

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COMMONWEALTH OF MASSACHUSETTS/
SECRETARY OF ADMINISTRATION AND
FINANCE

and

COALITION OF PUBLIC SAFETY

Case No.: SUP-21-8845

Date Issued: May 14, 2025

Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

Peter J. Perroni, Esq. – Representing the Coalition of Public Safety

Melinda T. Willis, Esq. – Representing the Commonwealth of
Massachusetts/ Secretary of Administration and
Finance

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Commonwealth of Massachusetts, acting
2 through the Secretary of Administration and Finance (Commonwealth), violated Section
3 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E
4 (the Law) by failing to bargain in good faith with the Coalition of Public Safety (COPS) to
5 resolution or impasse over the impacts of the Commonwealth's decision to require unit
6 members to receive a COVID-19 vaccine by October 17, 2021, on employees' terms and
7 conditions of employment. Based on the record and for the reasons explained below, I
8 conclude that the Commonwealth did not violate the Law.

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STATEMENT OF CASE

On September 23, 2021, the COPS filed a charge with the Department of Labor Relations (DLR) alleging that the Commonwealth had engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On November 16, 2021, a DLR Investigator investigated the Charge. On November 24, 2021, the Investigator issued a one-count Complaint of Prohibited Practice and Partial Dismissal (Complaint) alleging that the Commonwealth violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.¹ On December 3, 2021, the Commonwealth filed its Answer to the Complaint.

On June 26, 2024, I conducted a hearing during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.² On September 13, 2024, the parties filed post-hearing briefs. Based on my review of the record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

Stipulations

1. The Commonwealth, acting through the Secretary of Administration and Finance, is a public employer within the meaning of Section 1 of the Law.
2. The Coalition of Public Safety (COPS) is an employee organization within the meaning of Section 1 of the Law.
3. COPS is the exclusive bargaining representative for executive department employees in statewide bargaining unit 5, including parole officers, environmental

¹ The Investigator dismissed the Union’s allegation that the Commonwealth violated the Law by failing to bargain in good faith over the decision to require unit members to receive a COVID-19 vaccine by October 17, 2021.

² After the Complaint was issued, the parties attempted to settle the case over a prolonged period of time.

1 police officers, and investigators employed by the Parole Board.
2

3 FINDINGS OF FACT

4 General Background

5 The Commonwealth and the Union are parties to the collective bargaining agreement
6 dated July 1, 2021 until June 30, 2024. The Union represents employees in statewide
7 bargaining unit 5, including parole officers, environmental police officers, and investigators
8 employed by the Parole Board. The Parole Board is an agency within the Executive Office
9 of Public Safety (EOPSS). Parole officers, including field parole officers, have job duties
10 that require close contact with and direct care and custody of parolees and/or inmates.³

11 Vaccine Requirement

12 On March 10, 2020, former Governor Baker declared a state of emergency due to
13 the COVID-19 pandemic. On May 28, 2021, pursuant to Section 2A of Chapter 17 of the
14 General Laws, the Governor declared that an emergency existed that was detrimental to
15 the public health in the Commonwealth. The emergency declaration gave the Commissioner
16 of Public Health, with the approval of the Public Health Council, the authority to “extend or
17 adopt measures to facilitate COVID-19 testing and vaccination of all populations throughout
18 the Commonwealth, to require special measures to protect higher risk populations or to
19 effectuate continued surveillance of COVID-19 in the Commonwealth, and to respond as

³ The record does not contain job descriptions for any of the positions in the bargaining unit. Neither party provided details on the job duties for the positions in the bargaining unit. However, Debra Tata (Tata), the Diversity Officer for the Parole Board, testified that a parole officer was a public facing position and that the field parole officer position required close contact with and direct care and custody of parolees and/or inmates.

1 necessary to outbreaks of the virus as they may arise.” This declaration was effective
2 immediately and remained in effect until Governor Baker rescinded it on June 15, 2021.

3 On August 19, 2021, Governor Baker issued Executive Order 595 (EO 595),
4 directing all executive department employees to receive a COVID-19 vaccine and
5 maintain full COVID-19 vaccination as a condition of continuing employment.⁴ EO 595
6 directed the Human Resources Division (HRD), within 60 days, to issue a written policy
7 for all executive department employees that required proof of a COVID-19 vaccination,
8 and the heads of all executive department agencies, bureaus, departments, offices, and
9 divisions to implement the terms of the HRD policy. EO 595 stated that HRD’s policy must
10 include the elements listed below:

- 11 1) a requirement that all executive department employees demonstrate no
12 later than October 17, 2021 to their employing agency, bureau, department,
13 office, or division that they have received COVID-19 vaccination and, going
14 forward, that they demonstrate they are maintaining full COVID-19
15 vaccination;
- 16
17 2) a procedure to allow limited exemptions from the vaccination requirement
18 where a reasonable accommodation can be reached for any employee who
19 is unable to receive COVID-19 vaccination due to medical disability or who
20 is unwilling to receive COVID-19 vaccination due to a sincerely held
21 religious belief;
- 22
23 3) a method for documenting and verifying vaccination status among
24 executive department employees that ensures all information will be
25 maintained confidentially and separately from any employee's personnel
26 files;
- 27
28 4) appropriate allowance for use of Commonwealth-provided sick leave or
29 other time off for employees in order to obtain COVID-19 vaccination; and

⁴ In 2021, the Commonwealth was suffering the effects of the COVID-19 pandemic, including an outbreak of the Delta and Omicron variants of COVID-19, which resulted in high hospitalization and death rates in communities. Additionally, data from the Massachusetts Department of Public Health showed hospitalization and death rates decreased in fully vaccinated individuals.

1
2 5) appropriate enforcement measures to ensure compliance, which shall
3 include progressive discipline up to and including termination for non-
4 compliance and termination for any misrepresentation by an employee
5 regarding vaccination status.
6

7 EO 595 stated that it would continue in effect until amended, superseded, or revoked by
8 subsequent Executive Order.⁵

9 On August 18, 2021, HRD sent an email notification to all Cabinet Secretaries, Chiefs
10 of Staff, Executive Department Agency Heads, and Secretariat Human Resources Officers
11 stating:

12 All employees will be required to provide proof that they have received
13 either the required two doses of the Moderna or Pfizer or the single dose of
14 the Johnson & Johnson vaccine by October 17, 2021. In addition, as new
15 guidance regarding vaccine recommendations are updated by the [Center
16 for Disease Control (CDC)] to include booster doses in the future, Executive
17 Department employees will be required to provide proof they have received
18 such doses by a deadline to be established. Employees for whom
19 vaccination is medically contraindicated or who object to vaccination on the
20 grounds of sincerely held religious beliefs may be entitled to an exemption.
21

22 In line with Governor Baker's Executive Order, the Human Resources
23 Division will issue a corresponding policy explaining how staff can
24 demonstrate receipt of the vaccine. Additional information about the
25 reporting process and the reasonable accommodation process will be
26 provided in the coming weeks. Equally important to these items in
27 development is the engagement of all unions to ensure their interests and
28 perspective are respected in this critical effort.
29

30 By email dated October 15, 2021, the Commonwealth's Assistant Secretary and
31 Chief Human Resources Officer, Jeff McCue (McCue) informed all executive department

⁵ In EO 595, the Commonwealth explained that the order was due in part to the emergence of safe vaccines that were proven to prevent hospitalization and severe disease in fully vaccinated individuals.

1 employees that:⁶

2 Beginning the week of October 18, the next steps in this comprehensive
3 program involve the review of compliance levels across all Executive
4 Departments, confirming reported vaccine compliance, and responding to
5 instances of employees failing to meet the terms of the vaccine
6 requirement.

7
8 As the requirement deadline approaches, unless expressly directed not to
9 report to work by your manager or Agency Head, all Executive Department
10 employees should report for work on their regularly scheduled shift on
11 October 18, 2021. Agencies will be communicating directly with staff
12 identified as not having filed attestations of vaccine receipt to confirm their
13 status and to initiate progressive discipline where required.

14
15 This substantial public health initiative has been challenging in many
16 regards and will test us further as we move through the steps of full
17 implementation. Your professionalism and concern for your fellow
18 employees has been exceptional to date, and this continued commitment
19 will serve us well in the days ahead.

20
21 Religious Exemption

22
23 As explained above, EO 595 stated that the vaccine requirement would have a
24 medical and religious exemption. The Commonwealth's general process for requesting a
25 reasonable accommodation based on religious beliefs or practices began with an
26 application that an employee filed that stated the employee's reason for the religious
27 exemption/accommodation. After receiving the application, Tata would schedule an
28 appointment with the applicant to engage in an "interactive process" with the employee.⁷

⁶ On October 15, 2021, Joel Boone (Boone), an employee for the Commonwealth's Office of Employee Relations (OER), forwarded Peter Peroni (Peroni), the Union's attorney, McCue's email from earlier in the day which informed all executive department employees of the next steps in complying with the vaccine requirement.

⁷ At all relevant times, Massachusetts General Laws, Chapter 151B required Tata to engage in a timely, good faith, interactive process for employees requesting reasonable accommodations for religious beliefs or practices. The "interactive process" is a one-on-one conversation with an employer representative and the employee about their application for a reasonable accommodation. The record does not provide detailed information on what

1 Tata often conducted these one-on-one interactive process appointments over the phone.⁸

2 For applications requesting a religious exemption, Tata was required to employ a
3 two-part test.⁹ First, Tata determined if the applicant had a sincerely held religious belief. If
4 Tata determined that the individual had a sincerely held religious belief, then she would
5 determine if a reasonable accommodation could be granted. In order to assess if a
6 reasonable accommodation could be granted, Tata considered whether any
7 accommodation would be an undue hardship on the Employer. After Tata determined
8 whether a reasonable accommodation could be provided, she would give the employee and
9 their supervisor a copy of the form noting a denial or approval of the request. After the
10 vaccine requirement issued, Tata received approximately eight applications from unit
11 members requesting reasonable accommodations to the vaccine requirement based on
12 religious practices or beliefs.

13 On or about September 22, 2021, "Officer B," a parole officer and unit member,
14 applied for a religious exemption from the vaccination policy.¹⁰ Thereafter, Tata engaged in
15 the required interactive process with Officer B. On or about October 4, 2021, Tata issued a
16 response for Officer B's religious exemption request. In the response form, Tata wrote:

17 In this interactive process we agreed that a "reasonable accommodation"
18 would be to continue to follow proper CDC masking, social distancing, and

information an employer must solicit from the applicant during the interactive process, or what information an applicant must provide an employer during the interactive process.

⁸ Tata serves as the Parole Board's diversity coordinator and ADA coordinator.

⁹ Under Title VII of the Civil Rights Act of 1964 and Massachusetts General Laws, Chapter 151B, an employer is required to reasonably accommodate an employee's sincerely held religious beliefs or practices, unless doing so would cause undue hardship to the employer.

¹⁰ To maintain privacy, the parole officer and unit member who applied for the religious exemption is referred to as "Officer B."

1 testing guidance for the unvaccinated population. We do not yet have the
2 testing parameters or are aware if testing will be an accommodation. That
3 said, we did agree to discuss it as a possibility going forward if this becomes
4 the case. Please be advised that this accommodation request to not
5 receive the COVID vaccine is approved with the understanding that testing
6 may also be an accommodation and requirement which may be added at
7 a future date and will be dependent upon additional factors. i.e. – CDC
8 guidance, DPH Guidance, HRD, and Labor Relations guidance.
9

10 Tata checked the box on the form indicating the accommodation/exemption was granted.
11

12 After October 5, 2021, Tata participated in a phone call with other HR Directors from
13 the Commonwealth with the Office of Diversity (OOD) to discuss the exemptions from the
14 vaccine requirement. During the phone call, Sandra Borders (Borders), the Director of
15 OOD, discussed how EO 595 related to the accommodation process. Borders informed the
16 HR directors that someone from their respective secretariats would be in touch with more
17 information to ensure consistency in the process and the evaluation of the undue hardship
18 assessment. After the meeting with Borders, Tata did not deny or approve any exemptions
19 from EO 595 until she received further information from EOPSS.

20 Shortly thereafter, Tata attended a virtual meeting with Kevin Keefe (Keefe), the
21 Director of Parole, and several members of EOPSS including Monica Munoz-Perkins
22 (Munoz-Perkins), the Deputy Director of Human Resources, Jean Auguste (Auguste), the
23 Director of Human Resources, and Louis Richardson (Richardson), a Diversity Officer.¹¹
24 During the meeting, the participants discussed the Parole Board's accommodations
25 process and how to ensure consistency in the process throughout the Secretariat. Tata and
26 the others discussed that the Parole Board was still employing the same analysis for
27 religious exemptions, i.e.: 1) does the individual have a sincerely held religious belief, and

¹¹ Tata testified that although she was unsure of the exact date of the meeting, she knew it occurred between October 5, 2021 and October 19, 2021.

1 2) whether a reasonable accommodation could be made by the Employer. Additionally, Tata
2 and the others decided that if the individual held a public facing position, and the exemption
3 would pose a direct threat to others, an accommodation could not be granted as it would
4 be an undue hardship on the Commonwealth. EOPSS provided Tata with guidance and
5 sample language to utilize when rescinding or denying religious exemption requests when
6 appropriate.

7 After the meeting with Keefe, Munoz-Perkins, Auguste, and Richardson, Tata
8 assessed whether each applicant's position was public facing and whether an exemption
9 would pose a direct threat to others and the public. On October 19, 2021, Tata reassessed
10 Officer B's exemption request and considered whether Officer B's position was public facing
11 and whether an exemption would pose a direct threat to others and the public. Upon
12 reassessment, Tata determined that Officer B's position as a field parole officer was public
13 facing as it required close contact with and direct care and custody of parolees and/or
14 inmates, and that a reasonable accommodation would pose a threat to others and the
15 public. As a result of this determination, Tata reversed her previous decision to allow a
16 religious exemption for Officer B. In her written rescission of Officer B's reasonable
17 accommodation, Tata stated that:

18 We are writing to inform you that a Secretariat level panel has made the
19 determination to rescind your exemption from obtaining the COVID-19
20 Vaccination, as required in Executive Order 595. You represented that your
21 objection was based on a sincerely held religious belief. The
22 documentation submitted provides that the vaccine would conflict with your
23 stated religious beliefs, practices, or observances. Unfortunately, your
24 position requires close contact and direct care and custody of parolees
25 and/or inmates whereby an exemption and/or accommodation cannot be
26 supported. We apologize for any inconvenience this may have caused. For
27 the reasons stated above, your request for an exemption has been denied.
28 The Agency would be unable to provide you an accommodation. The
29 Agency's obligation to protect the safety of your colleagues, parolees,

1 prisoners, and members of the public during this ongoing and serious
2 global pandemic, could require finding you a new position within the
3 Agency. This would be an undue hardship on the ability of the Parole Board
4 to manage its operations, as well as its ability to comply with its collective
5 bargaining agreement(s).
6

7 Tata informed Officer B that they had three calendar days to receive and provide proof of
8 vaccination by October 22, 2021, or submit a letter of resignation or retirement. Tata further
9 informed Officer B that if they did not submit proof of vaccination or a letter of
10 resignation/retirement, they would be subject to progressive discipline and/or termination.

11 Pre-Implementation Bargaining

12
13 By email dated August 19, 2021, Boone forwarded Union president Brian Westerman
14 (Westerman), the August 19th email from Governor Baker regarding EO 595. Boone stated
15 that Westerman should let him know when Westerman wanted to meet to discuss EO 595.
16 By email dated August 23, 2021, Boone forwarded Westerman a copy of the
17 Commonwealth's "Draft Vaccination Policy" for his review. Boone stated that OER was
18 available to meet with Westerman and requested his availability for proposed dates to meet.

19 Later that same day, Peroni sent Boone an email stating he represented the Union
20 and demanding to bargain on behalf of the Union. The Union also demanded that the
21 Commonwealth cease its implementation of the vaccine requirement until it afforded the
22 Union an opportunity to bargain. Also on August 23, Westerman emailed Boone asking if
23 the parties still wanted to meet that coming Wednesday for contract negotiations. Boone
24 forwarded the email to Peroni and stated that the parties should postpone the contract
25 negotiations on Wednesday until he and Peroni had a chance to talk. By email dated
26 September 3, 2021, Boone informed Peroni that he was available to talk on Wednesday or
27 Thursday, September 8th or 9th. By email dated September 7, 2021, Peroni replied that he

1 was available the following day to speak with Boone. On or about September 8, 2021,
2 Peroni and Boone spoke.¹²

3 By email dated September 23, 2021, Boone forwarded Peroni a draft of the
4 Commonwealth's Vaccine Compliance Guideline. The Commonwealth's guideline
5 discussed the following five scenarios:

- 6 1) Employees who refuse to be vaccinated;
- 7 2) Employees who are suspended, but reconsider and get their first shot at any point
8 during the disciplinary process;
- 9 3) Employees who are not vaccinated by October 17, 2021, but who have begun
10 the vaccination process (i.e., received their first dose and have scheduled their
11 second dose);
- 12 4) Employees who filed for an exemption on or before October 8, 2021, but have
13 not received a decision by October 17th;
- 14 5) Employees who filed for an exemption after October 8th, but before October 17th,
15 but have not received a decision by October 17th.

16
17 By email dated September 24, 2021, Peroni informed Boone that the Union did not
18 believe the Commonwealth had fulfilled its obligation to bargain with the Union before the
19 vaccination requirement was implemented. Peroni stated that the Union believed that
20 bargaining over vaccines must take place at the main table successor contract negotiations.

21 Peroni stated that some of the Union's concerns included:

- 22 1) testing and/or mask exemptions/alternatives to vaccination - we have been
23 researching the effectiveness of the rapid test - which, although not as
24 effective as a standalone test, appears to be a better tool if done weekly, as
25 it more effectively detects if a person is contagious, which should be the
26 main goal here;
- 27
28 2) cost - should the tests be mandatory terms of employment, then the cost
29 should be borne by the State;
- 30
31 3) resulting sickness from vaccine covered as work related injury;
- 32
33 4) known exposure at work covered as work-related injury; and

¹² The record does not clarify what Peroni and Boone spoke about or if they spoke on the phone, in-person, or by video conference.

1
2 5) parameters and guidelines for implementation of the individual exemptions.

3
4 Peroni asked Boone to confirm if the Employer was available to discuss those issues on
5 September 28.

6 On September 28, 2021, Boone and Peroni with their respective bargaining teams
7 met to discuss the Union's issues. During this meeting, Boone informed the Union that the
8 Commonwealth was not willing to implement mask or testing alternatives to the vaccination
9 requirement. Given the Commonwealth's stance on alternatives to the vaccine, the Union's
10 second issue regarding testing payments for unit members was not further discussed.
11 However, Boone and the Union did discuss the Union's issues regarding covering vaccine-
12 related sickness and known work exposures as work-related injuries. The parties discussed
13 and decided that in those instances, workers' compensation would be available should the
14 need arise. Also, Boone informed the Union that the parameters for exemptions were
15 dictated by state and federal law. Finally, Boone informed the Union that the Commonwealth
16 would not delay the implementation of the vaccine requirement, and the effective date would
17 remain October 17, 2021.

18 In addition to the above-described conversations between Boone and Peroni, the
19 Commonwealth was engaged in bargaining with many other unions. As such, the
20 Commonwealth had drafted a vaccination policy agreement that it sent to all the
21 Commonwealth's unions, including the COPS. By email dated October 6, 2021, Peroni sent
22 Boone proposed edits to the Commonwealth's Vaccine Compliance guidelines. The Union's
23 proposed edits exclusively dealt with establishing a testing alternative to the vaccination
24 requirement. By email dated October 7, 2021, Boone sent Peroni a copy of the
25 Commonwealth's COVID-19 vaccination policy agreement and stated that he could discuss

1 the policy at Peroni's convenience. On October 8, 2021, the Union and the Commonwealth
2 met via zoom for two hours to discuss the vaccination policy. During the meeting, Boone
3 and Peroni discussed each of the proposed edits to the compliance guidelines. Additionally,
4 Boone and Peroni discussed the Commonwealth's proposed agreement with the Union on
5 the vaccination policy.

6 After receiving feedback from various unions, including the COPS, the
7 Commonwealth revised its guidelines for vaccination requirements. Specifically, the
8 Commonwealth removed from the attestation form any reference to the "pains and penalties
9 of perjury." By email dated October 14, 2021, John Langan (Langan), Director of the Office
10 of Employee Relations, sent many union presidents within the Commonwealth, including
11 Westerman, a copy of the updated compliance guidelines for the vaccine. Langan stated
12 that "based on the concerns raised by a number of unions, Scenario #4 has been changed
13 to permit an employee to continue to work while waiting for an exemption decision."
14 Additionally, at the request of the unions, the Commonwealth included in the proposed
15 agreement the following language: "When additional information from a healthcare provider
16 is necessary to make a determination regarding a medical exemption, the Commonwealth
17 ADA coordinators will be instructed to inform the employee prior to contacting the
18 employee's medical provider to request such information."

19 Post-Implementation Bargaining

20 On October 17, 2021, the Commonwealth implemented the vaccine requirement for
21 all Commonwealth employees. By email dated October 29, 2021, Langan emailed the
22 presidents of various unions, including Westerman, a revised copy of the compliance
23 guidelines. By email dated November 17, 2021, McCue informed executive department

1 employees that vaccine boosters were not required at that time. Later that same day, Boone
2 forwarded Peroni the November 17th notification from McCue.

3 Prior to November 24, 2021, the Union's proposals on the vaccination requirement
4 were focused on testing and mask alternatives to acquiring a vaccine. However, on
5 November 24, 2021, the DLR issued the Complaint and Partial Dismissal in this case. The
6 DLR dismissed the allegation that pertained to bargaining over the decision to require unit
7 members to receive the COVID-19 vaccine by October 17, 2021. The Union did not provide
8 the Commonwealth with any additional proposals to the Vaccination Policy after November
9 24, 2021. By email dated Friday, December 17, 2021, Peroni informed Boone that meeting
10 on Monday December 20 would not work for the Union and asked him to call. By email
11 dated Monday, December 20, Boone responded and asked if Peroni was available at 3:00
12 p.m. that day to speak on the phone. Later that day, Peroni and Boone spoke on the phone.

13 In December of 2021, the Union and the Commonwealth began successor contract
14 negotiations. During successor contract negotiations, Boone informed the Union that the
15 Commonwealth was willing to listen to any proposals that the Union may have regarding
16 the vaccine requirement. Beyond the Union's requests for testing and mask alternatives to
17 the vaccine requirement, the Union did not provide any proposals in successor contract
18 negotiations on the impacts of the vaccine requirement. On or about May of 2022, the Union
19 and the Commonwealth executed a settlement agreement for a successor contract.

20 By email dated January 31, 2022, Boone informed Peroni that he wanted to meet to
21 review the grievances pertaining to the vaccine requirement and discuss a plan for these

1 cases.¹³ Peroni offered to meet Thursday or Friday, February 3rd or 4th, and Boone
2 suggested that the parties meet either from 10 a.m. to 12:00 p.m. or 1:00 p.m. to 3:00 p.m.¹⁴
3 By email dated April 21, 2022, Peroni followed up with Boone about the outstanding
4 grievances. Peroni responded by email stating that the parties agreed to hold the cases in
5 abeyance, however, he wanted to discuss how to handle the cases procedurally, including
6 potentially consolidating the grievances for arbitration. On July 27, 2022, Boone met with
7 Westerman and Peroni in a Zoom meeting, but the record does not disclose the substance
8 of their conversation.

9 Opinion

10 A public employer violates Sections 10(a)(5), and derivatively, Section (1) of the Law
11 when it unilaterally alters a condition of employment involving a mandatory subject of
12 bargaining without first bargaining with a union to resolution or impasse. School Committee
13 of Newton v. Labor Relations Commission, 388 Mass 557 (1983). Certain types of
14 managerial decisions, however, must, as a matter of policy, be reserved to a public
15 employer's discretion; and in instances where a negotiation requirement would unduly
16 impinge on a public employer's freedom to perform its public functions, the Law does not
17 require bargaining over a decision directly affecting the employment relationship. City of
18 Worcester v. Labor Relations Commission, 438 Mass 177, 180 (2002). Notwithstanding a
19 public employer's prerogative to make certain types of core managerial decisions without
20 prior bargaining, if a managerial decision impacts a mandatory subject of bargaining, then

¹³ The record does not contain any information as to the nature of the grievances referenced in this communication.

¹⁴ The record is unclear if the parties ever met at this time to discuss the outstanding vaccine grievances.

1 bargaining over the impacts is required. Id. at 185; City of Somerville, 42 MLC 170, 171,
2 MUP-13-2977 (December 30, 2015). In some instances, the means of implementing a
3 decision can also be a mandatory subject of bargaining. School Committee of Newton, 388
4 Mass at 563-564 (the means of achieving a reduction in force can be the subject of collective
5 bargaining).

6 In this case, the Complaint alleges that the Commonwealth violated the Law when it
7 failed to bargain in good faith over the impacts of its decision to require unit members to
8 receive a COVID-19 vaccine by October 17, 2021, on employees' terms and conditions of
9 employment. It is undisputed that prior to October 17, 2021, the Commonwealth did not
10 require unit members to receive a COVID-19 vaccine.¹⁵ Additionally, it is undisputed that
11 the Union demanded to bargain with the Commonwealth over the vaccine requirement.
12 Finally, I find that the Commonwealth's decision to require unit members to receive a
13 COVID-19 vaccine by October 17, 2021, impacted several mandatory subjects of
14 bargaining.

15 For example, as directed in EO 595, the Commonwealth was tasked with creating a
16 vaccination policy that included appropriate enforcement measures to ensure compliance
17 and procedures to allow limited exemptions from the vaccine requirement for medical
18 disability or sincerely held religious beliefs where a reasonable accommodation can be
19 reached. As such, the Commonwealth's decision to require unit members to receive a
20 COVID-19 vaccine by October 17, 2021, impacted several mandatory subjects of

¹⁵ As previously decided in the partial probable cause dismissal in this case and other similar cases, the Commonwealth did not have an obligation to bargain with the Union over its decision to require unit members to receive a COVID-19 vaccine by October 17, 2021.

1 bargaining, such as the unit members' health and safety, disciplinary procedures, and
2 fitness for duty. See City of Boston, 30 MLC 38, MUP-01-2940 (September 12, 2003); New
3 Bedford Housing Authority, 27 MLC 21, MUP-1650 (September 7, 2000); City of Boston, 45
4 MLC 26, MUP-16-5313, MUP-16-5350 (August 30, 2018). More specifically, the vaccination
5 requirement impacted: procedures for compliance with EO 595, discipline for non-
6 compliance, paid leave, and procedures for a denied exemption request. Therefore, I find
7 that the Commonwealth had an obligation to bargain in good faith with the Union over the
8 impacts of its decision to require unit members obtain a COVID-19 vaccination by October
9 17, 2021, on the employees' terms and conditions of employment.

10 *Exigent Circumstances*

11

12

13 An employer who relies on the exigent circumstances exception to the rule
14 prohibiting unilateral changes in employees' working conditions must show that
15 circumstances beyond its control required the imposition of a deadline for negotiations, the
16 deadline imposed was reasonable and necessary, and the union was on notice that the
17 change would be implemented on a certain date. Town of Plymouth, 26 MLC 220, 223,
18 MUP-1465 (June 7, 2000). The Commonwealth relies on this exception to the bargaining
19 requirement to argue that it did not violate the Law by implementing the terms of EO 595
20 before the parties were able to reach resolution or impasse on the impacts of the vaccination
21 requirement. It contends that it was justified in implementing the vaccine requirement on
22 October 17, 2021, because of the unprecedented public health threat posed by the COVID-
19 pandemic.

23

24

In 2021, the Commonwealth was suffering the effects of a COVID-19 pandemic,
including an outbreak of the Delta and Omicron variants of COVID-19, which resulted in

1 high hospitalization and death rates in communities. However, data from the Massachusetts
2 Department of Public Health showed that hospitalization and death rates had decreased in
3 fully vaccinated individuals. As reported in EO 595, the Commonwealth stated that the order
4 was due in part to the emergence of safe vaccines that were proven to prevent
5 hospitalization and severe disease in fully vaccinated individuals. Given the high death and
6 hospitalization rates brought on by the COVID-19 pandemic, it is clear that the
7 Commonwealth was facing extraordinary times and dire circumstances when it issued the
8 vaccination requirement. In fact, the Union did not dispute that the Commonwealth was
9 facing a pandemic that created dire circumstances and major health concerns for the
10 population at large.

11 Also, on August 21, 2021, the Commonwealth provided the Union with notice that
12 EO 595 would be implemented on October 17, 2021, which gave the parties 60 potential
13 bargaining days prior to implementation. The CERB has previously found that two months
14 between the announcement of a change and a scheduled date for implementation was
15 sufficient to complete bargaining. Everett School Committee, 43 MLC 55, 58, MUP-09-5665
16 (August 31, 2016). As such, I find that circumstances beyond the Commonwealth's control
17 required the imposition of a deadline for negotiations regarding the impacts of the vaccine
18 requirement, and that the deadline imposed was reasonable and necessary. Therefore, I
19 conclude that the Commonwealth established that exigent circumstances permitted it to
20 implement its decision to require vaccination for all unit members by October 17, 2021, and
21 continue to bargain thereafter.

22 *Impact Bargaining*

23

24 The Union argued that the Commonwealth did not bargain in good faith over the

1 impacts of its decision to require unit members to receive a COVID-19 vaccination by
2 October 17, 2021. Specifically, the Union only argued that the Commonwealth failed to
3 bargain in good faith over exemptions to the COVID-19 vaccination requirement, and it did
4 not allege that the Commonwealth failed to bargain in good faith over any other impacts of
5 the Commonwealth's decision to require vaccination. The Commonwealth argued that it did
6 not violate the Law because it fulfilled any obligation to impact bargain with the Union over
7 its decision to require unit members to receive a COVID-19 vaccine by October 17, 2021.
8 For the following reasons, I agree that the Commonwealth bargained in good faith to
9 resolution or impasse over the impacts of its decision to require unit members to receive a
10 COVID-19 vaccination by October 17, 2021, including but not limited to, any impacts on
11 exemptions to the requirement.

12 First, the Union and the Commonwealth met several times to bargain over the
13 impacts of the vaccine requirement and discuss the Union's concerns, specifically, on
14 September 28 and October 8, 2021. Additionally, they met several times in 2022 for
15 successor contract negotiations where Boone expressly informed the Union that it could
16 submit any proposals pertaining to the vaccine requirement. Lastly, Boone and Peroni, as
17 representatives for their respective parties, spoke about the vaccine requirement several
18 times throughout 2021 and 2022.

19 During the above-described impact bargaining sessions, the parties agreed to a
20 solution for several of the Union's concerns. As previously noted, in September of 2021,
21 Peroni submitted to Boone the Union's five areas of concern: 1) testing and/or mask
22 exemptions/alternatives to vaccination; 2) cost of testing should tests become mandatory
23 terms of employment; 3) resulting sickness from the vaccine covered as a work-related

1 injury; 4) known exposure at work covered as a work-related injury; and 5) parameters and
2 guidelines for the implementation of the individual exemptions. At the September 28
3 meeting, the parties discussed and agreed that worker's compensation was available for
4 any illnesses resulting from the vaccine or known exposure to COVID-19 at work.

5 Next, the Union's concerns and subsequent proposals regarding testing and mask
6 alternatives to the vaccine requirement dealt squarely with the Commonwealth's decision
7 to require vaccination for unit members. However, as confirmed in the dismissal of the
8 Union's decisional bargaining allegation in this matter, the Commonwealth did not have to
9 bargain with the Union over the decision to require a COVID-19 vaccination. Throughout
10 2021 and 2022, the Union did not raise with the Commonwealth any other concerns with
11 the vaccine requirement or submit any proposals that did not solely comprise of alternatives
12 to the decision to require vaccination. After the parties' bargaining sessions and the CERB's
13 dismissal of the Union's decisional bargaining allegation, the only remaining issue from the
14 Union's vocalized concerns and proposals was the "parameters and guidelines for
15 individual exemptions."

16 The Union also argued that the change in the Commonwealth's reasonable
17 accommodation policy was a bargainable impact of the vaccination requirement, and that
18 the Commonwealth failed to bargain in good faith over said change. However, the Union
19 only provided evidence of reasonable accommodation requests based on religious beliefs
20 or practices. The Union did not provide any information as to how, if at all, the COVID-19
21 vaccine requirement changed the process or policy for obtaining a reasonable
22 accommodation for a medical exemption. As such, the Union did not demonstrate that an
23 impact of the Commonwealth's decision to require a COVID-19 vaccination was a change

1 in the reasonable accommodation policy for medical exemptions.

2 Next, the Union specifically asserted that an impact of the Commonwealth's decision
3 to require vaccination was a change in the reasonable accommodation policy for religious
4 exemptions. However, the Union provided limited information on how the Commonwealth
5 handled religious exemptions and reasonable accommodations before its decision to
6 require COVID-19 vaccinations by October 17, 2021. The Union's singular example was
7 Tata's original approval for Officer B's religious reasonable accommodation request. The
8 Union argues that the Commonwealth's subsequent rescission of its approval for a
9 reasonable accommodation for Officer B demonstrates a unilateral change in a reasonable
10 accommodation policy, and that this change is an impact of the vaccination requirement. I
11 disagree.

12 Under M.G.L. 151B, the Commonwealth's general application process for
13 reasonable accommodations for religious exemptions included the following steps: 1) an
14 employee would submit the application form for a religious exemption/accommodation
15 request to their department's diversity coordinator, and 2) the diversity coordinator would
16 schedule and conduct an appointment with the applicant to engage in the "interactive
17 process." The record is clear that all unit members who sought a reasonable
18 accommodation from the COVID-19 requirement based on their religious beliefs or
19 practices submitted an application to Tata as the diversity coordinator for the Parole
20 Department, and that Tata scheduled and conducted an appointment with each applicant
21 to engage in the "interactive process." The Union did not provide any information to
22 demonstrate that the Commonwealth's decision to require COVID-19 vaccinations changed
23 the process by which unit members applied for a reasonable accommodation based on a

1 religious belief or practice.¹⁶

2 As stated above, the Commonwealth is required to employ a two-part test for
3 assessing reasonable accommodations for religious exemptions. In this case, the
4 Commonwealth applied the same required two-part test to all applicants who requested a
5 reasonable accommodation for the COVID-19 vaccination requirement based on religious
6 beliefs or practices. As explained above, with all applicants for religious exemptions, Tata
7 first considered whether they had a sincerely held belief. If Tata determined the applicants
8 had a sincerely held belief, Tata next determined whether a reasonable accommodation
9 would be an undue hardship on the Employer. As such, there is no evidence establishing
10 that the Commonwealth's decision to require a COVID-19 vaccination changed the required
11 two-part process for assessing reasonable accommodations for religious beliefs or
12 practices.¹⁷

13 Next, the Union asserts that the Commonwealth had previously applied a reasonable
14 accommodation policy that utilized an individualized assessment of an employee's specific
15 job duties to determine whether an employee's accommodation request would impose an
16 undue hardship under the applicable law. The Union argues that the Commonwealth

¹⁶ The Union did not argue or present any evidence to suggest that the form for religious exemptions to the vaccine mandate required or omitted any information that was not included in the exemption process prior to the vaccine requirement.

¹⁷ I note that this case is solely about whether the Commonwealth violated Massachusetts General Laws, Chapter 150E by failing to bargain in good faith over the impacts of its decision to require unit members to receive a COVID 19 vaccination by October 17, 2021. I do not and cannot consider whether the Commonwealth violated Massachusetts General Laws, Chapter 151B, when it denied any of the unit members' requests for reasonable accommodations based on religious beliefs or practices, including determining whether an accommodation would impose an undue hardship on the Commonwealth.

1 changed its reasonable accommodation policy when it rescinded Officer B's reasonable
2 accommodation approval, and thereafter, used a generalized determination that all parole
3 officers were public facing, and thus posed a threat to the public when assessing whether
4 a reasonable accommodation request would impose an undue hardship. Despite the
5 Union's assertions, it has not provided sufficient information to determine what the
6 Commonwealth's reasonable accommodation policy was for assessing undue hardship
7 prior to the COVID-19 vaccination requirement. The only evidence it provided was Officer
8 B's application, which did not show how the Commonwealth previously assessed whether
9 a reasonable accommodation request would impose an undue hardship for the
10 Commonwealth. For example, the Union did not provide evidence as to what information,
11 prior to the vaccine requirement, the Commonwealth considered when assessing whether
12 an undue hardship existed for reasonable accommodation request based on religious
13 beliefs or practices. Additionally, the Union did not provide any evidence that, prior to the
14 vaccine requirement, the Commonwealth had never reassessed or rescinded a reasonable
15 accommodation decision for a unit member. Although the Union provided Officer B's original
16 exemption approval, one example is not sufficient to establish a past practice. City of
17 Haverhill, 42 MLC 273, MUP-13-3066 (May 24, 2016). Thus, I do not find that the Union
18 provided sufficient evidence to establish the parameters of the Commonwealth's
19 reasonable accommodation policy before the COVID-19 vaccination requirement, or how
20 the vaccine requirement may have changed them.

21 Even if I assume that prior to the COVID-19 vaccination requirement, the
22 Commonwealth applied a reasonable accommodation policy that utilized an individualized
23 assessment of specific job duties to determine undue hardship, I would not find that the

1 Commonwealth's decision to require vaccination changed the reasonable accommodation
2 policy. Although Tata rescinded her approval of Officer B's reasonable accommodation, I
3 find that she did consider Officer B's specific and individual job duties when she reassessed
4 whether the exemption would constitute an undue hardship on the Employer. During the
5 reassessment, Tata evaluated Officer B's position as a field parole officer and determined
6 that their position required close contact with and direct care and custody of parolees and/or
7 inmates. After reassessing Officer B's position, Tata determined that a reasonable
8 accommodation for Officer B would be a direct threat to others and the public, thus creating
9 an undue hardship for the Parole Department. In fact, in the recission form, Tata expressly
10 mentioned that the Commonwealth took Officer B's position into consideration. As such, I
11 find that Tata did conduct an individualized assessment of the job duties for Officer B's
12 position, and the Union provided no evidence to the contrary. Therefore, I find that the
13 Commonwealth's decision to require COVID-19 vaccination did not change the
14 Commonwealth's reasonable accommodation policy as the Union alleged.

15 Most importantly, I find that the Commonwealth did bargain in good faith over any
16 impacts that its vaccination requirement decision had on the reasonable
17 accommodations/exemption process. For example, the Commonwealth provided the Union
18 with proposals for a vaccination policy which addressed disciplinary procedures and
19 timelines for compliance with the vaccination requirement if a unit member's exemption
20 request was denied. Additionally, the Commonwealth afforded the Union many
21 opportunities to bargain over those proposals. However, the Union did not contest the
22 Commonwealth's proposals on exemptions procedures, disciplinary procedures, and

1 timelines for compliance, nor did it provide counter proposals.¹⁸ Furthermore, the Union did
2 not argue that the Commonwealth failed to bargain in good faith over those impacts. In sum,
3 it is clear from the record that the Commonwealth addressed all impacts pertaining to the
4 procedures and guidelines for reasonable accommodations for religious exemptions to the
5 COVID-19 vaccination requirement.

6 **CONCLUSION**

7 The Commonwealth did not fail to bargain in good faith to resolution or impasse with
8 the Union over the impacts of its decision to require unit members to receive the COVID-19
9 vaccine by October 17, 2021. Therefore, the Commonwealth did not violate the Law as
10 alleged in the Complaint, and I dismiss the Complaint.

11 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MEGHAN VENTRELLA, ESQ.
HEARING OFFICER

¹⁸ The Union argued that it was never notified that the Commonwealth changed the reasonable accommodation policy, and therefore it could not have provided any proposals on the changes. However, as stated above, I do not find that the Commonwealth changed the reasonable accommodation policy. Moreover, the Union was on notice that EO 595 stated that the vaccine requirement would have a medical and religious exemption.

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 no later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.