what the PFMLA offered.

At that meeting, Preston specifically asked the Commonwealth's representatives whether they had the authority to bargain over the contribution or to agree to anything other than what they said that they were going to do with the contribution. The representatives said no.[21]

For the first time at this meeting, Preston raised the issue of whether NAGE members would be able to use their sick leave benefits in conjunction with PFMLA benefits. Preston believed that this would be one favorable aspect of the PFMLA if it operated the way the Workers' Compensation statute did, i.e., by allowing workers to combine their use of statutory leave with accrued sick leave, as a means of getting a full day's pay without "burning" up all of their accrued sick leave. Alpine did not have a clear answer on this point at this meeting.

June 14, 2019 Delay Notice

[21] We credit Preston's testimony on this point as it is unrebutted. Quersher did not deny making this statement; instead, like many of her responses on cross-examination, she testified that she did not "recall" stating that she had no authority to bargain. That the Commonwealth's representatives recognized that they had no authority to agree to anything other than the maximum contribution also explains why the Commonwealth never made a proposal, that, if accepted, would have changed the employee contribution rate, nor did it agree to any of the Union's proposals that would have resulted in bargaining unit members contributing anything less than the maximum cash amount to the PFMLA.

On June 14, 2019, the DFML posted a notice on the "mass.gov" website titled "Notice to Massachusetts Employers about PFML delay."[22] The notice stated in part:

> The Massachusetts Legislature and the Baker-Polito Administration have enacted legislation to delay the start of employer and employee contributions to the [PFML] by three months to October 1, 2019.
>
> The delay will allow employers across the Commonwealth more time to prepare their organizations and workforces for PFML. . . .
>
> **Required Withholding Now Starts October 1**
>
> The start date for required PFML contributions is now October 1, 2019. On that date, employers must begin withholding PFML contributions from employee qualifying earnings. Employers will be responsible for remitting employee and (if applicable) employer contributions for the October 1 to December 31 quarter through MassTaxConnect by January 31, 2020.
>
> **Contribution Rate Change**
>
> The PFML law requires that the [DFML] adjust the contribution rate to offset the shorter period for collections that will result from the three-month delay. As a result, the total contribution rate has been adjusted from 0.63% to 0.75% of employee qualifying earnings. This adjustment will ensure that full funding will be in place for the commencement of benefit payments in January 2021.
>
> **Timeline Extended for Required Employee Notices**
>
> Employers now have until September 30, 2019 to notify all covered individuals of their rights and obligations under PFML. . .
>
> **Timeline Extended for Opt-out Applications**
>
> Employers that offer paid leave benefits that are at least as generous as those required under the PFML law may apply to the Department for an exemption from making contributions. Employers will have until December 20, 2019, to apply for an exemption that will excuse them from their obligations to remit contributions for the full period commencing with the October 1 start date.

[22] Although the notice was posted on June 14, 2019, Preston was aware by the June 11 bargaining session that the Legislature was planning to pass legislation delaying the start of employer and employee contributions by three months.

PFML Regulations Will be Final and Effective on July 1, 2019

> The final regulations will be posted on the [DFML] website . . .on Monday, June 17, 2019.

May – June Information Requests and Response

On June 24, 2019, [23] Quersher provided a question-by-question written response to McGoldrick's May information request. In response to questions regarding why NAGE unit members were covered under the PFMLA, the Commonwealth reiterated that NAGE members were subject to the PFMLA under that statute's terms. Further, because they were beneficiaries of the law, they should share the cost. The Commonwealth indicated that it had not conducted the studies and analyses or tracked the information that NAGE asked for questions 2, 3, 5, 21, 26, 29, or 33. It provided answers to several questions regarding NAGE members' historical leave usage, but, for several questions, only for 2018 and not for 2016-2017, as requested. With respect to NAGE's various questions requesting details about the PFMLA's operations and processes, Quersher's responses indicated that Alpine had covered that information in his June 11, 2019 information session. As set forth below, McGoldrick was not satisfied with most of these responses.[24]

Leave in Lieu of Deductions

During a telephone call with Langan on some unspecified date between June 11 and late July, Preston told Langan that NAGE members would be willing to make a leave

[23] A fourth meeting had been scheduled toward the end of June at which Quersher planned to present her response to the information request, but it was cancelled a few days before.

[24] NAGE did not file an unfair labor practice charge over the information requests.

contribution in lieu of a cash contribution.[25] Although he could not say how much leave they would be willing to contribute because there were still many unanswered questions regarding the overall value of the PFMLA benefit,[26] Preston asked Langan if he would check with his "principals" to see if they would be amenable to this idea. Langan did as Preston asked and told Preston sometime in late July that the administration was not interested in anything other than a cash contribution to the fund.[27]

July 2019

In July 2019, the DFML issued its first set of "final regulations."[28] Among other things, these regulations clarified for the first time that the DFML would not permit workers

[25] Preston testified that this was not his own idea but that it came from a legislative director who did a quick calculation and concluded that one day's pay was equivalent to the 50% employee contribution.

[26] Preston admitted that this was not a "complete offer" but that the offer was nonetheless "firm" to the extent that NAGE was willing to make a leave contribution of some sort.

[27] There was conflicting testimony between Preston and Langan as to whether this suggestion was made on- or off-the-record; however, we need not resolve this dispute. A central issue before us is whether the parties reached an impasse in their negotiations over employee PFMLA contribution amounts and, therefore, evidence that Preston made the offer regardless of whether such offer was on- or off-the record, in an attempt to resolve the parties' differences on PFMLA contributions is proper evidence for us to consider. Commonwealth of Massachusetts, 8 MLC 1978, 1979, n. 3, SUP-2497 (March 22, 1982) (CERB rejecting Commonwealth's objection to testimony concerning occurrence and content of "informal" or "off-the- record" bargaining sessions because "…the introduction of evidence on the existence of informal meetings – and therefore the parties' continuing efforts to reach agreement – was proper.") *aff'd sub nom.* Massachusetts Organization of State Engineers and Scientists v. Labor Relations Commission, 389 Mass. 920 (1983). We do note, however, that Preston's August 28th email to Langan, described *infra,* references a "possible in-kind contribution," possibly lending some force to Preston's testimony that this offer, while incomplete, was not off-the-record.

[28] The parties jointly submitted two "final" versions of the DFML regulations – one effective July 2019 and another effective July 2020. We take administrative notice that the DFML

to receive paid sick leave benefits and PFMLA benefits at the same time; rather, workers who had been approved for PFMLA benefits would have to choose between the two. 458 CMR 2.12(8)(a). With respect to reimbursements, the final paragraph of Section 2.12(6) essentially tracked the above-quoted language of Section 3(c) of the PFMLA.

August 15, 2019 Bargaining Session

Preston and Langan led negotiations on behalf of NAGE and the Commonwealth at this meeting.[29] At various points during this session, Preston and McGoldrick reiterated points that NAGE had previously made about the contribution rate being presented as a fait accompli, complained that the Commonwealth had not fully answered its information requests, and questioned why the Commonwealth could not delay its withholding from NAGE members' wages until bargaining was complete.

Both parties, however, also made several new points. Preston expressed anger that the final regulations prohibiting concurrent payments of paid sick leave and PFMLA benefits were contrary to the statute.[30] Also, having heard from Alpine as to how difficult

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also issued updated regulations on December 21, 2020, after the hearing in this matter concluded.

[29] Shortly after this meeting, Quersher assumed another position within the Commonwealth, and Langan took over as lead negotiator for the Commonwealth.

[30] As noted above, Preston contended during his testimony that that the "Baker Administration" and the DFML were essentially the same entity for various purposes, including for purposes of drafting the regulations and guidances. Although the Commonwealth outlines valid differences between the three entities in its post-hearing brief, Langan's testimony was consistent with Preston's at least with respect to DFML regulations. Langan testified that although the DFML issued the regulations, they were nevertheless "subject to direction" by the Secretary of Administration and Finance and the Governor's office. While conceding that this was not stated in Chapter 175M, Langan indicated that the Commonwealth has a cabinet system, and "that's how the Executive Branch works."

it would be for the Commonwealth to get an exemption based on NAGE members' existing leave benefits, and believing that there would be insufficient time before the October 1 implementation date to negotiate new benefits that would permit an exemption, Preston also asked whether the administration would support efforts by it and other state unions to exempt the Commonwealth from the PFMLA's coverage, i.e., a legislative solution to the opt-out difficulties outlined by Alpine. The record does not reflect any response from the Commonwealth as to this point. At some point, Preston also suggested that if the Commonwealth could allow more teleworking as a way of saving money on office space. Preston opined that this could be a "good tradeoff."

Preston also discussed the reimbursement provision in the statute. By using a hypothetical example based on his understanding of this provision, Preston contended that the Commonwealth "stood to make money" from implementing the 50/50 split, and he thought that this was a "scandal." At that point, Langan made a proposal - that the Commonwealth would split any reimbursements it received pursuant to this provision with the Union "50/50" and would "put the money into some sort of fund [and/or] do some sort of program." At the time that Langan made the proposal he believed, but did not know for certain, that the reimbursement would include accrued sick leave payments and thus, in his words, "would be a very, very good way of trying to solve the issue of the Union's concern that they are paying the full employee contribution." The Union did not make a counterproposal during or after this meeting because it did not know for certain what it was actually worth to its members until around January 2020.[31]

[31] Langan's notes from this meeting also reflect that the Union accused the Commonwealth of engaging in regressive bargaining. Langan testified that this referred

Other State Employers' Contributions

After these meetings, McGoldrick met with officials from the Attorney General's Office, the Treasurer, and the State Auditor's office and confirmed that these constitutional offices would not be deducting PFMLA contributions from their employees' paychecks.[32]

August 28 – September 12 Email Chain

On August 28, 2019, Preston sent an email to Langan seeking to confirm his beliefs that the July 2019 regulations promulgated by the DFML significantly reduced the value of two provisions in the PFMLA that Preston had thought might actually cause the statute to have some value for his members. Preston reiterated what he told Langan on August 15 – that the DFML regulations regarding concurrent use of PFMLA and other paid leave were contrary to the statute, adding, "I can't imagine how we can be expected to consider any financial or possible in kind contribution to fund the PFMLA until the conflict between the law and the regulations is satisfactorily resolved."

Preston also indicated that while he had initially believed that the Commonwealth's offer to split those reimbursements 50/50 would have had some value, the new DFML regulations did not include a provision for such payments, thereby rendering the

to Preston learning that the Commonwealth planned to make the first deductions from paychecks issued after October 1, but the notes, as well as McGoldrick's and Preston's testimony, suggest that "regressive bargaining" also referred to the issuance of the July 2019 regulation that prohibited employees from using PFMLA leave in conjunction with paid sick leave. Regardless, the CERB takes administrative notice that NAGE has not filed any prohibited practice charges with the DLR alleging that the Commonwealth has engaged in regressive bargaining.

[32] The record also reflects that the Legislature, the Secretary of State's Office, and some Sheriff's offices also assumed the full share of PFMLA contributions for its employees.

Commonwealth's offer "essentially valueless." Preston asked Langan to confirm this. He concluded his letter by stating that "NAGE would see any unilateral action by the employer to impose fees on employees prior to conclusion of negotiations to be a violation of Chapter 150E."

Langan replied to Preston's letter on September 4, 2019. Referencing information that he had recently provided to NAGE in response to an information request, Langan disagreed that the PFMLA was not of limited value to NAGE members – rather it had "the potential to provide significant value to employees who have little paid sick time available to them."[33] Referencing 458 CMR 2.12(5), Langan also refuted Preston's claim that the regulations did not provide for reimbursement. Langan reminded Preston about the Commonwealth's proposal to split reimbursements, adding that "while we will certainly continue to meet and discuss the potential utilization and distribution of these reimbursements, we look forward to any counterproposal from NAGE on this subject."

Preston replied to this email on September 10 as follows:

> Thanks for your response. You haven't responded, however, to my main question, which was whether the DFML (or the Commonwealth) intend(s) to prohibit employees from blending their PFMLA and sick leave benefits (as in the worker's comp model). The law clearly authorizes this, but the regulations seem to prohibit it.
>
> I don't think we can assess the value of this plan to our members until we get the answer to this. It is also impossible to assess the value of your offer as well. I'd suggest that you invite DFML officials to our next session so we can get answers.

[33] On August 29, 2019, Langan emailed Preston with information that NAGE requested at the August 15 meeting regarding the number of paid and unpaid FMLA hours for NAGE Executive Department members in 2017 and 2018 and the total number of parental leave hours in 2018. Langan attached a spreadsheet showing, among other things, that in 2018, 1,701 employees took a total average of 303,700 paid leave hours and 88,277 unpaid hours.

> I'll be out on medical leave for a week or two, but could you send some possible meeting dates for the end of the month.

Langan replied to Preston on September 12, 2019, with copies to McGoldrick and other NAGE representatives as follows:

> The guidance we received from the DFML on the question outlined below is consistent [with] its regulations. Specifically, employees will not be able to augment the PFMLA with accrued sick leave benefits provided under a collective bargaining agreement. This position has been communicated to us as recently as this week by the Department.
>
> We are available to meet as soon as you return from your leave. . . .

Langan offered September 24, 26 or 27th for bargaining dates and stated that he looked "forward to hearing from you and for any counter proposal from NAGE on this subject."

August 30, 2019 Notice

On August 30, 2019, Langan sent an email to Preston, McGoldrick and two other NAGE representatives reminding them that the Commonwealth was required by Law to send PFMLA notices to employees. The email included the draft notice that the Commonwealth intended to send to Commonwealth employees on September 10, 2019 regarding their PFMLA benefits and "required contributions." Once again, Langan stated, "If you have any questions, please do not hesitate to contact me."

Based on a DFML template, the notice was formatted as a letter on Human Resources Division letterhead, with blank fields for name, address, employee record number, etc. The notice first stated that, "[l]ike all employers in Massachusetts, the Commonwealth is required to participate in the PFMLA program." It then explained that, on or before September 30, 2019, the employee was required to either acknowledge or

refuse receipt of the letter, using the methods described therein. It provided a summary of the PFMLA, indicating, among other things, that, "On October 1, 2019, contributions to the [DFML Trust Fund] will begin on wages paid after that date." Regarding contributions, the notice stated:

> - As your employer, the Commonwealth of Massachusetts will pay approximately half of the .75% total contribution, which means that your contribution will be the remaining half, or 0.3788% of your wages. This means that for every $100 you earn, approximately $.38 will be deducted for your half of the contribution rate.

Timing of Payroll Deductions

On September 4, 2019, Langan sent a letter to Preston and McGoldrick informing them that, because the October 4th paycheck occurred *after* the October 1, 2019 effective date, the "DFML has concluded that deductions must be taken from the October 4, 2019 paycheck." Langan attached the DFML update containing this information. Until this update, both NAGE and the Commonwealth believed that the withholdings would apply only to wages *earned* after October 1, 2019, not to wages *paid* after that date.[34]

NAGE Press Release

Also on September 4, 2019, NAGE issued the following press release:

> **NAGE Calls on Governor Baker to Halt Plan to Tax State Workers for Leave Program**
>
> After months of fruitless negotiations over the implementation of the new [PFMLA], NAGE National President David Holway has called on Governor Baker to cease and desist with his administration's plan to tax state employees for a program that they may never be able to utilize.
>
> "The Legislature took steps to meet a critical need for working families in the state and I commend them for the work they did," said Holway. "However, the Governor's interpretation of the program and the state's

[34] As noted above, NAGE believed that beginning the deductions on October 4, 2019 constituted regressive bargaining but opted not to file a prohibited practice charge.

> obligation to fund it have taken a drastic departure from the law's original intent."
>
> In anticipation of the new PFML program and the state's obligation to bargain over it with NAGE, the Union filed a demand to bargain in order to begin addressing any potential impact on NAGE members. Since the law specifically exempts employers who provide leave benefits equal to the law, NAGE's firm position is that our members should be exempt from the program and potential tax implications.
>
> According to Governor Baker's Office of Employee Relations, the Baker Administration is planning to bill the new program for Family and Leave that his employees take, which in effect is fleecing the fund and probably will mean that the Administration's contribution to the fund will be returned if not more.
>
> "Our 'no taxes' Governor has refused to negotiate in good faith and seems hell bent on unilaterally implementing his plan to begin collecting .3788% from his employees' paychecks on October 1, 2019, which in some cases amounts to over $300 per year. With a surplus of $1.9 billion in fiscal year 2019 and revenue up 6% over last July, it's unconscionable that the Governor would squeeze his employees further for a program they will never use," states Holway.
>
> Governor Baker's actions are outrageous and further illustrate that when it comes to his ability to manage State Government. . . 'the Emperor has no clothes.' . . . I'm here to tell the Governor that his time is up, and we will do everything we can to hold him and his team accountable to his employees and the taxpayers of the Commonwealth."

October 2, 2019 Bargaining Session

This was the parties' final bargaining session. Preston, McGoldrick, Kaplan, Chris Cook, and NAGE attorney Caroline O'Brien were present on behalf of NAGE. Langan was again the Commonwealth's spokesperson. Alpine also attended and spoke. Preston reiterated the two points he had made in his August 28 email regarding reimbursements and concurrent payments. Preston also requested information regarding the assumptions that the administration had made when it submitted its budget request, and whether in formulating the original 0.63% contribution rate, the DFML had factored in reimbursing

employers for paid sick leave. Alpine indicated that he would look into it, but that this was part of the Grand Bargain. McGoldrick reiterated that many of the information requests that she had made in May were still outstanding, including, in particular, questions regarding what would happen if benefits were denied. Alpine did not answer these questions to McGoldrick's satisfaction. Preston also objected to the contributions being imposed upon wages earned before October 1.

In response to Preston's assertion that the DFML regulations prohibiting concurrent leave use conflicted with the PFMLA, Alpine indicated that he had no explanation but that the courts would have to decide who was right.

Alpine also did not provide a definitive answer when questioned whether the DFML would reimburse employers for sick leave payments.[35] The meeting ended without the parties reaching agreement or either party declaring impasse on the contributions issue.

On October 3, 2019, the Union filed this charge at the DLR.

Starting with the October 4, 2019 paychecks, the Commonwealth began withholding PFMLA contributions in accordance with the various notices and letters it sent to employees in September 2019.

November – December 2019 Email Chain Regarding Information Requests

On November 25, 2019, McGoldrick sent an email to Langan reiterating her belief that many responses to NAGE's May 2019 information request were still outstanding.

[35] Preston testified that Alpine's statements at the October 2 meeting regarding whether the DFML would reimburse employers for sick leave payments led him to believe that this would be unlikely, but that this did not become official until several months later. Langan indicated that Alpine was clear that reimbursements would include parental leave but was "less clear" as to whether it would include sick time. According to Langan's notes, Alpine indicated that the issue had not "landed" yet. As indicated below, it was not until January 2020 that the DMFL announced that sick leave payments would not be reimbursable.

Langan responded on November 26, 2019, stating his belief that Quersher had answered the request on June 24, 2019, and noting that NAGE had since made a number of requests, which Langan claimed had also been answered. Langan concluded with his standard final sentence – that the Commonwealth remained willing to meet on the issue and would provide all necessary information requested by NAGE. McGoldrick responded on November 27 stating that out of the 39 requests, the Commonwealth had only fully responded to Questions 7, 9 and 39, provided partial responses with Excel spreadsheets to five others questions (30, 31, 32, 33, 36), but had not responded to the remaining 31 questions.

McGoldrick and Langan exchanged emails on December 5 and December 12, with both ultimately disagreeing that the Commonwealth had responded in full, as Langan indicated, but with Langan again indicating that the Commonwealth was willing to meet regarding the answers and to discuss additional questions. The record does not reflect a response from the Union or any further meetings between the parties regarding this issue or the PFMLA generally. NAGE never directly sought answers from the DFML regarding what it believed were outstanding information requests.

2020

In January 2020, the DFML announced that reimbursable amounts under Section 3(c) of the PFMLA would not include payments of accrued paid time off. This announcement was memorialized in the updated 2020 regulations, which were issued on July 24, 2020. Section 2.12(9) states in pertinent part:

> Employers and covered business entitles will not be eligible for reimbursement from the [DFML] for payments to a covered individual where the covered individual has elected to utilize accrued paid leave whether it is

> in *lieu* of applying for benefits to the Department or supplementary to a temporary disability program or program of an employer . . .

Opinion[36]

A public employer violates Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law when it unilaterally alters a condition of employment involving a mandatory subject of bargaining without first giving its employees' exclusive collective bargaining representative notice and an opportunity to bargain over the change to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983). If, however, an employer can demonstrate that exigent circumstances beyond its control required it to implement the proposed change by a particular date, sets a reasonable deadline to complete bargaining, and bargains in good faith until that date but does not reach resolution or impasse, it may implement the change and engage in post-implementation bargaining without running afoul of its bargaining obligations under the Law. Secretary of Administration and Finance v. Commonwealth Employment Relations Board, 74 Mass. App. Ct. 91, 98 (2009); City of New Bedford, 38 MLC 239, 251, MUP-09-5581, MUP-09-5599 (April 3, 2012) *aff'd sub. nom*. City of New Bedford v. Commonwealth Employment Relations Board, slip op., A.C. No. 15-P-1 (unpublished order pursuant to Rule 1:28, August 26, 2016); Town of Westborough, 25 MLC 81, 87, MUP-9779, MUP-9892 (June 30, 1997). Wages and withholdings that affect those wages are mandatory subjects of bargaining. Secretary of Administration and Finance, 74 Mass. at 94; see generally, M.G. L. c. 150E, §6.

[36] The CERB's jurisdiction is not contested.

The question before the CERB is whether the Commonwealth made an unlawful unilateral change when it began deducting the maximum employee contribution permitted under the PFMLA from NAGE unit members' October 4, 2019 paychecks. The Commonwealth justifies its October 1 implementation on two main grounds – that the parties were at impasse when the deductions began, and that exigent circumstances permitted implementation of the maximum contribution on October 1. A common thread running through both arguments is that the Union did not bargain in good faith over the contribution amount, thereby, in the Commonwealth's words, "obliterat[ing] any allegations the Union could make attributing bad faith to the Commonwealth." We are not persuaded by these arguments for the reasons set forth below.

Our analysis rests on two undisputed principles. First, as Chapter 175M, the DFML's regulations, and the actions taken by other constitutional offices such as the Attorney General's office and the Legislature reflects, the PFMLA permits, but does not mandate, that employers deduct any PFMLA contributions from employees' wages. Second, because such deductions clearly impact NAGE unit members' wages, a mandatory subject of bargaining, then absent resolution, impasse or exigent circumstances, as defined above, the Commonwealth could not start withholding PFML contributions from employees' paychecks without running afoul of its bargaining obligation. Town of Westborough, 25 MLC at 87.

We first consider whether the parties were at impasse. In cases where the parties have reached an impasse in negotiations, a unilateral change by an employer on an issue under negotiation will not be deemed a violation, provided that the change is consistent with the position previously adopted by the employer and communicated to the union.

City of Peabody, 9 MLC 1447, 1449, MUP-4750, MUP-4767 (November 17, 1982). In assessing whether an impasse has been reached, the CERB looks to the totality of the circumstances surrounding the negotiations. Commonwealth of Massachusetts, 8 MLC 1499, 1513, SUP-2508 (November 10, 1981). Impasse in negotiations occurs only when "both parties have negotiated in good faith on all bargainable issues to the point where it is clear that further negotiations would be fruitless because the parties are deadlocked." Everett School Committee, 43 MLC 55, 58, MUP-09-5665 (August 31, 2016) (quoting Town of Plymouth, 26 MLC 222, 223, MUP-1465 (June 7, 2000)). Parties to negotiations must bargain with an open and fair mind, have a sincere purpose to find a basis of agreement, and make reasonable efforts to compromise their differences. Town of Braintree, 8 MLC 1193, 1196, MUPL-2363 (July 1,1981); King Philip Regional School Committee, 2 MLC 1393, 1396, MUP-2125 (February 18, 1976). The ultimate test of whether impasse has been reached is whether there is a likelihood of further movement by either side and whether the parties have exhausted all possibilities of compromise. Everett School Committee, 43 MLC at 58 (citing City of Boston, 28 MLC 175, 184, MUP-1087 (November 21, 2001)).

Applying these factors to the case before us, we find that the parties were not at impasse as of October 4, 2019. First, by time of the final bargaining session, when the Commonwealth had made clear that implementation was imminent, there was still one proposal on the table - the Commonwealth's proposal to evenly split reimbursements with the Union. Both Preston and Langan agreed that, had those reimbursements included the Commonwealth's costs for sick leave payments, this would have been, in Langan's words, a " very, very good way of trying to solve the issue of the Union's concern that they

are paying the full employee contribution" and, implicitly, the Commonwealth's insistence on their paying the full contribution. However, as of October 2, 2019, Alpine could not tell Preston with any certainty whether accrued sick leave payments would be part of those reimbursements. As a result, Preston had no way of valuing this proposal and reasonably did not feel he was in any position either to accept it or make a counterproposal. With that proposal still on the table, and the Union still waiting for the information that it needed to evaluate it, we decline to find that the parties were deadlocked with no hope of future movement at the time of implementation. See City of Boston, 28 MLC 175, 185, MUP-1087 (November 21, 2001) (finding that parties were at impasse based in part on lack of outstanding information requests and proposals).

We disagree with the Commonwealth that the Union's conduct during bargaining justified the unilateral implementation here. Thus, although the Commonwealth contends that the Union was the party with the fixed position who made no counterproposals, we view Holway's May 23 announcement that NAGE members would not contribute to the PFMLA as a response to the Commonwealth's April 29 announcement (which Quersher characterized as a "proposal") that they would. The Commonwealth made no effort to counter these announcements by, for example, proposing that bargaining unit members pay some amount less than 50% of the required contribution.

Moreover, even after Holway made his strongly-worded statements, the Union continued to meet with the Commonwealth and, based on its continued request to delay implementation, likely would have met again had the Commonwealth not implemented the deductions in October.

The Commonwealth does not deny its conduct – instead, it correctly points out that Section 6 of the Law does not require parties to make concessions or reach agreement. The Law does, however, require parties to enter into negotiations with an open and fair mind. Taunton School Committee, 28 MLC 378, 391, MUP-1632 (June 13, 2002); Commonwealth of Massachusetts, 8 MLC at 1510. Despite admitting that it *could* have bargained over the contribution amount, and its professed willingness to "talk," viewed in their totality, the Commonwealth's statements and conduct throughout negotiations, including its negotiators' statements to the effect that they were not there to bargain over the amount and that they had no authority to do so, demonstrate that the Commonwealth did not enter bargaining with an open mind and fair mind, in violation of the good faith bargaining obligation. Taunton School Committee, 28 MLC at 391. Its proposal regarding reimbursements doesn't alter our conclusion as that was more in the nature of an impact bargaining proposal, designed to ameliorate the economic effects of the contributions without changing its decision to impose the maximum amount. Where, as here, an employer had a duty to bargain over both the decision and the impacts of a decision, an employer that is only willing to bargain over the impacts has not satisfied its good faith bargaining obligation. City of New Bedford, 38 MLC at 250.

None of the Commonwealth's claims that the Union bargained in bad faith has merit, particularly since much of what the Commonwealth characterizes as bad faith were efforts on the Union's part to reach agreement notwithstanding the Commonwealth's steadfast position on requiring employee contributions. To this end, we will not fault the Union for exploring scenarios in which the Commonwealth might not be obliged to make any contributions at all, e.g., whether it could opt-out from the PFMLA or be open to a

legislative solution. Nor do we consider the Union's questions or comments regarding what it deemed to be conflicts between the statute and the regulations to be in bad faith. The Union viewed the ability to use PFMLA and accrued leave benefits concurrently as a path to resolving the parties' differences over the amount of contribution. With no explanation for the DFML's interpretation that sick leave and PFML leave could not be used concurrently, other than the "courts would have to decide who is right," the Union cannot be faulted for challenging or refusing to accept the DFML's interpretation, especially since both the Union and Langan viewed the regulations as being subject to the direction of the Baker administration, including the Secretary of Administration and Finance, who is the statutory employer here.

Finally, we will not attribute any bad faith to NAGE for not reaching out directly to the DFML for answers to its questions regarding various PFMLA processes or interpretation. First, to its credit, the Commonwealth made Alpine available on two occasions during which NAGE did have the opportunity to question Alpine directly. Second, where the Law requires employers to provide relevant and reasonably necessary information to unions regardless of whether it is available from other sources, see, e.g., Commonwealth of Massachusetts, 12 MLC 1590, 1598, SUP-2619, SUP-2638 (January 31, 1986), the Union's decision to request certain information about the PFMLA from the Commonwealth instead of directly from the DFML is not indicative of bad faith bargaining. See generally City of Boston v. Commonwealth Employment Relations Board, 453 Mass. 389, 401 (2009) (Union has a right to request information from employer that may assist it in formulating reasonable counterproposals).

In sum, we find no basis to conclude that the Union bargained in bad faith during these negotiations. Rather, based on the possibility of further movement due to the Union's unanswered questions regarding employer reimbursements and in light of the Commonwealth's unwavering stance that bargaining unit members contribute the maximum PFMLA contribution, we decline to find that the parties were at impasse when the Commonwealth implemented those contributions. We turn therefore to consider whether there is merit to the Commonwealth's argument that exigent circumstances justified the timing of the implementation.

Exigency

To succeed on its exigency defense, the Commonwealth must establish that: 1) circumstances beyond its control required the imposition of a deadline for negotiations; 2) the Union was notified of those circumstances and the deadline; and 3) that the deadline imposed was reasonable and necessary. City of New Bedford, 38 MLC at 251. For the following reasons, we find that the Commonwealth has not met these requirements.

The Commonwealth claims that two mandates in the PFMLA, the posting and notice provisions set forth in Section 4(a), and the deadlines for commencing PFMLA contributions, along with the associated penalties for failing to comply with those mandates, justified the deadline it imposed for negotiations. With respect to notices, it is true that in June 2019, the DFML required the Commonwealth to post a notice setting forth the contribution rate by September 30, 2019. However, the Commonwealth points to nothing in the PFMLA, the regulations, or the DFML notifications that prevents an employer from changing its contribution rate after posting the notice. When the parties

had not negotiated to resolution or impasse by September 30, 2019, the Commonwealth could have posted a notice informing employees that it would be paying the employees' full share of contributions, but that this was subject to change. We thus disagree that the deadline for posting the notice was a circumstance beyond the Commonwealth's control that justified its setting the same deadline for implementing its decision to impose the maximum contribution.

The Commonwealth's argument that the October 1 deadline for commencing contributions justified implementation also fails for the simple and undisputed reason that the PFMLA does not mandate any deductions from employees' wages to fund PFMLA benefits. The facts of this case are thus different from Holliston School Committee, 23 MLC 211, MUP-1300 (March 27, 1997), where the CERB held that the employer could lawfully set a deadline for concluding bargaining over increasing the length of the school day because the deadline was based on a regulatory mandate by the Department of Education that required an adjustment to meet amended standards for learning time for the 1995-1996 school year. Id. at 213. In the absence of a similar statutory or regulatory mandate here for employee payroll deductions, Holliston is inapposite.

The CERB's decision in Town of Westborough, supra, further illustrates this point. There, the CERB considered whether the town was justified in setting a deadline for implementing a proposal to consolidate certain health plans and to change premium contributions rates for the remaining plans. The CERB held that Blue Cross's decision to cancel certain health insurance coverage by the end of the year constituted circumstances beyond the town's control that justified its setting a deadline to complete negotiations over the consolidation proposal. 25 MLC at 88-89. Critical to this case,

however, the CERB found that there were "no comparable pressures that dictated a deadline for bargaining over premium contribution rates for the remaining health plans." Id. The CERB thus concluded that the town was required to bargain to resolution or impasse before implementing its proposal to set premium contribution rates. Id. Based on the absence of any statutory mandate for employee PFMLA contributions, we reach the same conclusion and thus agree with the Union that the Commonwealth could have paid the full amount owed to the Trust Fund until bargaining concluded.[37]

The Commonwealth makes several arguments as to why it could not do so. It first posits that "it is a well-established principle of tax law that the payment of a tax on another's behalf results in additional taxable income to the individuals upon whose behalf the tax is paid."[38] The Commonwealth thus argues that because the PFMLA established a tax split between employers and employees, the October 1 deadline had an impact on employees regardless of whether the Commonwealth paid for the employee contribution.

This argument fails for two reasons. First, according to a footnote in the Commonwealth's brief, the DFML has requested, but not yet received, guidance from the Internal Revenue Service on this issue. Although the Commonwealth claims it has no reason to assume that the "prevailing guidance" would not apply, the uncertainty surrounding the tax issue precludes a finding that the potential tax consequences of the Commonwealth paying 100% of PFMLA contributions constituted circumstances beyond

[37] In so holding we do not reach the issue of whether the Commonwealth could lawfully have set a deadline for concluding bargaining as of January 31, 2020, the date that its first payments to the Trust Fund were due.

[38] The Commonwealth cites Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929) for this proposition.

its control that warranted making employee deductions as of October 1.[39] Second, even assuming that potential tax consequences constituted circumstances beyond the Commonwealth's control that justified implementation, the Commonwealth has presented no evidence showing that it ever communicated these specific concerns to NAGE as justification for the October 1 deadline, as it was required to do under the second element of the exigency test. See City of New Bedford, 38 MLC at 251. For both reasons, we reject the Commonwealth's tax-based defenses to its conduct.

The Commonwealth next argues that the lack of funding for employee contributions in the existing budget appropriation approved by the Legislature presented circumstances beyond its control that justified imposition of the deadline. In a footnote in its brief, however, the Commonwealth explains that the Governor's proposal for a budget in January 2019, before the parties commenced bargaining, did not foreclose future requests for funding in the event that such bargaining produced a need.[40] Although we

[39] If we were to hold otherwise, it would be tantamount to deeming the withholdings mandatory based on the mere possibility that employees could be taxed if the withholdings were *not* made. This could not have been what the Legislature intended.

[40] For this reason, we reject the Union's argument that the Governor's submitting the proposal for only half the amount before bargaining began violated the Law. It is not a per se violation of the Law for an employer to give a union notice and an opportunity to bargain after the budget process is complete. Rather, in cases where, as here, bargaining does not begin until after a budget is formulated, the CERB looks at the record to determine whether meaningful bargaining could nevertheless still take place or whether the employer has committed to a course of action. Everett School Committee, 43 MLC at 58 (citing Town of Weymouth, 40 MLC 253, 254, MUP-10-6020 (March 10, 2014) (additional citations omitted)). Based on the Commonwealth's representations as to the ability of the Commonwealth to seek supplemental funding and the frequency with which this occurs, the budget proposed by the Governor and approved by the Legislature does not, standing alone, demonstrate that the Commonwealth had committed to a course of action as of January 2019.

recognize that such requests for supplemental appropriations may not have been funded, the same may be said for every request for an appropriation to fund a collectively-bargained agreement. See generally, M.G.L. c. 150E, §7(b). In addition, the Commonwealth did not have to actually remit any contributions to MassTaxConnect until January 31, 2020, and thus the lack of funding in its budget for employee contributions as of October 1, 2019 did not justify setting October 1, 2019 as the date for concluding bargaining.

The Commonwealth finally contends that imposing a deadline to negotiate over the amount of contributions was reasonable in light of the Union's conduct during negotiations. Having found that the Union did not bargain in bad faith, we reject these arguments for all the reasons set forth above. Moreover, because we have found that circumstances beyond the Commonwealth's control did not require immediate action, we further find that the Union did not act in bad faith when it did not respond to the Commonwealth's offer to meet again in November and December 2019. See City of Newton, 35 MLC 296, 298, MUP-04-4294 (May 27, 1999) (post-implementation bargaining does not satisfy an employer's bargaining obligation in the absence of any evidence that circumstances beyond the employer's control required immediate action) (additional citation omitted).

Finally, even assuming without deciding that the Commonwealth's imposed deadline for implementing the PFMLA deductions was reasonable, the Commonwealth remained under a continuing obligation to bargain in good faith between the date on which it set the deadline and the date on which it implemented the proposal. Town of Westborough, 25 MLC at 87. As previously explained, the Commonwealth's inflexible

insistence on its proposal regarding the amount of employee PFMLA contributions did not satisfy its obligation to bargain in good faith. The Commonwealth's exigency defense must therefore fail on this ground as well. Id.

Conclusion

For the reasons set forth above, the CERB concludes that the Commonwealth violated the Law by implementing the maximum PFMLA deductions from bargaining unit members' paychecks before bargaining was complete.

Remedy

Section 11 of the Law grants the CERB broad authority to fashion appropriate orders to remedy unlawful conduct. Labor Relations Commission v. Everett, 7 Mass. App. Ct. 826 (1979); Commonwealth of Massachusetts, 22 MLC 1459, 1464 , SUP-3922, SUP-3944(February 2, 1996). To remedy an employer's unlawful unilateral change in a mandatory subject of bargaining, the CERB traditionally orders the restoration of the status quo ante until the employer fulfills its bargaining obligation and directs the employer to make whole the affected employees for any economic losses they may have suffered as a result of the employer's unlawful conduct. See generally, School Committee of Newton v. Labor Relations Commission, 388 Mass. at 577-578.

The Commonwealth contends that because the advent of the PFMLA and the impact of a new payroll tax has "altered the status quo," the appropriate remedy in this case would be an order to direct the parties to "re-engage in bargaining over the amount and impact of the PFML contributions" without a retroactive financial remedy. The Commonwealth states that any remedial order directing it to pay the employees' share of the PFMLA contributions pending the conclusion of bargaining would have the "significant

potential" to impose additional taxable income on NAGE unit members. We reject these speculative tax arguments for the reasons set forth above. In any event, many, if not most, make-whole orders have the potential to impose additional taxable income on the beneficiaries of the order. The Commonwealth cites no cases, and we find none where that has been the basis of any CERB decision not to order a monetary remedy.

Reiterating that funding for the PFMLA contribution would be subject to appropriation, the Commonwealth also states that since March 2020, the Commonwealth has been in the grips of extraordinary circumstances caused by the COVID-19 pandemic that could affect its ability to pay or affect ongoing efforts to address this emergency. While we acknowledge that this has been an extraordinary and difficult year for many reasons, even in cases where a fiscal crisis is evident from the record (which it is not here), the CERB has not refrained from imposing retroactive and make-whole orders that put bargaining unit members in the same positions they would have been in had the unfair labor practice not occurred. See City of New Bedford, 38 MLC at 251, 252 (ordering city to make employees' whole for economic losses that they suffered as a direct result of city's unilateral deduction in hours, despite acknowledging budgetary pressures caused by the financial crisis of 2008 and 2009). Further, as the Commonwealth notes throughout its brief, should the parties bargain and reach an agreement that requires funding or a request for supplemental appropriations, both the Legislature and the Governor, through his veto power, will have an opportunity to evaluate these costs items prior to implementation. Alliance, AFSCME/SEIU v. Secretary of Administration and others, 413 Mass. 377, 383 (1992). See generally, M.G. L. c. 150E, §7(b).

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Commonwealth shall

1. Cease and desist from:

   a. Failing and refusing to bargain collectively in good faith by unilaterally deducting the maximum amount of employee contributions permitted by the PFMLA from bargaining unit members' paychecks without bargaining with the Union to resolution or impasse over the decision to deduct these contributions and the impacts of that decision on employees' terms and conditions of employment.

   b. In any like manner, interfering with, restraining and coercing any employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purposes of the Law:

   a. Upon request, bargain with the Union in good faith to resolution or impasse before deducting the maximum amount of employee contributions permitted by the PFMLA from bargaining unit members' paychecks.

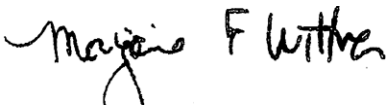
   b. Make whole bargaining unit members for any economic losses they may have suffered as a result of the Commonwealth's unlawful conduct, plus interest on any sums owing at the rate specified in M.G.L. c. 321, sec. 6I compounded quarterly.

   c. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted, including electronically, if the Commonwealth customarily communicates to its employees via intranet or email, and maintain for a period of thirty (30) days thereafter copies of the attached Notice to Employees.

   d. Notify the DLR within thirty (30) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



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MARJORIE F. WITTNER, CHAIR

JOAN ACKERSTEIN, CERB MEMBER

KELLY STRONG, 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
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board (CERB) has held that the Commonwealth of Massachusetts violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by unilaterally deducting the maximum amount of employee contributions permitted by the Massachusetts Paid Family and Medical Leave Act (PFMLA) from the paychecks of employees represented by the National Association of Government Employees (Union) without bargaining to resolution or impasse with the Union about that decision and the impacts of that decision on bargaining unit members' terms and conditions of employment.

Chapter 150E gives public employees the right:

- to form, join or assist a union;
- to participate in proceedings at the Department of Labor Relations;
- to act together with other employees for the purpose of collective bargaining or other mutual aid or protection;
- and to choose not to engage in any of these protected activities.

The Respondents post this Notice in compliance with the CERB's Order.

WE WILL NOT unilaterally deduct the maximum amount of employee contributions permitted by the PFMLA from bargaining unit members' paychecks without bargaining to resolution or impasse about that decision and the impacts of that decision on employees' terms and conditions of employment.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce employees in the exercise of their rights protected under Chapter 150E.

WE WILL, upon request, bargain with the Union to resolution or impasse before deducting any PFMLA contributions from bargaining unit members' paychecks.

WE WILL make whole bargaining unit members for any economic losses suffered as a result of the Respondents' unlawful paycheck deductions.

_____ _____

For the Commonwealth of Massachusetts 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).