COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of		Case No.: SUPL-13-2628
UNIVERSITY OF MASSACHUSETTS DARTMOUTH FACULTY FEDERATION LOCAL 1895, AFT, AFL-CIO		
and		Date issued: August 20, 2015
CHIDIEBERE NWAUBANI		

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Chidiebere Nwaubani	-	Pro Se
Haidee Morris, Esq.	-	Representing the University of Massachusetts Dartmouth Faculty Federation, Local 1895

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

The issue in this case is whether the University of Massachusetts Dartmouth Faculty Federation Local 1865 (Union) violated Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to act upon bargaining unit member Chidiebere Nwaubani's (Charging Party or Nwaubani) request to file a grievance. I find that the Union violated the Law.

STATEMENT OF THE CASE

On February 21, 2013, Nwaubani filed a charge of prohibited practice with the Department of Labor Relations (DLR), alleging that the Union had engaged in prohibited practices within the meaning of Chapter 150E of the Massachusetts General Laws (the Law). Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.04 of the DLR's Rules, a DLR hearing officer investigated the charge on May 2, 2013, and issued a complaint of prohibited practice on May 31, 2013. The complaint alleged that the Union violated Section 10(b)(1) of the Law by failing to pursue a grievance for Nwaubani after advising him that his grievance was filed and would be placed before the Union's Grievance Hearing Committee. The Union filed an answer to the complaint on June 7, 2013 and corrected the answer on January 15, 2014. The Charging Party filed an Amended Motion for Summary Judgment on August 25, 2014,[1] which I took under advisement at hearing. The Union filed its Opposition to the Amended Motion for Summary Judgment on or about September 2, 2014.[2]

I conducted a hearing on August 28, 2014, at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The parties filed post-hearing briefs on or about November 14, 2014. Upon review of the entire record, I make the following findings of fact and render the following opinion.

[1] The Charging Party originally filed a Motion for Summary Judgment on January 13, 2014 to which the Union filed its opposition on or about January 17, 2014. In a February 5, 2014 email message, Nwaubani requested that the Hearing Officer disregard his original motion as he intended to submit an amended motion in light of the Union's January 15, 2014 corrected answer.

[2] Because I have decided the case based upon the entire hearing record, I need not rule on Nwaubani's Amended Motion for Summary Judgment.

FINDINGS OF FACT[3]

Relevant Contract Provisions and Related Union Procedures

The Union is the exclusive bargaining representative for certain professional employees employed at the University of Massachusetts Dartmouth, including full-time professors. The Board of Trustees of the University of Massachusetts and the Union are parties to a collective bargaining agreement that, by its terms, is in effect from July 1, 2012 through June 30, 2012 (Agreement).

Article III Academic Freedom, Democracy and Responsibility

B. Suspension From Class[4]

> The Chancellor may, after consultation with the appropriate College Dean and Provost, suspend a faculty member from class. No faculty member may be removed from the performance of duties without full disclosure of the reasons for the intended suspension to the individual concerned. The faculty member shall have the right to a hearing before the appropriate College Academic Council which shall make its recommendations to the Chancellor. Where a person has been removed from the performance of duties, the administration shall present its reasons at a hearing before the College Academic Council within five (5) school days. If the grievance is not resolved at the level of the College Academic Council, the faculty member involved may pursue the grievance in an orderly manner, under Article XVII (Grievance Procedures) of this Agreement.

The primary purpose of the College Academic Council (CAC) is to deal with personnel matters, including faculty member promotions and tenure decisions and fifth and sixth year contract renewals. The CACs also monitor certain departmental elections, i.e. elections for the department chair. Typically, each of the University's five colleges has one CAC, but the College of Arts and Sciences has three. Except for the School of Law, each CAC has two representatives from each department on it, and

[3] The DLR's jurisdiction in this matter is uncontested.

[4] Article V, Section D, entitled "College Academic Councils" further describes the councils, but does not require a faculty member to request a hearing.

CAC members are elected by the departmental faculty for staggered two-year terms. The number of members varies depending on the number of departments in a college. Article 3B is the only section of the Agreement that discusses faculty requests to a CAC.

The Union interprets Section 3B to require a suspended faculty member to request a CAC hearing following a suspension, because the entity suspending the faculty member does not report it to the CAC. There is no contractual timeframe within which a faculty member must request a hearing, and the Union and the University have an understanding that exercising the right to a CAC hearing preserves timeliness for grievance filing purposes. If faculty members have no knowledge of their rights to CAC hearings or the procedure for requesting one, they could acquire this information by telling the Union of their suspensions and asking the Union what to do. The Union would advise members of their right to a CAC hearing.[5] There have been approximately three CAC suspension hearings in the past forty years.

Article XVII, Grievances Procedures

> B. Definition
>
> A "grievance" shall mean a complaint by a member of the bargaining unit that there has been as to the individual a violation, misinterpretation or inequitable application of any of the provisions of this Agreement. These grievance procedures are limited so as to apply to personnel action matters only. The university may elect not to proceed to arbitration on any claim under Article II.A. or other claim of unlawful discrimination if such claim is being pursued at MCAD, EEOC or through the courts.
>
> C. General Procedures

[5] In response to a question about how a faculty member should know how to request a CAC hearing, former Union president James Griffith (Griffith) explained that: " ... if a faculty member was unaware that this provision of the contract existed, ostensibly they would ask the Faculty Federation, gee, I've been suspended from class, what should I do? We would then point out this section of the contract and de facto make them aware of their right under the contract to a hearing."

> 1. As used in this article, the term "grievance" shall also include a grievance affecting more than one campus.....The Faculty Federation shall represent every member of the bargaining unit at various levels of the grievance procedures. When members of the bargaining unit choose to handle their own grievance cases, they do so at their own peril.
>
> 2. When a grievance arises, the grievance must be filed within ten (10) school days ... from the day of the event upon which the grievance is based or from the date when the member of the bargaining unit had or should have had knowledge of the event. A grievance is considered to be filed when a completed grievance form is delivered to the administrator being grievance and to the Faculty Federation Grievance Hearing Committee.
>
> A member of the bargaining unit with a grievance shall notify in writing the Faculty Federation Grievance Committee specifying the act or condition and the grounds upon which the grievance is based. From this time forward, the Faculty Federation Grievance Committee shall be available to act in an advocacy role if the member of the bargaining unit requests it....

Bargaining unit members can file grievances in two ways: through the Union's grievance officer or on their own. A grievance is not considered a grievance if it is not on the grievance form or if the grievance form is not signed.

When a bargaining unit member contacts Union grievance officer[6] Richard Golen[7] regarding a dispute with the University, Golen's usual practice is to invite the member to his office, meet with the member, elicit information about the dispute, and review supporting documentation. If the member does not meet with him, Golen

[6] The grievance officer performs intake duties when a unit member believes the University has violated the collective bargaining agreement.

[7] In 2012, Golen was employed in the University's Charlton College of Business as a Professor of Management and Marketing in the Department of Management and Marketing. Golen held J.D. and MBA degrees and had been a Union grievance officer for approximately seven years.

assumes that the member either has resolved the issue or has decided not to proceed with the issue.[8]

Nwaubani's Employment

Nwaubani began his employment at the University in 2005 as the director of African/African American studies. He was transferred to the faculty in 2011, and in the fall of 2012, held a tenured associate professor position in the history department, which is part of the College of Arts and Sciences. Nwaubani instructed undergraduate students in African/African American studies during the 2011-2012 school year, which began in September and ended in May.

Events Occurring between September 4 through 17, 2012

In early September of 2012, before classes began, Nwaubani discovered that he was not listed on the course listings to teach any classes for the Fall 2012 semester. Nwaubani emailed Provost John Farrington (Farrington) on Tuesday, September 4, 2012 to ask why he had been excluded from teaching. Farrington emailed a response later that day,[9] explaining that he (Farrington) had removed Nwaubani from teaching because Nwaubani had "refused to abide by the Terms of the Agreement between the [Union and the University]". In his email, Farrington noted claims that Nwaubani previously had made that he was working in a "hostile environment" and stated that Nwaubani had not availed himself of opportunities to meet with the University's Human Resources and Equal Opportunity offices. Nwaubani did not respond to Farrington, but

[8] Approximately 30% to 40% of the time, bargaining unit members, who had contacted Golen regarding a dispute, did not follow through and meet with him about it.

[9] Nwaubani viewed Farrington's email on September 5, 2012.

on September 12, 2012, filed a complaint with the Massachusetts Commission Against Discrimination (MCAD) and called the Union's office.

When Nwaubani called the Union office on September 12, he spoke to Office Manager May Matsumoto (Matsumoto) and told her that he wanted to file a complaint. Matsumoto told Nwaubani to contact Golen, and she gave him Golen's office phone number. Nwaubani called Golen's number and left a voice mail message regarding filing a complaint.[10]

Also, on September 12, 2012, Farrington sent Nwaubani a letter[11] stating in pertinent part:

> I wish to bring to your attention the attached e-mail I sent to you on Tuesday, September 4, 2012, in response to your e-mail to me dated Tuesday, September 4, 2012. I would like to meet with you and Interim CAS Dean Jeannette Riley within two weeks from today, September 12, 2012.
>
> As I have stated in my e-mail to you, failure to meet with us in a timely manner (no later than Wednesday, September 26, 2012), and continued failure to fulfill your responsibilities as a member of the faculty in accords with the Faculty Federation Agreement, most likely will result in your being placed on unpaid leave until such time as you fulfill or agree in a signed document to fulfill these responsibilities.

On Thursday, September 13, 2012, Nwaubani and Golen exchanged a series of emails. At 8:52 a.m. Nwaubani emailed Golen, stating as follows:

> Good morning. This is from Chidi Nwaubani. I called yesterday and left a message on your office voice mail. I need to file a grievance today. Actually, mine is one of those cases where the Faculty Federation ought

[10] Nwaubani did not recall the content of the voice mail message that he left for Golen. He did not testify that he asked Golen to return the call.

[11] Nwaubani did not see Farrington's September 12, 2012 letter until on or about January 3, 2013, when Farrington's letter was attached to a January 3, 2013 letter from Interim Provost and Vice Chancellor Alex Fowler (Fowler).

> to initiate the grievance because it involves a knowing and egregious violation of the collective bargaining agreement.
>
> In any case, I want to meet with you today. So please let me know the time(s) you're available for such a meeting. Do you have a form for this purpose? If so, please email it to me (In WORD or interactive PDF): this way, I'll complete and bring it along with me to the meeting. Or, do I simply write out a statement of the grievance. A quick response will be appreciated. Have a nice day.

Golen responded to Nwaubani's email at 9:27 a.m. that same day stating:

> I can meet you at noon today. CCB 225.[12]

Golen was in his office at noon, but Nwaubani could not meet Golen at that time. Later that Thursday afternoon, at 12:51 p.m., Nwaubani emailed Golen and said:

> Hi Sorry I missed the appointment. I've been on the road and was able to check my email just a little while ago. Please do you have any other opening today?

Golen responded at 12:54 p.m. stating:

> Unfortunately, the next time we could meet is on Monday. I have office hours from 10 to noon.

Nwaubani replied at 12:55 p.m. stating:

> In the circumstance, can I send you the complaint by email?

At 4:03 p.m. on September 13, 2012, Golen's emailed response stated:

> Sure, send me what you have so far. Also, please send me the date the incident happened as the contract requires a grievance to be filed within ten days of the occurrence of the violation.

On Friday, September 14, 2012 at 3:51 p.m., Nwaubani emailed Golen a message entitled: "Statement of my Grievance" that stated as follows:

> About a week before Fall 2012 classes began (on September 4, 2012), I checked and did not find my name on the course listings, which meant that I had no class to teach.

[12] CCB 225 was Golen's room number at the Charlton College of Business.

Early on September 4, I sent an email to the Provost, Dr. John Farrington, and reported I had been excluded from teaching. Late in the day, Dr. Farrington replied, by email, and belatedly informed me that:

"The decision for you to be removed this semester from teaching was my decision. I took this action because you have refused to abide by the terms of the Agreement between the UMass Board of Trustees and the American Federation of Teachers Local 1895, AFL-CIO Faculty Federation at UMass-Dartmouth. You have claimed several times in emails to several people at UMass-Dartmouth that you work in a hostile work environment (including your email below), yet you have not availed yourself of opportunities to meet with representatives of the University of Massachusetts-Dartmouth Office of Human Resources and/or the Office of Equal Opportunity, Diversity & Outreach when they have attempted to contact you." [Emphasis in Original]

I need to clarify that Dr. Farrington's email reached my mailbox at 10:31 pm on September 4 and I did not see it until the morning of September 5.

In the language of the collective bargaining agreement, cited by Dr. Farrington himself, what he did was to "suspend" me "from class." And in doing so, he violated Article III. B of the Agreement in a fundamental manner.

First, Dr. Farrington seized and acted on power that is not allocated to him. The only source of authority to suspend a UMassDartmouth faculty member from class is the collective bargaining agreement. And quite clearly, the Agreement vests the power to do so in the Chancellor, not the Provost. Even at that, the Chancellor is required to act only "after consultation with the appropriate College Dean and Provost."

Second, as provided by the collective bargaining agreement, suspension of a faculty member from class involves a due process procedure which Dr. Farrington disregarded. For example, the Agreement is quite clear that: "No faculty member may be removed from the performance of duties without full disclosure of the reasons for the intended suspension to the individual concerned."

Furthermore, the Agreement requires that: "Where a person has been removed from the performance of duties, the administration shall present its reasons at a hearing before the College Academic Council within five (5) school days." This has not happened.

> Besides, Dr. Farrington did not even inform that I had been suspended from class: this information came out only after and because I reported to Dr. Farrington that I could not find my name on the course listings.[13]

Because Nwaubani delayed a day before sending his detailed complaint, Golen thought that it did not need to be handled immediately.

Golen and Nwaubani had no contact between Friday, September 14 and Monday, September 17, but at some point Golen reviewed the information that Nwaubani emailed to him on September 14, 2012. Golen deduced that Farrington had removed Nwaubani from teaching based upon Farrington's belief that Nwaubani had refused to abide by the terms of the Agreement. After reviewing the email, Golen read Article 3B of the Agreement. His review of the contractual provision lead him to conclude that Nwaubani did not have a valid grievance because he had not taken the requisite procedural steps prior to filing a grievance, specifically requesting a hearing before the appropriate CAC. Golen understood that a CAC hearing is convened as soon as a suspended faculty member requests a hearing and that the hearing is a precursor to any grievance.

At 5:11 AM on the morning of September 17, 2012, Golen emailed department secretary Eileen Muscarella (Muscarella) stating:

> I'm not feeling well and am staying home. Please put a note on my door. Thanks.

Golen was not in his office on Monday, September 17, 2012. He did not meet Nwaubani that day and had no conversation with him about the grievance that day or at

[13] When he was compiling information to send to Golen, Nwaubani reviewed Article 3B of the Agreement. He knew that this contractual provision gave faculty members the right to a hearing before the appropriate CAC. Nwaubani did not request a hearing because he did not think that the Agreement required him to request a hearing.

any subsequent point.[14]

Events Occurring After September 17, 2012

Golen did not contact Nwaubani after September 17, 2012 because he was waiting for Nwaubani to contact him. In Golen's experience, a faculty member who is seeking to file a grievance usually starts and pursues the process. Golen believed that Nwaubani would contact him after seeing the note that he had asked Muscarella to post.

Golen never explained to Nwaubani verbally or by email that Nwaubani could not file a grievance because he had not requested a CAC hearing. He did not do so because after Nwaubani failed to contact him, Golen assumed that Nwaubani did not want to pursue the matter. For the same reason, Golen never asked Nwaubani to provide the full text of Farrington's September 4 email, information that Golen believed was necessary to have a complete picture of what had occurred, or told Nwaubani why the information that Nwaubani sent him on Friday, September 14, 2012 was incomplete. Golen never sent Nwaubani the form that Nwaubani had requested in his 8:52 AM September 13, 2012 email, because Golen typically prefers to see all of the information that exists about an issue before forwarding a grievance form.

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[14] Golen's and Nwaubani's testimony regarding a September 17, 2012 meeting and conversation differ significantly. Nwaubani testified that he and Golen met on September 17, 2012, that he (Golen) had filed a grievance for Nwaubani, and that it was timely and properly filed. Conversely, Golen testified that: he never met Nwaubani on September 17 or any time before the unfair labor practice hearing, never told Nwaubani that he had filed a grievance on Nwaubani's behalf, and never told Nwaubani that his complaint was properly and timely filed. I credit Golen's testimony on this point because consistent with Golen's longstanding practice, it is likely that if Golen and Nwaubani met that Golen would have asked Nwaubani to sign a grievance form. Further, it is plausible that Golen was absent due to illness on September 14, 2012 because he submitted a copy of his email message to Muscarella into evidence and later he was out of work on extended sick leave that began in December 2012.

Nwaubani never contacted the Union after September 14, 2012, nor did anyone from the Union contact him. Golan began a medical leave of absence on December 19, 2012, and Union Grievance Officer Wayne LeBlanc (LeBlanc) took over Golen's Union responsibilities at that point.[15] Nwaubani filed a charge of prohibited practice in this case on February 21, 2013. He concluded that because he had received no further communication from the Union on the issue, the Union had not filed a grievance on his behalf.[16]

Nwaubani's Unpaid Leave of Absence and Termination

The University paid Nwaubani for the 2012 Fall Semester. By letter dated January 3, 2013, Fowler notified Nwaubani that the University was placing him on an unpaid leave of absence effective January 7, 2013, for his alleged refusal to respond to requests from the University administration to address the situation. Fowler's letter outlined a series of steps for Nwaubani to complete and warned him that the University would terminate his employment if he failed to initiate and cooperate in a review process.[17] The University ceased to pay Nwaubani on January 7, 2013 and subsequently terminated his employment on February 12, 2013.

Following his termination, Nwaubani emailed Golen about filing a grievance. Golen advised Nwaubani that he was away from campus and that LeBlanc was

[15] LeBlanc held a Professional Technician I position at the University and had been on the Union's executive board for ten years.

[16] Nwaubani previously had complained to the Union about certain of the University's actions, but this was the first time that he had sought to file a grievance.

[17] As previously noted, Fowler's letter referenced and attached Farrington's September 12, 2012 letter requiring Nwaubani to meet with Farrington and College of Arts and Sciences Dean Jeannette Riley (Riley).

handling grievances. Nwaubani then emailed LeBlanc to ask for a complaint form and whether he should send his complaint to LeBlanc as he had with Golen. LeBlanc reviewed the email that Nwaubani had sent to Golen, and, without having any discussion with Nwaubani responded by email on February 23, 2013 stating:

> I received a copy of your email to Richard Golen. I am filling in for Richard this semester. I will forward you a copy of our grievance form on Monday for you to complete.[18]

On Sunday, February 24, 2013, Golen sent Nwaubani a second email stating:

> Here is the blank grievance form. This must be completed to begin the process. Fill in the sections as appropriate. Most important is to tell us what article of the contract you believe was violated. This will be what the grievance committee will focus on exclusively. This should be brief and succinct.[19]

Nwaubani completed the grievance form, dated it February 22, 2012, and the Union subsequently processed it through the contractual steps. On July 10, 2013, Chancellor Divina Grossman (Grossman) upheld the grievance and instructed the Office of Human Resources to move Nwaubani from unpaid leave to paid administrative leave and "process his compensation and other conditions from January 7, 2013 retroactively."[20]

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[18] Although the record contains no evidence of any discussion between Golen and Leblanc regarding Nwaubani, Leblanc's testimony makes clear that the Union was aware of Nwaubani's concerns and was trying to expedite any future issues that might arise.

[19] There are no set rules for when Union grievance forms are distributed and returned. LeBlanc's usual practice is to discuss a potential grievance with a grievant in order to become familiar with the charges prior to sending the grievant a blank grievance form.

[20] The University has forwarded monies to Nwaubani, but Nwaubani believes that he has not received the correct amount of compensation. Because the issue is not before me, I make no findings concerning whether the University's payment to him was correct.

OPINION

A union has a duty to represent its members fairly in connection with issues that arise under a collective bargaining agreement. National Association of Government Employees v. Labor Relations Commission, 38 Mass. App. Ct. 611, 613 (1995). A union breaches its statutory responsibility to bargaining unit members if its actions toward an employee during the performance of its duties as the exclusive collective bargaining representative are unlawfully motivated, arbitrary, perfunctory, or reflective of inexcusable neglect. Quincy City Employees Union, H.L.P.E., 15 MLC 1340, 1355, MUP-6037, MUPL-2883 (January 24, 1989), aff'd sub nom. Pattison v. Labor Relations Commission, 30 Mass. App. Ct. 9 (1991), further rev den'd, 409 Mass. 1104 (1991). If a union ignores a grievance, inexplicably fails to take some required step, or gives the grievance merely cursory attention, it has breached its duty of fair representation by its perfunctory handling of an employee's grievance. AFSCME Council 93 and Patrick Palmer, 29 MLC 127, 130, SUPL-2710 (January 22, 2003). Similarly, if a union fails to investigate, evaluate, or pursue an arguably meritorious grievance without explanation, it has breached its duty of fair representation by its gross or inexcusable negligence. Id. (citing NAGE and Herbert Moshkovitz, 20 MLC 1105, 1113, SUPL-2522 (August 9, 1993), aff'd, National Association of Government Employees (NAGE) v. Labor Relations Commission, 38 Mass. App. Ct. at 611 (1995)).

The Complaint in this case alleges that the Union unlawfully failed to pursue Nwaubani's grievance after advising him that it had been filed and would be placed before the Union's grievance hearing committee the following month. Although I have found that Golen did not tell Nwaubani that a grievance had been filed, the evidence

establishes that the Union's failure to pursue Nwaubani's request to file a grievance violated its statutory obligation as the exclusive bargaining representative.[21]

Nwaubani contacted the Union's agent Golen on September 13, 2012, clearly expressed his immediate desire to file a grievance over a specific dispute, and requested a quick response. Nwaubani advised Golen that he "need[ed] to file a grievance today," "want[ed] to meet with [Golen] today," requested a grievance form, and promised to complete the form and bring it to the meeting. Golen responded promptly and offered to meet with Nwaubani 2 ½ hours later. Although Nwaubani was unable to communicate his inability to meet that quickly, Nwaubani emailed Golen back less than one hour later and requested an appointment later that day. After Golen replied that he could not meet until the following Monday, Nwaubani asked Golen if he could email Golen his complaint. Less than twenty-four hours later, Nwaubani forwarded Golen a "Statement of My Grievance" that included a factual description of his dispute with Farrington, excerpts from Farrington's communications, the contractual provision expressly violated, arguments in support of his complaint, and additional factual details. These facts plainly show that Nwaubani made Golen aware of his desire to quickly file a grievance over a specific dispute.

Golen did not appear at his office during the time that he had offered to meet with Nwaubani on Monday, September 17, 2012. Golen also did not subsequently contact or follow up with Nwaubani, despite the fact Golen's illness precluded the meeting, and

[21] The parties fully litigated the issue of whether the Union complied with its statutory duty even if Golen did not make the statements attributed to him in the complaint. In addition to arguing that Golen never told Nwaubani that he had filed a grievance, in its brief, the Union also argues that there was no valid grievance to file and that the Union had a rational basis for concluding that Nwaubani did not want to proceed with the grievance.

Nwaubani never subsequently communicated a desire to discontinue pursuit of his complaint. The Union did not file a grievance over Nwaubani's suspension complaint or send Nwaubani the grievance form that he initially requested. The Union's actions or lack thereof are contrary to the Union's claim that the case involves a mere "communication gap". Nevertheless, the Union argues that Golen's conduct satisfied the Union's statutory duty because: 1) Golen believed that Nwaubani no longer wanted to pursue a grievance; and, 2) the incomplete information that Nwaubani forwarded to Golen on Friday, September 13, 2012 demonstrated that Nwaubani did not have a valid grievance. I am not persuaded by these arguments.

A union has considerable discretion in determining whether to file a grievance and whether to pursue it through all levels of the contractual grievance procedure, National Association of Government Employees, 38 Mass. App. Ct. at 613. Also, the grievance process need not be error-free. Amherst Police League, 35 MLC 239, 250 (April 23, 2009) (citing Hines v. Anchor Freight, Inc., 424 U.S. 554, 571 (1976)). However, a union must gather sufficient information concerning the merits of a grievant's claim and make a reasoned judgment in deciding whether to pursue or abandon a particular grievance. Local 285, SEIU and Vicki Stultz, 9 MLC 1760, 1764, MUPL-2461 (April 5, 1983). Although the thoroughness with which unions must investigate grievances to satisfy their duty varies with the facts of each case, the investigation must be sufficient to permit the union to make a reasoned judgment about the merits of the grievance rather than an arbitrary choice. Massachusetts State College Association, 24 MLC 1, 4, SUPL-2588 (July 24, 1997).

To assess the Union's defense, I review the reasons it asserts for ceasing to process Nwaubani's complaint. The Union first argues that Golen believed that Nwaubani had changed his mind and decided not to pursue the grievance. For the following reasons, I find that Golen had no reasonable basis for making this determination. Unlike the facts in New England Water Resources Professionals and Nicholas Flammia, 25 MLC 135, 136, MUPL-4180 (March 1, 1999), where the union had no indication that the charging party wanted to file a grievance, Nwaubani made his intentions clear when he began corresponding with Golen. Nwaubani's absence from the Thursday meeting did not signal a lack of interest or declining urgency, because he never agreed to attend the meeting and did not receive Golen's invitation to meet until after the proposed meeting time had passed. Golen had proposed the Thursday meeting with less than three hours' notice, and Nwaubani subsequently clarified the reason for his absence.

Similarly, the fact that Nwaubani forwarded the requested information on Friday afternoon rather than Thursday does not show disinterest given the complicated situation that Nwaubani was describing. Further, the Union argued that because thirty to forty percent of the unit members who contact Golen about complaints subsequently fail to meet with him, Golen reasoned that Nwaubani was not interested in filing a grievance because they subsequently did not meet. However, the present matter can be distinguished from Golen's prior experiences with other unit members. Here, it was not Nwaubani but Golen, who due to illness, failed to appear as planned on Monday, September 17 and then failed to contact Nwaubani to reschedule a meeting. Thus,

Nwaubani's subsequent silence does not demonstrate waning interest in filing a grievance.

I next consider the Union's argument that Golen's decision to cease filing a grievance on Nwaubani's behalf was not unlawful because Golen had decided over the weekend of September 14-16, that the proposed grievance had no merit. The CERB does not substitute its judgment for that of a union absent evidence to establish that the union was improperly motivated, acting in bad faith or inexcusably negligent. See Baker v. Local 2977, State Council 93, American Federation of State, County and Municipal Employees, 25 Mass. App. Ct. 439, 441-442 (1988). Here, the Union asserts that Nwaubani's proposed grievance was fatally deficient because the information that Nwaubani forwarded to Golen on Friday, September 14 showed that Nwaubani had not requested a CAC hearing. Although Nwaubani acknowledges that such a hearing should precede the filing of a contractual grievance,[22] Nwaubani had not requested a hearing because he did not believe that it was his obligation to request one, and the Union never explained it to him. The fact that there have been only three suspensions in the past forty years undercuts the contention that Nwaubani should have known the intricacies of the hearing procedures. Former Union president Griffith testified that if a member is unaware of the provision for requesting a CAC suspension hearing, the Union would explain it to the member. The opposite occurred here. When Golen learned that there had been no CAC hearing, he let go of the matter instead of contacting Nwaubani and advising him to request one. Because grievance timelines

[22] Nwaubani in his brief states, "[a]dmittedly, Article III.B of the CBA is clear that, in the case of a faculty suspended from teaching, a grievance at the level of the CAC precedes grievance with the [Union] as set out under Art. XVII (Grievance Procedures) of the CBA."

are suspended during the CAC hearing process, and there is no time frame in which a faculty member must request a hearing, there is no evidence or argument that Nwaubani's grievance would have been untimely at that point. Thus, on the facts as presented here, Golen's decision to cease filing a grievance based solely on the information that he had received prior to having a meeting with Nwaubani was inexcusably negligent.

Finally, the lack of a CAC hearing did not make Nwaubani's proposed grievance fatally flawed because the hearing was simply a condition precedent to filing a grievance. The Union has not alleged that Golen believed for other reasons that Nwaubani's suspension did not violate the collective bargaining agreement. As Nwaubani pointed out in his September 14 email to Golen, Provost Farrington had acknowledged that he had made the suspension decision, yet Article 3B of the Agreement provides that '[t]he Chancellor may, after consultation with the appropriate College Dean and Provost, suspend a faculty member from class." Nwaubani's grievance arguably was meritorious because the Provost, rather than the Chancellor, made the suspension decision.

At the time that Golen stopped processing Nwaubani's complaint, he did not have sufficient information to make a reasoned judgment about the complaint's merits. See Local 285, SEIU and Vicki Stultz, 9 MLC at 1760. Golen had received excerpts from Farrington's suspension letter from Nwaubani, but he admittedly did not have the whole picture. Consequently, Golen needed to gather additional information from Nwaubani to fully understand what Nwaubani was complaining about. Additionally, for the reasons discussed above, Golen needed to explain the CAC hearing procedure to

Nwaubani so that the complaint would be ripe for a contractual grievance. Because Golen did not come to his office during the time that he had offered to meet with Nwaubani, and because Golen needed to acquire and communicate additional information about the merits of Nwaubani's complaint before the Union could decide whether or not to file a grievance, it was incumbent on Golen to contact Nwaubani after September 17. The Union's failure to do so, coupled with its premature cessation of any action on Nwaubani's request to file a grievance, violated the duty of fair representation that it owed Nwaubani.

Furthermore, the additional defenses that the Union raised in its answer are without merit. Nwaubani's charge was timely filed since the conduct at issue occurred on or after September 17, 2012, which was within six months of February 21, 2013, the filing date of the charge. See DLR Rule 15.03, 456 CMR 15.03. Nwaubani first contacted the Union on September 12, 2012, eight days after Farrington's September 4, 2012 email, and no record evidence shows that an earlier contact was required. The evidence also does not establish that Nwaubani "intentionally misled" the Union by forwarding selective portions of Farrington's email. Nwaubani did not represent that the portion of Farrington's email quoted in his September 13 email to Golen constituted the entirety of Farrington's communication. Additionally, the email chain between Golan and Nwaubani shows that Nwaubani sought to meet with Golen, thereby providing an opportunity to discuss Farrington's whole email. Compare Local 195, Independent Public Employees Association and Robert P. McLaughlin, 8 MLC 1222, 1228, MUPL-2327 (July 14, 1981) (union violated its duty of fair representation where its attorney

failed to meet with grievant to review facts underlying the grievances and union failed to keep two appointments with grievant to discuss grievances).

Finally, I am not persuaded by the Union's argument that there was no evidence that Golen's conduct was unlawfully motivated, and, thus, no violation of the duty of fair representation. Although I agree that the record contains no evidence of improper motivation, its absence is inconsequential here. The absence of improper motivation does not shield the Union from its failures to act upon Nwaubani's request to file a grievance, to communicate critical information to him, to meet with him after Golen offered a time and place, and to follow up with him afterwards. Cf. Raul Gonclaves v. Labor Relations Commission, 43 Mass. App. Ct. 289, 298 (1977) (finding that absence of unlawful motivation or bad faith does not excuse union officials' lack of knowledge of the Union's own policies and resulting failure to continue processing of a grievance).

REMEDY

The CERB fashions remedies for violations of the Law by attempting to place charging parties in the positions that they would have been in but for the unfair labor practice. Natick School Committee, 11 MLC 1387, 1400, MUP-5157 (February 1, 1985). The present case focused on the Union's failure to act upon Nwaubani's request to file a grievance challenging his September 2012 suspension from teaching Fall 2012 classes,[23] and the record shows that the University has paid Nwaubani for the Fall 2012 semester. Consequently, Nwaubani has not suffered any economic loss from the

[23] Although the record contains evidence of Nwaubani's subsequent termination and reinstatement, Nwaubani acknowledges in his brief that: "[f]rom the outset, the Hearing Officer was sufficiently clear that the hearing would focus only on Nwaubani's complaint of the [Union's] failure to grieve his complaint regarding his arbitrary suspension which came to light on September 4, 2012."

suspension or the Union's wrongdoing. The remedy in this case is, therefore, properly limited to a cease and desist order and a notice posting.

CONCLUSION

For the foregoing reasons, the Union violated its duty of fair representation in violation of Section 10(b)(1) of the Law.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Union shall:

1. Cease and desist from:

   a) Failing to act upon requests to file grievances by bargaining unit members who are covered by the terms of the collective bargaining agreement between the Union and the University.

   b) In any like or similar manner, interfering with, restraining, or coercing any employees in the exercise of their rights guaranteed under the Law.

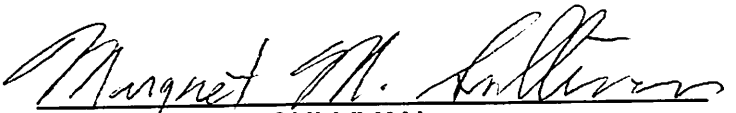
2. Take the following affirmative action that will effectuate the purposes of the Law:

   a) Post immediately in all conspicuous places where members of its bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the Union customarily communicates with bargaining unit employees via intranet or email, and display for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and,

   b) Notify the DLR within thirty (30) days of receipt of this Decision and Order of the steps taken to comply with it.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.15, 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 THE DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Department of Labor Relations has determined that the University of Massachusetts Dartmouth Faculty Federation Local 1895, AFT, AFL-CIO (Union) has violated M.G.L. c. 150E, Section 10(b)(1) by failing to act upon bargaining unit member Chidiebere Nwaubani's request to file a grievance challenging his September 2012 suspension from teaching.

Section 2 of M.G.L. Chapter 150E gives public employees the right to engage in concerted, protected activity, including the right to form, join and assist unions, to improve wages, hours, working conditions, and other terms of employment, without fear of interference, restraint, coercion or discrimination and the right to refrain from either engaging in concerted protected activity or forming, or joining or assisting unions.

The Union assures bargaining unit members that:

WE WILL NOT fail to properly process grievances for employees who are covered by our collective bargaining agreement with the Board of Trustees of the University of Massachusetts/Dartmouth; and

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

_____ _____

AFT, Local 1895, AFL-CIO Faculty Federation 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, 19 Staniford Street, 1st Floor, Boston MA 02114 (Telephone: (617) 626-7132).