

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

In the Matter of

COMMONWEALTH OF MASSACHUSETTS/
SECRETARY OF ADMINISTRATION AND
FINANCE

and

NAGE

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Case No.: SUP-19-7599
Date Issued: November 22, 2021

CERB RULING DENYING PARTIES' JOINT MOTION TO VACATE DECISION

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2 Background

3 On October 3, 2019, the National Association of Government Employees (NAGE
4 or Union) filed a prohibited practice charge with the Department of Labor Relations (DLR)
5 alleging that the Commonwealth of Massachusetts (Commonwealth or Employer) made
6 an unlawful unilateral change when it began deducting the maximum amount of employee
7 contributions permitted under the Paid Family and Medical Leave Act (PFMLA) from
8 bargaining unit members' paychecks, without first bargaining with the Union to resolution
9 or impasse over its decision to implement the deductions, and the impacts of the decision
10 on employees' terms and conditions of employment. A DLR Investigator found probable
11 cause to believe that the Commonwealth had violated Section 10(a)(5) and, derivatively,
12 Section 10(a)(1) of M.G.L. c. 150E (the Law) as alleged and, on May 21, 2020, issued a
13 one-count complaint. At the time the complaint issued, there were twenty-two other
14 charges raising similar legal issues pending before the DLR that NAGE and other unions

1 representing employees employed by the Commonwealth, the Massachusetts Water
2 Resources Authority, the Massachusetts Department of Transportation, and the
3 University of Massachusetts had filed.

4 After the complaint issued, NAGE filed a motion for the CERB to hear the case in
5 the first instance pursuant to Section 11(f) of the Law. On August 28, 2020, the CERB
6 found that good cause existed to grant the motion due, in large part, to its determination
7 that a CERB decision in the first instance could provide guidance with to the parties,
8 investigators, and hearing officers in the other pending PFMLA charges, thereby avoiding
9 the possibility of inconsistent hearing officer decisions and/or multiple appeals on similar
10 issues. A week after the CERB ruled on the motion, the DLR issued an order holding the
11 other pending PFMLA charges in abeyance until the CERB issued its decision in this
12 case.

13 The CERB conducted a hearing on December 15, 2020 and December 17, 2020.¹
14 On March 30, 2021, the CERB issued a decision holding that the Commonwealth had
15 violated the Law as alleged. On April 29, 2021, the Commonwealth filed a Notice of
16 Appeal of the CERB's decision pursuant to Section 11(i) of the Law. On the same day, it
17 filed a separate motion to stay the CERB's order, which the CERB granted on June 14,
18 2021. In granting the stay, the CERB considered the fact that an Appeals Court decision
19 would affect not only members of statewide bargaining units 1,3 and 6, but potentially,
20 the bargaining unit members of the state unions whose charges had been held in
21 abeyance since the fall of 2020.

¹ The hearing was held virtually due to the COVID-19 state of emergency.

1 provide consistent and authoritative guidance to the hearing officers and parties in the
2 pending matters.

3 The procedural posture of this case therefore stands in stark contrast to the
4 CERB's ruling in Town of Hull/Hull School Committee, 42 MLC 177, MUP-10-5951, 5952,
5 5953, 5954 (January 15, 2016). In that case the CERB vacated its order where, after the
6 respondents appealed the decision to the Appeals Court, but before the Appeals Court
7 issued a ruling, the Supreme Judicial Court issued a decision in a different case that
8 rendered the CERB's order in Hull unenforceable. Under those limited circumstances,
9 the CERB vacated its order "in the interests of promoting the orderly administration of
10 labor relations and conserving the resources of the DLR, the parties and the courts." Id.
11 at 178.

12 No similar considerations are implicated here. To the contrary, as the DLR's and
13 CERB's previous rulings imply, requiring the parties to litigate the pending cases "afresh"
14 would burden both the hearing officers' and the CERB's resources by forcing them to
15 revisit legal issues that the CERB has already resolved. Thus, in this case, unlike in Hull,
16 *denying* the motion to vacate would better promote the orderly administration of labor
17 relations and conserve applicable resources. Furthermore, notwithstanding this
18 precedent, the parties to future PFMLA litigation remain free to distinguish their cases on
19 the facts or to argue that the CERB's decision was wrongly decided. As such, the
20 advantages of preserving the CERB's decision as guidance to future litigants outweigh
21 any perceived disadvantages to the parties to this case or future ones. See Wareham
22 Education Association, 16 MLC 1347, MUPL-3444 (August 29, 1989) (denying motion to

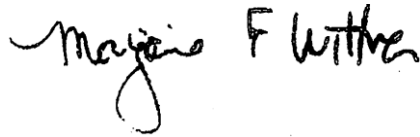
1 vacate CERB ruling in agency fee matter where prior rulings did not preclude future
2 litigation or appeals).

3 Conclusion

4 For the foregoing reasons, the joint motion to vacate is DENIED.

5 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



JOAN ACKERSTEIN, MEMBER



KELLY STRONG, MEMBER