

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

SEIU, LOCAL 509

and

LORNA ANDINO

Case Number: SUPL-24-10690

Date Issued: June 18, 2026

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Ian O. Russell, Esq.

- Representing SEIU, Local 509

Lorna Andino

- Pro Se

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the SEIU, Local 509 (Union) breached its duty of
2 fair representation to Lorna Andino (Andino) in violation of Section 10(b)(1) of
3 Massachusetts General Laws, Chapter 150E (the Law) by not responding to a June 1,
4 2024 email from Andino and, as of September 15, 2024, not informing Andino that: i) the
5 Commonwealth of Massachusetts (Commonwealth) had denied her grievance
6 (Grievance) at Step II; ii) the Union had appealed that denial to Step III; and iii) that the
7 Commonwealth had failed to issue a Step III written reply within 30 days of the appeal.
8 Based on the record, and for the reasons explained below, I find that the Union did not
9 violate the Law.

STATEMENT OF CASE

On June 26, 2024, Andino filed a charge of prohibited practice (Charge) with the Department of Labor Relations (DLR) alleging that the Union's handling of a Grievance related to her February 23, 2024 discharge as an employee of the Commonwealth had violated Section 10(b)(1) of the Law; Andino amended the Charge on June 28, 2024. On September 16, 2024, a DLR investigator investigated the Charge. On November 1, 2024, the investigator issued a Complaint of Prohibited Practice (Complaint), alleging that the Union breached its duty of fair representation to Andino in violation of Section of 10(b)(1) of the Law by not responding to a June 1, 2024 email from Andino and, as of September 15, 2024, not informing Andino that: i) the Commonwealth had denied her Grievance at Step II; ii) the Union had appealed that denial to Step III; and iii) that the Commonwealth had failed to issue a Step III written reply within 30 days of the appeal. On November 8, 2024, the Union filed its Answer to the Complaint. On December 5, 2025, Andino filed a Motion to Amend Complaint, which the Union opposed, and I denied on January 8, 2026. On March 9, 2026, I conducted an in-person hearing, during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence. On or before April 23, 2026, the parties filed post-hearing briefs.¹ Based on the record, I make the following findings of fact and render the following opinion.

FINDINGS OF FACT

General Background

The Union is the exclusive bargaining representative for employees of the Commonwealth working in statewide units 8 and 10. Andino, a member of the bargaining

¹ I have disregarded all aspects of Andino's brief that addressed issues that are beyond the scope of the Complaint.

1 unit, began working for the Department of Transitional Assistance (DTA) in 2016. On or
2 around June 20, 2023, Andino commenced a position as a homeless coordinator with the
3 Executive Office of Housing and Livable Communities (EOHLC), Division of Housing
4 Stabilization (DHS). Although Andino is not a new employee of the Commonwealth, as a
5 new employee of the EOHLC, Andino was subject to a probationary period.

6 Raya Kirby (Kirby) is the Union's Member Action Resource Center (MARC) Field
7 Representative. During the relevant period, Lucy Montan (Montan) was the MARC
8 Director.

9 Andino's Discharge

10 By letter dated February 23, 2024, DHS discharged Andino. In relevant part, the
11 discharge letter states that EOHLC "has a nine (9) month probationary period," that "a
12 determination has been made that this is not a good fit" for DHS, and that "we have
13 decided to end the employment relationship during your probationary period, effective
14 today." DHS did not copy the Union on the discharge letter.²

15 By email on February 26, 2024, Andino wrote to Christopher Groll, EOHLC's
16 Director of Labor and Employee Relations, to request reinstatement and a copy of her
17 personnel file. Andino attached a letter alleging that she had been wrongly terminated. In
18 relevant part, Andino believed that pursuant to the collective bargaining agreement
19 between the Union and the Commonwealth (CBA), she was subject to a six-month
20 probationary period rather than a nine-month probationary period. Andino copied Union
21 representatives on this email but did not request assistance from the Union.

² Andino testified that on the day of her discharge she contacted the Union to request that the Union file a grievance on her behalf, and that the Union rebuffed her. The timing of Andino's initial contact with the Union is not the subject of the Complaint's allegations.

1 Union files Grievance

2 By letter to the Union dated April 5, 2024, Andino asserted, in relevant part, that
3 her probationary period at EOHLC was six months rather than nine months, and that the
4 Union had failed to properly represent her.³ Andino further asserted that this letter “is a
5 contractual agreement” between the Union and Andino. After Andino sent this letter, the
6 Union contacted her.

7 On April 16, 2024, Kirby filed a Step II Grievance alleging that Andino’s discharge
8 violated Article 23 of the CBA.⁴ The Grievance states: “Member was terminated from
9 employment without just cause. Ms. Andino was terminated and was not offered to return
10 to her previously held position. Union was not notified of Ms. Andino’s termination.” The
11 Grievance sought rescission of Andino’s termination.

12 Andino Meets with Union

13 On May 1, 2024, Andino met with Kirby and Montan via Zoom. Andino disagreed
14 with the Union’s decision to file the Grievance under Article 23 but not Article 14 of the
15 CBA. The Union disagreed with Andino’s interpretation of the CBA, and explained that
16 Andino was, in fact, still within her probationary period, which the Union understood to be
17 nine months rather than six. The Union further explained that since Andino was still in her
18 probationary period, the Union could not grieve her discharge under the just cause

³ Andino believes that pursuant to Article 14 of the CBA, her probationary period is six months. Article 14 pertains to seniority, transfers, promotions, reassignments, filling of vacancies, and new positions.

⁴ Article 23 pertains to the arbitration of disciplinary action. The filing of the Grievance is not at issue in this matter.

1 provision of Article 23 but also explained that it might be able to get the Commonwealth
2 to return Andino to her prior position at DTA, which Andino did not want. Andino claimed
3 that the Union was misrepresenting her.⁵

4 By email on May 2, 2024, Andino wrote to Montan, again expressing her belief that
5 the Union was misrepresenting her. Andino attached a letter, addressed to Montan and
6 Kirby, in which she continued to insist that, pursuant to Article 14 of the CBA, her
7 probationary period was six months rather than nine months. Andino wrote that, "In order
8 for the Union to properly represent me the Union needs to be able to understand the
9 language of the contract," and she included language from Articles 14 and 23 of the CBA.⁶
10 Andino further wrote that her "goal is for us to be on the same page in order for the Union
11 to properly represent a Union member they must understand the Articles in Collective
12 Bargaining Agreement." [sic] In relevant part, this letter concludes:

13 Questions:
14

- 15 • Does a Union member lose years of in service when accepting a different
16 position in another agency?
- 17 • Why do you think it's a nine month probationary period for someone who
18 has transferred/new employees to different departments, if section 23
19 protects Union members from disciplinary action for anyone over 9 months
20 in the CBA?
- 21 • Even if the employee is a new employee in that agency does it affect their
22 years in service?
- 23 • When accepting a new position in a different department but continuing with
24 the same union SEIU 509 does that cause any interruption?

⁵ Andino described this meeting as a "power struggle." Andino testified that, "I felt the Union was trying to demote me along with my employer."

⁶ Although not at issue in this case, I note for clarity that the language that Andino relied on from Article 14 of the CBA expressly applies to promotions within the jurisdiction of the employee's appointing authority; whereas the language that Andino cited from Article 23 applies to an employee who leaves an agency for a position in a different agency.

- If the Union member has more than 9 months within the Union CBA, why are they getting terminated without just cause if they are under 9 months which passes their probationary periods as specified in Article 14?

I leave you with these questions. In order to do right by your Union members you must be able to answer these questions without confusion.

Thank you for your understanding and continued assistance in this matter. I appreciate your efforts in making sure we come up with a reasonable remedy within the sections outlined.

Andino's June 1 Email to Kirby and Union Response

By email on Friday, May 31, 2024, Andino wrote to Montan and Kirby to follow up on "any updates from our previous meeting and emails regarding rescinding of termination." Andino inquired if the Union needed any assistance or documentation and requested to schedule a follow-up meeting "to discuss next steps to move grievances forward." Later that day, on the evening of May 31, 2024, Kirby responded to Andino that Kirby had "reached out to Labor Relations twice and have not heard back from them. I was directed to a new LR representative and I have not been able to reach him yet. I will be sure to follow up again on Monday." Kirby thanked Andino for checking in and told Andino that the Union would keep Andino updated.

By email on Saturday, June 1, 2024, Andino wrote to Kirby that Andino had questions regarding Kirby's previous email. Andino wanted to know: the name of the labor relations representative Kirby had contacted and the new point person; the protocol for a Step II grievance; and if it was normal for labor relations not to answer. Andino continued that:

I've been wrongly terminated since 2/23/24 and the grievance was dated 4/16/24 The Union has nothing since then, it's been nearly 4 months. [sic]

I would like to schedule a meeting as soon as possible.

1 Last time we spoke you're reviewing about Article 14 and did you find out about
2 the change in agency you reported will let me know? [sic]
3

4 I am looking forward to speaking to you on Monday, I will call you!

5 On Monday, June 3, 2024, at 4:53 p.m., Andino texted Kirby that Andino had been
6 trying to reach her but had not received a response. Andino requested that Kirby call her
7 "at your earliest convenience." At 6:34 p.m., fewer than two hours later, Kirby responded
8 that she had been in staff meetings all day but was "free now if you have time." That
9 evening, June 3, 2024, Andino and Kirby spoke by telephone for approximately an hour.
10 The call primarily regarded the filing of the Grievance, with Andino continuing to disagree
11 with the Union regarding Article 14 of the CBA.⁷ They also discussed advancing the
12 Grievance to Step III.

13 On June 7, 2024, Andino texted Kirby to ask, "Did you start the step 3? Let me
14 know of any updates." That day, Kirby responded that, "Lucy and I are meeting with union
15 legal on Wednesday next week to follow up on your grievance and interpretation of Article
16 14. I will let you know the outcome." Andino responded that she was "looking forward to
17 resolving this asap" and needed to get back to work.⁸

⁷ Kirby testified regarding this conversation:

Similar to the meeting in May via Zoom, it was more... conversation about why the grievance was filed the way it was. Ms. Andino disagreeing with the filing of the grievance and how it was filed. Looking for me to essentially change my response. But I was very clear in that we filed the grievance as it was outlined from the language of the contract.

Andino testified that she did not recall what they spoke about during this conversation. I credit Kirby's testimony in its entirety.

⁸ Kirby credibly testified that:

1 On June 18, 2024, Andino texted Kirby to ask about “any updates regarding
2 grievance or Article 14.” On June 26, 2024, Andino filed the Charge. On June 27, 2024,
3 Kirby responded that she had, “No updates as I was out last week and Lucy is out this
4 week. I asked our field rep to reach out to Chris Groll from Labor but haven’t heard back
5 about his response yet.”⁹ Andino responded, “What was the Meeting with the Union
6 lawyer about? Did you reach a conclusion on what I requested to receive an update about
7 the Article 14?” Still on June 27, 2024, Kirby replied that, “As far as I’m aware, the attorney
8 was on the same page as Lucy with article 14 not being applicable. However, we are
9 trying to use the “transfer” wordage in your offer letter to negotiate with Labor. As soon
10 as I hear back from them, I’ll let you know.” On June 28, 2024, Andino amended the
11 Charge.

12 Union Advances Grievance to Step III

13 The Commonwealth did not respond to the Grievance at Step II.¹⁰ On July 31,
14 2024, Kirby advanced Andino’s Grievance to Step III and requested from the

The grievance had been filed at a step two with no response from the Commonwealth.... Ms. Andino and I had had discussion about moving the grievance forward without having a step two hearing, which is not uncommon. And I let her know that Lucy and I were going to be corresponding with our staff attorney to again review Ms. Andino’s concerns about not filing under Article 14. So we were bringing that to our in-house counsel just again to bring forward Ms. Andino’s concerns, and I was just giving her an update on that.

⁹ As of June 27, 2024, the Commonwealth had not responded to the Step II Grievance. Kirby credibly testified that, “It’s not uncommon that the Commonwealth does not respond to requests for primarily step one and step two hearings.... it is not uncommon to not hear from labor relations in the initial steps of the grievance process.”

¹⁰ Kirby credibly testified that, “I’m fairly certain that we had moved the grievance forward to a step three without any correspondence with the Commonwealth.”

1 Commonwealth "OER number and dates to have heard." The Commonwealth did not
2 respond.

3 By email on September 9, 2024, Andino wrote to Kirby and Montan that:

4
5 I would like to follow up on my grievance status.

6
7 It has nearly been 8 months of me being wrongful terminated.

8
9 What has the UNION done since Raya was redirected to a new representative?

10
11 Has a level 3 arbitration started yet?

12
13 I haven't heard anything from the Union since I've put in the charge with the DLR.
14 I called Lucy multiple times and I do not receive a call back. (I received text
15 messages) I requested a meeting: nothing has been scheduled since the
16 grievance was filed. The last time I spoke with Raya she reported no response
17 from the department, has there been any updates? [sic]

18
19 On September 10, 2024, Kirby responded to Andino that Montan was no longer
20 with the Union, and Kirby had "no updates regarding the grievance but am planning to
21 attend the DLR hearing on the 16th with our attorney." On September 11, 2024, Kirby
22 again asked the Commonwealth for "available dates and times to have this Step III
23 grievance heard." Later on September 11, 2024, Greg McKinney (McKinney), a
24 Commonwealth hearing officer, responded to Kirby that:

25 I am available the following dates in September: 17, 18, 19, 26, 30. I will need a
26 signed grievance waiver to schedule a date for this Step III. Let me know which
27 dates work for the grievant and Union and I will coordinate with the department.¹¹

28
29 Kirby forwarded McKinney's email to Andino within minutes, writing that: "the 17th and
30 18th do not work for me on such short notice, but I believe the rest of the dates look good.
31 Please let me know at your earliest convenience dates and times that work." Still on

¹¹ The Commonwealth did not respond to the Step III Grievance prior to September 11, 2024.

1 September 11, 2024, Andino responded to Kirby that, "The 19th, 26th and 30th works for
2 me any time." [sic]

3 On September 12, 2024, Kirby emailed McKinney to schedule the Step III hearing
4 for September 30, 2024. The next day, September 13, 2024, McKinney wrote to Kirby
5 that:

6 I understand Lorna Andino was hired by DHCD on June 18, 2023. She is subject
7 to a 9 month probationary period, Article 23, sec 1 of the SEIU 509 contract. Lorna
8 was separated as a probationary employee on February 23, 2024. Based on the
9 contract this cannot be grieved since she was still with-in the probationary period.
10 What is the Union[']s basis for this grievance?
11

12 On September 16, 2024, the day of the investigation at the DLR, Kirby responded to
13 McKinney that, "The Union's position is that per the CBA, Lorna should have been
14 returned to her previous position at DTA rather than strictly terminated." McKinney did not
15 respond to Kirby, and the Step III hearing did not occur on September 30, 2024.¹²

16 OPINION

17 The Complaint alleges that the Union breached its duty of fair representation to
18 Andino in violation of Section of 10(b)(1) of the Law by not responding to a June 1, 2024
19 email from Andino and, as of September 15, 2024, not informing Andino that: i) the
20 Commonwealth had denied her Grievance at Step II; ii) the Union had appealed that
21 denial to Step III; and iii) that the Commonwealth had failed to issue a Step III written
22 reply within 30 days of the appeal.

¹² The matter was ongoing as of the date of the investigation and the issuance of the Complaint. Although beyond the scope of the Complaint, I note that the Commonwealth never provided dates to schedule a Step III hearing. On November 5, 2024, Kirby told Andino that Kirby was prepared to file for arbitration, and Andino agreed. On December 5, 2024, Kirby notified Andino that the Grievance was scheduled for arbitration on June 23, 2025.

1 A union has a duty to represent its members fairly in connection with issues that
2 arise under a collective bargaining unit. National Association of Government Employees
3 v. Labor Relations Commission, 38 Mass. App. Ct. 611, 613 (1995) (citing Vaca v. Sipes,
4 386 US 171, 177 (1967)). The duty of fair representation encompasses a duty to
5 represent employees in a manner which is not arbitrary, perfunctory, unlawfully motivated,
6 or the result of inexcusable negligence. Quincy City Employees Union, H.L.P.E., 15 MLC
7 1340, 1355, MUP-6037 (January 24, 1989), aff'd sub nom., Pattison v. Labor Relations
8 Commission, 30 Mass. App. Ct. 9 (1991), further rev. den'd, 409 Mass 1104 (1991).
9 Unions have a wide range of reasonableness when fulfilling their duties. Goncalves v.
10 Labor Relations Commission, 43 Mass. App. Ct. 289, 293 (1997). I address each
11 allegation in turn.

12 June 1, 2024 Email

13 In the evening on May 31, 2024, Kirby informed Andino that the Union had not
14 heard from the Commonwealth, Kirby would follow up with the Commonwealth, and that
15 the Union would keep Andino updated. On Saturday afternoon, June 1, 2024, Andino
16 responded with a number of questions, accused the Union of doing “nothing” since
17 Andino’s discharge, requested to schedule a meeting, continued to press the Union on
18 Article 14 of the CBA, and stated that she would call Kirby on Monday.

19 On Monday, June 3, 2024, Andino continued to reach out to Kirby and Montan.
20 Kirby spoke to Andino that evening for approximately an hour. During that conversation,
21 Andino continued to disagree with “the filing of the grievance and how it was filed,” and
22 she looked for Kirby to “essentially change” the response regarding Article 14 of the CBA.
23 They also discussed advancing the Grievance to Step III. On June 27, 2024, Kirby told

1 Andino that Kirby had still not heard back from the Commonwealth, understood that the
2 Union's attorney had agreed that Article 14 of the CBA did not apply to Andino, told Andino
3 that the Union was still trying to negotiate with the Commonwealth, and told Andino that
4 she would update Andino when she heard back from the Commonwealth.

5 Thus, the Union responded to Andino's June 1, 2024 email. Even if the Union had
6 not responded, a mere failure to respond to an email, without more, would not violate
7 Section 10(b)(1) of the Law. See AFSCME Council 93, 27 MLC 113, 116, SUPL-2696
8 (February 9, 2001) (union's delay in responding to grievant's phone call and letters did
9 not demonstrate inexcusable neglect). I therefore dismiss this allegation.

10 Communications with Andino as of September 15, 2024

11 The Complaint alleges that as of September 15, 2024, the Union had not notified
12 Andino that the Commonwealth had denied the Grievance at Step II. The Commonwealth
13 never responded to the Grievance at Step II. Moreover, by September 11, 2024, when
14 Kirby forwarded McKinney's email regarding scheduling the Step III hearing, Andino knew
15 that the Union had advanced the Grievance to Step III, and, because they were discussing
16 scheduling the Step III hearing, that no written reply at Step III could have issued. Even if
17 the Union had not informed Andino of these three items as of September 15, 2024, that,
18 without more, would not violate Section 10(b)(1) of the Law. Id. I therefore dismiss this
19 allegation.

20 CONCLUSION

21 The Union did not fail to respond to Andino's June 1, 2024 email. Further, the
22 Union did not fail to inform Andino of the status of the Grievance as of September 15,

- 1 2024. The Union did not violate Section 10(b)(1) of the Law as alleged in the Complaint.
- 2 Accordingly, I dismiss the Complaint.
- 3 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



JAMES SUNKENBERG, ESQ.
HEARING OFFICER

APPEAL RIGHTS

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