

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS EMERGENCY
MANAGEMENT AGENCY

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

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Case No. SUP-20-7917

Date issued: January 24, 2022

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

Emily Sabo, Esq. - Representing the Commonwealth of Massachusetts

Caroline O'Brien, Esq. - Representing the National Association of
Government Employees

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Commonwealth of Massachusetts,
2 Massachusetts Emergency Management Agency (MEMA) violated Section 10(a)(5) and,
3 derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law)
4 by transferring National Association of Government Employees (NAGE or Union)
5 bargaining unit work to non-unit personnel without providing NAGE with prior notice and
6 an opportunity to bargain to resolution or impasse over the change. More specifically, this
7 case regards whether MEMA transferred certain public information and preparedness

1 duties performed by bargaining unit employees Peter Judge and Christopher Besse to
2 Tom Lyons in the non-unit Public Engagement Manager position. For the reasons
3 explained below, I find that MEMA violated the Law as alleged.

4 STATEMENT OF THE CASE

5 On March 9, 2020, NAGE filed a charge with the Department of Labor Relations
6 (DLR) alleging that MEMA had engaged in prohibited practices by transferring bargaining
7 unit duties to management personnel. On August 6, 2020, a DLR Investigator issued a
8 Complaint of Prohibited Practice (Complaint), alleging that MEMA violated Section
9 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by transferring bargaining unit work
10 to non-unit personnel without giving NAGE prior notice and an opportunity to bargain to
11 resolution or impasse over both the decision and the impacts of that decision. On August
12 14, 2020, MEMA filed its Answer to the Complaint. On June 8, 2021, June 10, 2021, and
13 July 1, 2021, I conducted a remote hearing via WebEx at which both parties had a full
14 opportunity to be heard, to examine and cross-examine witnesses, and to introduce
15 evidence. Both MEMA and NAGE filed timely post-hearing briefs on September 17, 2021.
16 Based on the record, which includes witness testimony, my observation of the witnesses'
17 demeanor, stipulations of fact, and documentary exhibits, and in consideration of the
18 parties' arguments, I make the following findings of facts and render the following opinion.

19 STIPULATIONS OF FACT

20
21 The parties stipulated to the following facts:

- 22
23 1. The Commonwealth of Massachusetts, acting through the Secretary of
24 Administration and Finance, is a public employer within the meaning of Section 1
25 of the Law.
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27 2. The Union is an employee organization within the meaning of Section 1 of the
28 Law.

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- 3. The Union is the exclusive collective bargaining representative for certain employees employed by the Employer in statewide bargaining Unit 6 (Unit).
- 4. On January 29, 2020, the Employer posted the position of Public Engagement Program Manager, a new non-unit position.

FINDINGS OF FACT

9 **Background**

10 The Civil Defense Act of 1950 created MEMA to ensure that the Commonwealth
11 is able to plan for, respond to, and recover from natural and man-made hazards and
12 threats. MEMA, within the Executive Office of Public Safety and Security, coordinates and
13 implements the statewide emergency management program, which is supported by other
14 state agencies, federal and local entities, and private sector organizations such as the
15 American Red Cross and Salvation Army. Every city and town in the Commonwealth also
16 establishes a local emergency management program to develop internal emergency
17 response plans and coordinate with MEMA.

18 As part of its preparedness activities, MEMA provides information and education
19 when an incident is anticipated including extreme weather such as hurricanes,
20 snowstorms, or heat waves. This information and education is provided to the public
21 through MEMA’s website, social media platforms, media interviews, press releases, an
22 alert and notification system, and in-person local outreach and presentations.

23 During the response phase, MEMA’s Director may activate a State Emergency
24 Operations Center (SEOC), located at MEMA’s headquarters in Framingham, to
25 coordinate resources in order to respond to the emergency. SEOCs are activated when
26 there are significant impacts or when multiple communities are involved. Where there is

1 a more localized emergency, MEMA does not activate a SEOC but interacts with local
2 communities and assesses whether resources can be provided at the state level.

3 When SEOCs are activated, there is often, but not always, a public information
4 component to disseminate disaster-related information to the media and the general
5 public. MEMA's Director¹ determines whether to include a public information component
6 based on the size and scope of the event, the level of media interest, and an analysis of
7 whether the public information component should more appropriately be handled either
8 at the local level or centrally by the governor's office rather than through MEMA.

9 MEMA and NAGE are parties to a collective bargaining agreement (CBA) effective
10 July 1, 2017 through June 30, 2020.²

11

¹ The Civil Defense Act provides that the Governor appoints MEMA's Director who "may, within limits of the amount appropriated therefor, appoint such experts, clerks and other assistants as the work of the Massachusetts Emergency Management Agency may require and may remove them, and may make such expenditures as may be necessary in order to execute effectively the purposes of this act. Such employees shall not be subject to chapter thirty-one of the General Laws."

² Article 2, § 2.1 of the parties' CBA provides:

the Employer shall have the right to exercise complete control and discretion over its organization and technology including but not limited to the determination of the standards of services to be provided and standards of productivity and performance of its employees; establish and/or revise personnel evaluation programs; the determination of the methods, means and personnel by which its operations are to be conducted; the determination of the content of job classifications; the appointment, promotion, assignment, direction and transfer of personnel; the suspension, demotion, discharge or any other appropriate action against its employees; the relief from duty of its employees because of lack of work or for other legitimate reasons; the establishment of reasonable work rules; and the taking of all necessary actions to carry out its mission in emergencies.

1 **Bargaining Unit Public Information Duties**

2 Peter Judge

3 From 2000 through 2005, Peter Judge (Judge) served as the Public Coordinator
4 III for MEMA. In 2005, Judge's title changed to Public Information Officer (PIO), but he
5 continued to perform the same duties. Judge was a member of NAGE's bargaining unit
6 while serving in both positions. Judge reported directly to the Director.³ The job
7 descriptions for Judge's two positions are substantially identical and indicate that his
8 duties and responsibilities were to:

9 Prepare and disseminate information concerning agency activities to the
10 general public through media (print, radio, television, and computers).
11 Develop and implement outreach activities for the general public, other
12 agencies such as state or federal and private industry. Participate in agency
13 training through conferences and workshops. Assist, recommend and
14 review all agency literature, handouts and other publications, for accuracy
15 and relevance. Coordinate all aspects and requests for information from
16 media representatives and the general public as well as state and federal
17 agencies.

18
19 The more detailed list of Judge's duties and responsibilities included preparing public
20 awareness articles and news releases, and acting as a liaison with various news
21 organizations, private organizations, and local, state, and federal agencies in order to
22 exchange information to resolve problems.

23 The bulk of Judge's duties involved times when there was no ongoing
24 emergencies, referred to as "blue sky days." About 5% of his duties involved public
25 information during an emergency, referred to as "grey sky days." During "blue sky days"

³ Judge testified that although officially the Chief of Staff supervised him and completed his evaluations, during his over 20 years at MEMA he reported almost exclusively to the Director.

1 Judge developed and engaged in outreach activities such as representing MEMA at
2 public speaking engagements and preparing and disseminating information concerning
3 MEMA's activities to the public through the media. He prepared news releases and other
4 specific written and oral instructions for the public, describing actions to be taken to
5 prepare for an emergency, for instance, information regarding how to assemble a family
6 disaster kit.

7 Judge started MEMA's social media presence and updated MEMA's website with
8 relevant public information material. Although upper-level management would, on
9 occasion, indicate when certain material should be updated on the website, Judge was
10 responsible for the upkeep of the website and tracking social media analytics.

11 Through MEMA's training department, Judge taught courses on basic public
12 information for public information officers in the local communities or organizations,
13 including topics such as how to write press releases, how to do interviews, and how to
14 build relationships with the media. He conducted this course three to four times a year.

15 During most of his employment at MEMA, during both "blue sky days" and "grey
16 sky days," Judge handled most of the media interviews, speaking on behalf of MEMA.
17 He answered questions from the media and gave on-air interviews. During Judge's
18 tenure, there were numerous SEOCs for severe weather events, and other large events
19 such as the annual Boston Marathon. For all SEOC activations that included a public
20 information component, Judge served as the PIO and was responsible for setting up the
21 media room where the Governor and others would give press conferences. The first few
22 Directors during Judge's tenure had no interest in dealing with the media, however when

1 Kurt Schwartz (Schwartz) became the Director,⁴ he engaged more with the media.
2 Schwartz answered questions during SEOCs and sometimes gave interviews.⁵ When
3 Schwartz gave a planned interview, Judge provided him with talking points in advance
4 and sat with Schwartz during the interview. Additionally, after the Director and Governor
5 left a press conference, Judge remained with the media to provide additional information
6 or clarify the information, answering any questions that they might have.⁶

7 Judges' duties often required him to work after his regular business hours. He
8 could work extremely long hours during an activation but even when there was no
9 activation, he would often receive calls after hours. He would use his judgement to
10 determine if the call merited an immediate response or if it could wait until the morning.
11 When Judge was on vacation or otherwise absent, other bargaining unit employees
12 conducted his duties.

13 Judge retired in 2016. He continued to support MEMA as a contractor through June
14 30, 2019, performing the training functions. Judge was not a bargaining unit employee
15 when he taught the PIO course as a contractor.

⁴ The record does not reflect when Schwartz became the Director, although he is included on the 2010 organization chart.

⁵ Judge testified that other than Schwartz giving interviews, management officials did not perform any of his job responsibilities. Christopher Besse, who worked closely with Judge and assumed Judge's responsibilities upon Judge's retirement, concurred with this assessment.

⁶ Judge testified that he had a good understanding of what information he should share and what he should not share. At times, he would make the judgement call. When he received a media inquiry regarding a particularly sensitive matter, Judge would consult with the Director or other management officials for input on whether certain information should be shared.

1 Christopher Besse

2 In 2012, Christopher Besse (Besse) was hired as a Preparedness Coordinator at
3 MEMA. This position is in NAGE's bargaining unit. In this position, Besse spoke at
4 community events and distributed MEMA material in an effort to promote public
5 preparedness. He began working closely with Judge, although he was not officially
6 reporting to him.⁷ Besse commenced managing MEMA's social media accounts, including
7 Facebook and Twitter. Although Judge still had some involvement, Besse assumed
8 responsibility for almost all of the social media posts and website updates, both during
9 the workday and after hours. Although management did not post on social media or
10 update the website, management would sometimes review Besse's planned posting in
11 advance.⁸

12 In 2015, Besse assumed a new bargaining unit position titled Social Media and
13 Public Information Coordinator (PIC). In this position, Besse reported directly to Judge.⁹
14 Besse also retained his previous preparedness duties but now assumed new
15 responsibilities as reflected in his new Form 30 which provided that:

16 The primary responsibilities of the Social Media and Public Information
17 Coordinator are to support MEMA's mission by increasing public awareness

⁷ Besse testified that he reported to John Giarusso but did not recall his title.

⁸ Besse explained that he often did not seek approval before posting material, but if the material was sensitive, Besse would "run it up my chain to whoever my boss was at the time." Besse further testified that Giarusso would often refer Besse's questions about social media matters to Judge.

⁹ Although his supervisor is listed as the Chief of Staff, Besse testified that he actually reported to Judge. He testified that he is unsure why the Chief of Staff was listed but speculated that it may be because Judge was a bargaining unit employee and not a manager. A subsequent 2016 organization chart reflects that Besse reported directly to Judge, and Judge reported to the Chief of Staff. Judge and Besse consistently testified that neither actually reported to the Chief of Staff.

1 of hazards and MEMA programs, promoting personal, family, business and
2 community preparedness, and sharing information with the public during
3 disasters, emergencies, and preplanned events. The Social Media and
4 Public Information Coordinator will utilize social media and other public
5 facing communications platforms to disseminate preparedness tips and
6 accurate, timely, and coordinated information regarding
7 disasters/emergencies and planned events. The Social Media and Public
8 Information Coordinator will work across social media platforms to
9 maximum MEMA's web presence and outreach. This will include developing
10 a strategy to identify, utilize and institute the use of emergent social media
11 tools and platforms.

12
13 The Social Media and Public Information Coordinator will also be
14 responsible for managing the agency's website content. This will include
15 working with a Website Project Management Team to identify ways to
16 update web content and add new content.

17
18 The Social Media and Public Information Coordinator will serve as a primary
19 point of contact with community based agencies and organizations
20 requesting general information about MEMA and preparedness information.
21 This will include working with MEMA staff to create and update
22 handouts/brochures and leading tours of MEMA's headquarters facility.

23
24 Although not a primary responsibility, as required and directed, the Social
25 Media and Public Information Coordinator may be tasked with supporting
26 the agency's Public Information Officer in communicating with reporters and
27 traditional media outlets.

28
29 This position will report to the Public Information Officer (PIO) and will
30 support the PIO office to further MEMA's ability to effectively disseminate
31 information to the public.

32
33 Bessie's listed duties and responsibilities included working with MEMA's PIO to
34 provide coordinated information to the public using social media; updating website
35 content; utilizing resources such as Mass 211, the Commonwealth's primary call center
36 for the public, to keep the public informed of threats and hazards; developing pre-scripted
37 social media messages for various situations; developing and maintaining relationships
38 with partners from other public safety agencies and private sector organizations to
39 improve MEMA's public information capabilities and outreach; and working with MEMA's

1 Training and Exercise Unit to develop or deliver training and/or presentations on social
2 media to public safety officials. Besse also backed up and supported the PIO with public
3 information duties by communicating with reporters and traditional media outlets, drafting,
4 and disseminating press releases, and participating in SEOCs. These tasks required
5 Besse to work extended hours, including nights and weekends.

6 Judge remained the lead for public information but Besse began to assume more
7 of the public information responsibilities. As before, on “blue sky days”, Besse would plan
8 and prepare for emergencies. Together with Judge, Besse developed messages about
9 different hazards and safety tips and decided when to issue them on the website and
10 MEMA’s other social media accounts.¹⁰ Besse posted on social media after hours, as
11 necessary, when there were late breaking developments.

12 During both “blue sky days” and “grey sky days,” Judge and Besse handled media
13 inquiries during the regular workday and after hours.¹¹ Besse also began setting up and
14 giving interviews.¹² Besse reviewed media stories regarding MEMA’s programs and
15 recommended whether MEMA should respond if he found any misquote or other
16 inaccuracy.

¹⁰ Besse testified that although Judge may have written some social media posts, Besse did “close to 100 percent of the social media posts.” He also did most of the website work. Besse testified that management did not perform either of these duties, although at times the Director or Governor provided information to be posted on MEMA’s social media platforms.

¹¹ During “grey sky days”, this media work constituted approximately 80% of his day. During a “blue sky day” Besse estimated this work consumed about 20% of his day on average, although there could occasionally be quiet weeks with no media calls.

¹² Besse testified that although the Director would sometimes give interviews, only bargaining unit employees scheduled and set up the interviews.

1 Besse also served as the deputy PIO during SEOCs when Judge was present,
2 and he acted as the backup PIO in Judge's absence.¹³ Besse worked long days during
3 SEOCs and continued to participate in conference calls or to post on social media after
4 hours, as necessary. During the manhunt after the 2013 Boston Marathon bombing, he
5 drafted the first wireless emergency alert to cell phones to advise the public to shelter in
6 place. Any emergency alerts that Besse drafted were reviewed by Judge or higher-level
7 managers.

8 After Judge retired in August 2016, Besse continued to perform his own work and
9 assumed all of Judge's responsibilities as well. Besse reported directly to Schwartz. His
10 title did not immediately change but he was referred to as the interim PIO. In 2017, MEMA
11 officially assigned Besse to a Program Coordinator III position as the Public Information
12 Coordinator (PIC).¹⁴ Besse's new position was designated as an Emergency Personnel
13 Position, meaning he could be requested to report to work during an emergency or during
14 non-business hours. His position description provided that:

¹³ Besse testified that he is unaware of anyone else performing this work although he testified that "there's a chance" if both Judge and Besse were out, that "someone might have done something." He explained that if Judge was not available to act as the PIO, there may have been a backup overnight person. But Besse also testified that he was not aware of any manager ever acting as the PIO during an SEOC or otherwise performing any of his work or Judge's work. When Besse was on vacation during this time frame, either Judge would perform some of Besse's duties, or the work would wait until Besse returned.

¹⁴ Thereafter, on March 28, 2018, Besse filed a classification appeal seeking the title of PIO. The Commonwealth's Human Resources Division denied the appeal on June 1, 2018, explaining that his duties were best classified as the lower graded position of Information Officer III. Besse appealed the decision but subsequently withdrew that appeal.

1 Under the supervision of the Director, Deputy Director and Chief of Staff,¹⁵
2 the Public Information Coordinator (PIC) performs public information
3 activities on behalf of the agency, including, but not limited to: preparing and
4 disseminating preparedness messaging and information to the public;
5 developing and implementing preparedness campaigns and initiatives;
6 supporting preparedness activities; preparing and disseminating media
7 releases and advisories; responding to inquiries from members of the
8 media; coordinating the agency's public information activities with the
9 Executive Office of Public Safety and Security, the Governor's Office, and
10 other agencies and organizations; preparing and disseminating emergency
11 and non-emergency information to the public, media and stakeholders
12 pertaining to agency and State Emergency Operations Center activities,
13 and the response to, and recovery from disasters and emergencies;
14 developing content/information for the agency's website, and posting
15 information to the agency's website; supporting emergency
16 communications to the public via the agency's alerting and warning
17 platforms; supporting public information and messaging needs for
18 preplanned events; and promoting the agency and emergency
19 management through stakeholder engagement, tours of MEMA's facilities,
20 public information and outreach, and other activities. The PIC uses a
21 number of platforms and medium to communicate with the public and
22 stakeholders, including, but not limited to social media, print media, radio,
23 television, email, presentations and in-person meetings.

24
25 The Public Information Coordinator support's (sic) MEMA's mission by
26 increasing public awareness of threats and hazards, promoting personal,
27 family, business and community preparedness, and sharing information
28 with the public in anticipation of, and during disasters, emergencies, and
29 pre-planned events. The Public Information Coordinator utilizes social
30 media and other public facing communications platforms to disseminate
31 preparedness information and accurate, timely, and coordinated
32 information regarding disasters, emergencies and events. The Public
33 Information Coordinator works across social media platforms to maximize
34 MEMA's web presence and outreach. The PIC makes recommendations to
35 the Director, Deputy Director and Chief of Staff on the use of new or different
36 communications tools, systems and methods to enhance the agency's
37 public information activities and outreach.

38
39 Under the supervision of the Director, Deputy Director and Chief of Staff,
40 the Public Information Coordinator responds to inquiries from the media and

¹⁵ Although the position description states that Besse worked under the supervisor of the Director, Deputy Director and Chief of Staff, Besse reported to the Director. This is also reflected in the 2018 organization chart. Besse testified that, on occasion, the Director would have him work with the Deputy Director on a project, but he did not recall ever reporting to the Chief of Staff.

1 public and communicates with the media. The PIC maintains good
2 relationships with members of the media and maintains distribution and
3 contact lists to facilitate communications with the media.
4

5 The Public Information Coordinator serves as a point of contact with public,
6 private and non-profit agencies and organizations seeking or needing
7 general information about the agency, preparedness information,
8 emergency and non-emergency information about the State Emergency
9 Operations Center and response and recovery activities, and emergency
10 management.

11
12 The PIC works with agency staff and external stakeholders on developing
13 and disseminating information to the public, and related messaging. The
14 PIC develops/drafts handouts and brochures, media releases, social media
15 posts, remarks, presentations, and content for the agency's website.
16

17 The PIC represents the agency at stakeholder and public meetings and
18 events.
19

20 This position reports directly to MEMA's Director and also is supervised by,
21 and receives direction from the Deputy Director and Chief of Staff.
22

23 The more detailed statement of the duties and responsibilities were as follows:

24 1. Prepare and disseminate media advisories and releases on behalf of the
25 agency. Receive and respond to inquiries from the media. Conduct on-
26 camera, on-air, and background interviews with the media. Maintain good
27 relationships with the media. Maintain contact and distribution lists to
28 facilitate communications with the media.
29

30 2. Promote the agency, emergency management, and disaster
31 preparedness by preparing, publishing, communicating and disseminating
32 information using different medium and strategies including, but not limited
33 to social media, the agency's website, MEMA's monthly bulletin (MEMA
34 Reports), publications, brochures, posters and banners, presentations to
35 members of the public and stakeholder groups, focused initiatives and
36 campaigns, media releases, and tours of MEMA's facilities.
37

38 3. Prepare and disseminate public information about or during
39 emergencies, disasters and events, including providing specific guidance
40 on preparedness and safety actions to be taken before, during or after an
41 emergency or disaster. Recommend platforms, systems and medium to use
42 to disseminate such information.
43

- 1 4. Draft remarks, talking points, and information for use by the Director,
2 Secretary of Public Safety and Security, Governor, and others in interviews,
3 statements, releases, and speaking engagements.
4
- 5 5. Provide accurate, timely, concise and coordinated information to the
6 public using MEMA's social media and other public facing communications
7 platforms. Ensure that all such communications are consistent with the
8 agency's public information goals, objectives and strategies.
9
- 10 6. Research and propose ways to enhance public preparedness and the
11 dissemination of information to the public, media and stakeholders, whether
12 via social media or other platforms and medium. Propose, implement and
13 support public information and preparedness campaigns and initiatives to
14 enhance preparedness and resilience. Promote initiatives/campaigns of
15 other stakeholders, such as FEMA's Preparedness Month, the Great
16 Northeast Shakeout, and Hurricane Preparedness Week.
17
- 18 7. Is familiar with, and utilizes MEMA's public information and alerting
19 platforms and technologies, such as Massachusetts Alerts, Emergency
20 Alert System, and Wireless Emergency Alerts; and identifies and
21 recommends new or different technologies/systems that may increase
22 efficiency and increase MEMA's ability to reach a wider audience.
23
- 24 8. Work with the Chief of Staff and other agency personnel to ensure that
25 website content is maintained and updated on regular basis;
26
- 27 9. Develop and maintain an electronic library of pre-scripted social media
28 messages for various threats, hazards and situations, and ensure that all
29 such messages are periodically reviewed and updated and are consistent
30 with each other and information on MEMA's website;
31
- 32 10. Maintain and implement a strategy for delivering preparedness
33 information and related content throughout the year, ensuring that the
34 information being disseminated is related to the threats, hazards and
35 preparedness campaigns at that time. For example, hurricane
36 preparedness information should be delivered during hurricane season, and
37 general preparedness should be promoted during Preparedness Month (as
38 well as other times of the year.)
39
- 40 11. Track social media analytics and overall program metrics. Use these
41 analytics and metrics to help improve future programs and messages.
42
- 43 12. Develop and maintain effective relationships with partners from other
44 public safety agencies and private sector organizations to improve MEMA's
45 public information capabilities and outreach, and overall preparedness.
46

1 13. Coordinate public information activities with the Executive Office of
2 Public Safety and Security and the Governor's Office, including providing
3 daily updates/reports on public information activities. Participate in
4 Mass.gov's "social media users group" or other such groups in order to stay
5 up to date on, and support state agency public information and social media
6 activities. Coordinate with public information officers/coordinators from
7 other local, state and federal agencies, and private sector organizations.
8

9 14. Promote MEMA's preparedness programs and messages through
10 appropriate venues;
11

12 15. Attend and participate in internal and external meetings and events on
13 behalf of the agency. Offer remarks or presentations at such
14 meetings/events. Promote the agency and emergency management at
15 such meetings.
16

17 16. Work with MEMA's Training and Exercise Unit to develop or deliver
18 public information and social media trainings and/or presentations to local
19 and state emergency managers and public safety officials, and other
20 stakeholders;
21

22 17. Manage a multi-media library to maintain photos, videos, press releases
23 and advisories, and other public information products for agency use (uses
24 such as social media, website, presentations, publications, etc.);
25

26 18. Participate in activations of the State Emergency Operations Center
27 (SEOC), either by being rostered and present in the SEOC, or by supporting
28 the SEOC virtually from remote locations. Such activities may take place
29 during non-business hours, including nights and weekends, and may
30 involve extended work hours and operational periods. During activations of
31 the SEOC, may serve as a Public Information Officer under the SEOC's
32 Incident Command System structure, or as a member of a Joint Information
33 Center. Take direction from the SEOC's Command Staff, and work closely
34 with the entire SEOC staff.
35

36 19. During periods leading up to, or during and after disasters, emergencies,
37 and events, support MEMA's operations and incident priorities and
38 objectives by disseminating information to the media and public via social
39 media, traditional media (print, radio, television, etc.), MEMA's website, and
40 other resources such as Mass 2-1-1 and Mass.Gov, to keep the public
41 informed of threats and hazards and of preparedness, response and
42 recovery actions that may reduce risk or mitigate impacts.
43

44 20. As directed, respond to scenes of disasters, emergencies, incidents or
45 events, or to emergency operations centers or command posts, to support
46 local or state public information efforts and activities. Serve as a Public

1 Information Officer or member of a Joint Information Center and support the
2 public information needs and demands of such disaster, emergency,
3 incident or event, as determined by the Incident Commander or designee.
4

5 21. Be available during non-business hours to receive and screen requests
6 from the media and, with direction from the Director, Deputy Director or
7 Chief of Staff, ensure that time-sensitive requests are appropriately
8 handled.
9

10 22. As directed, work with, and train other MEMA staff who are designated
11 to serve as back-up public information coordinators, to ensure that such
12 staff members are capable of fulfilling the roles and responsibilities of the
13 Public Information Coordinator during such times as the PIC may not be
14 available, or the PIC requires additional support.
15

16 In his new position, Besse continued to handle the public information duties that
17 he and Judge previously performed. Media outlets were aware that Besse handled
18 MEMA's media inquiries and would usually contact Besse directly. Occasionally a media
19 outlet would contact MEMA's 24-hour communication center. The dispatchers would then
20 direct these to calls to Besse.¹⁶ Besse also continued to handle all social media and
21 website updating. He continued to handle public information duties during SEOCs.
22 Additionally, Besse continued to lead public preparedness initiatives and campaigns such
23 as Hurricane Preparedness Week and Emergency Preparedness. Besse attended
24 meetings with MEMA leadership addressing the public information messaging for various
25 preparedness campaigns. Besse then implemented the agreed upon messaging.

26 Besse was the primary liaison with Mass 211. Mass 211 provided Besse with a
27 summary of MEMA-related call topics that it received. Besse would then either share this

¹⁶ Michael Russas (Russas), the Assistant Director for Operations Division, testified that when the dispatch center receives notification of an emergency, the duty officer alerts leadership and commences and coordinates efforts. Duty officers do not give interviews or respond to media inquiries. Prior to 2021, the duty officers would direct media-related calls to Judge or Besse.

1 information with management or contact the appropriate person within MEMA who could
2 provide him with the correct responsive information. Besse would then provide talking
3 points to Mass 211 for dissemination to callers.

4 Additionally, Besse coordinated with other PIOs and other outside groups
5 regarding upcoming major events. For instance, Besse coordinated with the Boston
6 Athletic Associations' communication staff to work on a communications plan in advance
7 of the Boston Marathon. During the 2018 Merrimack Valley gas explosion, Besse reported
8 to the scene where he worked closely with the Fire Department PIO, the State Police
9 Communications Director, members of the impacted communities, and the Governor's
10 communication staff to coordinate information.

11 Besse also continued to conduct public information courses, sometimes with
12 Judge, who performed this duty as a contractor after his retirement.¹⁷ No managers ever
13 instructed the PIO course.

14 Besse's official hours were from 6:30 a.m. to 2:30 p.m., however he often worked
15 late, and he was available 24/7 unless he was on paid leave. He responded to media
16 inquiries and performed other duties as needed after his regular work hours, on
17 weekends, and on holidays. Sara White, a bargaining unit employee whose main position

¹⁷ Judge taught the PIO training course for at least three years, ending in June 2019. According to his contract, he was responsible for obtaining the necessary training materials and equipment, preparing, and delivering lesson plans, coaching students, and administering exams. This position was paid hourly and was on an as needed basis; there was no guarantee of a minimum number of hours.

1 with MEMA did not involve public information, would often serve as Besse's backup
2 overnight or when he was on vacation.¹⁸

3 **Organizational changes**

4 In early 2019, Schwartz left MEMA and was replaced as Director by Samantha
5 Phillips (Phillips). Phillips reorganized MEMA's leadership structure by eliminating the
6 Chief of Staff position and elevating four section chiefs to assistant director positions.
7 Phillips moved the public information area to the Planning and Preparedness Division.

8 Phillips provided support and oversight of the public information program. From
9 August 2019 through January 2020, she supervised Besse and had monthly "check ins"
10 with him. Phillips reviewed and sometimes revised Besse's draft press releases. She and
11 other leadership had input into the content and timing of messages to be sent out to the
12 public.

13 Phillips believed that the public information component was too large a portfolio for
14 one individual to handle.¹⁹ Phillips further determined that certain policy and program

¹⁸ Russas testified that Travis Hengen, another bargaining unit employee, had sometimes provided coverage for Judge when Judge was on vacation. Russas further testified that Scott Maclead, a recovery section chief served as the PIO at some point, however he provided no specific time frame and did not detail what duties Maclead performed. No other witnesses provided any testimony regarding Maclead's involvement with MEMA's public information. Given the vagueness of this testimony about Maclead's involvement, I credit the consistent testimony by Judge and Besse that bargaining unit employees exclusively served as the PIO during their tenures.

¹⁹ Phillips testified that when she started at MEMA, Besse was the only one who regularly handled media relations, posted on social media, and wrote press releases, during both the workday and after hours, as managed by senior leadership. She testified that Besse was the primary contact for PIOs and communication staff at other agencies, led public preparedness initiatives, was the primary liaison with the Mass 211 call center for public information sharing, and typically served as the PIO during SEOCs.

1 work within the public information sphere was best addressed at a management level. In
2 late 2019, MEMA posted a job posting for a new management position, a Public
3 Engagement Manager. Although the position was for a manager and not a bargaining unit
4 employee, the job posting listed most of Besse's current duties.²⁰ The posting noted that
5 the Public Engagement Manager would be responsible for MEMA's public affairs, public
6 information, and community engagement portfolios and further indicated that

7 It is expected that both the Public Engagement Manager and Preparedness
8 Coordinator will be cross-trained, particularly in functions pertaining to
9 media coordination, public information, and communications. This is to
10 ensure there is adequate staffing coverage, redundancy, and depth of
11 staffing. The Public Engagement Manager will be called upon during non-
12 business hours to coordinate with agency leadership, as needed.²¹

²⁰ Phillips testified that she was aware that the duties listed in the job postings were Besse's current duties.

²¹ The posting further listed the duties of the position as follows:

The Public Engagement Manager performs public information activities on behalf of the agency, including, but not limited to: preparing and disseminating preparedness messaging and information to the public; developing and implementing preparedness campaigns and initiatives; supporting preparedness activities; preparing and disseminating media releases and advisories; responding to inquiries from members of the media; coordinating the agency's public information activities with the Executive Office of Public Safety and Security, the Governor's Office, and other agencies and organizations; preparing and disseminating emergency and non-emergency information to the public, media and stakeholders pertaining to agency and State Emergency Operations Center activities, and the response to, and recovery from disasters and emergencies; developing content/information for the agency's website, and posting information to the agency's website; supporting emergency communications to the public via the agency's alerting and warning platforms; supporting public information and messaging needs for pre-planned events; and promoting the agency and emergency management through stakeholder engagement, public information and outreach, and other activities. The Public Engagement Manager uses a number of platforms to communicate with the public and stakeholders, including, but

not limited to social media, print media, radio, television, email, presentations and in-person meetings.

The Public Engagement Manager support's MEMA's mission by increasing public awareness of threats and hazards, promoting personal, family, business and community preparedness, and sharing information with the public in anticipation of, and during disasters, emergencies, and pre-planned events. The Public Engagement Manager utilizes social media and other public facing communications platforms to disseminate preparedness information and accurate, timely, and coordinated information regarding disasters, emergencies and events. The Public Engagement Manager works across social media platforms to maximize MEMA's web presence and outreach. The Public Engagement Manager makes recommendations on the use of new or different communications tools, systems and methods to enhance the agency's public information activities and outreach.

The Public Engagement Manager responds to inquiries from the media and public and communicates with the media. The Public Engagement Manager maintains good relationships with members of the media and maintains distribution and contact lists to facilitate communications with the media.

The Public Engagement Manager will be responsible for developing procedures and policies for the Joint Information System and lead the development of the Joint Information Center which will be activated during large scale emergencies and work in collaboration with the mission and operations of the State Emergency Operations Center.

The Public Engagement Manager serves as a point of contact with public, private and nonprofit agencies and organizations seeking or needing general information about the agency, preparedness information, emergency and non-emergency information about the State Emergency Operations Center and response and recovery activities, and emergency management.

The Public Engagement Manager works with agency staff and external stakeholders on developing and disseminating information to the public, and related messaging. The Public Engagement Manager develops/drafts handouts and brochures, media releases, social media posts, remarks, presentations, and content for the agency's website. The Public Engagement Manager also represents the agency at stakeholder and public meetings and events.

This position reports to the Planning and Preparedness Section Chief for routine work responsibilities. When coordinating with the media and

1 When Besse saw this posting for a management position that incorporated his
2 current responsibilities, he applied for the position. Besse also contacted NAGE to ensure
3 that it was aware of the job posting. On November 25, 2019, NAGE filed a charge with
4 the DLR, Case No. SUP-19-7717, alleging that MEMA violated the Law by transferring
5 NAGE bargaining unit work to a new management position. MEMA subsequently
6 withdrew the job posting, and NAGE withdrew the charge.

7 On January 19, 2020, Dawn Brantley assumed the position of Assistant Director
8 of Planning and Preparedness and became Besse's first line supervisor, although he
9 continued to report to Philips while Brantley settled into her position, and even thereafter
10 on certain topics. When Besse was out, Brantley assumed some of his responsibilities,
11 including answering media calls and writing press releases.²²

12 **Job Opening for Public Engagement Program Manager**

developing emergency-related messages, content, and communications, the Public Engagement Manager will work closely with MEMA's Director. During non-business hours, the Public Engagement Manager may coordinate directly with the Director or on-call response staff.

When dealing with emergencies, the Public Engagement Manager may serve as the Public Information Officer in the Emergency Operations Center (EOC).

²² Brantley testified that when Besse was present, he responded to media inquiries, wrote press releases, posted on social media, and gave interviews. Besse would inform her, after the fact, regarding how he responded to certain specific media requests. If he felt there was anything that might be controversial, he contacted her or Phillips to get direction on how to proceed before responding to the inquiry. Although Brantley testified that she or Phillips answered media calls and wrote press releases when Besse was not present, she did not provide any details about how often she handled these duties. Phillips also testified that she handled some media inquiries during the 2019 holiday season when Besse was out on paid leave.

1 Phillips worked with the Human Resources to develop a new managerial position
2 that, in part, covered the public information component. On January 29, 2020, MEMA
3 posted a job vacancy²³ for a Program Manager V position of Public Engagement Program
4 Manager.²⁴ The announcement listed the Public Engagement Program Manager
5 responsibilities²⁵ as follows:

6 A. Directs the activities of the Public Engagement Program Area, which
7 includes planning, coordinating, administering, and evaluating programs,
8 projects, processes, procedures, systems, standards, and services.

9
10 B. Directs the coordination of content on various media, including printed
11 material, social media, website updates, cable television station and other
12 outreach and communications tools; oversees the agency's website,
13 including updates and upgrades.

14
15 C. Develops a broad understanding of agency's functions and initiatives to
16 prioritize messages and manage departmental behavior. This work should
17 be done in coordination with Divisions and Program Areas.

18
19 D. Responsible for the development and implementation of a
20 comprehensive crisis communications program that includes ongoing
21 coordination with partner agencies, public communication, and coordination
22 with media partners. This also includes the development of a Joint
23 Information Center with corresponding equipment, plans, procedures, and
24 training to support messaging and communications pertaining to longer-
25 term disaster responses and special events.

26
27 E. In partnership with state agencies and local partners, develop a PIO
28 corps that can support long-term emergency operations and ensure
29 membership receive and maintain training.

²³ Besse did not apply for this position.

²⁴ No evidence was introduced that MEMA provided NAGE with notice or the opportunity to bargain over any NAGE unit work that the Public Engagement Program Manager assumed.

²⁵ Besse testified that many, but not all, of these duties reflect duties he performs as well, including developing emergency related content and acting as the spokesman during an SEOC. Philips also testified that some of the duties in the Public Engagement Program Manager job description were Besse's duties, although she added that the position had a greater focus on strategic program development and implementation.

- 1
2 F. Provides media relations advice for agency leadership.
3
4 G. Manages the implementation and development of new public outreach
5 tools for the agency, oversees the modification and improvement of current
6 tools, and collaborates with program areas to identify the needs and
7 solutions for complex communications problems.
8
9 H. Responsible for revamping and reinvigorating MEMA's community
10 engagement programs such as Citizen Corps, Voluntary Organizations
11 Active in Disaster, and Community Emergency Response Teams. This work
12 needs to be done in partnership with other programs areas within MEMA,
13 regional offices, and local stakeholders.
14
15 I. Responsible for the design, development, and implementation of MEMA's
16 community preparedness and resilience programming. This is a new
17 initiative that will include modernized curriculum for building preparedness
18 and resilience at the individual, household, community, and organizational
19 level.
20
21 J. Responsible for the development and ongoing management of MEMA's
22 fellowship/internship program to strengthen MEMA's partnership with local
23 academic institutions.
24
25 K. Develop training programs for MEMA personnel and local partners on
26 crisis communications, social media, and public speaking and engagement.
27
28 L. This position reports to the Assistant Director for Planning and
29 Preparedness. When coordinating with the media and developing
30 emergency-related messages, content, and communications, the Public
31 Engagement Program Manager will work closely with MEMA's Director.
32 During non-business hours, the Public Engagement Program Manager may
33 coordinate directly with the Director and on-call response staff.
34
35 M. When MEMA is coordinating emergency response and recovery efforts,
36 the Public Engagement Program Manager may serve as the spokesperson
37 in the Emergency Operations Center (EOC), or an alternate location. The
38 Public Engagement Program Manager will work closely with MEMA's
39 Director. During non-business hours, the Public Engagement Program
40 Manager may also coordinate directly with the Director or on-call response
41 staff.
42
43 This position reports to the Assistant Director for Planning and
44 Preparedness and is a member of the agency's management team. The
45 position assists with planning and implementing objectives of the

1 organization, working on improving policies and procedures, and problem
2 solving where appropriate. Program managers serve as a conduit between
3 senior leadership and unit supervisors and staff. The Public Engagement
4 Program Manager will receive direction from the Assistant Director for
5 Planning and Preparedness and will sometimes work directly with the
6 Agency's Director on key initiatives and public information.

7 8 **Further Changes at MEMA**

9 On March 13, 2020, MEMA activated a SEOC to deal with the COVID-19 public
10 health crisis. MEMA did not handle the public information component. Instead, the
11 Governor created a COVID Command Center which was responsible for COVID-related
12 public information. When MEMA received COVID-related inquiries, the inquiries were
13 routed through the COVID Command Center rather than addressed by MEMA. On
14 occasion, the Command Center's communications team would contact Besse if it needed
15 certain information or help drafting certain responses.

16 In May 2020, Besse was informed that he no longer needed to "stand by" to work
17 on nights and weekends, although he still worked overtime.²⁶

18 **The Public Engagement Program Manager's Duties, and Besse's Duties**

19 In August 2020, Tom Lyons (Lyons) started his position as Public Engagement
20 Program Manager. His main responsibility is to set the direction and manage the office.
21 He reports to Brantley, who reports to the Director. Besse began reporting directly to
22 Lyons.

²⁶ Phillips testified, in part, that she ended Besse's stand-by status because he was not dealing with as many media inquiries after the COVID Command Center was formed, and due to her analysis of the organization and how MEMA staffed, particularly after hours. NAGE filed another charge, Case No. SUP-20-8314, regarding the change in Besse's stand-by status.

1 Lyons began building a public engagement plan and strategy. Additionally, he
2 participated on the Commonwealth's COVID-19 Enforcement and Intervention Team to
3 provide messaging about COVID-related safety issues, coordinated and drafted wireless
4 emergency alert messages, and created guides in a number of languages for
5 communities regarding how to use their own public alert systems for COVID messaging.

6 Lyons works with Besse on a daily basis. Besse coordinates media responses
7 during work hours and he writes most of the press releases, which Lyons reviews and
8 edits. Occasionally Lyons also writes press releases.²⁷ During his regular workday, Besse
9 is responsible for all social media posts and website maintenance and updates. However,
10 Lyons or other management officials now post on social media and the website in the
11 event of severe weather or other developments that arise after hours.²⁸

12 Besse and Lyons together develop weekly reports that are submitted to the Mass
13 211 call center. Besse still has day-to-day contact with Mass 211 to ascertain what types
14 of questions it is receiving. If necessary, he consults with Lyons about a proposed

²⁷ Lyons testified that there "may" have been a time that he wrote a press release but Besse's testimony and Phillips' testimony was more definitive that Lyons has drafted press releases.

²⁸ Besse testified that previously he exclusively posted information to the public via MEMA's social media platforms but recently, others began posting after hours. Lyons testified that although Besse is "essentially our webmaster," Lyons has posted on the website and on other social media on behalf of MEMA on nights and weekends. Phillips' testimony confirmed that Lyons shares this work with Besse. She further testified that she was not aware if other management had previously posted on social media. The Chief of Staff's position description notes that the Chief of Staff is responsible for overseeing "public information activities, including media releases, social media postings, MEMA's monthly newsletter, and responding to media requests," but no testimony was provided that the Chief of Staff ever actually responded to a media request, wrote a press release, or posted on social media.

1 response.²⁹ Lyons performs certain other managerial functions with Mass 211, including
2 updating the scope of services. He was part of a leadership team developing a new call
3 center in connection with Mass 211 to handle the numerous calls regarding questions
4 about vaccines and requests for assistance in scheduling the COVID-19 vaccines when
5 they were newly available.

6 Lyons and Besse together conduct trainings for local information officers.

7 Lyons and Besse also share the PIO role during SEOCs. Their respective roles
8 were formalized in a new Activation Procedure issued in September 2020. The Activation
9 Procedure standardized the initial rostering of MEMA staff for SEOCs. The Activation
10 Procedure listed two teams, the Blue Team and the Green Team, to staff the initial two
11 operational periods. Phillips is listed as the SEOC Manager for the Blue Team. Lyons is
12 listed as the PIO on the Blue Team, with Sara White providing PIO support. There is no
13 SEOC Manager listed on the Green Team. Besse is listed as the PIO on the Green
14 Team.³⁰ Since August 2020, there have been a few partial activations that have included

²⁹ Besse testified that in the past, he was the Mass 211 liaison and all related questions or issues came directly to him, but now he is “still involved with supporting some of that, but Tom has taken the lead on that. But I used to do it.”

³⁰ Besse testified about his concerns regarding this new two team approach and the fact that he appeared to be on the secondary team. He testified that “[A]ll the primary people in the agency ... they are all on that first team, but I'm not. And so not only does it look like I'm now the backup, but previously, this filling of this PIO position in the EOC was entirely bargaining unit work.” Besse further testified that “the reason that stood out to me or seemed different was because in the past, the day-to-day PIO, myself or previously Peter, would always be the PIO unless we were unavailable for some reason.” Phillips’s testimony confirmed that Besse and Lyons now shared PIO responsibilities during SEOCs. She also testified that Besse has always shared the work, however, previously he shared it with Judge and another bargaining unit employee, Sara White. Phillips indicated that the Activation Procedure is currently being negotiated with NAGE.

1 a public information component. Besse served as the PIO during the most recent SEOC
2 prior to the hearing, which was activated in response to winter storms in December 2020.
3 During that SEOC, Lyons provided support overnight, and Phillips also performed some
4 media-related work.³¹

5 Over time, Lyons began assuming the responsibility for responding to media calls
6 after hours and when Besse was off duty. On April 5, 2021, MEMA issued the Public
7 Information Protocol: Responding to Steady-State Media Requests (Protocol). The
8 Protocol addresses media requests that arise other than during an SEOC, both during
9 and after regular work hours. The Protocol notes that the PIC, Besse, is the primary media
10 point of contact and is responsible for coordinating the response to all media requests
11 during regular business hours. When the PIC is on leave, the Public Engagement
12 Program Manager provides coverage. Moreover, after regular business hours and
13 weekends, media calls go to the Communication Center. If the media inquiry requires an
14 immediate response, the Protocol directs the Communication Center to first contact
15 Lyons. If Lyons is unavailable, the Communication Center contacts Brantley. Besse is
16 not listed as a contact for any after-hours media inquiries.³²

³¹ Phillips testified that she did a lot of media work that day because of the “co-occurring emergencies” of the first big storm during COVID. Phillips did not clarify whether the media work she referenced was giving interviews as Directors had in the past, or if she engaged in other types of media-related work previously performed exclusively by bargaining unit employees.

³² At hearing, NAGE requested that I take administrative notice of MEMA’s position statement in Case No. SUP-20-8314, asserting that MEMA admitted ending Besse’s stand-by pay status because Lyons assumed his after-hours work. Although after consideration of this request, I do not believe it is proper to take administrative notice of a statement of position in a separate matter before the DLR, my comments during the hearing reasonably led the parties to believe I would do so. Accordingly, I reviewed the

1 Besse still coordinates with other PIOs and communication staff from outside
2 agencies and organizations, but Lyons has now assumed the lead in various areas,
3 including interagency coordination of public information.³³ When the COVID Command

statement of position which provides a number of reasons why MEMA changed Besse's stand-by status. As a result of the Governor's State of Emergency in response to the COVID-19 pandemic, employees were directed to work remotely from home but be available on a 24/7 basis. Noting that Besse was the only person in the preparedness unit designated as being on "stand-by," Phillips determined that Besse could be compensated for overtime like other employees when needed outside of his regular shift. The position statement provides that "[f]urther, she [Phillips] determined that in light of Lyons' hiring and the screenings done by the duty officers, it was no longer necessary to continue to have Besse on "stand-by." I need not rely on MEMA's statement of position in an unrelated charge to establish that Lyons now coordinates and responds to media inquiries after hours. The facts already in evidence, via testimony and the Protocol, establish that Lyons assumed responsibility for responding to media inquiries after hours. In this regard, Phillips testified that Lyons and Brantley were the liaisons for after-hours media inquiries even before that was "clarified" by the Protocol. Besse testified that "[p]reviously, anytime media inquiries happened after hours, they would come to me or ... to Peter previously when he was the PIO, and that we would triage the work with leadership on our response, get back to the reporter, figuring out what we're going to do, sometimes doing the interviews, sometimes declining it, whatever it might be, but that was work that -- that I had always done after hours." He further testified that "so previously that [after hours media coordination] was 100 percent me, and now the new policy is 100 percent management and I -- I'm out of that kind of workflow or responsibility." Russas concurred, testifying that previously media calls were directed to Besse but in 2021, those same calls were sent to Lyons or Brantley instead. In contrast to this testimony, Lyons testified that he had not spoken on the record or handled a press inquiry other than one interview when Besse was out. I credit the testimony of Besse, Phillips, Russas, and the documentary evidence, which all support the contention that after hours media calls are now directed to management officials rather than Besse.

³³ Besse testified that many of his previous tasks have "shifted away from me and my job is -- sort of it feels like it's been reduced by -- by taking those pieces away. There's a piece about, you know, just my feeling of job insecurity. That, you know, previously it was a two-person role with -- with Peter and I working in this unit both in collective bargaining positions. Peter retired and they said, oh, we only need one -- we think we're only going to fill one now and it's going to be you and you're going to do all that work. Now we've added someone back in, but it's at a manager level, and I don't know what would happen in the future if, you know, something happened, but they now have a manager that's doing many of those responsibilities. So it feels -- my job feels more insecure because of that."

1 Center needs certain information or assistance drafting a response, they consult with
2 Lyons.³⁴ Lyons assumed the lead and coordinated with the Boston Athletic Associations'
3 communication staff to work on a communications plan in advance of the 2021 Boston
4 Marathon. Besse retains involvement in the preparedness campaigns and initiatives, but
5 now Lyons leads the preparedness initiatives and attends leadership meetings discussing
6 the initiatives.³⁵

7 Because Besse was no longer responsible for responding to after-hour calls and
8 posting on social media after hours, Besse earned less in overtime pay.³⁶

9 OPINION

10 Section 10(a)(5) of the Law requires a public employer to give the exclusive
11 bargaining representative prior notice and an opportunity to bargain to resolution or

³⁴ Besse testified that previously the COVID Command Center would contact him as the point person if they had a media question, needed information from MEMA, or needed assistance drafting a response, but “[s]ince Mr. Lyons came onboard, he is now the lead on that.”

³⁵ Although Lyons testified that he works closely with Besse on these matters, he maintains that Besse is responsible for putting together the plans. Besse agrees that he is still involved in these campaigns, but he testified that Lyons leads the initiatives. Besse testified that previously he would attend meetings with the Director to discuss the messaging for these campaigns, but now Lyons attends the meetings and then later informs Besse of the plan, which they then implement. Phillips concurs with Besse’s testimony that previously Besse was the person who led public preparedness initiatives and campaigns like hurricane preparedness week, but Lyons now leads these preparedness efforts. Given Phillip’s and Besse’s consistent testimony and given that Lyons did not specifically testify about whether he or Besse attends meetings with MEMA leadership regarding preparedness campaigns, I find that the weight of the evidence supports a finding that Lyons has assumed the lead for the preparedness campaigns.

³⁶ Besse provided uncontroverted testimony that he has less opportunity to earn overtime pay now that Lyons has assumed responsibilities that Besse used to perform on nights and weekends. Although no testimony was offered regarding how much overtime Besse had earned in previous years, Besse testified that he earned around \$15,000 in overtime in the past year, which he asserts is less than he previously earned.

1 impasse before transferring bargaining unit work to non-bargaining unit personnel.
2 Commonwealth of Massachusetts v. Labor Relations Commission, 60 Mass. App. Ct. 831
3 (2004). To establish that an employer violated Section 10(a)(5) of the Law in this manner,
4 the union must prove the following elements: 1) the employer transferred bargaining unit
5 work to non-unit personnel; 2) the transfer of the work had an adverse impact on either
6 individual bargaining unit members or on the bargaining unit itself; and 3) the employer
7 did not provide the exclusive bargaining representative with prior notice and an
8 opportunity to bargain over the decision to transfer the work. Id.

9 **Transfer of Bargaining Unit Work**

10 To establish the first element, the union must show that the unit work at issue
11 traditionally has been performed by bargaining unit employees. City of New Bedford, 15
12 MLC 1732, 1737, MUP-6488 (May 31, 1989). When work is shared by bargaining unit
13 members and non-unit employees, the Commonwealth Employment Relations Board
14 (CERB) has determined that the work will not be recognized as exclusively bargaining
15 unit work. Higher Education Coordinating Council, 23 MLC 90, 92, SUP-4090 (September
16 17, 1996). In shared work cases, the employer is not obligated to bargain over every
17 incidental variation in job assignments between unit and non-unit employees. Rather,
18 bargaining must occur only if there is a calculated displacement of bargaining unit work.
19 Id. A calculated displacement of bargaining unit work occurs when unit members have
20 traditionally performed an ascertainable percentage of the work and the employer takes
21 an action that results in a significant reduction in that percentage, with a corresponding
22 increase in the percentage of work performed by non-unit personnel. In shared work
23 cases, the CERB looks to the pattern and practice of allocating the disputed work. Id.

1 The issue in this case is whether MEMA transferred NAGE bargaining unit work to
2 the newly created managerial position of Public Engagement Program Manager, and, to
3 a lesser extent, other managers. NAGE contends that bargaining unit employees, namely
4 Judge and Besse, exclusively performed the following duties: serving as the PIO during
5 SEOCs; writing press releases; updating the website; responding to after-hours media
6 calls; posting on social media after hours; leading preparedness campaigns; acting as
7 the primary contact for outside agencies' PIOs; coordinating public information during
8 large public events; and teaching public information training classes. NAGE asserts that
9 MEMA transferred this bargaining unit work to management officials without fulfilling its
10 bargaining obligations. Conversely, MEMA argues that the public information work as a
11 whole has always been shared work. Directors have conducted media interviews and
12 managers have provided input into media inquiry responses. Managers have also
13 reviewed and revised press releases and other public messaging. MEMA further argues
14 that since 2007, non-bargaining unit duty officers have responded to media inquiries.
15 Contractors, who are not bargaining unit employees, have taught the public information
16 training classes. MEMA further points that the job description for the non-unit Chief of
17 Staff position indicates that the position is responsible for overseeing "public information
18 activities, including media releases, social media postings, MEMA's monthly newsletter,
19 and responding to media requests." MEMA maintains that it was not obligated to bargain
20 because this work has always been shared, and NAGE failed to present sufficient
21 evidence of any calculated displacement.

22 I am unpersuaded by MEMA's arguments. When Phillips first sought to create a
23 management position, in part so that Besse would not be handling the extensive public

1 information duties alone, many of Besse's duties were included in the job posting for a
2 Public Engagement Manager. In fact, the job description is almost a replica of Besse's
3 job description. Although MEMA withdrew that job posting after NAGE filed a charge
4 alleging an unlawful transfer of bargaining unit duties, MEMA still sought to add a
5 management position to assume some of the public information duties. When MEMA
6 created the Public Engagement Program Manager position, the job description included
7 more managerial responsibilities and did not so clearly absorb Besse's job duties.
8 Nevertheless, as Phillips was aware, the position includes duties that Besse had been
9 performing. Based on the evidence presented at hearing, I find that MEMA transferred all
10 but one of the following NAGE bargaining unit duties to non-bargaining unit employees,
11 in whole or in part:

12 1. Teaching the PIO Class

13 The evidence demonstrates that only Judge and Besse taught MEMA's PIO
14 courses prior to Lyons' hire. However, after Judge left his position at MEMA, he returned
15 as a contractor to teach the PIO course. As a contractor, Judge was not a bargaining unit
16 employee. Accordingly, both bargaining unit employees and non-bargaining unit
17 employees have shared this responsibility in the past.

18 Although NAGE admits that Judge was a contractor while performing this role for
19 at least three years, it argues that the practice of teaching the course was not accepted
20 by NAGE as being shared work with management. Judge was uniquely able to assist with
21 teaching duties due to his vast experience as the retired PIO. NAGE maintains that having
22 Judge continue to teach the class as a contractor was a temporary solution due to the
23 lack of available union staff equipped to fill the role rather than a permanent change in

1 the allocation of work responsibilities. I am not persuaded by this argument and I do not
2 find that the case NAGE cited, City of Quincy, Quincy City Hospital., 15 MLC 1239, MUP-
3 6490 (November 8, 1988), supports its argument. In the cited case, the CERB dismissed
4 the complaint, finding that certain work had been shared by bargaining unit painters and
5 outside contractors, but the union failed to present sufficient evidence to demonstrate
6 there was any alteration in the pattern of assigning that work. The same is true here. For
7 at least three years, a bargaining unit employee and non-bargaining unit employee, a
8 contractor, shared the teaching duties. The only difference now is that Lyons is the non-
9 bargaining unit employees who shares these duties with Besse, rather than a contractor.
10 No evidence was presented about whether Besse equally shared the duties with Judge
11 when he returned as a contractor or whether one performed a larger percentage of the
12 teaching duties. No evidence was presented about whether Besse and Lyons equally
13 share the duties currently or whether one performs a larger percentage of the work.
14 Consequently, there is no evidence of a decrease in the percentage of work that Besse
15 performs. Thus, I find that NAGE has failed to establish a calculated displacement of
16 shared work for the duty of teaching the PIO class.

17 2. Serving as PIO during SEOCs

18 In the past, only bargaining unit employees served as PIOs during SEOCs. Judge
19 and Besse served as the PIOs and were covered as necessary by other bargaining unit
20 employees. Directors sometimes addressed the media and gave interviews during
21 SEOCs, but did not perform the duties of the PIO. This changed when Lyons was hired.
22 Currently, Lyons and Besse share PIO duties during SEOCs. Although Lyons testified
23 that he has only assumed these responsibilities when Besse is out, other testimony and

1 documentary evidence demonstrates that this previously exclusive bargaining unit work
2 is now shared work. Moreover, the Activation Procedure clearly demonstrates that this is
3 now a shared duty with Lyons serving as the PIO during SEOCs on the Blue Team and
4 Besse serving as the PIO during SEOCs on the Green Team. Accordingly, I find that
5 NAGE has established by a preponderance of the evidence that MEMA transferred NAGE
6 work to the Public Engagement Program Manager position when Lyons began assuming
7 PIO duties during SEOCs.

8 3. Responding to after-hours media calls

9 The evidence is clear that Judge and Besse previously responded to all media
10 calls after hours. Accordingly, this was exclusively NAGE work. Both Judge and Besse
11 testified to that and their testimony was supported by Russas,³⁷ Brantley, and Phillips. At
12 some point, Besse was put on stand-by pay so he would be available after hours to
13 respond to the media and perform other related duties. After Lyons and Brantley were
14 hired in 2020, they began responding to media calls after hours. Although Lyons
15 downplayed his involvement with media calls, the other witnesses all agreed that Lyons,
16 and to a somewhat lesser extent Brantley, began assuming these responsibilities in 2020.

³⁷ MEMA, in its brief, argues that since 2007, duty officers, who include managers and other non-bargaining unit staff, responded to media inquiries. However, this is a misreading of the evidence presented at the hearing, which in part may be due to a possible mistake in the transcript. According to the transcript, Russas testified that the PIO or PIC handled media calls and “would probably coordinate with the duty officer on our actions, but we’d [duty officers] be the one that would actually coordinate with the media.” However, a full review of Russas’ testimony clearly establishes that duty officers do not handle media requests. Russas explained that duty officers provide the information to the PIC or PIO to be distributed to the media, but the PIC or PIO were the ones to deal with the media directly. He specifically testified that no duty officer regularly responds to media inquiries or gives media interviews. Rather, any such media inquiries were sent to Judge and Besse for a response until that changed after MEMA hired Lyons.

1 Additionally, the April 2021 Protocol clearly indicates that the PIC, Besse, is the primary
2 media point of contact and is responsible for coordinating responses to all media requests
3 during regular business hours, but that after business hours, these calls are transferred
4 to the Communications Center. If the inquiry required an immediate response, the
5 Communications Center sends it to Lyons, and, in his absence, Brantley. Besse is not
6 included in the list of people that the Communications Center should contact to respond
7 to after-hours media inquiries. I find the evidence clearly demonstrates that bargaining
8 unit employees previously responded to media calls after-hours and on weekends until
9 MEMA transferred that duty to non-bargaining unit employees.

10 4. Writing Press Releases, Website Updates and Social Media Postings After Hours

11 The evidence demonstrates that previously Judge and Besse were exclusively
12 responsible for writing press releases, posting on social media, and updating the website.
13 Management officials would sometimes provide information for the bargaining unit
14 employees to post, and sometimes reviewed and edited the bargaining unit employees'
15 press releases and planned postings, but bargaining unit employees were the ones who
16 actually wrote the press releases and posted to social media and the website. Phillips
17 confirmed that when she began her employment at MEMA, Besse was the only one who
18 regularly posted on social media and wrote press releases, as managed by senior
19 leadership. Nevertheless, MEMA argues that these duties were shared work and remain
20 shared work because various managers reviewed and edited Besse's press releases in
21 the past and now Lyons reviews and edits the press releases. I do not agree that just
22 because bargaining unit employees' work was reviewed by managers that work must be
23 considered shared work. In the past, only bargaining unit employees wrote press

1 releases. That duty had not been shared previously, but now it is shared because Lyons
2 and Brantley also write press releases in addition to Besse. Similarly, although Besse
3 continues to handle the majority of the website updating, Lyons now occasionally also
4 posts to the website. His position description reflects that he oversees MEMA's website
5 including updates and upgrades. Because these duties were previously exclusively
6 performed by bargaining unit employees but are now shared by a bargaining unit
7 employee and a management official, I find that MEMA transferred some of the bargaining
8 unit work of writing press releases and posting to the website to non-bargaining unit
9 employees.

10 Previously, bargaining unit employees were exclusively tasked with posting to
11 other social media outlets after hours. Besse now only posts on social media on behalf of
12 MEMA during work hours. Lyons is exclusively tasked with posting on social media after-
13 hours when the need arises. Accordingly, MEMA has also transferred this bargaining unit
14 duty from Besse to a non-unit employee.

15 5. Leading Preparedness Campaigns

16 The evidence presented at the hearing demonstrates that Besse had been the lead
17 for public preparedness initiatives and campaigns. He attended meetings with the Director
18 and other management officials regarding how to proceed with certain preparedness
19 campaigns such as hurricane preparedness, and then implemented the plan. Currently,
20 Besse remains involved in preparedness campaigns and initiatives but Lyons attends the
21 meetings with management rather than Besse. Lyons then relays the information he
22 learned to Besse. I find that MEMA transferred bargaining unit work to a non-bargaining

1 unit employee when it assigned Lyons, rather than Besse, to lead the public preparedness
2 campaigns.

3 6. Primary Contact for Other PIOs and Coordinating Public Information with Other
4 Agencies for Large Scale Events

5
6 Judge and Besse were the main point of contact for PIOs in other agencies and
7 private sector organizations. When the COVID Command Center needed information
8 from MEMA or needed assistance drafting a response to a media inquiry, it contacted
9 Besse. Similarly, when Mass 211 had a question or an issue regarding MEMA-related
10 public information, it contacted Besse. Now the COVID Command Center and Mass 211
11 contact Lyons rather than Besse. Judge and Besse previously coordinated with outside
12 entities to prepare for and respond to large scale events. For instance, Besse worked with
13 the Boston Athletic Association on the communications plan for the Boston Marathon.
14 Lyons has assumed the lead for the communications plan for the 2021 Boston Marathon.
15 I find that NAGE has established that MEMA transferred these duties, which were
16 previously performed by bargaining unit employees, to a non-unit employee.

17 Adverse Impact

18 Having found that MEMA transferred the above duties, with the exception of
19 teaching the PIO class, I next consider whether the transfer of these duties adversely
20 impacted any NAGE member or the bargaining unit as a whole. MEMA argues that NAGE
21 failed to demonstrate that there has been any adverse impact as a result of any transfer
22 of duties. MEMA asserts that Besse did not lose any work. He continues in his role as
23 PIC and performs the same job functions as he had in the past. Lyons has only handled
24 a very few after hours calls that previously would have been directed to Besse. MEMA
25 further argues that Lyons is performing work, including developing branding and

1 strategies, that was not previously done and would otherwise go undone. MEMA cites
2 Chief Justice for the Administration and Management of the Trial Court v. Commonwealth
3 Employment Relations Board, 79 Mass. App. Ct. 374, 387 (2011) for the proposition that
4 there is no adverse impact where bargaining unit members did not lose work or where
5 work would otherwise have gone undone. Additionally, MEMA denies that Besse has
6 suffered any decrease in overtime. Conversely, NAGE argues that Besse has suffered
7 an adverse impact. He has less work and less job security since Lyons assumed some
8 of the NAGE bargaining unit work that Besse previously performed. Besse has also lost
9 the opportunity to earn stand-by pay and overtime at the same level as before due to the
10 loss of some of his after-hour duties.

11 I find that although Besse continues to perform many of the same duties that he
12 did in the past, he has suffered adverse impacts because he has lost some of his previous
13 responsibilities to Lyons, and to a lesser extent Phillips and Brantley. Besse no longer
14 responds to media inquiries or posts to social media after hours. Besse now shares PIO
15 duties during SEOCs with Lyons. Lyons has replaced Besse as the lead for certain
16 preparedness campaigns, and interactions with outside agencies. In Chief Justice for the
17 Administration and Management of the Trial Court v. Commonwealth Employment
18 Relations Board, 79 Mass. App. Ct. 374, bargaining unit work was assigned to non-
19 bargaining unit personnel that otherwise would have gone undone due to the shortage of
20 necessary bargaining unit employees. In contrast, here there is no reason to assume that
21 any of the work which Besse and Judge had handled for years would otherwise have
22 gone undone if not performed by Lyons, Brantley, or Phillips. Besse handled these

1 responsibilities previously and no evidence was introduced that provided any explanation
2 about why he could not have continued to do so.

3 The parties dispute whether Besse earned less overtime after the transfer of some
4 of his duties. Besse testified that he earned about \$15,000 in overtime in the past year.
5 He did not specify how much he had earned in overtime previously but explained that he
6 has earned less overtime since Lyons was hired. No witness or documentary evidence
7 contradicted Besse's testimony. In its brief, MEMA argues that Besse earned more than
8 \$15,000 in overtime in 2020, and in fact earned more in 2020 than in previous years.
9 However, this contention is not supported by any evidence introduced at the hearing. It is
10 reasonable to conclude that Besse would see a reduction in overtime pay due to the clear
11 evidence that many of his after-hour responsibilities were transferred to management.³⁸
12 Given Besse's uncontroverted testimony, I find that the evidence presented at hearing
13 supports a finding that Besse lost overtime pay opportunities, and therefore he suffered
14 an adverse impact due to MEMA's transfer of some of his duties to non-unit personnel.

15 The transfer of bargaining work also adversely impacted Besse in other ways and
16 impacted the bargaining unit as a whole. Besse expressed understandable concerns
17 about his job security given that a manager has assumed many of his responsibilities. At
18 one point, two bargaining unit employees, Besse and Judge, handled the public
19 information duties together. After Judge's retirement, Besse handled these duties on his

³⁸ NAGE also asserts that Besse lost the opportunity to earn stand-by pay starting in May 2020. Although there was some testimony about this loss of stand-by pay, that matter is at issue in another charge. Moreover, Phillips provided a few reasons about why she eliminated Besse's stand-by pay, including reasons unrelated to the transfer of any work to non-unit personnel. Accordingly, I do not find that Besse's loss of stand-by pay was an adverse impact resulting from MEMA's unlawful transfer of bargaining unit work.

1 own, with some coverage by other bargaining unit employees. When Phillips determined
2 that the public information component was too large a portfolio for one individual, instead
3 of hiring another bargaining unit employee, she created a managerial position to, in part,
4 assume some of Besse's duties. Even where a transfer of bargaining unit work does not
5 result in any immediate reduction in bargaining unit positions, it could result in an eventual
6 elimination of the bargaining unit through gradual erosion of bargaining unit duties.
7 Commonwealth of Massachusetts, 24 MLC 116, 119, SUP-4050 (June 10, 1998)).
8 Similarly, the CERB has held that losing the opportunity to perform unit work in the future
9 is a sufficient detriment to the unit to trigger a bargaining obligation. Town of Saugus, 29
10 MLC 208, 210, MUP-2621 (May 14, 2003). For these reasons, I find that MEMA's transfer
11 of certain bargaining unit duties adversely impacted both Besse and the bargaining unit
12 as a whole.

13 **MEMA Defends its Failure to Bargain over the Transfer of Bargaining Unit Work**

14 It is uncontroverted that MEMA did not provide NAGE with prior notice and an
15 opportunity to bargain over the decision to transfer of any of the bargaining unit work
16 described above. MEMA maintains that it was not obligated to provide NAGE with notice
17 and the opportunity to bargain to agreement or impasse for a number of reasons which I
18 analyze below.

19 1. Public Engagement Program Manager Performs Duties that Bargaining Unit 20 Employees Do Not.

21 MEMA argues that the Public Engagement Program Manager performs certain duties
22 that Besse never perform. I agree. Lyons clearly has certain managerial and strategic
23 responsibilities that have never been assigned to NAGE bargaining unit employees. But
24 that is not relevant to the question of whether there was a transfer of bargaining unit work.

1 The question is not whether Lyons performs duties that Besse does not; the question is
2 has Lyons, a non-bargaining unit employee, assumed some of Besse's bargaining unit
3 duties. That answer, as noted above, is yes. See Commonwealth of Massachusetts, 26
4 MLC 228, SUP-4288 (June 12, 2000) (the Commonwealth created a managerial position,
5 PTLs, which had more decision-making authority than the bargaining unit employees, but
6 because the Commonwealth transferred at least some of bargaining unit employees'
7 duties to the PTLs, "a transfer of that unit work has taken place, regardless of what
8 additional duties the PTLs may be performing. Therefore, the Commonwealth was
9 obligated to bargain with the Union to resolution or impasse before transferring
10 the Buyer's duties to the PTLs").

11 2. MEMA's Management Rights

12 MEMA next argues that it has management rights regarding standards of service
13 to be provided and the personnel by which its operations are to be conducted. In this
14 regard, MEMA has the right to direct and transfer personnel, and it has the authority to
15 take actions necessary to carry out its mission in emergencies. Article 2, § 2.1 of the
16 parties' CBA provides:

17 The Employer shall have the right to exercise complete control and
18 discretion over its organization and technology including but not limited to
19 the determination of the standards of services to be provided and standards
20 of productivity and performance of its employees; establish and/or revise
21 personnel evaluation programs; the determination of the methods, means
22 and personnel by which its operations are to be conducted; the
23 determination of the content of job classifications; the appointment,
24 promotion, assignment, direction and transfer of personnel; the suspension,
25 demotion, discharge or any other appropriate action against its employees;
26 the relief from duty of its employees because of lack of work or for other
27 legitimate reasons; the establishment of reasonable work rules; and the
28 taking of all necessary actions to carry out its mission in emergencies.
29

1 MEMA argues that because the Director is responsible for determining: 1) whether
2 a situation demands activating the SEOC, 2) whether there will be a public information
3 component, and 3) who will staff the SEOC and what their roles will be, NAGE cannot
4 insist that only a bargaining unit member can serve as the public information officer during
5 an emergency. I am not persuaded by this argument. First, the evidence demonstrates
6 that MEMA did not just transfer the PIO duties during an emergency to non-unit personnel
7 but transferred a host of bargaining unit duties to non-unit personnel. But to address the
8 specific claim here, the Director remains free to determine whether a SEOC should be
9 activated and if there will be a public information component. Although the Director is also
10 free to determine which staff will perform certain roles, if the Director decides that a non-
11 bargaining unit employee should serve as PIO during the SEOC, a role that has been
12 exclusively bargaining unit work, then MEMA must fulfill its bargaining obligation before
13 transferring these duties. MEMA did not do so. I see nothing in the CBA language that
14 would permit MEMA to ignore the bargaining requirements set forth in the Law.

15 3. MEMA's Nondelegable Statutory Authority under the Civil Defense Act.

16 Similarly, MEMA argues that under the Civil Defense Act, MEMA's Director has
17 the nondelegable managerial authority to "appoint such experts, clerks and other
18 assistants as the work of the Massachusetts Emergency Management Agency may
19 require and may remove them." MEMA cites to Department of State Police v.
20 Massachusetts Organization of State Engineers & Scientists 456 Mass. 450, 455 (2010),
21 in which the Supreme Judicial Court determined that the import of the language in M.G.L.
22 Ch. 22C, § 9, which authorizes the colonel to appoint, transfer and remove experts, clerks
23 and other assistants as he may deem necessary for the operation of the department, "is

1 plainly to confer on the colonel exclusive managerial authority over the appointment,
2 transfer, and removal of any person employed in one of the specified positions, authority
3 that cannot be delegated to an arbitrator under a collective bargaining agreement.” MEMA
4 suggests that under the Civil Defense Act, MEMA’s Director has similar authority to that
5 of the State Police Colonel to appoint and direct employees. Accordingly, MEMA asserts
6 that Phillips, as the Director, has the exclusive managerial authority to appoint and direct
7 employees, and seemingly suggests that therefore, MEMA was not required to bargain
8 when it transferred the bargaining unit duties to non-bargaining unit personnel. I am
9 unpersuaded by this argument. The Civil Defense Act provides that the Director may
10 appoint experts, clerks, and other assistants as MEMA may require and may remove
11 them, but the issue here is not about the appointment or removal of any expert, clerk, or
12 other assistant. The issue here is whether MEMA was obligated to bargain before
13 transferring bargaining unit duties to non-bargaining unit employees. The Civil Defense
14 Act specifically excludes these employees from the Civil Service law, MGL c. 31, but I
15 find nothing in the Civil Defense Act that suggests that the Law does not apply to MEMA’s
16 employees.

17 After considering all of MEMA’s arguments, I do not find that MEMA has justified
18 its failure to bargain with NAGE when it transferred certain bargaining unit duties to non-
19 bargaining unit personnel.

20 CONCLUSION

21 For the reasons explained above, I find that MEMA did not unlawfully transfer
22 bargaining unit duties to non-bargaining unit employees when Lyons began to teach the
23 PIO course, because those duties had been performed by a non-bargaining unit

1 employee for years, and NAGE was unable to demonstrate a calculated displacement of
2 bargaining unit work. However, I find that MEMA did violate the Law when it transferred
3 the following duties to non-unit personnel without giving NAGE prior notice and an
4 opportunity to bargain to resolution or impasse: serving as PIO during SEOCs,
5 responding to after-hours media calls, writing press releases, updating MEMA's website,
6 posting on social media after hours, leading preparedness campaigns, serving as the
7 primary contact for other PIOs, and coordinating public information with outside
8 organizations for large scale events.

9 REMEDY

10 The goal of fashioning appropriate remedies is to place a charging party in the
11 position that it would have been but for the unfair labor practice. Commonwealth of
12 Massachusetts, 36 MLC 65, 69, SUP-05-5191 (October 23, 2009). MEMA argues that
13 NAGE failed to establish that Besse is entitled to any additional compensation because:
14 1) any potential overtime is speculative as it is based on mission need, and 2) NAGE has
15 a separate charge pending concerning Besse's stand-by pay, so that any impact related
16 to that claim is beyond the scope of this charge. NAGE requests the traditional remedy in
17 transfer of unit work cases, a return to the status quo ante order while the parties negotiate
18 the decision and the impacts of the proposed transfer of unit work, along with a Notice
19 posting. Additionally, NAGE requests that the DLR order that NAGE's bargaining unit
20 members be made whole for any loss of earning suffered because of the MEMA's
21 unlawful transfer, including stand-by pay that would have been paid to Besse if the on-
22 call work had not been done by Lyons, at the rate specified by G.L. c. 231, Section 61,
23 compounded quarterly, up to the date MEMA complies with this order.

1 As noted above, there were a number of reasons provided to explain why MEMA
 2 removed Besse from stand-by status other than the transfer of some of Besse's duties to
 3 non-unit personnel. Accordingly, I do not order restoration of Besse's stand-by status
 4 here. Besse's standby pay is the subject of another pending complaint, and the matter
 5 can be remedied in that proceeding should it result in a finding that MEMA violated the
 6 Law.

7 Although the parties did not provide specifics about the loss of Besse's overtime, I
 8 do not conclude that Besse's financial harm is too speculative to be included in my order.
 9 The record contains sufficient information to find that Besse suffered financial harm as a
 10 result of the transfer of bargaining unit work which he previously performed after-hours
 11 and for which he was paid overtime. Contrast Town of Marion, 30 MLC 11, 15, MUP-02-
 12 3329 (August 20, 2003) (declining to issue a make whole order where the record is devoid
 13 of any evidence showing that unit members would have performed duties on an overtime
 14 basis if not transferred.) Any uncertainty about the specifics of the suffered economic
 15 harm can be resolved either by the parties themselves or, if necessary, by a compliance
 16 proceeding. See City of Gardner 10 MLC 1218, MUP-4917 (September 14, 1983).

17 ORDER

18 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that MEMA shall:

19
 20 1. Cease and desist from:

21
 22 a. Transferring public information and preparedness duties performed by bargaining
 23 unit employees to non-bargaining unit employees without giving NAGE prior notice
 24 and an opportunity to bargain to resolution or impasse.

25
 26 b. in any like or related manner, interfering with, restraining, or coercing employees
 27 of their rights guaranteed under the Law.

28
 29 2. Take the following affirmative action which will effectuate the policies of the Law:

- 1
- 2 a. Restore to the bargaining unit the following duties: serving as PIO during SEOCs,
- 3 responding to after-hours media calls, writing press releases, updating MEMA's
- 4 website, posting on social media after hours, leading preparedness campaigns,
- 5 serving as the primary contact for other PIOs, and coordinating public information
- 6 with outside organizations for large scale events.
- 7
- 8 b. Upon demand, bargain in good faith with the Union to resolution or impasse about
- 9 the decision and the impacts of the decision to transfer the duties referenced in
- 10 paragraph 2(a) to non-bargaining unit employees.
- 11
- 12 c. Make whole Christopher Besse for overtime pay lost as a direct result of MEMA's
- 13 decision to transfer his after-hours duties to Tom Lyons, plus interest at the rate
- 14 specified by G.L. c. 231, Section 6B, compounded quarterly, up to the date MEMA
- 15 complies with this order.
- 16
- 17 d. Post immediately in all conspicuous places where members of NAGE's bargaining
- 18 unit usually congregate, or where notices are usually posted, including
- 19 electronically if MEMA customarily communicates with these members via intranet
- 20 or email, and display for a period of thirty (30) days thereafter, signed copies of the
- 21 attached Notice to Employees.
- 22
- 23 e. Notify the DLR in writing of steps taken to comply with this Order within ten (10)
- 24 days from receipt.
- 25

26 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



GAIL SOROKOFF, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE
MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Massachusetts Emergency Management Agency (MEMA) has violated Sections 10(a)(5) and derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by unilaterally transferring bargaining unit work outside of the unit without providing the National Association of Government Employees (NAGE) with notice and the opportunity to bargain. The Law 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. Based on these rights, MEMA assures its employees that:

WE WILL NOT fail or refuse to bargain with NAGE by failing to provide it with prior notice and the opportunity to bargain over the transfer of bargaining unit work to non-unit employees;

WE WILL restore the following duties to the bargaining unit: serving as PIO during SEOCs, responding to after-hours media calls, writing press releases, updating MEMA's website, posting on social media after hours, leading preparedness campaigns, serving as the primary contact for other PIOs, and coordinating public information with outside organizations for large scale events;

WE WILL upon request, bargain in good faith with NAGE to resolution or impasse over the decision and the impacts of the decision to transfer the bargaining unit duties listed above to non-unit employees;

WE WILL make whole Christopher Besse for overtime pay lost as a direct result of MEMA's decision to transfer his after-hour duties to non-unit personnel;

WE WILL NOT otherwise interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under the Law.

Massachusetts Emergency Management Agency

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, Lafayette City Center, 2 Avenue de Lafayette, Boston MA 02111 (Telephone: (617) 626-7132).