

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTIONS

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 509

Case No. SUP-20-8162

Date Issued: January 17, 2023

Hearing Officer:

Lan Kantany, Esq.

Appearances:

Earl Wilson, Esq.: Representing the Commonwealth of Massachusetts
Department of Corrections

Tod Cochran, Esq.: Representing the Service Employees International
Union, Local 509

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Commonwealth of Massachusetts
2 Department of Corrections (Employer or DOC) violated Section 10(a)(5) and, derivatively,
3 Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by repudiating
4 a settlement agreement when it refused to execute a settlement agreement it reached
5 with the Service Employees International Union, Local 509 (Union). Based on the record,
6 and for the reasons explained below, I find that the Employer violated the Law in the
7 manner alleged.

STATEMENT OF CASE

1 On August 21, 2020, the Union filed a charge of prohibited practice (Charge) with
2 the Department of Labor Relations (DLR) alleging that the Employer had violated Section
3 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On November 17, 2020, a DLR
4 investigator investigated the charge. On December 9, 2020, the investigator issued a
5 Complaint of Prohibited Practice (Complaint) alleging that the Employer violated the Law
6 by repudiating a settlement agreement when it refused to execute a settlement agreement
7 it reached with the Union regarding a vacation grievance. On December 18, 2020, the
8 Employer filed its Answer to the Complaint.

9 On August 18, 2021, the Employer filed a Motion to Dismiss. On September 3,
10 2021, the Union filed an Opposition to the Motion to Dismiss. I issued a ruling, denying
11 the Motion to Dismiss, on September 13, 2021. On October 1, 2021, I conducted a
12 hearing by videoconference, during which the parties received a full opportunity to be
13 heard, to examine and cross-examine witnesses, and to present evidence. On January
14 31, 2022, the parties filed post-hearing briefs. Based on my review of the record, including
15 my observations of the demeanor of witnesses, I make the following findings of fact and
16 render the following opinion.

STIPULATIONS OF FACT

- 17
- 18 1. The Commonwealth of Massachusetts (“Commonwealth”) is a public employer
19 within the meaning of Section 1 of the Law.
20
 - 21 2. SEIU Local 509 (“Union”) is an employee organization within the meaning of
22 Section 1 of the Law.
23
 - 24 3. The Union is the exclusive bargaining representative for correction program
25 officers employed in the Commonwealth’s Department of Correction (“DOC”).
26

- 1 4. On September 11, 2017, the Union filed a grievance, known as the Teachers'
2 Vacation grievance, under the collective bargaining agreement (CBA) that was in
3 effect between the Union and the DOC at all relevant times.
4
- 5 5. The Teachers' Vacation grievance was initially scheduled for arbitration on
6 January 14, 2020.
7
- 8 6. Prior to the commencement of the hearing, the parties agreed to postpone the
9 arbitration to February 7, 2020 to discuss the possibility of settlement.
10
- 11 7. The parties began to negotiate a settlement agreement on February 7, 2020 prior
12 to the arbitration hearing commencing.
13

14 FINDINGS OF FACT

15 Background

16 The Union is the exclusive bargaining representative for correction program
17 officers and institutional school teachers employed by the DOC. Institutional school
18 teachers (IST) provide education to persons who are incarcerated at the DOC facilities.

19 Prior to 2016, ISTs provided classroom instruction to persons who were
20 incarcerated in their facilities 40 weeks throughout the traditional school year, from
21 approximately September to June, and then took approximately 9 weeks off during the
22 summer. ISTs also received three weeks off during the September to June school year.
23 In effect, they worked 40 weeks and received 12 weeks of paid time off a year.

24 In 2016, the Employer decided to switch from a traditional school year to teaching
25 over twelve months. The parties entered into a memorandum of agreement (MOA) in
26 August 2016 whereby there would be a transitional school year from July 1, 2016 to June
27 30, 2017. The Union claimed the MOA entitled ISTs to 12 weeks of time off or
28 compensatory time for the 2016-17 school year. The Employer disputed this
29 interpretation.

1 On September 11, 2017, Candace Fournier (Fournier), a bargaining unit member
2 and IST, filed a grievance alleging the Employer violated the CBA by scheduling ISTs for
3 only three weeks of time off with pay and shorting employees an additional nine weeks of
4 time off with pay when it implemented the July 1, 2016 to July 30, 2017 transitional school
5 year (hereinafter referred to as the "Teachers' Vacation grievance").¹ The Union claimed
6 that, according to the CBA, ISTs worked 40 weeks in a calendar year, in exchange for 12
7 weeks of paid time off during the calendar year.

8 The Teachers' Vacation grievance was scheduled for arbitration on January 14,
9 2020. On the morning of January 14, 2020, the arbitrator asked if the parties were
10 interested in discussing settlement. The parties agreed to explore the possibility of
11 settlement and to postpone the hearing until February 7, 2020. On February 6, 2020, Jo
12 Fletcher (Fletcher), an assistant to the Union's attorney, Tod Cochran (Cochran), e-
13 mailed the arbitrator and informed him that the parties agreed to place the Teacher's
14 Vacation grievance in abeyance, pending completion of a settlement agreement.

15 Settlement Negotiations

16 On March 4, 2020, the Employer's Director of Employee Relations and attorney,
17 Earl Wilson (Wilson), sent an e-mail to Cochran attaching a draft settlement agreement
18 and release for the Teachers' Vacation grievance and the Superior Court claim. The draft
19 settlement agreement and release states as follows:

- 20 1. The Teachers currently employed by the Department and listed on
21 the attached Exhibit A will be credited with seven (7) weeks'
22 compensatory time ("compensatory time"). Said compensatory

¹ In addition to the Teachers' Vacation grievance, an individual IST also filed a class action lawsuit in Bristol County Superior Court on behalf of all the affected ISTs alleging violations of the Massachusetts Wage Act, Chapter 149, Sections 148 and 150 (hereinafter referred to as the "Superior Court claim").

1 time can be used subject to existing rules for the use of "floating
2 days", i.e., after timely request and approval by the
3 Superintendent of Schools or her designee, based upon the
4 operational needs of the Department.
5

6 2. Teachers who retire from the Department will be paid for any of
7 the unused compensatory time referred to in Paragraph 1 above
8 at their effective hourly rates as of the time of the signing of this
9 Settlement Agreement and Release.
10

11 3. Teachers who were employed during the Transitional School Year
12 of September 6, 2016 to June 30, 2017, and who subsequently
13 retired or deceased, will be paid for seven (7) weeks'
14 compensatory time at their effective hourly rates at the time of their
15 retirement or death.
16

17 4. The Union and the individuals listed on the attached Exhibit A
18 agree to withdraw Arb. # 9742 (OER # 18-45-241) as well as all
19 other grievance(s) which may be pending relative to this specific
20 matter, and agree not to pursue this specific matter in any other
21 forum, and furthermore agree to release the Commonwealth from
22 any further responsibility arising from this claim, including except
23 as prohibited by law. The Union and the Teachers listed in Exhibit
24 A specifically agree to and hereby do waive, release and
25 discharge all claims, demands, causes of action, fees, liabilities
26 and expenses of any kind whatsoever, including, but not limited
27 to, claims under the Massachusetts Wage Act, M.G.L. c. 149, §§
28 148, 150, et seq., whether known or unknown, and whether or not
29 previously asserted against the Commonwealth of
30 Massachusetts, its agencies including, but not limited to, the
31 Department of Correction, and any of its current, former and future
32 employees, officials, agents, officers, attorneys, successors,
33 parents, subsidiaries or affiliates, individually and in their official
34 capacities, by reason of any actual or alleged act, omission,
35 transaction, practice, conduct or occurrence, arising out of or
36 relating in any way to the allegations set forth in Arb. # 9742 (OER
37 # 18-45-241) including, but not limited to, the matter of Lori Convey
38 v. Commonwealth of Massachusetts, et al., Bristol Superior Court
39 C.A. No. 1873CV00220.
40

41 5. The Parties enter into this Settlement Agreement and Release in
42 the spirit of compromise and avoidance of protracted litigation, and
43 agree that this Settlement Agreement and Release shall not
44 constitute an admission of wrongdoing or liability by any party.
45

1 6. The terms of this Settlement Agreement and Release shall pertain
2 to the instant case, shall not serve as precedent for any other
3 case, and cannot be introduced in any forum except to enforce the
4 terms of the Settlement Agreement and Release.

5
6 The draft settlement agreement also included a separate page entitled Exhibit A,
7 which contained spaces for individual ISTs to sign. There were approximately 34 ISTs
8 who worked during the transitional year.

9 On March 19, 2020, Cochran e-mailed the draft settlement agreement back to
10 Wilson with revisions and comments from the Union. The Union had three main concerns
11 with the draft.² First, it struck the language in paragraph 1, “subject to existing rules for
12 the use of ‘floating days.’” The Union was concerned about making the use of the seven
13 weeks of compensatory time subject to the rules for floating days because floating days
14 are restricted to two hour minimum periods and do not carry over at the end of the fiscal
15 year. Second, the Union struck the language in paragraph 2, “the signing of this
16 Settlement Agreement and Release” and substituted it with “their retirement.” The Union
17 asserted that the agreement was that the payout would be at the rate at the time of the
18 teachers’ retirement, not at the time of the Settlement and Release. Third, the Union
19 added “or left the department” after the word “deceased.” The Union asserted that there
20 were three individuals, Heidi Souza (Souza), Victoria Sabajian (Sabajian), and Nydia
21 Trela (Trela), who had already left the DOC, but did not retire, and were in the class
22 grievance who should be covered i.e., had been working during the transitional year. The
23 Union made no other changes to the settlement agreement.

² The Union also added, for clarification, “C, D, and E” after “Teachers” in paragraph 1.

1 On April 28, 2020, Wilson responded by e-mail to Cochran's March 19, 2020 e-
2 mail. With respect to the floating days issue, Wilson stated that he could tentatively agree
3 with Cochran's proposed revisions, subject to final review with his principals. With respect
4 to the second issue, Wilson stated that it was the DOC's understanding that the Union
5 had agreed that any compensatory time paid at retirement would be at the hourly rate in
6 effect at the signing of the settlement agreement. With respect to the final issue, Wilson
7 stated that he had some questions about Souza, Sabajian, and Trela that he wanted to
8 discuss with Cochran.

9 After Wilson's April 28, 2020 e-mail to Cochran, Wilson and Cochran had a
10 conversation about the three issues remaining with the settlement agreement. Wilson
11 confirmed that the DOC would accept the Union's revisions regarding eliminating the
12 reference to floating days. Wilson expressed openness to including Souza, Sabajian, and
13 Trela in the settlement agreement, but maintained that the compensatory time pay rate
14 would be the rate when the settlement agreement was signed, not when the ISTs retired.

15 On May 19, 2020, after the conversation referenced above, Cochran e-mailed
16 Wilson regarding the three remaining issues with the settlement agreement. With respect
17 to the first issue, Cochran said "[t]hank you for your understanding on the floating day
18 issue. Please confirm with your principals." With respect to the second issue, Cochran
19 reiterated the Union's position that it agreed to the pay rate at the time of the employee's
20 retirement, and not at the time of the settlement. With respect to the third issue, Cochran
21 reiterated that it was the Union's position that Souza, Sabajian, and Trela were entitled to
22 payment under the settlement agreement, even though they left the DOC and had not
23 retired from state service.

1 On May 22, 2020, Wilson e-mailed Cochran requesting to discuss the settlement.
2 Later the same day, Wilson and Cochran had a telephone conversation regarding the
3 settlement. During the conversation, Wilson stated that he agreed to accept the Union's
4 position that Souza, Sabajian, and Trela were entitled to qualify for the settlement.
5 However, he maintained that the rate of pay for the compensatory time would be at the
6 execution of the agreement. Cochran informed Wilson that he would check with the Union
7 regarding the remaining issue of how the rate of pay for the compensatory time would be
8 calculated.

9 After the telephone call with Wilson, Cochran e-mailed Fournier. Cochran stated
10 that Wilson "was willing to move on these three: Souza, Sabajian, and Trela, although he
11 has to get DOC to agree with him." Cochran further opined that Wilson's position on the
12 rate of pay was the same, and therefore he thought they would need to let that go. Finally,
13 Cochran stated that Wilson would circle back in a couple of days after speaking with DOC.

14 On June 4, 2020, Wilson e-mailed Cochran and stated "I have the OK to pay out
15 to Souza, Sabija [sic] and Trela, but can you confirm that any future buy outs are at the
16 rate in effect at the time of execution of the agreement?" After receiving this e-mail,
17 Cochran consulted with the Union and they decided to drop the pay rate issue.

18 On June 10, 2020, Cochran called Wilson and informed him that the Union agreed
19 that the future buy outs for the compensatory time would be at the rate of pay at the time
20 of the execution of the agreement. Wilson responded by saying "we have a deal" and that
21 he would get a final draft settlement over to the Union for signatures the next week.³ Later

³ Cochran testified that Wilson said "we have a deal" and that he would get "a final settlement" to Cochran. Wilson testified on direct examination that "to the best of my recollection was I indicated that I would put together another draft of the settlement

1 the same day, Cochran informed Fournier by e-mail that he just spoke with Wilson, that
2 Wilson was making the changes they discussed, and that he promised a final version by
3 Monday, June 15, 2020 at the latest. On June 17, 2020, Cochran e-mailed Wilson asking
4 for an update on the settlement.

5 DOC's Decision to Not Settle Teachers' Vacation Grievance

6 At some point between June 10, 2020 and July 2, 2020, the DOC realized that it
7 had approximately four more ISTs who had retired from the DOC who it would need to
8 pay nearly immediately after the settlement agreement was reached. The DOC thought it
9 was originally only five people, including Trela, Sabajian, and Souza, who would be paid
10 immediately after the settlement was completed. Further, Wilson learned that the DOC
11 was exploring alternative ways of delivering education to incarcerated persons as a result
12 of the COVID-19 pandemic, which may result in a reduction in the work force and cause
13 additional immediate pay outs because there were approximately 19 ISTs who were
14 already retirement eligible. Therefore, the DOC never sent the final draft settlement to the
15 Union for signatures.

16 Between June 17, 2020 and July 2, 2020, Cochran did not speak to Wilson but left
17 him messages asking about the settlement agreement. On July 2, 2020 at 1:01 p.m.,
18 Cochran e-mailed Wilson stating "we've run out of patience on the lack of response for
19 this settlement draft. If I don't get a draft back from you by the end of the day, this coming

agreement and send it to him by Monday." Wilson later testified on cross-examination that he had represented to Cochran that he "would prepare another, a final draft." In his testimony, Wilson did not address whether he stated "we have a deal," nor did the DOC dispute in its post-hearing brief that he said this. Based on this, largely undisputed testimony, I find that Wilson stated "we have a deal" and that he would send a "final draft settlement."

1 Monday, I'm going to ask the arbitrator to set up a conference call." Just a few minutes
2 later, Wilson wrote an e-mail to Cochran stating, "I did leave a voicemail on your cell
3 phone on Tuesday to call me. We are not going forward with the settlement. So let's go
4 ahead and set up a conference call with [the arbitrator] to talk about scheduling the
5 hearing." Cochran responded that he did not get the message and that "[DOC]'s decision
6 to back away at the 13th hour is not just ridiculous, its bad faith. Presumably DOC realizes
7 we will be going for 100% (at least) on the grievance and there won't be any more
8 rescheduling or last minute attempts at a deal."

9 On July 6, 2020, Fletcher e-mailed the arbitrator, stating that "[t]he parties have
10 been unable to settle the above referenced matter. Please provide new dates for another
11 day of hearing." The arbitration on the Teachers' Vacation grievance was held on
12 February 11, 2021. On July 15, 2021, the arbitrator issued a decision in favor of the DOC,
13 denying the Teachers' Vacation grievance.

14 OPINION

15 The Complaint alleges that the Employer violated Section 10(a)(5) and,
16 derivatively, Section 10(a)(1) of the Law by repudiating a settlement agreement when it
17 refused to finalize and execute a settlement agreement it reached with the Union.

18 Section 6 of the Law requires public employers and unions that represent public
19 employees to meet at reasonable times to negotiate in good faith regarding wages, hours,
20 standards of productivity and performance, and any other terms and conditions of
21 employment. The statutory obligation to bargain in good faith includes the duty to comply
22 with the terms of a collectively bargained agreement. Commonwealth of Massachusetts,
23 26 MLC 165, 168, SUP-3972 (March 13, 2000). This obligation applies to side

1 agreements to resolve grievances. City of Cambridge, 35 MLC 183, 186, MUP-04-4229
2 (March 5, 2009). Repudiating a collectively bargained agreement by deliberately refusing
3 to abide by or to implement an agreement's unambiguous terms violates the duty to
4 bargain in good faith. Town of Falmouth, 20 MLC 1555, MUP-8114 (May 16, 1994), aff'd
5 sub nom., Town of Falmouth v. Labor Relations Commission, 42 Mass. App. Ct. 1113
6 (1997).

7 In determining whether an employer and a union reached an agreement, the
8 Commonwealth Employment Relations Board (Board) considers whether there has been
9 a meeting of the minds on the actual terms of the agreement. Town of Ipswich, 11 MLC
10 1403, 1410, MUP-5248 (February 7, 1985). To achieve a meeting of the minds, the
11 parties must manifest an assent to the terms of the agreement. Suffolk County Sheriff's
12 Department, 30 MLC 1, 6, MUP-2747 (August 19, 2003). Here, the parties reached a
13 meeting of minds on June 10, 2020, when they resolved the last remaining issue in the
14 settlement agreement. Wilson manifested the DOC's assent to the terms of the entire
15 agreement when he said "we have a deal," and that he would send a final draft settlement
16 to Cochran.

17 Unlike previous occasions, Wilson did not condition the resolution of the last issue,
18 or the final settlement, upon his consultation with other people in the DOC. Therefore, his
19 assent to the terms of the agreement on June 10, 2020 is binding on the DOC.
20 Commonwealth of Massachusetts, 28 MLC 339, SUP-4333 (May 17, 2002) (union entitled
21 to rely on apparent authority of bargaining representative where he did not inform union
22 of any limitations on his authority during negotiations); Town of Ipswich at 11 MLC 1410

1 n.7 (unless communication of a limitation in one's authority is presented to the other party,
2 an individual in charge of a transaction is held to have broad apparent authority).⁴

3 Even though the Union and the DOC never memorialized their agreement into a
4 final written settlement agreement, the Board has long recognized that a meeting of the
5 minds can occur without an agreement being reduced to writing or signed by either party.
6 Chief Justice for Administration and Management of the Trial Court, 35 MLC 171, 173,
7 SUP-04-5150 (January 30, 2009) (an oral agreement between a public employer and a
8 union is effective and enforceable under the Law if the agreement is otherwise valid)
9 (citing Service Employees International Union, Local 509 v. Labor Relations Commission,
10 410 Mass. 141, 145 (1991)). Therefore, the Union has established that the DOC
11 repudiated the oral agreement reached on June 10, 2020, when the DOC later refused to
12 finalize, execute, and implement the settlement agreement.

13 The DOC argues that its conduct should be evaluated under the totality of the
14 circumstances, and that under that standard, it did not engage in bad faith bargaining in
15 violation of Section 10(a)(5) of the Law. It argues that subsequent factors late in the
16 process of negotiations justified its ability to change its mind regarding the settlement
17 agreement. I reject these arguments for two reasons. First, the cases the DOC cites did
18 not arise in the context of a union alleging repudiation of an agreement and are therefore
19 inapplicable. Rather, the cases the DOC cites applying the totality of circumstances
20 standard were in the context of the employer's conduct *during negotiations*. See King

⁴ Deputy Commissioner of Career and Professional Development, Michael Grant, indicated during his testimony that Wilson did not have the authority to enter into a settlement agreement on behalf of the DOC. The DOC did not make this argument in its post-hearing brief or opening statement, and therefore I did not consider this argument.

1 Philip Regional School Committee, 2 MLC 1393, MUP-2125 (February 18, 1976) (whether
2 the school committee engaged in bad faith bargaining during successor negotiations
3 when it insisted that the agreement contain certain terms); Town of Saugus, 2 MLC 1480,
4 MUP-591 (May 5, 1976) (whether the town engaged in bad faith bargaining during the
5 course of negotiations); Framingham School Committee, 4 MLC 1809, MUP-2428
6 (February 27, 1978) (whether the school committee engaged in bad faith bargaining
7 during successor negotiations); Cambridge School Committee, 7 MLC 1026, MUP-3319
8 (May 27, 1980) (whether the school committee's conduct during agreed upon impact
9 negotiations constituted bad faith bargaining); Board of Trustees of University of
10 Massachusetts, 26 MLC 143, SUP-4489 (March 9, 2000) (whether the employer failed to
11 bargain in good faith when it stated that it was not possible to grant an across-the-board
12 pay increase of 2% to the charging party's bargaining unit members, but later provided
13 an across-the-board pay increase to other employees); City of Springfield, 7 MLC 1088,
14 MUP-3720 (June 19, 1980) (H.O. decision) (whether the city demonstrated an intent to
15 reach an agreement with the union over compensation for a holiday through good faith
16 negotiations), aff'd, 7 MLC 1832 (February 6, 1981); Newton School Committee, 44 MLC
17 178, MUP-16-5186, MUP-16-5542 (March 14, 2018) (H.O. decision) (whether the school
18 committee bargained in good faith when it preconditioned its willingness to make
19 economic proposals on the union's acceptance of outsourcing). NLRB v. Truitt Mfg. Co.,
20 351 U.S. 149, 153-154 (1956) (whether the employer failed to bargain in good faith when
21 it asserted that it could not afford to pay higher wages but then refused to produce
22 information substantiating its claim). Here, the Union did not assert that the DOC engaged
23 in bad faith bargaining during their negotiation of the settlement agreement. The relevant

1 inquiry is whether the parties concluded negotiations and reached an agreement that the
2 DOC then repudiated, as established by the well-settled law for evaluating repudiation
3 claims under the Law.

4 Second, the DOC's decision to not move forward was not "late in the process" of
5 negotiations. Rather, it was after negotiations had already been completed and an
6 agreement was reached. The DOC may have had valid reasons for deciding that the
7 settlement agreement was not in its best interests. However, the DOC had the ability to
8 evaluate the scope of actual and potential retirements and the impact of changes due to
9 the COVID-19 pandemic during the negotiations, and should have considered those
10 factors *prior* to reaching an agreement with the Union on June 10, 2020. The DOC does
11 not cite any cases that permit any party to refuse to finalize, execute, or implement a
12 settlement agreement after there has been a meeting of minds on all issues, even when
13 there may be valid reasons for doing so.⁵ Indeed, in Belmont School Employees Local
14 408, AFSCME, the Labor Relations Commission (LRC), the Board's predecessor,
15 affirmed the hearing officer's decision finding that a union could not void an agreement
16 that the union president signed even though the union president mistakenly presented an
17 incorrect provision to the union membership at ratification. 4 MLC 1189, MUPL-2095
18 (August 5, 1977) (H.O. decision), aff'd, 4 MLC 1707 (February 2, 1978). See also City of

⁵ The DOC cited City of New Bedford, 38 MLC 117, MUP-09-5581, MUP-09-5599 (2011) (H.O. decision), aff'd, 38 MLC 239 (2012), stating that the Board found that the employer did not repudiate an executed agreement by laying off certain employees as a result of subsequent local aid cuts pursuant to M.G.L. c. 29, Section 9(c). However, the Board found that the agreement was not repudiated because it did not unambiguously state that the employer would not implement layoffs during the time in question. The Board did not reject the union's repudiation claim because there were subsequent local aid cuts. Therefore, this case does not support the DOC's defense.

1 Holyoke, 7 MLC 2128, MUP-4159 (May 8, 1981), aff'd, 8 MLC 1179 (June 30, 1981) (city
2 was bound by an agreement and violated the law when it failed to execute the agreement,
3 even though the city asserted that the passage of Proposition ½ constituted an economic
4 obstacle to implementation of the agreement).

5 Finally, the DOC argues that the “this case is not one on which an employer’s
6 decision to not conclude a settlement leaves the union without a remedy except
7 enforcement of the settlement.” It states that the Union had the ability to proceed to
8 arbitration on the underlying grievance. This argument is meritless because whether the
9 Union had the ability to proceed to arbitration on the underlying grievance is irrelevant
10 here. Where the parties had a meeting of minds on all terms of the settlement agreement,
11 the Law recognizes it as effective and enforceable. The remedy under the Law for
12 repudiation of an agreement is separate and distinct from the parties’ contractual
13 grievance procedure. See City of Cambridge, 35 MLC at 187 (ordering the city to, among
14 other things, cease and desist from refusing to bargain in good faith with the association
15 by failing to execute and to implement the terms of the settlement agreement concerning
16 the grievances of bargaining unit members).

17 CONCLUSION

18 The Union and the DOC reached a final settlement agreement on June 10, 2020.
19 Therefore, the DOC’s failure to reduce the final settlement agreement to writing and its
20 failure to execute and implement the settlement agreement violated Section 10(a)(5), and
21 derivatively, Section 10(a)(1) of the Law.

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ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the DOC

shall:

- 1. Cease and desist from:
 - a. Refusing to bargain in good faith with the Union by failing to finalize a written version of the Teachers' Vacation grievance settlement agreement, and failing to execute and to implement the terms of the settlement agreement.
 - b. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.
- 2. Take the following affirmative action that will effectuate the purposes of the Law:
 - a. Reduce to writing the final settlement agreement reached on June 10, 2020, and execute and implement the terms of the Teachers' Vacation grievance settlement agreement.
 - b. Post immediately in all conspicuous places where employees represented by the Union usually congregate, or where notices are usually posted, including electronically if the DOC customarily communicates with these members via intranet or email, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
 - c. Notify the DLR in writing within ten (10) days of receipt of this decision of the steps taken to comply with this Order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



LAN KANTANY, ESQ.
HEARING OFFICER

APPEAL RIGHTS

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



NOTICE TO EMPLOYEES

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

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A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the Commonwealth of Massachusetts Department of Corrections (DOC) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by refusing to bargain in good faith with the Service Employees International Union, Local 509 (Union) by failing to reduce to writing the final settlement agreement reached on June 30, 2020 concerning the Teachers' Vacation grievance and by failing to execute and implement the terms of the settlement agreement.

Section 2 of the Law gives public employees the right to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all the above.

WE WILL NOT fail to bargain in good faith with the Union by refusing to reduce to writing settlement agreements, and by failing to execute and implement terms of settlement agreements of grievances of bargaining unit members.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce the Union in the exercise of its rights guaranteed under Section 2 of the Law.

WE WILL reduce to writing the final settlement agreement reached on June 10, 2020 with the Union and we will execute and implement the terms of the Teachers' Vacation grievance settlement agreement.

Commonwealth of Massachusetts
Department of Corrections

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).