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

* Case No.:

COMMONWEALTH OF MASSACHUSETTS/ SECRETARY OF ADMINISTRATION AND FINANCE

and

Case No.: SUP-19-7599

Date Issued: November 22, 2021

CERB RULING DENYING PARTIES' JOINT MOTION TO VACATE DECISION

Background

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

representing employees employed by the Commonwealth, the Massachusetts Water Resources Authority, the Massachusetts Department of Transportation, and the

University of Massachusetts had filed.

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

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

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

On November 8, 2021, the Commonwealth filed an assented-to motion for voluntary dismissal of its appeal with the Appeals Court. On the same day, the Commonwealth and NAGE filed a joint motion to vacate the CERB's decision on grounds that they had reached agreement "as to all underlying issues pending resolution on this matter on judicial appeal." The parties contend that "[i]n light of the resolution of this matter, and the prior withdrawal and anticipated resolution of all remaining cases pending before the [DLR] for which the Commonwealth's Secretary of Administration and Finance is the statutory employer, vacatur of the instant decision will permit any remaining PFMLA contribution cases to proceed afresh without impact by this ruling."

10 Ruling

The CERB denies the motion. The parties offer no reason for granting this motion other than that they have settled this case, and that other cases with the same statutory employer will be withdrawn and resolved. However, settlements while cases are pending judicial appeal are commonplace. If motions to vacate were routinely granted on such grounds, it would significantly undermine the finality and precedential value of the CERB's decisions to the detriment of stable and continuing labor relations. See Moe v. Sex Offender Registry Board, 444 Mass. 1009 (2005) (citing Stowe v. Bologna, 32 Mass. App. Ct. 612, 616 (1992)(while administrative agencies generally have inherent authority to reconsider their decisions, that authority must be used be used sparingly if administrative decisions are to have resolving force on which persons can rely)).

This is particularly true in this case, given that the DLR expressly held twenty-two similar PFMLA charges in abeyance pending the CERB ruling, and the CERB issued a stay of its own order in anticipation that its decision (or the Appeals Court decision) would

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

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

No similar considerations are implicated here. To the contrary, as the DLR's and CERB's previous rulings imply, requiring the parties to litigate the pending cases "afresh" would burden both the hearing officers' and the CERB's resources by forcing them to revisit legal issues that the CERB has already resolved Thus, in this case, unlike in Hull, denying the motion to vacate would better promote the orderly administration of labor relations and conserve applicable resources. Furthermore, notwithstanding this precedent, the parties to future PFMLA litigation remain free to distinguish their cases on the facts or to argue that the CERB's decision was wrongly decided. As such, the advantages of preserving the CERB's decision as guidance to future litigants outweigh any perceived disadvantages to the parties to this case or future ones. See Wareham 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