

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 888

and

SPEANDILOVE NELSON

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Case No.: SUPL-17-5913

Date Issued: December 31, 2018

Hearing Officer:

Jennifer Maldonado-Ong, Esq.

Appearances:

Maureen Medeiros, Esq. – Representing Service Employees
International Union, Local 888

Speandilove Nelson – Pro Se

HEARING OFFICER'S DECISION

SUMMARY

1
2 The issue is whether the Service Employees International Union, Local 888
3 (Union) breached its duty of fair representation to Speandilove Nelson (Nelson) in
4 violation Section 10(b)(1) of Massachusetts General Laws Chapter 150E (the Law) by
5 acting in a manner that was arbitrary, perfunctory, and motivated by hostility when it 1)
6 posted on a Union bulletin board a negative and critical response to a petition that
7 Nelson had circulated in an effort to remove certain Union representatives and
8 2) conducted a membership vote on a global shift re-bid after reaching settlement with
9 the Commonwealth of Massachusetts/Executive Office of Health and Human Services'

1 Soldiers' Home (Employer). Based on the record, and for the reasons explained below,
2 I conclude that the Union did not breach its duty of fair representation to Nelson
3 because its actions were not arbitrary, perfunctory, or motivated by hostility.

4 STATEMENT OF THE CASE
5

6 On April 3, 2017, Nelson filed a Charge of Prohibited Practice (Charge) with the
7 Department of Labor Relations (DLR) alleging that the Union had violated Section
8 10(b)(1) of the Law. On October 5, 2017, and following an in-person investigation that
9 took place on June 14, 2017, a DLR investigator issued a single count Complaint of
10 Prohibited Practice (Complaint), alleging that the Union had violated Section 10(b)(1) of
11 the Law by acting in a manner that was arbitrary, perfunctory, and motivated by hostility
12 when it posted on a Union bulletin board a negative and critical response to a petition
13 that Nelson had circulated in an effort to remove certain Union representatives.
14 However, the DLR investigator also dismissed certain other allegations contained in the
15 Charge, which included Nelson's claims that, in April 2017, the Union had improperly
16 conducted a membership vote on a global shift re-bid after reaching a settlement
17 agreement with the Employer, and that the Union had failed to file grievances on her
18 behalf between the years 2014 and 2016. On October 13, 2017, the Union filed an
19 answer to the October 5 Complaint.

20 On October 17, 2017, Nelson filed a request for review of the dismissal pursuant
21 to DLR Regulation 456 CMR 15.05 (9), to which the Union filed no response. On
22 February 6, 2018, the Commonwealth Employment Relations Board (CERB) issued a
23 ruling concluding that there was probable cause to warrant a hearing to determine
24 whether the Union violated the Law by conducting a membership vote on a global shift

1 re-bid after reaching a settlement agreement with the Employer. Therefore, on February
2 8, 2018, the DLR issued an amended two count complaint (Complaint on Remand) of
3 prohibited practice on remand by the CERB, alleging that the Union had violated
4 Section 10(b)(1) of the Law.

5 On February 14, 2018, the Union filed an answer to the February 8 Complaint on
6 Remand. I conducted a hearing on September 13, 2018, during which both parties had
7 the opportunity to be heard, to examine witnesses, and to introduce evidence.¹ The
8 parties filed post-hearing briefs on or before October 16, 2018. Based on the record,
9 which includes witness testimony, my observation of the witnesses' demeanor,
10 stipulations of fact, and documentary exhibits, and in consideration of the parties'
11 arguments, I make the following findings of fact and render the following decision.

12 STIPULATED FACTS

- 13 1. The Commonwealth of Massachusetts, acting through the Executive Office of
14 Health and Human Services (Employer) is a public employer within the
15 meaning of Section 1 of the Law.
16
- 17 2. Service Employees International Union, Local 888 (Union) is an employee
18 organization within the meaning of Section 1 of the Law.
19
- 20 3. The Union is the exclusive bargaining representative for Statewide Bargaining
21 Unit 2, which includes, but is not limited, to certain Certified Nursing
22 Assistants employed at the Soldiers' Home in Chelsea, Massachusetts
23 (Soldiers' Home).
24

¹ After the Charging Party rested her case in chief, the Union verbally motioned to dismiss the second count of the Complaint on Remand on grounds that Nelson failed to provide documentary or testimonial evidence in support of that allegation, which I denied. In the Union's post-hearing brief, the Union argues that the denial of the motion was in error and reasserts its motion to dismiss the second count of the Complaint on Remand. Notwithstanding, I decline to grant the Union's reasserted motion to dismiss because I have considered and addressed the Union's arguments in support of dismissal, along with the rest of the hearing record, to rule on the substantive merits of the entire Complaint on Remand.

- 1 4. Speandilove Nelson (Nelson) is a bargaining unit member of the Union.
2
3 5. In or around the fall of 2016, the Employer contacted the Union to negotiate
4 the terms of a reorganization of staff at the Soldiers' Home.
5
6 6. As a result of the negotiations, the Union and Employer agreed to conduct a
7 shift re-bid in December 2016 whereby bargaining unit members could bid in
8 order of seniority for new shifts on the floor on which they currently work.
9
10 7. During a meeting on or around December 6, 2016, Nelson circulated a letter
11 titled "Stronger Together," calling for a membership meeting and stating, in
12 part, the following:
13
14 Since our union has not made themselves (sic) available to
15 us about our grievances, it is time we take our grievances to
16 the union...Collectively, we can change the way the union
17 represents us, now and in the future.
18
19 8. On or around the December 6, 2016 meeting, Nelson circulated a letter titled
20 "Blurred Lines," calling for the Union to hold a membership meeting and
21 stating, in part, the following:
22
23 Members feel like they were forced to sign on a bidding
24 which was forced on them. And the union representatives
25 sat in silence while our hands were forced and they asked us
26 to sign the paper...Now is the time for the union to live up to
27 its claims. If not, I foresee that the members will seek
28 strength in themselves, independent of the union.
29
30 9. On or around December 11, 2016, Nelson circulated a petition to remove the
31 current chapter representatives based on a "lack of communication and
32 proper representation" and a "conflict of interest in leadership."
33

34 FINDINGS OF FACT

35 **Background**

37 The Union is the exclusive bargaining representative for Statewide Bargaining
38 Unit 2, which includes, but is not limited to, certain Certified Nursing Assistants (CNAs)
39 and Licensed Practical Nurses (LPNs) employed at the Soldiers' Home. The Soldiers'
40 Home is located in Chelsea, MA and is administered by the Employer, the
41 Commonwealth of Massachusetts, acting through the Executive Office of Health and

1 Human Services. At all relevant times, and since at least October 2014, Nelson worked
2 as a CNA and was a member of the bargaining unit represented by the Union.

3 **2016 Staff Reorganization**

4 In the fall of 2016, the Employer contacted the Union to negotiate the terms of a
5 staff reorganization. As a result of the negotiations, the Union and the Employer agreed
6 to conduct a shift re-bid in December 2016, whereby bargaining unit members could bid
7 in order of seniority for new shifts on the floor in which they currently worked.
8 Accordingly, by interoffice memorandum dated November 4, 2016, the Employer
9 notified all affected employees, which included the CNAs and LPNs, about the
10 re-designed staffing pattern for these job titles and informed the employees that they
11 would be "invited to bid on a schedule by floor and in order of seniority." Subsequently,
12 a meeting was scheduled for December 6, 2016 so that the bargaining unit members
13 could choose a new shift.

14 On December 6, 2016, the CNAs and LPNs, including Nelson, participated in a
15 re-bid process with the Employer, during which new shifts were assigned to bargaining
16 unit members. However, the Employer presented Nelson with only one option and did
17 not allow her to bid on shifts according to her seniority. The sole option presented by the
18 Employer entailed a twenty-four hour shift that Nelson was to work between the hours of
19 6:45 am and 3:15 pm, on Mondays, Tuesdays, Wednesdays and Thursdays during the
20 first week of the nursing rotation, and on Mondays, Tuesdays, Wednesdays and Fridays
21 during the second week of the nursing rotation.² Shortly after the December 6 meeting

² By interoffice memorandum to Nelson dated December 16, 2016, the Employer confirmed that the schedule assigned to Nelson on December 6 became effective on January 8, 2017.

1 concluded, Nelson asked the Union to file a grievance on her behalf concerning the
2 re-bidding process. On the same date, Nelson circulated two letters claiming that the
3 Union had not done anything to assist members in their grievances over the shift
4 bidding procedure and calling for a Union membership meeting.

5 One of these letters was titled "Blurred Lines," in which Nelson wrote the
6 following:

7 The whispers of your members. If you really want to know how your
8 members feel, I recommend you call a meeting concerning the bidding
9 process which was not an actual bidding. You will hear their frustration.
10 Most of them feel they do not know where management ends and the
11 union continues. The members feel like they were forced to sign on a
12 bidding which was forced on them. And the union representatives sat in
13 silence while our hands were forced and they asked us to sign the paper.
14 To make matters worse, people who don't have seniority have been given
15 positions held by people who have seniority over them. In a since [sic],
16 management did not follow the letter[,] which stated that the bidding would
17 be based on seniority. And on a later date, management called a select
18 few to offer them different shifts. That is an unfair labor practice. How long
19 will our union allow this practice to go on? The union is supposed to advo-
20 cate for equal opportunity for all of its members. At this point we are urging
21 our union representatives to correct the unfair labor practices that are go-
22 ing on in the Soldiers['] Home before management implements what was
23 forced on us 6 Dec[ember] 2016. The new schedule will become effective
24 on 8 Jan[uary] 2017[.]

25
26 The person who was first active in attempting to get the union to correct
27 what was called a bidding process was part of the select few who were
28 given a new position. At this point, she became silent. This goes to show
29 you how things are done at the Soldiers['] Home.

30
31 The union motto is "Stronger Together." Now is the time for the union to
32 live up to its claims. If not, I foresee that the members will seek strength in
33 themselves, independent of the union.

34
35 We would like the union to advocate for a proper bidding process:

- 36
37 1. Based on seniority. As was clearly stated in the first bidding letter given
38 to us by management.
39
40 2. Globally/all units

1 3. All shifts

2
3 4. All hours

4
5 The second of those letters was titled "Stronger Together," in which Nelson
6 stated:

7 Dear Members of SEIU Local 888:

8
9 Since our union has not made themselves [sic] available to come to us
10 about our grievances, it is time we take our grievances to the union. There
11 is strength in numbers, which is why I am pleading with anyone who can
12 be available Tuesday morning. We should all rendezvous and travel to the
13 main office, at 25 Braintree Hill Park, Suite 306, Braintree. There, we will
14 verbally express our grievances and let them feel our emotions. Collec-
15 tively, we can change the way the union represents us, now and in the fu-
16 ture. Let's make sure they cannot ignore us. If there has been any time
17 that you have to stand up for something bigger other than yourself, this is
18 the time. Let's get together.

19
20 Thank you fellow members.

21
22 On or about December 11, 2016, Nelson circulated a petition to remove the
23 current chapter representatives based on a "lack of communication and proper
24 representation" and a "conflict in leadership."³ Specifically, the petition, titled "The Voice
25 of the Members of SEIU Local 888 of Chelsea Soldier's [sic] Home A Petition to
26 [R]emove our [C]urrent Chapter Representatives," read:

27

³ Between December 6, 2016 and December 11, 2016, the Union had distributed its own letter pertaining to the December 6 Re-bid Procedure. In that letter, the Union included a section captioned "Informing the Membership," and provided in relevant part: "Since the Soldiers' Home is a 24/7 operation [Peter] Lanceleve and [Rick] Moffatt took it upon themselves to cover all shifts and inform members about the rebid ... but only a few members were willing to help. Instead, membership decided to concentrate on heavily criticizing Lanceleve and Moffatt." The Union also stated that "[e]very unit needs participation from all members not just a few (Emphasis supplied) ... Less criticism and more activism is the only way to effectively fight and preserve our rights against management."

1 To Whom It May Concern:

2
3 We, the members of SEIU Local 888 have decided that we no longer need
4 the representation of our current chapter leaders. This is bases [sic] on the
5 following reasons: [w]e have experienced a lack of communication and
6 proper representation. Also, we perceive a conflict of interest in
7 leadership. Effective immediately we request that they should cease and
8 desist in representing us in any union matters and a new vote will be for
9 new representatives.

10
11 Sincerely,

12
13 The Members of SEIU Local 888

14
15 Later on December 11, Union Business Representative Neal O'Brien (O'Brien) emailed
16 Nelson. In that email, titled "Removal of Peter Lanceleve and Neal O'Brien," O'Brien
17 conveyed the following:

18 Good Afternoon Love [Nelson],

19
20 It was a pleasure to see you the other day and I hadn't seen you since one
21 of your last disciplinary hearings. I understand there is a document/petition
22 floating around the workplace requesting the removal of Peter and I [sic].
23 Could you kindly forward that document to Peter so that both of us could
24 sign it? Thank you.

25
26 **DLR Case No. SUP-17-5757**

27 The Union did not file a grievance relating to the events of December 6 as
28 Nelson requested.⁴ Instead, on January 11, 2017, it filed a prohibited practice charge
29 with the DLR alleging that the Employer had violated Section 10(a)(5), and, derivatively,
30 Section 10(a)(1) of the Law by unilaterally allowing approximately twelve Union
31 employees to forego the negotiated shift re-bid and enter into a private re-bid of their

⁴ In the instant charge, Nelson alleged that the Union violated Section 10(b)(1) by failing to file a grievance on her behalf in this matter and in other matters that had occurred in 2014. Because the CERB affirmed the DLR investigator's dismissal of these allegations in its February 6, 2018 ruling, the issue of whether the Union violated the Law by failing to file grievances on Nelson's behalf is not before me.

own for select positions that were secretly withheld from the global shift re-bid and unilaterally changing the shift of certain bargaining unit members after they specifically bid on different shifts. The Union's charge was docketed as DLR Case No. SUP-17-5757.⁵ On or around May 5, 2017, the Union and the Employer resolved the matter and the Union withdrew the charge.

Union's Newsletter Update Re: the Soldiers' Home

In early January 2017, the Union distributed to its membership a newsletter that provided updates on Union activity involving the Soldiers' Home. The newsletter indicated that "2016 was a very trying year for SEIU members here at the home" before summarizing various grievances the Union had filed on behalf of its members, which included a reference to a grievance and an unfair labor practice charge that the Union had recently filed in response to a member who "refused to participate in the recent nursing rebid but was given a prime daytime shift despite being very low in seniority."

The newsletter continued:

A small group of our membership led by one particular employee and a handful of the "Sweet heart," [sic] group are trying to divisively direct other members. We are stronger together and there needs to be cohesiveness when trying to resolve issues. This [group] has no official capacity to speak on behalf of any [o]fficial Union [b]usiness and is actually serving only themselves. This will be dealt with through the parameters of the Union constitution and bylaws. ...

Please understand we (leadership) are working diligently to resolve all issues. We are categorizing, strategizing, and filing charge documents on anything we can. ... We will also be working on getting better bulletin boards to better communicate Union information to you as members. It has been brought to our attention that there needs to be better communication between leaders and members and there is a want for meetings. ...

⁵ I take administrative notice of DLR Case No. SUP-17-5717, which the Union filed with the DLR on January 11, 2017. On May 5, 2017, the Union notified the DLR that the parties had resolved the matter and withdrew the charge accordingly.

1 We are asking for you to provide us with your email to figure out the best
2 time for an onsite general membership meeting be [sic] to keep you
3 abreast of anything that is going on pertaining to Union business. We will
4 fight back at every turn and continue to support you...

5
6 Also in early January 2017, the Union disseminated a "Steward [T]ip of the Month
7 (January 2017)," which purported to offer advice on how to engage with a type of
8 individual categorized as "the instigator." The document describes "the instigator" as
9 someone who "not only doesn't much work, but spends time stirring up drama..." and
10 "can often be seen wandering from unit to unit, gossiping about co-workers, engaging in
11 casual chitchat and badmouthing union officials. If they don't feel confident engaging
12 others in conversation, they may instead conduct the same kind of drama-mongering
13 through email or online." Further in the document, the Union advised unit members that
14 "[t]hese are some of the hardest people to deal with because they may not actually be
15 breaking any rules, but are still somehow disturbing the work environment."

16 The Union also advised unit members to "[c]onsider engaging them more closely
17 and being good to them. This is the old 'keep your friends close and your enemies
18 closer' philosophy. Communicate with the troublemakers to find out what their issues
19 actually are. ...If these efforts don't succeed or are just too exhausting, ask for help...If
20 the member insists on making you the scapegoat for their inadequacies, seek out legal
21 [advice] and take action against the member if no other recourse is available."

22 **Nelson's Response to Union's Newsletter Update**

23 After the Union's newsletter was distributed among the membership, Nelson
24 circulated a written response titled "Stronger Together" and "The Voice of the
25 Members," which addressed the Union's leadership team. In her response, Nelson
26 suggested that the Union's leadership team refer to the December 2016 re-bid

1 procedure as an unfair labor practice instead of a “sweetheart deal” and elaborated with
2 the following:

3 We received a letter from the Local 888, titled Chapter Update. In this
4 letter the Union stated multiple grievances filed by its members. Some
5 were dated back to 2012/2013. As much as these grievances are
6 important to us, we would like the Union to focus on the present issue at
7 hand. This is the [u]nfair [l]abor [p]ractice that happened on 8—6
8 Dec[ember] 2016, as a result of the [b]idding [p]rocess. In terms of
9 grievances, the contract clearly states in Article 23A, that as soon as a
10 grievance is filed, management has 10 calendar days to respond. And if
11 and when the grievance winds up in arbitration, the agency head shall
12 issue a written reply by the end of 30 calendar days.

13 ...
14

15
16 Upon reading the Union newsletter, it is obvious that they are using issues
17 that should have been resolved long ago to avoid dealing with current
18 issues. This is why the members signed a petition to have their voice [sic]
19 heard. We will no longer be silenced. To downplay [u]nfair [l]abor
20 [p]ractice as a “Sweetheart Deal” is incorrect. Once again this is an at-
21 tempt of our Chapter Leaders to sidestep the critical issues. If anybody
22 has been given “Sweetheart Deals” it is our Chapter Leaders, who sat in a
23 series of 8 meetings, deciding our fate, and agreeing to the improper
24 [b]idding [p]rocess. Also, our Chapter Leaders did not communicate this
25 with us. And they never had to bid for their positions, which was the
26 “Sweetheart Deal.” Due to this action, it made it OK for management to
27 commit the [u]nfair [l]abor [p]ractice, which is the critical issue. The union
28 is supposed to advocate for equal opportunity for all of its members.

29
30 Thus, we will not settle for anything other than getting a proper bidding.
31 We would like the union [to] advocate for a proper bidding process:
32

- 33 1. Based on seniority, as was clearly stated in the first bidding letter given
34 to us by management.
- 35
36 2. Globally/all units
- 37
38 3. All shifts
- 39
40 4. All hours

41
42 Stronger Together
43 The [V]oice of the Members
44

1 Union Bulletin Board Posting

2 On or about January 26, 2017, an unsigned letter, titled "Our [L]eaders[']
3 [R]esponse," was posted on the Union's bulletin board on the third floor of the Soldiers'
4 Home urging "888 Members" to "Please Read" the following:

5 Looks to me like we are way ahead of the "whispers." We have and
6 continue to support the idea of [a] global rebid. We have filed unfair labor
7 practice documents. It appears as I stated earlier that Spondy [Nelson]
8 lacks support within the workplace and she is acting on behalf of herself
9 and maybe a few other members. We (leadership) are held to a higher
10 standard with regard to our actions.

11
12 We (leadership) have met all standards in regard to the "rebid." The
13 armchair quarterbacking seems to be coming from those who do not have
14 the capacity or "intelligence" to understand the CBA [collective bargaining
15 agreement]. Spondy [Nelson] was elected to a steward's position and
16 resigned in disgrace. She made multiple attempts to disrupt the leadership
17 from the very first stewards [sic] meeting and made false accusations to
18 cover for her inability to substantiate her claims. She has used the lies,
19 innuendos, race and gender in the past and I'm sure this will be thrown out
20 there too. She is already throwing other members "under the bus" as
21 indicated ia [sic] a quote from her letter above" [sic][.] The person who
22 was first active in attempting to get the union to correct what was called a
23 bidding process was part of the select few who were given a new position.
24 At this point, she became silent. This goes to show you how things are
25 done at the Soldiers['] Home."

26
27 Do not listen to her[,] brothers and sisters. She is only a disruptive influ-
28 ence if you give her an audience. She has no understanding of the CBA
29 and her ignorance is only compounded by her self-serving comments
30 about people who do.⁶

⁶ Christine Wilson (Wilson), a bargaining unit member of the Union and employee of the Soldiers' Home, testified as a witness for Nelson. On direct examination, Wilson testified that she noticed the letter posted on an unlocked bulletin board, and that she had removed the letter to make a copy before returning the letter to the unlocked bulletin board and presenting the copy she made to Nelson. Wilson also testified that she did not know who posted the document on the bulletin board. Another witness for Nelson, Lyneth Martin (Martin), testified that the letter was posted in the "2 East Nursing Station," and that she did not know who posted the document on the bulletin board or when the document had been placed on the bulletin board.

1 In response to the posting, Nelson emailed Union representatives John Magner
2 (Magner), O'Brien and Peter Lanceleve (Lanceleve) on January 27, 2017. In that email,
3 titled "Bulletin Board," Nelson wrote:

4 On 26 Jan[uary] 2017, about 2:30 pm, a colleague approached me with a
5 paper, which was on the Local 888 bulletin board. She thought is [sic] was
6 offensive and interesting and thought I should read it. She verbally gave
7 me a synopsis of what it was all about. I started laughing. It made my day.
8 What have we come to by using the Union bulletin board as a slander
9 board.

10
11 Nelson attached a copy of the posting in the January 27 email. On January 29, 2017,
12 Nelson emailed Magner, who acts as the Union's Legal Director, again, along with
13 Union President Mark Dello Russo (Dello Russo) and Union attorney Maureen Medeiros
14 (Medeiros). In that email, which she titled "Leadership Crisis," Nelson communicated the
15 following:

16 I want to point out that over the last year, a number of decisions have
17 been made at the Chelsea Soldier's [sic] [H]ome by the Union leadership
18 that leave many of the members feelings unrepresented. I dare say, that if
19 there was a way to get an unbiased "Vote of Confidence" made, the re-
20 sults would not be favorable. Having failed to get our immediate leader-
21 ship to respond to this situation, I want to bring this to your attention.

22
23 As a result of unfair labor practices that occurred on 8 Dec[ember], we col-
24 lected 80 signatures and presented them to the union office, voicing our
25 disapproval. I have attached a copy of the petition. At the same time, we
26 presented a document listing what we wanted the union to work on.

27
28 Nelson also attached a copy of the petition signed by approximately 80
29 bargaining unit members, and the document titled "Blurred Lines," which Nelson had
30 written and earlier distributed.

31 **2017 Settlement and Membership Poll**

1 On March 27, 2017, the Union and the Employer settled Case No.
2 SUP-17-5717.⁷ As a result of the settlement, the Employer agreed to conduct a new
3 global re-bid process in which bargaining unit members would be allowed to bid in order
4 of seniority for new shifts throughout the Soldiers' Home. The Employer, however,
5 verbally asked the Union to poll its members to determine whether a new global re-bid
6 process should take place at all. Accordingly, the Union agreed to poll bargaining unit
7 members to determine whether they wanted to participate in a new global re-bid
8 process.

9 On or about April 18, 2017, the Union sent out information and a ballot to
10 members regarding the global re-bid procedure.⁸ The Union explained the reasons for
11 the mailing as follows:

12 Please be advised there is a members meeting scheduled for all Soldiers'
13 Home LPN's and CNA's on ...Thursday, April 27, 2017...

14
15 The purpose of this meeting is to poll LPN's and CNA's for a future re-bid.
16 Soldiers' Home management approached the Union in the fall of 2016 to
17 negotiate the terms of the re-bid we participated in December 2016 [sic].
18 Your elected officers fought diligently with management for a [g]lobal
19 re-bid, which would allow members to bid jobs throughout the entire hospi-
20 tal and not only the floor in which they worked. The Union's position at that
21 time was not to attend the December 2016 re-bid. Soldiers' Home
22 management asserted their contractual rights stating that if the Union

⁷ At the hearing, the Union submitted a copy of its settlement agreement with the Employer. According to the settlement, the parties specifically agree[d] "to meet in 'good faith' and negotiate the parameters of a [g]lobal [r]e-bid at the Chelsea Soldiers' Home." The parties also agreed to administratively close the matter at the DLR for 60 days.

⁸ Prior to the April 18 mailing, the Union had scheduled a general membership meeting for the evening of March 29, 2017 and had included the following items in the meeting agenda: 1. "...ULP's [unfair labor practices], grievances and other actions taken against the Soldiers' Home administration." 2. "We will also discuss appropriate actions needed from members to address the [r]ebid of nursing dept. [department]. ... 5. "We will discuss as time allows any and all issues brought by the members in good standing and recognized by the Chapter Chair."

1 didn't show up for the December 2016 re-bid, they would assign
2 employees into positions arbitrarily.

3
4 The Union subsequently filed several [u]nfair [l]abor [p]ractice [c]harges
5 with the Massachusetts State Labor Board against the Soldiers' Home
6 regarding the December 2016 re-bid. As a result of these legal actions the
7 Soliders' Home management has agreed to have a global re-bid.

8
9 Decisions must be made by Union membership to determine if they want
10 to participate in this global re-bid. A survey must be completed by all
11 LPN's and CNA's to ensure all members have an opportunity to vote.
12 Enclosed you will find a survey to be completed by each of you. You may
13 either bring your completed survey to the Union meeting or you may drop
14 your completed survey in the ballot box located at the DCCU.

15
16 A future Union meeting for all members will be scheduled in May and we
17 are securing the date and time now. The Union will notify you of the May
18 Union meeting. Thank you.

19
20 At the April 27 membership meeting, a majority of bargaining unit members voted
21 against having a new global re-bid process and voted to maintain the status quo. The
22 voting results effectively precluded Nelson from rebidding on, or otherwise changing,
23 the shift that was the subject of the grievance that Nelson had asked the Union to file on
24 her behalf on December 6, 2016.

25 **July 6, 2017 Correspondence from the Union to Nelson**

26 By letter dated July 6, 2017 to Nelson, Dello Russo issued a formal apology on
27 behalf of the Union regarding the January 26 bulletin board posting. The letter stated in
28 its entirety:

29 Dear Ms. Nelson,

30
31 Please consider this an apology for the document posted on a bulletin
32 board in your workplace. Your name was personally used and the content
33 of this document was concerning to all of us.

34
35 We applied a thorough and conscientious effort to locate the author of this
36 document. We were unable to locate or speak to anyone that would take
37 responsibility. We did however, discuss with the leadership team how

1 inappropriate it was and will continue discovery to hopefully find the
2 responsible party.

3
4 Local 888 was disheartened with this posting and condemns these actions
5 at the highest level. We denounce these actions by any member or
6 individual in the workplace. We apologize and sympathize with your
7 disappointment in this situation and Local 888 will do everything possible
8 to promote and influence unity from a staff perspective into your
9 independent membership at the Chelsea Soldiers' Home.

10
11 Sincerely,

12
13 /s/ Mark Dello Russo
14 President

15
16 **Union Communication Re: Posting Materials on Bulletin Board**

17 Between January 2017 and July 2017, the Union also distributed the following
18 notice concerning the usage of union bulletin boards at the Soldiers' Home:

19 Our Union Bulletin Board at the Chelsea Soldiers['] Home is a place to
20 hang postings that are informative to membership. Our collective
21 bargaining agreement is clear on the types of postings that appear.

22
23 The Union Bulletin Board should not be used to post disparaging or
24 personal information about management or membership. Kindly refrain
25 from posting any material that is disparaging towards any person in the
26 workplace.

27
28 OPINION

29 Once a union acquires the right to act for and negotiate agreements on behalf of
30 employees in a bargaining unit, Section 5 of the Law imposes on that union an
31 obligation to represent all bargaining unit members without discrimination and without
32 regard to employee organization membership. Quincy City Employees Union, H.L.P.E.,
33 15 MLC 1340, 1355, MUPL-2883 and MUP-6037 (Jan. 24, 1989), aff'd sub. nom., Patti-
34 son v. Labor Relations Commission, 30 Mass. App. Ct. 9 (1991), further rev. den'd, 409
35 Mass. 1104 (1991). Under the Law, an employee organization has a statutory duty to

1 serve the interest of all its members without hostility or discrimination towards any and
2 to exercise its discretion in complete good faith and honesty.
3 Massachusetts State College Association, 24 MLC 1, 3, SUPL-2588 (July 24,
4 1997). Section 5 of the Law permits unions a wide range of reasonableness in
5 representing the often-conflicting interests of employees; and thus, vests unions with
6 considerable discretion to pursue or not pursue a grievance in a manner that is not
7 improperly motivated, arbitrary, perfunctory, or demonstrative of inexcusable
8 neglect. Graham v. Quincy Food Service Employees Ass'n, 407 Mass. 601, 606 (1990)
9 (citing Baker v. Local 2977, State Council 93, American Fed'n of State, County &
10 Municipal Employees, 25 Mass. App. Ct. 439, 441 (1988)); see also American
11 Federation of State, County and Municipal Employees, Council 93, AFL-CIO and Daryl
12 D. Dunlap (Dunlap), 27 MLC 113, 115, SUPL-2696 (Feb. 9, 2001) (citing National
13 Association of Government Employees v. Labor Relations Commission (NAGE), 38
14 Mass. App. Ct. 611 (1995) (union has considerable discretion in determining whether to
15 file a grievance and whether to pursue it through all levels of the contractual grievance-
16 arbitration procedure).

17 A union's action is perfunctory if it ignores a grievance, inexplicably fails to take
18 some required step, or gives the grievance merely cursory attention. American
19 Federation of State, County and Municipal Employees and Charles W. Bigelow
20 (Bigelow), 20 MLC 1271, 1275, SUPL-2553 (H.O. Nov. 24, 1993), aff'd, 22 MLC 1329,
21 (Dec. 29, 1995). A union's action is also perfunctory if it is done as a matter of routine
22 and for form's sake, without interest or zeal. Independent Public Employees
23 Association, Local 195 and Elizabeth P. Clarke (Clarke), 12 MLC 1558, 1565-66,

1 MUPL-2633 (Jan. 22, 1986). A union's conduct is arbitrary if it fails to gather sufficient
2 information concerning the merits of a grievant's claim and fails to make a reasoned
3 judgment in deciding whether to pursue or abandon a particular grievance. AFSCME,
4 Council 93 and Shand Palmer (Palmer), 31 MLC 180, 188-89, MUPL-4257 (June 3,
5 2005) (citing Teamsters, Local 437 and James L. Serratore (Serratore), 10 MLC 1467,
6 1474-75 and 1477-78, MUPL-2566 (March 21, 1984); Local 285, SEIU and Vicki Stultz
7 (Stultz), 9 MLC 1760, 1764, MUPL-2461 (April 5, 1983)).

8 **Nelson's Argument**

9 Nelson argues that the Union's conduct was perfunctory, arbitrary and motivated
10 by hostility against her based on the Union's failure to properly respond to her concerns
11 regarding the document posted on the Union bulletin board on January 26, which has
12 forced her to take measures to protect herself despite making numerous requests to the
13 Union for assistance. Nelson also contends that the Union only formally apologized to
14 her about the January 26 bulletin board posting because she filed the instant charge
15 with the DLR. Nelson further asserts that the Union's conduct regarding the April 2017
16 membership polling was arbitrary and motivated by hostility against her because she
17 finds it "highly irregular that the [Union] could ask the membership to ignore a portion of
18 the contract between the Union and the Employer by asking for a vote, in regards to the
19 bidding."

20 **The Union's Argument**

21 Conversely, the Union argues that its conduct was not perfunctory, arbitrary or
22 motivated by hostility with respect to either the January 26 bulletin board posting or the
23 April 2017 membership polling. The Union contends that Nelson did not provide

1 sufficient evidence to support the two allegations of the Complaint on Remand, and
2 therefore has failed to satisfy the burden of proof necessary to find that the Union
3 violated the Law in the manner alleged. In addition, the Union further asserts that it had
4 already addressed Nelson's concerns regarding the January 26 bulletin board posting in
5 good faith and that it has sufficiently demonstrated that the April 2017 membership
6 polling was proper in light of its March 27 settlement agreement with the Employer.

7 **The Union's Conduct was Not Perfunctory, Arbitrary or Motivated by Hostility**

8 **January 26 Bulletin Board Posting**

9 The evidence establishes that the Union attempted to address Nelson's ongoing
10 concerns about the January 26 bulletin board posting through the July 6 letter it sent
11 directly to Nelson. In that letter, the Union indicated that it had investigated the matter in
12 an attempt to discover the identity of the individual or individuals who posted the
13 document on the bulletin board, and that the Union had not been successful in its efforts
14 to do so. Nelson, as the Charging Party, did not dispute that the Union investigated the
15 bulletin board matter or that the Union issued the July 6 letter providing an update on
16 the matter. Therefore, there is no evidence to support the conclusion that the Union
17 ignored Nelson's requests for assistance or treated those requests in a perfunctory or
18 cursory manner.

19 Instead, the record shows that between January 26 and July 6, 2017, the Union
20 distributed a notice to membership concerning the use of Union bulletin boards and
21 admonished its members against posting disparaging and personal information about
22 management or union membership. Although Nelson maintains that Union officials
23 were responsible for writing and posting the document titled "Our Leaders' Response"

1 on the Union bulletin board, Nelson did not introduce any evidence establishing that the
2 Union, either through an official or a member, was responsible for posting that
3 document on January 26. In analyzing the tone and tenor of the Union's newsletters and
4 other official correspondence in the record with the document that was posted on
5 January 26, I find that that the Union's official communications and the January 26
6 document could have been authored and posted by individuals who were not Union
7 officials. In addition, the record does not yield any information about who could have
8 posted the document. However, the record does show that the Union bulletin board was
9 unlocked and located in a public hallway, and that any person walking in that hallway
10 had access to the bulletin board.⁹ For these reasons, I find that the Union's conduct with
11 respect to the January 26 bulletin board posting was not perfunctory. Contrast Clarke,
12 12 MLC at 1565-66 (union acted perfunctorily when it did nothing to help process a
13 grievance and had no explanation as why it did not pursue the grievance).

14 In addition, there is no evidence of any hostility or unlawful animus existing
15 between the Union and Nelson. Nothing in the record demonstrates that the Union's
16 communications rose to the level of hostility against Nelson personally. Although the
17 document titled, "Our Leaders' Response," was highly critical of Nelson and her
18 effort to the remove certain Union officials, there is no evidence that the Union adopted
19 the position referenced in the document or that it had written or posted the document.
20 As previously stated, I find that the Union took reasonable steps to acknowledge the
21 matter and address the issue to Nelson's satisfaction and demonstrated good faith and
22 a lack of hostility by its continued attempts to resolve the issues. See generally

⁹ The testimonies of Nelson, Wilson, Martin and O'Neal each attest to this fact.

1 International Brotherhood of Police Officers, Local 338, 28 MLC 285, 289, MUPL-4225
2 (March 15, 2002); Contrast Graham v. Quincy Food Service Employees Association,
3 407 Mass. at 609 (union member showed history or hostility and animosity between
4 herself and union officials concerning the running of the union that arguably tainted the
5 handling of her grievance). Although Nelson contends that the Union failed to properly
6 respond to her requests for assistance, the record indicates that after she notified the
7 Union about the January 26 bulletin board posting, the Union subsequently took steps
8 to address Nelson's concerns. A failure to notify a charging party of information about
9 the status of an issue does not, standing alone, constitute a breach of the duty of fair
10 representation. See generally AFSCME and Virginia Palma, 28 MLC 196,199,
11 SUPL-2725 (January 4, 2002).

12 **April 2017 Membership Polling**

13 Similarly, there is no evidence that the Union violated the Law with respect to the
14 April 2017 membership polling. Nelson did not present any evidence showing that the
15 Union acted arbitrarily and was motivated by hostility towards Nelson by polling the
16 Union's membership. Magner testified that the polling of the Union's membership was a
17 verbal condition precedent set by the Employer pursuant to the March 27 settlement
18 agreement, which Nelson did not dispute.¹⁰ Magner further explained that, in settlement
19 discussions, the Union had requested a global re-bid, that the Employer would only
20 agree to a global re-bid if the membership was polled first to see if they wanted the

¹⁰ On cross-examination, however, Nelson asked Magner why the March 27 settlement agreement did not contain language expressly stating that the polling of the Union's membership was a condition set by the Employer. In response, Magner testified that, while nothing in the agreement says that polling would be done, that condition was nonetheless established when the Union and the Employer discussed the parameters for negotiating settlement, and was not part of the settlement agreement.

1 re-bid in the first place, and that formal negotiations would occur only if the Union's
2 membership voted in favor of the proposed global re-bid. Magner also testified that the
3 settlement agreement with the Employer consisted of polling the unit members and, if
4 members voted in favor of the global re-bid, then the Union and the Employer would
5 further negotiate over a global re-bid procedure pursuant to the terms of the settlement
6 agreement.


7 In addition, the Union did not act arbitrarily or with hostility here because it
8 gathered sufficient information concerning the merits of its unfair labor practice charge
9 against the Employer and made a reasoned judgment in deciding to poll its membership
10 as a necessary part of settling the charge. The Union's testimonial and documentary
11 evidence shows that the Union's actions were not arbitrary but were well-reasoned and
12 fully-supported by the information gathered. See Vaca v. Sipes, 386 U.S. 171, 194
13 (1967). Further, Nelson did not provide any evidence that established the polling of its
14 members was improper in light of these uncontroverted facts, nor did Nelson produce
15 any evidence showing the Union took any steps to alter the outcome of the membership
16 vote so that the members would be inclined to vote against a global re-bid. There is no
17 evidence that the Union's decision to settle the unfair labor practice charge contravened
18 any Union policy or procedure, nor is there evidence that the Union's decision stemmed
19 from deliberate bad faith or personal hostility. On the contrary, the evidence shows that
20 the Union demonstrated good faith by entering into an agreement with the Employer
21 that stood to benefit all members, including Nelson. See generally Local 285 SEIU, 9
22 MLC 1760, MUPL-2461 (April 5, 1983).

1 Because there is no evidence showing that the Union's actions were perfunctory,
2 arbitrary, or motivated by hostility, but fell within the bounds of permissible discretion
3 afforded to unions under the Law, I find that the Union did not breach its duty of fair
4 representation to Nelson. Graham, 407 Mass. at 606 (citing Baker, 25 Mass. App. Ct.
5 at 441); NAGE, 38 Mass. App. Ct. at 613 (union has considerable discretion in
6 determining whether to file a grievance and whether to pursue it through all levels of the
7 contractual grievance-arbitration procedure).

8 CONCLUSION

9 For the reasons discussed, I conclude that the Union did not breach its duty of
10 fair representation to Nelson because its actions were not arbitrary, perfunctory, or
11 motivated by hostility when it investigated the January 26 bulletin board posting and
12 polled its membership regarding a new global re-bid procedure in April 2017.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


JENNIFER MALDONADO-ONG, ESQ.,
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 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 Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.