

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

BOARD OF TRUSTEES OF THE
UNIVERSITY OF MASSACHUSETTS

and

PROFESSIONAL STAFF UNION
and UNIVERSITY STAFF
ASSOCIATION, MTA/NEA

Case Nos. SUP-23-9892
SUP-23-9893

Date issued: March 28, 2024

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Daniel S. O'Connor, Esq. - Representing the Professional Staff Union
and the University Staff Association/MTA/NEA

James M. Pender, Esq. - Representing the Board of Trustees
Brendan T. Sweeney, Esq. of the University of Massachusetts

RULING ON CHARGING PARTIES' MOTION FOR PERMISSION TO TAKE
DEPOSITIONS

On February 28, 2023, the Professional Staff Union and the University Staff Association/MTA/NEA, who shall be referred to in this ruling as the Charging Parties, filed charges of prohibited practice with the Department of Labor Relations (DLR) in Case Nos. SUP-23-9892 and SUP-23-9893 respectively, alleging that the Board of Trustees of the University of Massachusetts (Employer) had violated Sections 10(a)(1), (3,) and (5) of Massachusetts General Laws, Chapter 150E (the Law).¹ On March 7, 2023, the DLR

¹ The PSU and the Staff Association each filed amended charges on March 1, 2024.

consolidated the cases for investigation. On May 17, 2023, a DLR hearing officer investigated the matters. On July 27, 2023, the investigator issued a complaint alleging that the Employer had violated Section 10(a)(5) of the Law by: a) transferring bargaining unit work in its Advancement Division from the Charging Parties' unit members to non-unit personnel, b) failing to bargain over the impacts of the Employer's decision to reorganize the Advancement Division and to abolish certain positions, and c) engaging in surface bargaining. The Complaint also alleged that the Employer had violated Section 10(a)(3) of the Law by transferring the bargaining unit duties in the Advancement Division in retaliation for the Charging Parties' unit members engaging in concerted, protected activity. The Employer filed its answer on August 8, 2023. On August 15, 2023, the DLR scheduled the cases for a pre-hearing conference on April 18, 2024, and a hearing on June 11, 12, and 14, 2024.

On March 7, 2024, the Charging Parties filed a motion for permission to take depositions of Melinda Troy (Troy) Esq. and James Salvie (Salvie) Esq, whom the Charging Parties identified as employees of the Massachusetts State Retirement Board (MSRB) at the relevant times in dispute.² On March 14, 2024, the Employer filed its opposition to the motion.

Ruling

456 CMR 13.07(5) provides that the hearing officer presiding over a hearing shall have the authority to "permit depositions to be taken when appropriate." Citing this provision, the Charging Parties argue that they need to depose Troy and Salvie because

² On March 25, 2024, the Charging Parties filed an amended motion to correct a scrivener's error in the motion's header.

the Employer in its Answer maintained that the decision to eliminate bargaining unit positions was “significantly dictated by guidance and direction from the MSRB.” The Charging Parties insist that it is important for them to understand the rationale of the MSRB and the information that it communicated to the Employer because of the Employer’s claims about the MRSB’s role in the decision-making process. However, the Commonwealth Employment Relations Board (CERB) previously has not permitted depositions to be taken solely because the proposed deponents possess arguably relevant information. See International Longshoreman, Local 809, 45 MLC 162, UPL-18-6690 (H.O. Ruling April 9, 2009) (denying motion for permission to depose because moving party had not alleged any extenuating circumstances). As explained by the CERB in Quincy City Employees Union, H.L.P.E. and Nina Pattison 13 MLC 1129, MUPL-2883, MUP-6037 (August 26, 1986), the DLR’s regulations “generally contemplate that deposition[s] will be used only when a witness is unavailable to testify at a hearing.” Ware School Committee, 22 MLC 1502, MUP-7753 (February 13, 1996) (parties agreed to depose witness who was too ill to attend hearing). Here, the Charging Parties have not asserted that Troy or Salvie are unavailable to testify. Further, the CERB previously has declined to adopt discovery procedures for a variety of reasons, including that it cannot afford to devote the necessary administrative time to the supervision of discovery practice, its desire to avoid the lengthy pre-trial litigation that usually characterizes discovery, and its conclusion that the use of discovery does not promote the DLR’s goal of trying to make DLR procedures accessible to all litigants, including pro se parties. See Quincy City Employees Union H.L.P.E., 13 MLC at 1131 n.3. Instead, through the

issuance of subpoenas, the parties may compel the appearance of witnesses. 456 CMR 13.07(2).

Conclusion

Accordingly, the Charging Parties' motion for permission to take depositions is denied.

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A handwritten signature in blue ink that reads "Margaret M. Sullivan". The signature is written in a cursive, flowing style.

MARGARET M. SULLIVAN
HEARING OFFICER