

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 809

and

DAVID C. TURLEY

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Case No. UPL-18-6690

Date issued: February 9, 2022

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Luke Liacos, Esq. - Representing the International
Longshoremen's Association, Local 809

Joseph A. Padolsky, Esq. - Representing David C. Turley

HEARING OFFICER'S AMENDED DECISION¹

SUMMARY

1 The four issues in this case are whether the International Longshoremen's
2 Association, Local 809 (Union, Local 809, ILA, or Respondent) violated Section 4A(4) of
3 G.L. c.150A (the Law) by breaching its duty of fair representation to David C. Turley
4 (Turley or Charging Party) when Philip McGee (McGee): (1) used his position as Union
5 President to bid ahead of Turley and other members of the bargaining unit in February
6 of 2018; (2) withdrew Turley's grievance on or around February 13, 2018; (3) held a

¹ The Hearing Officer amends the original decision pursuant to the Errata that issued on February 9, 2022.

1 Union meeting and proposed a seniority amendment to the Union's constitution and
2 bylaws to place himself permanently above Turley on the seniority list; and, (4) withdrew
3 Turley's May of 2018 grievance at the first step of the grievance process before a
4 response was issued by the Employer. For the reasons explained below, I find that the
5 Union did not violate Section 4A(4) of the Law as alleged when McGee used his
6 position as President to bid ahead of Turley and other members of the bargaining unit in
7 February of 2018. However, I find that the Union did violate Section 4A(4) of the Law as
8 alleged when it held a Union meeting and proposed a seniority amendment to its
9 constitution and bylaws which placed McGee permanently above Turley on the seniority
10 list. I also find that the Union violated Section 4A(4) of the Law as alleged when it
11 withdrew Turley's grievances in February of 2018 and in May of 2018.

12 STATEMENT OF THE CASE

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14 On June 18, 2018, Turley filed a Charge of Prohibited Practice with the
15 Department of Labor Relations (DLR), alleging erroneously that the Union had engaged
16 in prohibited practices within the meaning of Sections 10(a)(1) and 10(b)(1) of General
17 Laws Chapter 150E (G.L. c. 150E). On June 26, 2018, Turley filed an Amended Charge
18 of Prohibited Practice (Amended Charge), alleging that the Union had engaged in
19 prohibited practices within the meaning of Section 4A(4) of the Law. On September 13,
20 2018, a DLR Investigator conducted an investigation into the Amended Charge. On
21 October 24, 2018, the Investigator issued a Complaint of Prohibited Practice
22 (Complaint), alleging that the Union had violated Section 4A(4) of the Law by breaching
23 its duty of fair representation to Turley when McGee: (1) used his position as Union

1 President to bid ahead of Turley and other members of the bargaining unit in February
2 of 2018; (2) withdrew Turley's grievance on or around February 13, 2018; (3) held a
3 Union meeting and proposed a seniority amendment to the Union's constitution and
4 bylaws to place himself permanently above Turley on the seniority list; and (4) withdrew
5 Turley's second grievance at the first step of the grievance process before a response
6 was issued by the Employer. On November 2, 2018, the Union filed its Answer to the
7 Complaint.

8 The DLR issued Notices of Hearing (Notices) on December 13, 2018, September
9 6 and 16, 2019, November 19, 2019, and January 21, 2020. Pursuant to those Notices,
10 I conducted four days of hearing on November 5 and 15, 2019, January 14, 2020, and
11 March 9, 2020. By letter dated March 27, 2020, the DLR notified the parties that it was
12 cancelling all scheduled proceedings subject to its issuance of interim hearing
13 procedures due to the Governor's declaration of a State of Emergency. On May 8,
14 2020, the DLR issued Interim Videoconference Hearing Procedures. On May 19, 2020,
15 August 7, 2020, and September 2, 2020, the DLR issued additional Notices of Hearing.
16 Pursuant to these additional Notices, I conducted two more days of hearing on June 22
17 and October 27, 2020.

18 Prior to the hearing, the Union elected not to bifurcate the proceeding.² At the
19 hearing, I afforded the parties a full opportunity to be heard, to examine and cross-

² As part of its defense, a union has the right to bifurcate a hearing involving a duty of fair representation allegation and may present evidence regarding the merits of an underlying grievance at a subsequent proceeding, if necessary. See Quincy City

1 examine witnesses, and to introduce evidence. Both parties filed their post-hearing
2 briefs on January 22, 2021.

3 **Procedural Motions**

4 At the first day of hearing on November 5, 2019, the Charging Party made a
5 motion to sequester all witnesses prior to giving testimony (Motion I). Over the
6 Respondent's objection, I granted Motion I but allowed each party to select one
7 individual to assist in the presentation and management of their respective cases as an
8 essential representative. The Charging Party selected Turley as its essential
9 representative, and he remained present throughout all witness testimony. The
10 Respondent selected McGee as its essential representative, and he also remained
11 present throughout all witness testimony. As part of my sequestration order, I informed
12 the parties that "until the hearing is closed...[n]o witness may discuss with other
13 potential witnesses either the testimony that has been given or that is anticipated to be
14 given." I also informed counsel that they must "inform any potential witnesses of their
15 obligations under this order."

16 On November 5, 2018, the Respondent filed a Motion to Dismiss Complaint
17 (Motion II). On November 21, 2018, the Charging Party filed a Request for an Extension

Employees Union, H.L.P.E. and Nina Pattison, et al., 15 MLC 1340, 1355, MUPL-2883
and MUP-6037 (Jan. 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)
(where there exists a realistic possibility that an employer may consider a grievance on
the merits if the Commonwealth Employment Relations Board (CERB) orders a union to
process it, the CERB gives that union the option of litigating the merits of the grievance
at either the unfair labor practice hearing or at a subsequent compliance proceeding).

1 of Time to Respond to Motion II (Request) and, later that day, the Respondent filed its
2 opposition to the Request. By administrative ruling on November 21, 2018, the DLR
3 allowed the Request; and the Charging Party filed his Opposition to Motion II on
4 December 10, 2018. On December 11, 2018, the DLR administratively denied Motion II.

5 On April 4, 2019, the Charging Party filed a Motion for Permission to Conduct
6 Limited Written Discovery and Take Depositions (Motion III). On April 5, 2019, the
7 Respondent filed its Opposition to Motion III. By ruling issued on April 9, 2019, the
8 hearing officer³ denied Motion III. On August 19, 2019, the Respondent filed another
9 Motion to Dismiss Complaint (Motion IV). By e-mail on August 19, 2019, the Charging
10 Party stated his reasons for opposing Motion IV. By ruling on August 23, 2019, I denied
11 Motion IV. On September 13, 2019, the Respondent filed an Emergency Motion to
12 Postpone Hearing (Motion V). The Charging Party filed his Opposition to Motion V on
13 that same day. By ruling dated September 16, 2019, I denied Motion V; however, later
14 that day, I allowed Motion V on reconsideration after receiving additional information
15 from the Respondent.

16 On October 28, 2019, the Respondent filed a Motion in Limine to Exclude
17 Evidence of Post-Complaint Grievances (Motion VI). On November 4, 2019, the
18 Charging Party filed his Opposition to Motion VI (Opposition). I issued a ruling on
19 November 14, 2019, denying Motion VI. On January 23, 2020, the Charging Party filed
20 a Motion to Continue Hearing Date (Motion VII). On January 24, 2020, the Respondent

³ At that time, Kerry Bonner, Esq. was the assigned hearing officer to this case.

1 filed its Opposition to Motion VII. By ruling issued on January 24, 2020, I allowed Motion
2 VII. On June 5, 2020, the Respondent filed a Motion for Permission to Submit Sworn
3 Statement from Union Members (Motion VIII). The Charging Party filed his Opposition to
4 Motion VIII on June 17, 2020. The Respondent withdrew Motion VIII on June 19, 2020.

5 On June 22, 2020, the Respondent filed a Motion For Permission to Submit
6 Affidavits (Motion IX).⁴ Also, on June 22, 2020, the Charging Party stated on the hearing

⁴ The Affidavits were signed and dated by the following affiants: Russell J. Hatch (Hatch), “presently” a Terminal Operator with both date of hire and Union membership “since 1996;” Kenneth R. McNeill (McNeill), “currently retired” and “previously employed by [Massport] from 1998 to 2019 as a Terminal Operator” with Union membership “from 1998 to 2019;” Stephen G. Morrissey (Morrissey), date of hire “since 1997,” “presently” a Terminal Operator with Union membership “since 2000;” Kathy A. Mulcahy (Mulcahy), “presently” a Pier Clerk with date of hire “since 2007” and Union membership “since 2011;” William O’Connor (O’Connor) “presently” a Terminal Operator with both date of hire and Union membership “since 1996;” Thomas O’Leary (O’Leary) “presently” a Terminal Operator with date of hire “since 1998” and Union membership “[i]n 2011;” and Michael R. Szloch (Szloch) “currently” a Terminal Operator with a date of hire “in October 2013” and Union membership “in February 2014.”

With the exception of individual job titles, dates of Union membership, and dates of hire by Massport, the relevant portions of all seven affidavits comprised the following identical language:

The facts stated in this Affidavit are based on my personal knowledge and information. I submit this Affidavit in connection to the charge of prohibited practice filed by David Turley against [the Union].

In May 2018, the Union called an emergency membership meeting to discuss and vote on whether to pursue a grievance filed on behalf of David Turley in which he challenged his place in the bidding order for primary work location, shift hours and days off.

I was present at the emergency membership meeting in May 2018.

1 record that he did not object to the formal admissibility of the affidavits sought by Motion
2 IX, but disagreed with the statements contained in those affidavits and disputed their
3 substantive contents. On July 6, 2020, I issued a ruling that allowed Motion IX. On July
4 15, 2020, the Charging Party filed a Motion for Permission to Submit Sworn Statements
5 from Jean Chervil (Chervil) and Jennifer Bremberg (Bremberg), and to submit a letter
6 dated September 13, 2018 (Motion X). The Respondent filed its opposition to Motion X
7 on July 21, 2020. On August 10, 2020, I issued a ruling that denied Motion X.

8 By email on August 10, 2020, the Charging Party filed a Motion to Postpone
9 Hearing (Motion XI). The Respondent filed its Opposition to Motion XI on August 10,
10 2020; and, later that same day, the DLR issued an administrative ruling granting Motion
11 XI. By letter dated August 14, 2020, I directed the Charging Party to show cause for why
12 I should not close the hearing record and conclude the case. On August 21, 2020, the
13 Charging Party filed his response to the show cause letter without serving a copy of that
14 response on the Respondent. On August 21, 2020, the Respondent filed a Motion to
15 Close Record and Conclude the Hearing (Motion XII) based, in part, on the Charging
16 Party's failure to serve a copy of his show cause response on the Respondent. On
17 August 25, 2020, I issued a ruling that denied Motion XII because I found cause to keep

After discussing the merits of the grievance, by show of hands the membership voted overwhelmingly against processing the grievance any further.

To the best of my recollection, thirteen (13) members, including myself, voted against processing the grievance any further and only three (3) members, including Brother Turley, voted in favor of pursuing the grievance.

1 open the record. On August 25, 2020, the Respondent filed a Motion to Reconsider my
2 ruling on Motion XII (Motion XIII), which it withdrew on August 28, 2020. In lieu of
3 Motion XIII, the Respondent filed a request for review of my ruling on Motion XII with the
4 CERB on September 4, 2020. The Charging Party filed his response to the
5 Respondent's request for review on September 15, 2020. The CERB issued a ruling on
6 the interlocutory appeal on October 6, 2020,⁵ which upheld my ruling on Motion XII.

7 On September 21, 2020, the Massachusetts Port Authority (Massport, Authority,
8 MPA, or Employer) filed a Motion to Quash a subpoena that I had issued for Bremberg
9 on September 2, 2020 (Motion XIV). At the subpoena hearing on October 15, 2020,
10 Massport amended Motion XIV by requesting that I "revoke the subpoena *in toto*."
11 [Emphasis in original.] The Respondent filed a separate Motion to Vacate and Revoke
12 the Bremberg subpoena on September 28, 2020 (Motion XV). The Charging Party did
13 not file written oppositions to Motion XIV or Motion XV, but made an offer of proof
14 against those Motions on the record at the subpoena hearing. On October 20, 2020, I
15 issued a ruling that allowed both Motion XIV and Motion XV. On October 22, 2020, the
16 Charging Party filed a request for review of my rulings on Motions XIV and XV with the
17 CERB. On October 29, 2020, the Respondent filed its Opposition to the Charging
18 Party's request for review. On December 14, 2020, the CERB issued a ruling on
19 interlocutory appeal which upheld my rulings on Motion XIV and Motion XV.

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ADMISSIONS OF FACT

⁵ The CERB also issued an amended ruling on interlocutory appeal that same day.

1 The Union admitted to the following facts:⁶

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- 1. The Massachusetts Port Authority (Employer or Massport) is a public employer within the meaning of Section 2 of the Law.
- 2. The Union is a labor organization within the meaning of Section 2 of the Law.
- 3. The Union is the exclusive bargaining representative for all employees of Massport working at various locations across the Commonwealth in the following classifications: Car Loaders, Freight Handlers, Pier Clerk Foremen, Pier Clerks, Terminal Operator Foremen, Terminal Operators, and excluding executive supervisors.
- 4. The Employer and the Union [we]re parties to an Agreement dated February 1, 2016 to January 31, 2019 (CBA).
- 5. In or around February of 2018, the Employer issued to the Union a quarterly shift bid sheet for Terminal Operators (Bid Sheet) to bid on primary work location, shifts hours, and days off.

20 STIPULATIONS OF FACT

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The parties stipulated to the following facts:

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- 1. McGee was hired by Massport on June 18, 2007.
- 2. Turley was hired by Massport on May 19, 2008.

FINDINGS OF FACT

29 **Background**

30 **1. Massport**

31 Massport comprises multiple facilities including Black Falcon Terminal (Black
 32 Falcon), Conley Terminal (Conley), and East Boston Parks Terminal (East Boston).
 33 Massport assigns bargaining unit members⁶ employed in the classifications of Terminal

⁶ In its Answer, the Union made full and partial admissions of fact. This part of my decision reflects only the Union’s full admissions of fact.

1 Operators, Terminal Operator Foreman, Pier Clerks, and Pier Clerk Foremen to perform
2 various job duties at those facilities. Terminal Operators and Terminal Operator
3 Foreman perform similar duties except the foremen also perform supervisory duties.
4 Likewise, Pier Clerks and Pier Clerk Foreman perform similar duties except the foremen
5 also perform supervisory duties. Pier Clerk Foremen receive a higher rate of pay than
6 Pier Clerks; Terminal Operator Foremen receive a higher rate of pay than Terminal
7 Operators; and Pier Clerks receive a higher rate of pay than Terminal Operators.

8 **2. Massport Employees**

9 On May 19, 2008, Massport hired Turley as a Terminal Operator, and he has
10 remained in that position at all relevant times. Approximately 90 days after his initial hire
11 date and continuing to present, Turley has been a member of Local 809. On February
12 11, 2013, Massport hired Lou Steriti (Steriti) as a Terminal Operator, and he has
13 remained in that position at all relevant times. Steriti became a member of the Union "90
14 days after [his] date of hire." In July of 2013, Massport also hired Jean Chervil (Chervil)
15 as a Terminal Operator, and he has remained in that position at all relevant times. On or
16 about December 28, 2014, Massport hired Rashard Humphrey (Humphrey) as a
17 Terminal Operator, and he has remained in that position at all relevant times. Both
18 Humphrey and Chervil have been members of the Union at all relevant times.

1 At some point in 1979, Massport hired William Kelly (Kelly) as a “Messenger.”⁷
2 Approximately, “six months” after his hire date, Kelly became a member of Local 809. At
3 some point after 1979, Kelly became a Massport “Guard.”⁸ In or about 1999 or 2000,
4 Kelly became a Terminal Operator and later became a Terminal Operator Foreman.
5 When Kelly retired from Massport on September 1, 2019, he was a Terminal Operator
6 Foreman. On June 18, 2007, Massport hired McGee as a Terminal Operator. “About
7 four months” later, McGee bid successfully for a vacant Pier Clerk position. McGee
8 works as a Pier Clerk for over ten years until December 31, 2017, when he bid
9 successfully into a vacant Terminal Operator position.

10 At some point in 2006, Massport hired Brian Day (Day) as Manager of Labor
11 Relations. In 2008, Massport promoted Day to Deputy Director of Labor Relations, and
12 later promoted him to Director of Labor Relations around August of 2018.

13 **3. The Union E-board**

14 Kelly became Union Steward at some point in the “[l]ate [19]90’s” and was
15 President for six years beginning around the early 2000s. When Kelly retired from
16 Massport in 2019, he did not hold any position with the Union. McGee was Union
17 Steward⁹ for two years beginning in 2009; and from 2013 to 2015, he was the Union

⁷ At all times relevant to this case, the Messenger position was not in the bargaining unit.

⁸ At all times relevant to this case, the Guard position was not in the bargaining unit.

⁹ McGee gave un rebutted testimony that “[a]t the time” the Steward “was [an] appointed” position, and that “[t]he E-board appointed [him]” as Steward in 2009 which comprised “Billy Kelly, Tony Struppa, and...Steve Morrissey.” He also testified that in

1 Vice President. Beginning in 2015 and continuing to present, McGee has served as
2 Union President. During McGee's early tenure as President around 2015, Stephen
3 Morrissey (Morrissey) was Vice President and Thomas Moakley (Moakley) was
4 Treasurer. At all relevant times between 2017 and October of 2018, Dennis LaColla
5 (LaColla) was Union Vice President, Kathy Mulcahy (Mulcahy) was Union Treasurer,
6 and Steriti was Union Steward. After a Union meeting in October of 2018, the Union
7 combined the positions of Vice President and Steward to create the new position of
8 "Vice President/Steward." Pursuant to that change, Steriti no longer served as Steward,
9 and LaColla assumed his new role as Vice President/Steward. At that meeting, the
10 Union also elected Mike Szloch (Szloch) to replace Mulcahy as Treasurer.

11 At all relevant times, incumbents in the positions of Union President, Vice
12 President, and Treasurer referred to each other as Executive Board (E-board)
13 members. At no time prior to February of 2018, did the Steward or the general
14 membership refer collectively to the President, Vice President, and Treasurer as an E-
15 board. Similarly, prior to that time, neither the Steward nor the general membership
16 referred individually to those Union officials as E-board members.¹⁰

2009, the Steward position was "unpaid" and was not a member of the E-board; but rather, the E-board members were "[p]resident, vice president, secretary, treasurer." However, "[w]hen [Morrissey] became president" in or around 2013 and with the "[i]ntroduction of the bylaws at the International," the Steward position became part of the E-board and was a paid position.

¹⁰ Steriti gave un rebutted testimony that he served as shop steward for "about one year, maybe a year and a half" before the October 2018 meeting. During that time, he testified that he never referred to Union officials as E-board members, and that he was

1 Prior to February of 2018, the Union usually held general membership meetings
2 once a year.¹¹ Also, prior to February of 2018, the Union held E-board meetings on an
3 infrequent basis.¹² At no time prior to February of 2018, did the E-board ever meet to
4 vote on whether to withdraw a grievance.¹³

unaware that a Union E-board existed prior to February of 2018. Similarly, Humphrey testified that it never occurred to him that President McGee, Vice President LaColla, and Treasurer Mulcahy were a formal E-board prior to 2018 because he had “never heard of the E-board. It was never brought up.”

¹¹ Steriti gave un rebutted testimony that “on an average,” the Union held meetings “maybe once a year” and that he attended them “if we had them, yes.” Steriti also testified that the purpose of those meetings was for “general stuff” but “[t]he closer you came to Union contracts,” it was common to have more than one Union meeting a year. Similarly, Humphrey testified that, generally, “when we do have meetings, it’s about contracts and basically different issues someone might have if someone wanted to bring something up.”

¹² McGee testified that he was “involved in E-board meetings” even though they occurred “[v]ery infrequently” and “only when a major issue arises.” He also testified that “there weren’t any [E-board meetings] when [he] was the [V]ice [P]resident,” and that he was “definitely not” involved in any E-board meetings while he was Steward. During his tenure as President, McGee testified that E-board meetings occurred “[f]our, maybe five times” but only “two” of them related to Turley. Both Turley and Steriti testified that the Union never had an E-board prior to 2018. However, Turley conceded on cross-examination that he “never held a position on the E-board.” Similarly, Humphrey testified that the first time he “ever heard about an E-board meeting was...after [Turley] was told that the E-board decided to pull his grievance after it was submitted.” Based on the totality of this evidence, including McGee’s experience as an E-board member, I credit his testimony that the E-board has existed at all relevant times and that prior to February of 2018, E-board meetings occurred very infrequently.

¹³ McGee testified that as President, he was involved in a “few” grievances outside of Turley’s 2018 grievances, which included a grievance that went to arbitration and another grievance that involved a termination hearing for Kelly’s brother “Johnny Kelly” who later “retired.” As Steward, McGee testified that he was involved in “[o]ne grievance” concerning holiday leave for another employee. McGee also testified that he did not “recall” other grievances. On cross examination, McGee admitted that prior to

1 **4. The Union Bylaws**

2 In or about “[l]ate 2014,” the Union adopted a constitution and bylaws (bylaws).¹⁴

3 On or about March 25, 2015, the Union revised certain sections of its bylaws. Article I,

4 Section 3(a) of the revised bylaws pertained to “Officers” and stated in full, “the

5 Executive Board shall consist of (4) members: President; Secretary-Treasurer; Vice

6 President; Steward.” Article II of the revised bylaws pertained to “Meetings” and stated

7 in pertinent part:

8 Section 1. Regular meetings of the Local shall be held quarterly. Special
9 meetings may be called by the President or by a majority vote of the
10 Executive Board. Notice to the members for all meetings will be place[d] in

Turley’s case, he was never involved in an E-board meeting where he voted not to proceed with a grievance. Moreover, Day testified that “[s]ince 2006” the number of grievances of which he has been aware is “minimal” and “[p]robably five or less” during his tenure. Day also testified that “there hasn’t been many” grievances from Local 809 and that “[p]robably a couple of them” proceeded to a two-on-two (2+2) meeting with Massport; but he does not recall whether he granted or denied any 2+2 hearings during his tenure. Turley testified that between 2008 and February of 2018 he had filed two grievances, but his February 2018 grievance “was the first time there was a[n E-board] vote regarding grievances.” Turley also testified that in the “12 years...since my whole time...[t]hey never had a vote to decide whether or not a grievance moves forward until this day.” Based on the totality of this evidence, I credit the testimonies of McGee and Day that the Union had filed only a few grievances between 2006 and 2018. However, based partly on McGee’s admission that he was never involved in an E-board vote concerning a grievance prior to February of 2018, I find that prior to that time, the E-board had never met to vote on whether to withdraw a grievance.

¹⁴ McGee gave un rebutted testimony that he first contacted International Vice President Bernie O’Donnell (O’Donnell) and asked him for a copy of a set of [b]ylaws from a Boston local because [McGee] wanted to use a template [and]...didn’t have any idea how to write up [b]ylaws.” O’Donnell provided McGee with “a copy of [Local] 805’s bylaws” and along with “Tommy [Moakley]...went through them and...deleted any section that was not relevant to...Local [809].” McGee “brought [a final draft of the bylaws] to a Union meeting for a vote...[in] late 2014” which “passed unanimously as the [b]ylaws of 809.” O’Donnell did not testify.

1 all work locations as well as mailed to each member for time and date of
2 meetings.

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5 Section 3. When a special meeting is called, the Secretary-Treasurer shall
6 send a proper notice thereof to every member giving at least twenty-four
7 (24) hours['] notice of such meeting. No other business shall be transacted
8 except that for which the meeting was called.

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11 Article IV of the revised bylaws pertained to "Membership" and stated in pertinent

12 part:

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15 Section 2. Every member of this Local shall, upon request, obtain from the
16 President or Secretary-Treasurer a copy of the Constitution and By-Laws
17 of this Local.

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20 Article V of the revised bylaws pertained to "Discipline" and stated in pertinent

21 part:

22 Section 1. Charges against a member, officer or employee may be
23 initiated by any member by filing written charges with the President or
24 Secretary-Treasurer of the Local Union setting forth the offense, when and
25 where committed [and] the names and addresses of any and all
26 witnesses.

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29 Section 3. Hearings on charges shall be held by the Executive Board of
30 the Local....In any case where the accused or the accuser is a member of
31 the Executive Board, the accused or accuser shall not sit on such Board,
32 and the remaining Board shall have the power to act.

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35 Section 6. The basis for charges against members, officers, or employees
36 shall consist of, but not limited to, the following[:]

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1 4. Any attempt to prevent a member from exercising the rights
 2 provided to him or her under the Local Constitution and By-Laws, the
 3 International Constitution and By-Laws, and any applicable provisions
 4 of the Law....¹⁵

5
 6 Article VIII of the revised bylaws pertained to “Powers and Duties of the Local
 7 Union Executive Board” and stated in pertinent part:

8 Between membership meetings[,] the Executive Board is the highest
 9 authority of the Local Union....¹⁶ The Local Union Executive Board, in
 10 addition to such other general powers conferred by these By-laws, is here
 11 by empowered to:

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 14 4. Call a special meeting of the Executive Board;

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 16 5. Call special meeting of the General Membership;

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 19 The Union’s revised bylaws contain no reference to seniority, seniority list or
 20 seniority roster, or date of hire.

21 **The CBA**

22 The Employer and the Union were parties to an Agreement dated February 1,
 23 2016 to January 31, 2019 (CBA). Both parties signed the CBA on November 18, 2016
 24 with McGee, LaColla, and O’Donnell signing for the Union, and with CEO/Executive
 25 Thomas P. Glynn and Director Labor Relations/Labor Counsel Kelly B. Strong (Strong)
 26 signing for Massport.

¹⁵ The record is unclear about whether reference to “the Law” in Article V, Section 6 of the revised bylaws referred specifically to G.L. c. 150A or to another law.

¹⁶ Article X of the revised bylaws pertained to “General Provisions” and stated in pertinent part that “[t]he general membership is the highest authority of the Local Union.”

1 Article IV, Section 1 of the CBA listed the separate classifications for Terminal
2 Operator, Terminal Operator Foreman, Pier Clerk, and Pier Clerk Foreman, along with
3 the corresponding job duties which stated, in pertinent part:¹⁷

4 Section 1. Union Security

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6 Bargaining unit work is defined by way of example and not limitation for
7 current job classifications within the bargaining unit as follows:

8

9 Terminal Operators and Terminal Workers

10 Housekeeping duties relative to all MPA operated facilities including but
11 not limited to general upkeep of buildings, security fencing and yard areas;
12 the supplying of potable water to vessels and all other functions as
13 assigned by the management that are within the working capabilities of
14 bargaining unit employees; loading and unloading rail freight cars other
15 than work relating to containerized cargoes, cargoes loaded on or
16 discharged from a full container barge or vessel or cargoes for all vessels
17 and cargoes at Moran Terminal and Mystic Pier.

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19 Pier Clerks:

20 Performance of clerical duties with respect to Port of Boston Marine
21 Terminal Tariffs (dockage, wharfage, and demurrage) and such other
22 clerical duties with respect to MPA functions as required by management.
23 All duties within this "Pier Clerk" classification shall be performed only by
24 employees classified as Pier Clerks under this Agreement, provided
25 however that nothing herein shall alter the past and current practice of
26 certain clerical duties being performed by managerial or non-bargaining
27 unit employees.

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29 Foremen:

30 The direction and supervision of either Terminal Operators or Pier Clerks.

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¹⁷ All emphases in original.

1 Article IV, Section 1 also included language requiring all persons to become
2 members of the Union by their 91st day of employment or risk termination, stating in
3 pertinent part:¹⁸

4 It shall be a condition of employment that all employees of the Authority
5 covered by this Agreement who are members of the Union in good
6 standing and those who are not members on the effective date of this
7 Agreement shall, on the thirty-first (31st) day following the effective date of
8 this Agreement, become and remain members in good standing in the
9 Union. It shall be a condition of employment that all employees covered by
10 this Agreement and hired on or after its effective date, shall, on the ninety-
11 first (91st) day following the beginning of such employment become and
12 remain members in good standing in the Union.
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14 The failure of any person covered by this Agreement to become a member
15 of the Union at the required time shall obligate the Authority upon written
16 notice from the Union to such effect and to the further effect that Union
17 membership was available to such person on the same terms and
18 conditions generally available to other like members, to forthwith
19 discharge such person. Further, the failure of any person to maintain his
20 Union membership in good standing as required, herein, shall, upon
21 written notice to the Authority by the Union to such effect, obligate the
22 Authority to discharge such person.
23

24 Article IV, Sections 6 and 7 of the CBA covered procedures for bidding on shifts,
25 hours, and work locations, stating in pertinent part:

26 Section 6. Bid Procedure – Procedure in Employment Opportunity for
27 Regular Employees

28 It is mutually agreed and made a condition of this Agreement that a
29 procedure is hereby established to provide employment opportunity for
30 employees (except temporary) covered by this Agreement and herein
31 referred to as “Bid Procedure.”

¹⁸ The parties did not address—and, therefore, I need not discuss—whether this contractual provision violates Section 3 of the Law.

1 The Authority shall post at each Division notice of additional permanent
2 positions established at any facility as a result of increases in work force
3 covered by this Agreement or any vacancy therein. Such posting shall
4 notify the employees of the employment opportunities in the classification
5 and shall contain the job qualifications and requirements, and, as
6 hereinafter defined, any regular employee or regular part-time employee
7 covered by this Agreement may bid thereon. Preference first shall be
8 given to regular employees within the [D]ivision in which the position is
9 available and consideration will be in order of seniority standing and hence
10 to regular part-time employees. However, the Authority shall be the judge
11 of the qualification of the applicant through its employing Division Director
12 or Manager, subject to the approval of the Executive Director or his
13 designee. Applicants for higher rated positions will be interviewed and the
14 right of selection by the Authority will not be exercised in an arbitrary
15 manner. Vacancies subject to the posting and bidding procedure are those
16 resulting from openings in current unit positions and from the creation of
17 new jobs within the work jurisdictional confines of the unit. Provision shall
18 be made for lateral as well as vertical job movement by way of posting and
19 bidding. Disputes arising from the interpretation or application of the
20 provisions of this section may be subject to the Grievance Procedures of
21 Article XII.

22
23 Current professional system for maintenance positions to be retained. Any
24 unit employee retains the right to apply for and use his seniority to gain
25 entry to an entry level position in another classification. The right to bid
26 into an entry level position in another classification and to later return to an
27 employee's former classification applies only to employees employed in
28 bargaining unit positions as of the date of the signing of the collective
29 bargaining Agreement (8/95).

30
31 Section 7. Work Shift Bid-Procedure

32
33 Once every three (3) months employees, by their employee job
34 classification, shall be permitted, on a seniority basis, to bid a primary
35 work location, shift hours and days off. The Authority shall determine the
36 work locations, shift hours, days off and number of employees within each
37 classification needed for each shift and at each location.

38 Notwithstanding the foregoing primary work location selection, the
39 Authority reserves the right to temporarily transfer an employee from his
40 primary work location to another work location for a period not to exceed
41 fifteen (15) business days per transfer....

1 Upon notification by the Authority, the Union shall poll in seniority order,
2 the employees within the particular classification at the primary work
3 location from which the transfer shall take place, to afford said employees
4 an opportunity to voluntarily elect to be transferred to the work location
5 identified by the Authority. If no employee voluntarily elects the transfer,
6 the most junior employee available within the particular classification at
7 the primary location from which the transfer shall take place will be
8 transferred to the identified work location.
9

10 Article XII of the CBA pertained to "Grievance Procedure" and stated, in pertinent
11 part:

12 Disputes or controversies which may arise out of the interpretation or
13 application of the terms of this Agreement...and the aggrieved employee
14 or employees involved shall present the dispute or controversy to their
15 [S]teward who, in turn, will bring it to the attention of his Section Head, the
16 name of whom shall be furnished to the Union Steward by the Division
17 Director or Manager....The [g]rievance must be presented to the Manager
18 by the Union Steward within seven (7) days of the date the aggrieved
19 employee is aware of the fact that his rights under the terms of this
20 Agreement have been violated. In any case, where the Authority has given
21 a negative answer to a grievance[,] the Union must request the next step
22 within seven (7) days from time of the answer or waive all rights to further
23 consideration.
24

25 The next step referenced above shall be written notification to the Director
26 of Labor Relations or his designee that the first step answer of the
27 Manager is not acceptable and the Union requests to convene a 2+2
28 hearing. The 2+2 hearing shall consist of two (2) representatives of the
29 Union and two (2) representatives of the Authority....
30

31

32 Article XV, Section 1 of the CBA pertained to "Seniority" and stated, in pertinent part:

33 Section 1. General Seniority Provisions

1 The following general provisions will apply except where the Authority and
 2 the Union agree otherwise. Such exception to the provisions herein will be
 3 written out and attached to this Agreement.¹⁹

4 Seniority for purposes of bidding on lateral and promotional vacancies
 5 shall be defined as date of hire by the Authority.

6
 7 Seniority as referred to in this Article shall for the purpose of decreasing
 8 the work force, mean the length of service accumulated in a classification
 9 of work from date of hire or seniority date as hereinafter established. An
 10 employee will simultaneously accumulate seniority rights as well as in the
 11 classifications in which he is working. When an employee is transferred
 12 from one classification of work to another, except under lack of work
 13 conditions, he shall retain the seniority that was acquired in the former
 14 class of work for a period of ninety (90) days during which period the
 15 transfer shall be considered temporary. If he is retained in the new class of
 16 work for more than ninety (90) calendar days, his seniority in the new
 17 classification shall then be based on the date of his transfer. An employee,
 18 who under lack of work conditions, is unable to exercise his seniority rights
 19 in any classification in which he has previously worked, will be permitted to
 20 use his full seniority with the Authority to displace the least senior
 21 employee in any lower rated classification in which he can, in the
 22 judgment of the Authority, perform the work available.

23

24
 25 Section 2.

26
 27 The list of employees' rates according to seniority is attached hereto and
 28 made a part of this Agreement. The Authority will supply the Union Office
 29 on request with a list of all additions or deletions, if any, from the seniority
 30 list. The official seniority control list, certified by the Union, will be the list
 31 which is on file in the Authority's Personnel Department.

32

- 33 1) Seniority shall terminate:
- 34 a. When an employee is discharged;
 - 35 b. When an employee voluntarily quits his employment;
 - 36 c. When an employee obtains a Withdrawal Card from the Union;

¹⁹ There is no evidence in the record that the parties attached a seniority "exception" to the CBA. Further, McGee gave un rebutted testimony that he was not aware of any writings that have been attached to the CBA that relate to seniority.

- 1 d. When an employee does not return on or before the expiration
- 2 date of his or her authorized leave of absence;
- 3 e. When an employee laid off for lack of work does not report to
- 4 work within five (5) calendar days from call date. He will not be
- 5 passed for that job and the next senior employee on the spare
- 6 list will then be called. The employee so passed however, will
- 7 not lose his place upon the spare list and will be called for the
- 8 next job open.
- 9
- 10 2) When an employee is promoted to a supervisory position and it is
- 11 subsequently necessary for him to return to Union status, he may do
- 12 so under the following conditions:
- 13 a. He will be returned to the Union job he left with his full seniority
- 14 if he returns within a period of one (1) year from the date he
- 15 became a supervisor;
- 16 b. He will be returned to the lowest job in the department with his
- 17 full seniority if he returns any time after one (1) year from the
- 18 date he became a supervisor;
- 19 c. This Agreement will affect only employees promoted to
- 20 supervisory positions after January 1, 1968.

21 Article XVII, Section 5 of the CBA pertained to “Non-Discrimination and

22 Affirmative Action” in relation to “Recognition/Seniority,” and stated in full: “Nothing

23 herein is to contravene or supersede the provisions of the relevant Articles pertaining to

24 ‘Recognition’ or ‘Seniority’.” Article XVIII covered “Definitions” and stated in pertinent

25 part:

26 Section 1. Regular Employees

27 Regular employees, as defined herein, are those employed in permanent

28 positions as of the signing of this Agreement and those who after five (5)

29 months of employment have qualified for regular employment and as of

30 the qualifying date their name is placed on the seniority list of regular

31 employees with seniority date effective as of the first day of employment.

32

33 Section 2. Anniversary Date of Employment

34 Rate of pay entitlement and such other beneficial rights as related to

35 qualifying periods of employment shall be computed from the first day of

36 employment of each employee and the subsequent date each year is

37 designated as the anniversary date of employment, except however,

1 employees terminated for any reason and thereafter re-employed shall in
2 such instance be termed "new employees".
3

4 Section 3. Duration

5 The "Authority" as defined refers to the Massachusetts Port Authority, its
6 Executive Director, Division Director or Managers and/or their respective
7 designees.
8

9
10

11 **The 2017 Terminal Operator Vacancy**

12 In or around the summer of 2017, Moakley who was a Terminal Operator,
13 informed Turley, Kelly, McGee, and other bargaining unit members about his upcoming
14 retirement. Around that time, Turley learned that McGee wanted to become a Terminal
15 Operator and planned to bid on the anticipated vacancy caused by Moakley's
16 retirement. Also, around that time, McGee contacted Union counsel Michael Feinberg
17 (Feinberg) for legal advice on whether seniority is determined by date of hire or by
18 length of time spent working in a classification. By letter dated July 20, 2017, Feinberg
19 informed McGee of the following:

20 This letter is in response to Local 809's request for my opinion as to
21 whether bidding on "primary work location, shift hours and days off" as
22 referenced in Article IV Section 7, is determined by seniority based upon
23 date of hire by Massport or by length of time spent working in the job
24 classification.

25 Article IV, Section 7, provides, in part, "Once every three (3) months
26 employees, by their employee job classification, shall be permitted, *on a*
27 *seniority basis*, to bid a primary work location, shift hours and days off."
28 [Emphases in original.]
29

30 After reviewing the collective bargaining agreement, it appears that the
31 only place where "seniority" is defined is in Article XV, Section 1, wherein
32 it states, "*Seniority for purposes of bidding on lateral and promotional*
33 *vacancies shall be defined as date of hire by the Authority.*" Further, it
34 states, "*Seniority as referred to in this Article shall for the purpose of*

1 *decreasing the work force, mean the length of service accumulated in a*
2 *classification of work from date of hire or seniority date as hereinafter*
3 *established [for transfers of more than 90 days]²⁰...* [Emphases in
4 original.]

5
6 Therefore, only when a decrease in a classification is about to take place
7 does time spent in that classification apply. In all other instances, date of
8 hire by Massport defines an employee's seniority date. With respect to
9 bidding "a primary work location, shift hours and days off" the contract
10 (and past practice) requires that bidding will be in the order of those
11 employed longest by Massport.

12
13 At some point after receiving Feinberg's July 20, 2017 letter, McGee distributed
14 copies of that letter to certain unit members, including Turley. Based on his review of
15 both Feinberg's letter and the CBA, Turley, along with Terminal Operators Steriti,
16 Humphrey, Szloch, and Terminal Operator Foreman Hatch met with McGee in the
17 Conley break room to discuss their concerns about seniority and the Terminal Operator
18 bidding order.²¹ At that meeting, Turley expressed his concerns about how McGee's
19 potential move into the Terminal Operator classification would affect the bidding order
20 among current Terminal Operators, how McGee's seniority did not permit him to bid
21 over Turley pursuant to the CBA, and that Feinberg's July 20, 2017 letter failed to
22 reference all relevant provisions in the CBA.²² Turley also informed McGee that he

²⁰ Brackets in original.

²¹ Hatch and Szloch did not testify.

²² Turley gave un rebutted testimony that Feinberg's letter "left out...a big piece of...a paragraph above" Article IV, Section 7. He also testified that McGee stated at the Conley break room meeting that the Union doesn't "acknowledge that part of the [CBA]."

1 would file a grievance if McGee attempted to bid ahead of him as a Terminal Operator.

2 McGee acknowledged Turley's right to file a grievance and ended the meeting.²³

3 At some point between the Conley break room meeting and December 31, 2017,

4 Moakley retired. On December 31, 2017, McGee bid successfully and moved into the

5 Terminal Operator position left vacant by Moakley's retirement.²⁴

²³ Turley testified that he met with McGee in the Conley break room in or around the summer of 2017 to discuss concerns about seniority and the bidding order for Terminal Operators. Steriti and Humphrey both testified that they were also at that 2017 break room meeting with McGee. Turley testified further that he told McGee that he would file a grievance if McGee bid over him as a Terminal Operator, and that he "specifically recall[ed] talking about this matter with [McGee and it was] all of us, it wasn't just me. There was all of us...in that room. We all addressed...where [McGee's] going to fall and I read this article to him. Lou Steriti also read it. And [McGee] stated that 'we don't acknowledge that part of the book.'" Additionally, Turley testified that he told McGee that "I'm going to file a grievance," and that McGee replied "that's your right[:]; you have every right to file a grievance."

McGee testified that he did not "remember" his conversation with Turley during the 2017 break room meeting, and that he did not "remember" Turley telling him that he would file a grievance if McGee bid over him. While McGee recalled telling Turley that he has a "right as a member of the Union" to file a grievance, he testified to making that statement at a meeting "in the winter of 2018." McGee also testified that Turley "never said to me" that he would file a grievance if McGee bid over him. Instead, McGee testified that Turley stated "that he was going to pursue it" but never said the word "grievance; he said 'pursue it.'" Based on the totality of this evidence, including Turley's specific recollection and McGee's misbelief that the break room meeting occurred in the winter of 2018, I credit Turley's testimony that he informed McGee at the Conley break room meeting in 2017 that he would file a grievance if McGee bid over him as a Terminal Operator. I also credit Turley's testimony that McGee told Turley that he had a "right" to file a grievance.

²⁴ Turley testified generally that McGee's move into the Terminal Operator position was a "transfer." Day testified specifically that he did not consider McGee's move to be a transfer based on "language in the contract where for a period of like 15 days employees could be transferred from one location to another." Also, Day testified that transfers are different from "a vacant position" and that he distinguishes between

1 The 2017 Seniority Roster

2 Every three months Massport generates a seniority roster²⁵ pursuant to Article
3 IV, Section 7 and Article XV, Section 2 of the CBA to determine the order by which
4 employees may bid on shift hours, days off, and primary location.²⁶ There is one

transferring and bidding because “[t]hey can be distinct issues; distinct ideas” and that “in general, in a lot of contracts we have temporary transfer language and in this one....if managers need to move people around they have the ability to transfer people.” Day testified further that when McGee “moved from the pier clerk to the [terminal operator position]...it would have a been a result of a posting going up” and he does not “view that as a transfer.” Further, at no point during McGee’s testimony did he refer to his move into the Terminal Operator classification as a “transfer.” Based on this evidence, I credit Day’s specific testimony that McGee’s move into the Terminal Operator position on December 31, 2017 was not a transfer.

²⁵ Day gave un rebutted testimony that “[t]he labor relations administrator in our office puts [the seniority roster] together” but he does not “know what [the Union] do[es] with it [because] [i]t’s more of just a passing on of information” by Massport. He also testified that while he does not formulate the seniority rosters, “people from our office put those together” which are “based on information that is contained in...an HR system.”

²⁶ Turley gave un rebutted testimony that Massport also uses the seniority roster to determine temporary foreman duties. For example, if a Terminal Operator Foreman is out on leave, Massport will assign the next most senior Terminal Operator to perform temporary Terminal Operator foreman duties which includes a higher rate of pay. Turley also gave un rebutted testimony that Massport has separate overtime lists for bargaining unit members at each facility (e.g., Black Falcon, Conley, and East Boston), and that some facilities generate more overtime work than other facilities. For example, Black Falcon generates “the most overtime” work during “cruise ship season” but typically doesn’t have any overtime opportunities during the winter season. At Conley, overtime work varies because it has been as much as 20 - 40 hours of extra work during the past winters and around once bi-weekly during the summer of 2018.

Turley gave un rebutted testimony that he lost opportunities to perform temporary overtime work due to McGee bidding ahead of him in 2018. Specifically, he testified that he was “harmed...monetary[ily]” by McGee bidding ahead of him because Massport had assigned Turley to work on the “9:00 [a.m.] to 5:00 [p.m.]” shift “when [he] was always on 7:00 [a.m.] to 3:00 [p.m.]” Specifically, Turley testified that his preferred bid was 7:00

1 combined roster for Terminal Operators, Terminal Operator Foremen, Pier Clerks, and
2 Pier Clerk Foreman. The roster includes various information including an employee's
3 "Hire Date" which refers to when Massport hired that employee, a "Union FT Date"
4 which refers to when an employee became a member of the Union, and the "In Position
5 Date" which refers to when an employee moved into their relevant classification. Once

a.m. to 3:00 p.m., Monday through Friday at Conley, but once McGee began bidding ahead of him, there was one occasion "[t]hat summer" when Turley had to work on "the 9:00 [a.m.] to 5:00 [p.m]" and "got less overtime because of that...shift for that bid." Turley testified further that "[u]sually, the overtime is called out at Conley Terminal from like 3:00 to 9:00" and is "determined by [Massport]...by seniority." He also testified that McGee received priority on available overtime, and "was able to take the bid that had more overtime over the bid that [Turley] had gotten." Turley conceded that he is currently working the preferred shift and location of 7:00 a.m. to 3:00 p.m., Monday through Friday at Conley Terminal.

Turley also gave un rebutted testimony that that the amount of available overtime work "varies" and that it is "sporadic....some days it could be...four hours," while in the "[w]intertime, if it's snowing, we could be working 40 hours overtime, 20 hours overtime. It's just sporadic." He testified that "[h]istorically, yes" Black Falcon has the most overtime, generally. He testified further, that since the summer of 2018, "the overtime has dropped significantly since...the last couple of years," and that "[w]e've had more overtime in the past," and that he would "like more overtime." Additionally, Turley testified that he is "locked into Conley right now because of [his] seniority, but [he] would like to move forward and be able to have that opportunity to go...for more overtime if another facility is calling for it." Specifically, "some facilities have more overtime than...other facilities," and while he bid on Conley, his "other choice would have been East Boston" and he "didn't have the choice to bid over to the [Black] Falcon."

Moreover, Turley gave un rebutted testimony that he lost opportunities to perform temporary Terminal Operator Foremen duties. Specifically, he testified that Massport assigned McGee to work as a temporary Terminal Operator Foreman and received the temporary Terminal Operator Foreman rate because of his bids ahead of Turley. He testified also that "if a foreman needs the day off or if he's out for a period of time, then [the] next senior [Terminal Operator] will become foreman" but when McGee bid over Turley "he was getting the foreman rate...taking money out of [Turley's] pocket....for a period of time."

1 generated, Massport sends the roster to the Union to ensure accuracy and/or to correct
 2 any mistakes or discrepancies prior to conducting the quarterly bids.²⁷

3 On or about October 30, 2017, Massport posted the following seniority roster
 4 (2017 Roster) in the Conley break room:

Unit	Name	Job Title	Union FT Date	Merged FT Date ²⁸	FT/PT Date	In Position Date	Hire Seq. ²⁹	Hire Date
[Red-acted] ³⁰								
4370 Full Time ³¹	Kelly, William J.	Terminal Operator Foreperson	2/12/79	2/12/79	2/12/79	3/5/07		9/11/78
4350 Full Time	Hatch, Russell J.	Terminal Operator Foreperson	11/4/96	11/4/96	11/4/96	5/16/05	1	11/4/96

²⁷ Day gave un rebutted testimony that he did not remember whether the Union ever brought corrections from the roster to his attention, “but sometimes Unions may deal directly with Jeannie [Genevieve Karge (Karge)] who now does that stuff for our office.” Karge did not testify.

²⁸ Turley testified that “Merged FT Date” refers to when an employee merges into a new position or new classification. Day testified that he was “not sure honestly” what Merged FT Date means because “[he] didn’t create [the 2017] roster.” Day also testified that seniority rosters are “document[s] that[are] maintained by Massport and distributed to the Union” and that “[t]he information is really more so from an HR system, human resources.” Based on the totality of this evidence, I credit Turley’s testimony that Merged FT Date refers to when an employee merges into a new position or classification.

²⁹ The record is unclear about what the term “Hire Seq.” means.

³⁰ The information listed in the second row of the 2017 Roster was redacted. Neither party offered an unredacted copy of this document, nor did any party present evidence about why this part of the document was redacted or who redacted it.

³¹ Font in original.

4370 Full Time	O'Connor, William	Terminal Operator	11/4/96	11/4/96	11/4/96	11/4/96	3	11/4/96
4370 Full Time	McNeil, Kenneth R.	Terminal Operator	4/13/98	4/13/98	4/13/98	4/13/98		3/2/98
4370 Full Time	Morrissey, Stephen G.	Terminal Operator	12/25/00	12/25/00	12/25/00	12/25/00		11/24/97
4070 Full Time	Dearden, Peter E.	Terminal Operator Foreperson	3/12/01	3/12/01	3/12/01	5/24/15		2/7/05
4330 Full Time	Lau, Pik Chi	Pier Clerk Foreperson	7/1/01	7/1/01	7/1/01	6/9/11	2	7/22/91
4070 Full Time	Lacolla, Dennis	Terminal Operator	4/18/05	4/18/05	4/18/05	4/18/05		3/1/99
4330 Full Time	McGee, Phillip T.	Pier Clerk	6/18/07	6/18/07	6/18/07	8/27/07		6/18/07
4070 Full Time	Tamburello, Timothy P.	Terminal Operator	6/25/07	6/25/07	6/25/07	6/25/07		6/25/07
4350 Full Time	Turley, David C.	Terminal Operator	5/19/08	5/19/08	5/19/08	5/19/08		5/19/08
4330 Full Time	Mulcahy, Kathy A.	Pier Clerk	7/24/11	7/24/11	7/24/11	7/24/11		5/7/07
4070 Full Time	O'Leary, Thomas	Terminal Operator	8/22/11	8/22/11	8/22/11	8/22/11		5/18/98
4350 Full Time	Seriti, Louis J.	Terminal Operator	2/11/13	2/11/13	2/11/13	2/11/13		2/11/13
4070 Full Time	Chervil, Jean A.	Terminal Operator	10/6/13	10/6/13	10/6/13	10/6/13		8/1/13
4350 Full Time	Szloch, Michael R.	Terminal Operator	2/9/14	2/9/14	2/9/14	2/9/14		10/28/13
4330 Full Time	White, Kim R.	Pier Clerk	8/3/14	8/3/14	8/3/14	8/3/14		9/4/84
4350 Full Time	Humphrey, Rashard	Terminal Operator	12/28/14	12/28/14	12/28/14	12/28/14		10/6/14

1 The February 2018 Shift Bid and Grievance

2 Every three months, Massport provides the Union with a bid sheet to circulate
3 among Terminal Operators and Terminal Operator Foremen for bidding on shift hours,
4 primary location, and days off in order of seniority, with the most senior employee
5 bidding first.³² Terminal Operators and Terminal Operator Foremen bid on one sheet

³² Turley testified that “seniority is based on time in that classification” or “date of hire [within the] classification.” He also testified that it is his understanding that an employee keeps their seniority by date of hire for the first 90 days when they move into a new classification, and that “they have 90 days to decide if they want to go back to their old position,” but “on the 91st day they’ll lose that right and they’ll go to the bottom of the list of their seniority in their new classification.” Based on this understanding, Turley conceded on cross-examination that McGee had the right to bid ahead of him within the first 90 days of becoming a Terminal Operator on December 31, 2017, and that there was no contract violation related to the “first grievance” filed by Turley in February of 2018. However, Turley later testified that when he filed his May of 2018 grievance, he “knew [that McGee’s] 90 days were up, so [Turley] expected a different outcome.” Turley also conceded on cross examination that “Morrissey “did” bid by his date of hire within the Union, not by his in-classification date, and that Turley did not file a grievance against Morrissey’s bid in that instance because Morrissey “was going through a hardship...with his family” and Turley “did not want to make [Morrissey’s] life any more difficult at that time.” Turley conceded further that while Hatch also bid by his date of hire around 2019, Turley did not file a grievance against Hatch because he believed that his grievances against McGee would also apply to Hatch. Morrissey did not testify.

Humphrey testified that the bidding order has “always been by...your classification and your seniority.” However, he later testified that when Morrissey bid on a classification vacancy around 2015, his seniority was determined by his date of hire because he was new to that classification. Similarly, Steriti testified that, “[p]ractically speaking,” the quarterly bids “would go out like a week prior to the actual bid taking place and[,] based on seniority [in] classification, you would bid your location and your days off.” He also testified on cross examination that in every quarter since he started working for Massport, the bidding was determined by an employee’s time spent within their classification. Chervil testified that neither McGee nor anyone else ever explained that seniority was determined by overall date of hire, and that “nobody told [him] that this is how things work because there a list that shows the seniority and when we bid, it’s based on...as a Terminal Operator, not as...any other...members. But as a Terminal

Operator, we know it goes by the date of hire....nobody told me that.” Chervil later admitted on redirect examination that he was aware of when Morrissey moved into the Terminal Operator classification and that “[Morrissey] did not” bid from the bottom of the list.

Conversely, McGee testified that “[t]he long standing practice, 107 years of this Union dealing with seniority [is] by date of hire into the Union[;] for as long as I’ve been a member, that’s the way it’s been done.” Kelly also testified on direct examination that the bidding procedure is determined by “Union seniority,” specifically “[b]y the date you came into the Union [or] joined Local 809” so “[d]ate of hire....by the Local.” Kelly also testified that in his 40 years of experience at Massport, he had “[n]ever” known a time when seniority in classification was the basis for bidding on primary location, shift hours, and days off. Kelly testified further, that when he moved from the Terminal Operator classification into the Terminal Operator Foreman classification, it had “[n]o affect” on his seniority because it was determined “[b]y [his] date of hire by the Union.” Moreover, he testified that Hatch had more experience in the Terminal Operator Foreman classification but Kelly was able to bid ahead of Hatch based on “[d]ate of hire by the Union.” Similarly, when Kelly moved back into the Terminal Operator position, he bid over “[a] bunch of [employees]” but was still able to bid first among the other Terminal Operators. Later, Kelly made a third move from Terminal Operator to Terminal Operator Foreman and bid over Hatch for a second time, but testified that his move had no effect on the order of bids and that Hatch did not file a grievance against Kelly’s bid order. Kelly testified to other instances where employees with less in-classification experience bid over employees with more in-classification experience based solely on their “date of hire by the Union,” including Eddie Donovan (Donovan) who was a “[P]ier Clerk for 35 years” who bid over “Danny Fitzgerald [(Fitzgerald)]” as a Terminal Operator Foreman in “1996, ’97.” Kelly testified to another instance involving Tom Gibbs (Gibbs) who moved into the Pier Clerk classification in the “[e]arly 2000s—2003, 2004,” who had no previous Pier Clerk experience, but “bid second out of four of them” because his bid order was determined “[b]y Union seniority” but not by time spent in the classification. On redirect examination, Kelly testified that he supported McGee’s position because “[i]t’s just the way it’s been for 40 years that I was there....So, I supported his idea when we denied [Turley’s] grievance from going up to Massport.”

Kelly later admitted on cross examination to violating the November 5, 2019 order of sequestration. Specifically, Kelly admitted that he had “a five minute meeting...with McGee...[j]ust now, yes” and that during their conversation, he spoke with McGee about “how things were going on in [the hearing]” and discussed “[w]hat kind of questions [he] was going to be asked.” Kelly admitted further that he and McGee had discussed “the bid sheet,” whether Kelly “remembered how it was handled,” and whether “there [were] any instances [that]...involved classification, going from one classification to another.”

1 while Pier Clerks and Pier Clerk Foremen bid on a separate bid sheet. In or about early
2 February of 2018, Massport circulated a Terminal Operator bid sheet on which McGee
3 bid ahead of Turley and other Terminal Operators. Turley immediately filed two
4 grievances with Steriti both dated February 9, 2018, alleging violations of Article XV,
5 Section 1 and Article XVII, Section 5 of the CBA. The first grievance alleged that
6 “[Massport] violated [the] collective bargaining agreement...[by] allowing Union
7 members to shift bid outside th[eir] seniority within th[eir] new classification.” The
8 second grievance alleged that “[Massport] violated [the] collective bargaining
9 agreement...[and that] established past practices were also violated when seniority
10 rights were granted to select individual(s) to cause harm/loss of rights to several [Local]

Additionally, Kelly testified that while he did not “recall” what McGee said during their conversation, he was “sure [that McGee] did” say something specific about this case, “[y]es,” and that McGee did talk “[v]ery little” about the substance of this case. On redirect examination, Kelly testified that no one offered him anything in exchange for his testimony, that McGee did not tell him how he was supposed to testify, and that his testimony was truthful.

Despite Kelly’s admissions, the Charging Party neither filed a motion to exclude or strike his testimony, nor made a motion for me to draw an adverse inference. Instead, the Charging Party asked Kelly questions on cross examination and recross examination about his pre-testimony communications with McGee on March 9, 2020; and, the Respondent had an opportunity to ask Kelly additional questions on redirect examination. Based on the totality of the evidence, including Kelly’s admission to speaking with McGee just prior to his testimony, I do not find Kelly’s testimony to be credible on the issues of seniority and how seniority is determined at Massport. Rather, I find that the testimonies of Turley, Steriti, Humphrey, Chervil, and McGee are credible. I also find that there is a genuine dispute regarding their respective interpretations of the CBA and past practice as they pertain to seniority and the bidding procedure. However, because the Union elected to bifurcate this proceeding and may litigate the merits of Turley’s grievances at a subsequent compliance hearing, I need not make a factual determination on the issue of seniority.

1 809 members including David C. Turley.” On both grievances, Steriti requested 2+2
2 hearings with Massport pursuant to Article XII of the CBA.

3 At some point between February 9 and 12, 2018, Steriti presented Turley’s
4 grievances to his “manager” Chris Zuffante (Zuffante) who later forwarded them to Day
5 in Massport Labor Relations.³³ Shortly after receiving those grievances, Day contacted
6 McGee by telephone.³⁴ After his conversation with Day, McGee met with Turley,

³³ Day gave un rebutted testimony that at some point between December 31, 2017 and February of 2018, “[p]eople on [his] staff advised [him] that there was...a seniority issue, within [the Terminal Operator] group” concerning McGee’s move, and that “someone from maritime [informed Day] that they had received a step 1 grievance on the matter.” Day testified that he later “spoke to Chris Zuffante and...Mike Myron who at the time was probably the Deputy Port Director” about Turley’s February 2018 grievance, and that Day’s “plan was...to have a conversation with Mr. McGee...but [the grievance] never made its way to step 2 which is at [Day’s] department at labor relations.” McGee gave corroborating testimony that “[t]he two-on-two is step 2 of the grievance procedure” and that the 2+2 hearings are usually done by Day. Zuffante did not testify.

³⁴ Day testified that after his conversation with a manager in maritime, “[p]robably later tha[t] same day” he “had a conversation with Phil McGee” and told him that “we’ve had this issue before with another group,” and that “seniority as to who bids first versus second or ninth versus tenth within that classification, really isn’t of major concern to [Massport].” Day also testified to telling McGee that if the Union “pursue[s Turley’s grievances] it means [the Union] agree[s] with Mr. Turley’s position” and that Day would not only “allow [Turley’s] grievance[s]” but would allow all other grievances filed by other Terminal Operators on the matter of seniority and bidding order; so the Union has “to kind of step in and figure this out.” McGee corroborated Day’s testimony, testifying that Day told him that “if the Union were to pursue it, [Day] would agree to [Turley’s] grievance[s] and then every other grievance that came down the pipeline to infinity.”

However, McGee denied that anyone was around him when he spoke with Day, and testified specifically that neither Steriti nor Humphrey were within his “line of sight when [he] had that call with Day.” Humphrey testified that he and Steriti were both present while McGee was on the telephone with Day, and that Humphrey observed that prior to that call, McGee’s demeanor went from being not upset to “upset.” Similarly, Steriti testified that he was present during McGee’s telephone call with Day and observed that

1 Humphrey, Steriti, Hatch, and Szloch in the Conley break room where he explained his
2 prior conversation with Day. After that meeting, McGee sent Turley's grievance to
3 Feinberg for a legal opinion. In the interim, McGee invited Steriti to meet with Feinberg,
4 LaColla, Mulcahy, and O'Donnell to discuss the CBA in relation to seniority. Steriti
5 accepted the invitation, met with Feinberg, LaColla, Mulcahy, and O'Donnell and
6 concluded that neither Feinberg, O'Donnell, LaColla, Mulcahy, nor McGee were
7 supportive of Turley's grievances.

8 At some point between February 9 and 12, 2018, McGee received Feinberg's
9 response and asked LaColla, Mulcahy, and Steriti to attend an E-board meeting to vote
10 on whether to proceed with Turley's grievances. Steriti refused to attend the E-board
11 meeting.³⁵ At that meeting, McGee, LaColla, and Mulcahy voted 3 to 0 against pursuing
12 Turley's grievances to the 2+2 hearing and withdrew the grievances.

13 On or about February 12, 2018, McGee verbally informed Turley about the E-
14 board meeting and the outcome of the vote against his grievances. Turley asked
15 McGee for a written response, which McGee provided by letter dated February 13,
16 2018, stating in full, that "[i]n reference to your grievance dated February 9, 2018, the

McGee "was unhappy" after he ended that call. Based on the totality of the evidence on this issue, including the unrebutted testimony about observing McGee's demeanor, I find that both Humphrey and Steriti were present during McGee's phone call with Day.

³⁵ Steriti gave unrebutted testimony that McGee asked him "to be a part of that [E-board meeting]...but [he] took no part in that because [he] was not aware that there was an E-board that existed until that point in time," and he also "felt uneasy about coordinating a meeting for the purpose of revoking the grievance...with an E-board that [he] didn't know existed until that point in time."

1 Executive Board has decided through a vote to deny your request for a 2 on 2 [hearing],
2 with respect to the aforementioned grievance. The Executive Board believes the
3 grievance has no merit.”³⁶

4 After speaking with McGee on February 12, 2021, Turley wrote a letter dated that
5 same day, and hand-delivered it to Zuffante, McGee, and O'Donnell which stated, in full:

6 Local 809
7 Chris Zuffante
8 Labor Relations
9

10 I am writing in response to a decision made by the Executive Board to call
11 a hasty meeting to make a ruling regarding my grievance.
12

13 After this meeting took place, Phil McGee, the President of Local 809,
14 addressed the [T]erminal [O]perators[,] stating that my grievance had
15 been denied by Brian Day, Bernie O'Donnell[,] and Kelly Strong. Phil
16 McGee also stated that the Executive Board had denied my grievance. He
17 went on to attempt to explain his reasoning for the denial. I asked Phil
18 McGee if he had read my grievance. He stated that he had not. I also want
19 to mention that Phil McGee was questioned regarding Article XV[,]
20 Seniority, and that he stated to a group of his members that “We don't
21 acknowledge that Article.” I requested from Phil McGee a written
22 explanation of the denial of the grievance.
23

24 I have been a proud ILA member for over ten years and a recent concern
25 over seniority rights has compelled me to file a grievance. Local 809 has
26 in part had a long history adhering to the seniority rights as a standard for
27 measuring it's [sic] members value in a fair way to dispel political
28 favoritism. The events that inspired my complaint have had a corrosive
29 effect on the morale of Local 809, and called into question the ILA's duty
30 to fair representation.
31

32 I was not fairly represented in this matter as there is a clear conflict of
33 interest. In essence[,] Phil McGee is the grievance. President McGee used

³⁶ That letter was signed “Local 809 Executive Board” and included in its header:
“President: Philip McGee Vice President: Dennis LaColla Treasurer Kathy Mulcahy
Steward: Lou Steriti.” [Emphasis omitted.]

1 his [U]nion position to assert seniority rights over half the [T]erminal
2 [O]perators and myself included. More egregiously, he abused his [U]nion
3 position to call a [U]nion meeting to have my grievance dismissed. My
4 rights as an ILA member have been violated by the unethical and self-
5 serving actions of Mr. McGee.

6
7 In ending, I request a fair hearing. I am also requesting that Phil McGee
8 be removed from this process.

9
10 After sending his letter, Turley met with Steriti and Zuffante to discuss the
11 February of 2018 grievances and why Massport refused to hold a 2+2 hearing. During
12 their meeting, Zuffante told Turley and Steriti that Massport did not refuse to hold the
13 2+2 hearing, but that the Union withdrew the grievances before Massport could
14 respond.³⁷

³⁷ Turley testified that “My shop steward and myself met with Chris [Zuffante] regarding” Turley’s February 12, 2018 letter. Turley also testified that he “called [Zuffante] who “said he’d meet with us, myself and...Steriti.” Turley testified further that he “told [Zuffante] what had transpired regarding my grievance procedure and how it was handled and Chris [Zuffante]...listened to everything and I handed him this letter...and I said, ‘Yes, I want to go on the record....’” Additionally, Turley testified that the purpose of his meeting was “[b]asically to bring [him] up...to date on what happened with my grievance,” and that he and Steriti “brought it to [Zuffante’s] attention for the main reason to inform him why [Turley’s] grievance was...pulled....Basically...asking him and telling him, with Lou Steriti, as well, that [Turley] didn’t think it was right that [his] grievance didn’t make it through the two-on-two, that [his] grievance was pulled and [he] had no way...had no reason why [he] wasn’t getting a reason why and...[he] wanted an explanation from [Zuffante].” Last, Turley testified that “[Zuffante] did” give him an explanation, that Turley “was” satisfied with it, and that Turley “was upset because [he] knew it wasn’t Massport that...pulled the grievance...[but it was] [t]he Union....Phil McGee.” Steriti testified that he believes that he “went over and personally delivered [Turley’s February 2018 grievances] to [Zuffante]” and that “obviously Mr. Turley explained his situation” to Zuffante who “thought that it was a Union-on-Union matter.” At that point, Steriti testified “that’s when I believe [Zuffante] forwarded it to Brian Day, from my understanding,” and that “Mr. McGee and Brian Day were in communication in regards to the status and/or outcome of that grievance.”

1 At some point between February 9 and March 1, 2018, Turley retained the legal
2 counsel from Louison, Costello, Condon & Pfaff, LLP. By letter dated March 1, 2018,
3 Feinberg notified David E. Condon, Esq. (Condon) about the Union's position
4 concerning Turley's grievances, which stated, in pertinent part:

5 Apparently, Mr. Turley's grievances arose when on December 28, 2017[,]
6 Phil McGee, in a lateral move, assumed the job of Terminal Operator. Mr.
7 McGee has approximately 11 years of seniority with Massport. Mr. Turley
8 who also holds the same job has approximately 10 years of seniority. It
9 appears that Mr. Turley may be concerned about the application of the
10 following provision of the collective bargaining agreement:

11
12 An employee laid off in a classification shall have the right to
13 resume his seniority position in another classification
14 according to his seniority, providing he is qualified in the
15 opinion of the Authority, to perform the work required. When
16 a layoff in classification is to be made, employees will be laid
17 off in order of lowest seniority. Employees laid off for lack of
18 work when called back to work shall be re-employed in the
19 classification in order of their seniority and in accordance
20 with seniority provisions as heretofore set forth. Art. XV,
21 Section 1[.]

22
23 On February 9, 2018, Mr. Turley filed two grievances that essentially
24 claimed a violation of the Seniority provision (Article XV) and the Past
25 Practice provision (Article XVII) of the current collective bargaining
26 agreement between [Local] 809 and the Massachusetts Port Authority. On
27 February 12, 2018, Massport denied Mr. Turley's grievances and on
28 February 13, 2018, Local 809's Executive Board voted not to process Mr.
29 Turley's grievances to the next (2+2) step.

McGee testified that he first received a phone call from "Zuffante stating that he had a grievance on his desk from Dave Turley and that he was going to deny it and that it had to do with seniority." McGee also testified that Zuffante "handed [the grievance] to me at the...Conley Terminal" and it was denied, and soon after he "got the phone call with Brian Day." Based on the totality of this evidence, including the specific recollection of Turley on this matter, and the corroborating testimony from Steriti that a meeting between Turley, Steriti, and Zuffante occurred, I credit Turley's testimony that Massport did not deny his grievances in February of 2018.

1 ILA Local 809's position is that no violation of the collective bargaining
2 agreement happened when Mr. McGee transferred into the Terminal
3 Operator position and, therefore, no violation of Mr. Turley's seniority
4 occurred. Any concern by Mr. Turley that he may be affected in the future
5 by the application of the above-reference[d] section of the collective
6 bargaining agreement is speculative and, in any event, cannot be the
7 cause of any grievance at this time.

8
9 Finally, as Mr. Turley is no doubt aware, the decision as to whether *any*
10 grievance has merit is made by the Executive Board as was done in this
11 case. [Emphasis in original.]

12

13 14 **The 2018 Amended Bylaws**

15 By notice dated on or around March 29, 2018, the Union announced that it was
16 calling a "general Union meeting on Thursday Mach 29, 2018 at Black Falcon."³⁸ At
17 some point during that meeting, the Union distributed copies of its revised bylaws, which
18 Turley, Steriti, and Humphrey had received for the first time.³⁹ Later at that meeting, the

³⁸ The notice did not include information about the agenda or the purpose of the meeting.

³⁹ Turley, Steriti, and Humphrey all testified that when they became members in 2008, 2013, and 2015, respectively, the Union neither notified them of the existence of either the 2014 bylaws or the 2015 revised bylaws, nor provided them with copies of those bylaws. Rather, they testified that the Union only provided them with copies of the "book" (i.e., the CBA), and that they had never heard of any bylaws prior to the March 29, 2018 general meeting. Turley testified specifically that at the March 29, 2018 meeting, the Union "handed out...a packet of bylaws to each member, which we never had bylaws before" and which "were new to us." Turley testified further that while the Union distributed the 2015 revised bylaws, it never discussed the issues of seniority or his grievances at that meeting. Conversely, McGee testified that the Union discussed Turley's grievances at "[t]he March 2018 general Union meeting," and that there was also a resolution on the issue of seniority as it applied to those grievances. McGee also testified that the Union did not distribute any bylaws at the March 29, 2018 meeting, but read "[v]erbally" the proposed seniority language.

1 Union discussed whether it should amend the bylaws to include language stating that
2 there was only one seniority list regardless of job classification, and that seniority was
3 determined by date of hire. At some point after that discussion, LaColla made two
4 motions. The first motion was to reaffirm the Union's practice of recognizing seniority by
5 date of hire, which passed by a vote of 11 to 3.⁴⁰ The second motion was to amend the
6 bylaws and adopt the proposed seniority language. McGee seconded that motion and a
7 vote occurred by hand, with an outcome of at least 11 members voting in favor of
8 amending the bylaws, and at least 3 members voting against it.⁴¹

9 At some point in the summer of 2018, Turley, Steriti, and Humphrey found copies
10 of the 2018 amended bylaws in the Conley break room. The amended bylaws were
11 different from the 2015 revised bylaws because most of the table of contents were

Based on the totality of the evidence presented, I credit the testimonies of Turley, Steriti, and Humphrey that prior to March 29, 2018, the Union never notified them of the 2014 bylaws or the 2015 revised bylaws, and never provided them with copies of those bylaws when they joined the Union. I also credit Turley's testimony that the Union distributed copies of the 2015 revised bylaws at the March 29, 2018 meeting based on his specific recollection of receiving those bylaws at that meeting. However, I credit McGee's testimony that the Union did not distribute copies of the amended bylaws at the March 29, 2018 meeting, but instead read verbally the proposed seniority language at that meeting. Last, I do not credit McGee's testimony that the Union discussed Turley's February 2018 grievances at the March 2018 meeting because there is no evidence in the record to support this claim. Nor do I credit Turley's testimony that the Union did not discuss the issue of seniority at this meeting because the evidence shows that topic was discussed as the bases for LaColla's motions.

⁴⁰ While the record is unclear about who seconded LaColla's first motion, McGee gave unrebutted testimony that a vote was taken on that motion with an outcome of 11 to 3.

⁴¹ McGee testified that the outcome of the vote on LaColla's second motion was either "11 to 3 or 12 to 4...[i]n favor of adding it to the [b]ylaws."

1 missing, parts of pages 1, 2, 4, 7, 9, 11, and 13 were missing, and it included the
 2 following new language on the last page:⁴²

3 ITEM ADDED TO THE BYLAWS MARCH 29, 2018 [Emphasis in original.]

4

5 1) Local 809 Seniority List

6 [The] Union has ONE seniority list. [Emphasis in original.] The [U]nion

7 date of hire is the only date that is recognized by the [U]nion. The seniority

8 list is not job[-]specific or by job classification[;] it is date of hire by Local

⁴² Turley testified that “someone left a set of bylaws in our breakroom” and that “[t]hey were dropped off” but he did not remember when. Turley also testified that although he had received a copy of the 2015 revised bylaws at the March 29, 2018 meeting, the document that he found in the break room was different because “there were pages that didn’t add up, like the articles weren’t in line, nothing was in order. It jumped from one section to another.” Humphrey testified that he could tell that the amended language had been “cut and paste, like it was pulled from some different bylaws, like maybe from the International,” and that he “could tell the way the package was put together” because “it was like copied from another book and put on a piece of paper that [where] the [page] numbers [weren’t] matching up. Like say for instance, page 2, and then it had...like page 5 after.” Humphrey also testified that McGee stated at the March 29, 2018 meeting that “the International told [Local 809] that we had to have bylaws, and that it might have been a rush job [because] some things were cut and paste.” Similarly, Steriti testified that the “first batch of bylaws that went out...look[ed] like they were cut and paste[d] from somebody else’s local [union] because [the pages] were out of numerical order....Then when...a second group of bylaws came out, which...were properly numerically ordered...they had the same content that was from the original cut and paste set of bylaws.”

McGee testified that after the March 29, 2018 meeting, the Union did not circulate the newly amended bylaws among the membership because he “became aware that there was a procedural violation of that vote” due to the proposed amended language not being “presented to the membership before the vote” and due to not putting the “changes to the [b]ylaws...in writing before the meeting so that membership can review it and then [conduct a] two-thirds vote...to include them into the [b]ylaws.” Based on the totality of this evidence, I credit the testimonies of Turley, Steriti, and Humphrey that the document found in the Conley break room in the summer of 2018 was a partial copy of the 2018 amended bylaws that included the proposed seniority language which was adopted at the March 29, 2018 meeting. I also credit their testimonies that the amended bylaws appeared to be “cut and paste” because the table of contents were missing, and parts of pages 1, 2 4, 7, 9, 11, and 13 were also missing.

1 809. This was voted 13 in favor and 3 not in favor. Two members did not
2 attend the meeting.

3

4 **The May 2018 Shift Bid and Grievance**

5 In or about early May of 2018, Massport provided the Union with another bid
6 sheet which Steriti circulated among Terminal Operators and Terminal Operator
7 Foremen. On that bid sheet, McGee bid again ahead of Turley, who filed another
8 grievance with Steriti dated May 16, 2018, alleging that Massport had violated Article IV,
9 Sections 1, 6, and 7, Article XV, Section 1, and Article XVII, Section 5. That grievance
10 also alleged that “established past practices were violated when seniority rights were
11 granted to select individuals to cause loss of rights to several 809 members, [and]
12 allowing Union members to shift bid outside th[eir] seniority within the non-
13 classification.” Without notifying the E-board, Steriti requested a 2+2 hearing with
14 Massport and presented the grievance to his “manager” Ned Morrissey, who told Steriti
15 that he would forward it to Zuffante.⁴³ At some point between May 16 and 25, 2018,
16 McGee convened another E-board meeting where LaColla and Mulcahy voted 2 to 0
17 against processing Turley’s May 2018 grievance to a 2+2 hearing and withdrew the
18 grievance. McGee abstained from voting at that meeting, and Steriti did not vote
19 because he refused to attend the meeting.⁴⁴

⁴³ McGee gave un rebutted testimony that Zuffante had called him and told him about Turley’s second grievance, to which McGee responded that he “was unaware” but “would come pick it up, take a look at it, discuss it with the E-board and get back to [Zuffante].”

1 By letter dated May 10, 2018, Turley's attorney Joseph A. Padolsky (Padolsky)⁴⁵
2 informed the Union that Turley's February 2018 grievances had merit and that McGee
3 should not have been involved in deciding the outcome of those grievances. Padolsky
4 also requested that Steriti present Turley's February 2018 grievances to Massport and
5 that McGee recuse himself from processing Turley's grievances. Padolsky stated further
6 that he was initiating written charges for discipline against McGee pursuant to Article V
7 of the bylaws and requested that McGee recuse himself from deciding any disciplinary
8 charges against himself.⁴⁶ Padolsky copied Feinberg and Day on his letter.

⁴⁴ McGee gave un rebutted testimony that he "first discussed [Turley's grievance] with Mr. Steriti and...asked him if he remembered the conversation that we had had that any future correspondence or issues dealing with [Turley's] grievance were to be dealt with through the E-board...as a voting procedure." McGee also testified that he asked Steriti "why he handed the grievance [to Massport] without coming to the E-board," and that McGee would hold another "E-board meeting later on that day to discuss the second grievance." McGee testified further that prior to the E-board meeting in May of 2018, he forwarded Turley's second grievance to "Feinberg for review" who later responded. McGee also gave un rebutted testimony that the E-board voted at the May 2018 meeting "[t]wo to nothing not to pursue Turley's second grievance," that Steriti refused to attend that meeting, and that McGee had "abstained" from voting because of the "[p]erception [that he] didn't want the appearance that...[he] was trying to do anything that would...sway the outcome of the vote one way or the other." McGee also testified that the E-board later agreed "that [it] should not be deciding this matter" (i.e., whether to forward the grievance to a 2+2 hearing), but concluded that "[i]t should be done in the most fair and democratic way possible....[by] decid[ing] to call an emergency meeting so that [the E-board] could put the issue of Dave Turley's grievance to the entire Union body."

⁴⁵ At all relevant times, Padolsky was an attorney at Louison, Costello, Condon & Pfaff, LLP.

⁴⁶ McGee gave un rebutted testimony on cross examination that while he and the E-board were aware of Padolsky's May 10, 2018 letter requesting that McGee recuse himself from matters involving Turley's grievances, and requesting that McGee be

1 By letter dated May 25, 2018, Feinberg notified Padolsky of the following:
2 “Please be advised that on May 24, 2018[,] Local 809’s Executive Board reviewed your
3 letter⁴⁷ and determined that it did not contain any new information that would cause
4 Local 809 to change its position concerning Mr. Turley’s grievance.”

5 At some point around May 25, 2018, McGee called a special “emergency”
6 membership meeting to discuss Turley’s second grievance, which was the only topic of
7 discussion at that meeting.⁴⁸ At the meeting, the Union circulated Turley’s grievance

subject to disciplinary hearings per the bylaws, “[t]o [McGee’s] knowledge” those requests were never raised by the E-board in a Union meeting, and the Union never held a disciplinary hearing.

⁴⁷ Feinberg’s letter did not specify the date of Padolsky’s letter.

⁴⁸ Turley testified that while he was at the May 2018 emergency meeting, there was not a vote among membership about whether to proceed with his May 2018 grievance because that “[n]ever happened.” Instead, Turley testified that his “grievance was never brought to the [Union] body” and that “[i]t was never voted on.” Turley later testified that he could not “recall right now” what he remembered about the May 2018 meeting, except that he “believe[d] [the meeting] was at the [Black] Falcon” and that he “believe[d] it was a regular meeting.” However, Turley conceded that he was “aware” of the E-board vote which occurred in May of 2018 because “Lou Steriti” told him that the vote was 2 to 0 in favor of not pursuing the grievance.

Chervil testified that prior to the emergency meeting, someone from the E-board told him that it had voted not to pursue Turley’s grievance, but after “we said no” and said that there “should be a vote,” the E-board agreed to conduct a vote. Chervil also testified that at the beginning of that meeting, the Union discussed “money in books and everything else,” explained that “people were aware that [Turley] has filed a grievance and [asked] people that were in favor of the grievance to raise their hands and [asked] people that were against the grievance to raise their hands.” Chervil testified further that he “voted in favor of the grievance” but admitted “after that, I don’t really recall much of it, but I know we had to vote on it at some point.”

1 among the members and allowed them to ask questions and make comments. Near the
2 end of that meeting, Kelly made a motion for a vote on whether to pursue Turley's
3 grievance, which was seconded. A vote occurred with an outcome of 13 members
4 voting in favor of not pursuing Turley's May 2018 grievance, and 3 members in favor of
5 pursuing it.⁴⁹

6 **The June 2018 Seniority Roster**

7 On June 22, 2018, Massport generated the following Seniority Roster (2018
8 Roster), which placed McGee ahead of Turley. The 2018 Roster contained inaccurate

McGee testified that at the emergency meeting, "the only topic that we discussed was the topic of...[Turley's] grievance," and that it "was presented to the membership and they were allowed to read it [and] ask any questions about" it. McGee also testified that Turley participated in those discussions, and that McGee "did" vote not to pursue Turley's grievance. He testified further that the Union was not "under any obligation to hold an emergency meeting over a grievance, but we did[,] so that it would be out in the open and everyone would have a chance to discuss it and...hopefully...end the issue." Based on the totality of this evidence, I credit the testimonies of Chervil and McGee and find that the Union held an emergency meeting on or around May 25, 2018 and that a vote occurred at that meeting on whether to pursue Turley's May 2018 grievance, with an outcome favoring not pursuing the grievance.

⁴⁹ Affiants Hatch, McNeill, Morrissey, Mulcahy, O'Connor, O'Leary, and Szloch affirmed in their affidavits that they were present at the May 2018 meeting and voted by hand against Turley's grievance. Those affiants also affirmed that the final vote tally was 13 to 3 against the grievance. McGee testified that the vote could have been 12 to 4, while Kelly testified that it was 13 to 3 in favor of not pursuing the grievance. Based on the totality of this evidence, I credit Kelly's testimony and I credit the statements from Hatch, McNeill, Morrissey, Mulcahy, O'Connor, O'Leary, and Szloch, and find that the final tally was 13 members voting against pursuing Turley's May 2018 grievance, and 3 members voting in favor of pursuing it.

- 1 information about Deardon's and Morrissey's merge dates,⁵⁰ and inaccurate information
- 2 about McGee's in-position date and merge date:⁵¹

Unit	Name	Job Title	Union FT Date	Merged FT Date	FT/PT Date	In Position Date	Hire Seq.	Hire Date
4370 Full Time ⁵²	Kelly, William J.	Terminal Operator Foreperson	2/12/79	2/12/79	2/12/79	3/5/07		9/11/78
4350 Full Time	Hatch, Russell J.	Terminal Operator Foreperson	11/4/96	11/4/96	11/4/96	5/16/05	1	11/4/96
4370 Full Time	O'Connor, William	Terminal Operator	11/4/96	11/4/96	11/4/96	11/4/96	3	11/4/96
4370 Full Time	McNeil, Kenneth R.	Terminal Operator	4/13/98	4/13/98	4/13/98	4/13/98		3/2/98
4370 Full Time	Morrissey, Stephen G.	Terminal Operator	12/25/00	12/25/00	12/25/00	12/25/00		11/24/97
4070 Full Time	Dearden, Peter E.	Terminal Operator Foreperson	3/12/01	3/12/01	3/12/01	5/24/15		2/7/05
4330 Full Time	Lau, Pik Chi	Pier Clerk Foreperson	7/1/01	7/1/01	7/1/01	6/9/11	2	7/22/91

⁵⁰ Turley gave unrebutted testimony that the 2018 Roster was not accurate “[f]or Peter Dearden [because]...they don't have his merge date from terminal operator into his foreman position,” and because when “Dearden merged[,] [h]e took [Morrissey's] position in 2015...and [Morrissey] was the previous foreman.” Neither Dearden nor Morrissey testified.

⁵¹ Turley gave unrebutted testimony that the 2018 Roster was not accurate for McGee because it “never listed the merge date from [McGee's] previous position” of Pier Clerk, and did not reflect McGee's move into the Terminal Operator classification on December 31, 2017.

⁵² Font in original.

4350 Full Time	Lacolla, Dennis	Terminal Operator	4/18/05	4/18/05	4/18/05	4/18/05		3/1/99
4350 Full Time	McGee, Phillip T.	Terminal Operator	6/18/07	6/18/07	6/18/07	6/18/07		6/18/07
4350 Full Time	Tamburello, Timothy P.	Terminal Operator	6/25/07	6/25/07	6/25/07	6/25/07		6/25/07
4350 Full Time	Turley, David C.	Terminal Operator	5/19/08	5/19/08	5/19/08	5/19/08		5/19/08
4330 Full Time	Mulcahy, Kathy A.	Pier Clerk	7/24/11	7/24/11	7/24/11	7/24/11		5/7/07
4070 Full Time	O'Leary, Thomas	Terminal Operator	8/22/11	8/22/11	8/22/11	8/22/11		5/18/98
4350 Full Time	Steriti, Louis J.	Terminal Operator	2/11/13	2/11/13	2/11/13	2/11/13		2/11/13
4070 Full Time	Chervil, Jean A.	Terminal Operator	10/6/13	10/6/13	10/6/13	10/6/13		8/1/13
4070 Full Time	Szloch, Michael R.	Terminal Operator	2/9/14	2/9/14	2/9/14	2/9/14		10/28/13
4330 Full Time	White, Kim R.	Pier Clerk	8/3/14	8/3/14	8/3/14	8/3/14		9/4/84
4070 Full Time	Humphrey, Rashard	Terminal Operator	12/28/14	12/28/14	12/28/14	12/28/14		10/6/14
4330 Full Time	Ahern, Maureen E.	Pier Clerk	1/7/18	1/7/18	1/7/18	1/7/18		1/7/18

1 The November 2018 and February 2019 Shift Bids and Grievances

2 On November 8, 2018, Turley presented a grievance to the Union, alleging that
3 Massport had violated Article IV, Sections 1, 5, 6, and 7, Article XV, Section 1, and
4 Article XVII. Specifically, Turley alleged that “established past practices were violated
5 when seniority rights were granted to [a] select individual to cause loss of rights to 809
6 members,” and “allowing a member to shift bid outside th[eir] seniority within the non-
7 classification.” By letter addressed to Turley on November 14, 2018, the Union E-board
8 stated, in full, that “On November 14, 2018, the E-Board voted to withdraw your
9 grievance based on the fact that it has no merit. Thank you.”⁵³

10 On February 8, 2019, Turley presented another grievance to the Union, alleging
11 that Massport had violated Article IV, Sections 1, 5, 6, and 7, Article XV, Section 1, and
12 Article XVII. Specifically, Turley alleged that “established past practices were violated
13 when seniority rights were granted to select individuals to cause loss of rights to 809
14 members,” and “allowing a member to shift bid outside th[eir] seniority within the non-
15 classification.” Turley’s grievance also alleged that “this is a grievance that has merit
16 according to the Dept [sic] of Labor.” Turley attempted to present another grievance to
17 the Union by certified mail delivery/return receipt in or about May of 2019, but the United
18 States Postal Service returned the grievance to Turley, indicating that delivery was
19 “refused.”

⁵³ The letter was signed “E-board Local 809” and included in its header: “President: Philip McGee V. President/Steward: Dennis LaColla Treasurer Mike Szloch.” [Emphasis omitted.]

1 DECISION

2 The Massachusetts Appeals Court holds that, "[u]nder both State and Federal
3 law, a union has the responsibility and duty of fair representation." William S. Reilly v.
4 Massachusetts Bay Transportation Authority, 32 Mass. App. Ct. 410, 417 (1992)
5 (citations omitted). That court also holds that, "[e]ven if not required by statute, 'the
6 courts would infer [such a duty] as a constitutional requirement.'" Reilly, 32 Mass App.
7 Ct. at 417 (quoting, Leahy v. Local 1526, American Federation of State, County, and
8 Municipal Employees (AFSCME), 399 Mass. 341, 348 (1987) (other citations omitted)).

9 Thus, once a union acquires the right to act for and negotiate agreements on
10 behalf of employees in a bargaining unit, the Law imposes a duty on that union to
11 represent all bargaining unit members without discrimination and without regard to
12 employee organization membership. See, generally, Office and Professional Employees
13 International Union, Local 6 (OPEIU) and John F. Murphy, 44 MLC 196, 198, SUPL-14-
14 3628 (March 21, 2018), aff'd sub nom., OPEIU v. Commonwealth Employment
15 Relations Board, 96 Mass. App. Ct. 764, 768 (2019). The union's duty of fair
16 representation encompasses a duty "to represent its members fairly in connection with
17 issues that arise under a collective bargaining [agreement]," including contract
18 administration and grievance processing. OPEIU, 96 Mass. App. Ct. at 768 (citing
19 National Association of Government Employees (NAGE) and Hebert Moshkovitz, 20
20 MLC 1105, 1111 SUPL-2522 (Aug. 9, 1993), aff'd sub nom., NAGE v. Labor Relations
21 Commission, 38 Mass. App. Ct. 611, 613 (1995)); Massachusetts State College
22 Association and Jon L. Bryan, 24 MLC 1, 4, SUPL-2588 (July 24, 1997). It also

1 encompasses a duty to represent employees and to process their grievances in a
2 manner that is not arbitrary, perfunctory, unlawfully motivated, or the result of
3 inexcusable negligence. OPEIU, 96 Mass. App. Ct. at 768; Quincy City Employees
4 Union, H.L.P.E., 15 MLC at 1355; Teamsters, Local 437 and James L. Serratore, 10
5 MLC 1467, MUPL-2566 (March 21, 1984).

6 The CERB allows unions "a wide range of reasonableness in representing the
7 often-conflicting interests of employees" and are thus "vested with considerable
8 discretion not to pursue a grievance." OPEIU, 96 Mass. App. Ct. at 768 (citing Christine
9 A. Graham v. Quincy Food Service Employees Association, 407 Mass. 601, 606 (1990);
10 Albert B. Baker v. Local 2977, State Council 93, AFSCME, 25 Mass. App. Ct. 439, 441
11 (1988)); NAGE, 38 Mass. App. Ct. at 613. Thus, when reviewing the actions and
12 decisions of a union, the CERB does not determine whether the disputed action or
13 decision was sound; nor does the CERB substitute its judgment for that of the union.
14 International Brotherhood of Police Officers (IBPO), Local 338 and Michael Ciccolini, 28
15 MLC 285, 288, MUPL-4225 (March 15, 2002) (citing NAGE and Mario Longo, 26 MLC
16 57, 58, SUPL-2650 (Nov. 9, 1999)). Rather, the CERB's role is to inquire into the
17 union's motives and to review the union's decision-making procedures to ensure that
18 the union acted within the scope of its duty of fair representation. IBPO, Local 338, 28
19 MLC at 288 (citing Fitchburg Teachers Association and William P. Caron, et al., 9 MLC
20 1399, 1415, MUP-4511 and MUPL-2447 (Sept. 1, 1982)).

21 **Arguments**

1 Turley argues that the Union acted arbitrarily, perfunctorily, with inexcusable
2 negligence, and with unlawful motivation when it failed to recognize the CBA and denied
3 his grievances in February, May, and November of 2018, and in February and May of
4 2019.⁵⁴ Turley does not cite to case law, but points to the informal meeting in the Conley
5 break room in 2017 where McGee stated that the Union does not recognize Article XV
6 of the CBA as it pertained to seniority-based bidding. Turley also points to McGee's
7 decision to ignore that part of the CBA when he voted at the February of 2018 E-board
8 meeting not to forward Turley's grievances to a 2+2 hearing with Massport. Next, Turley
9 argues that the Union's actions were arbitrary, perfunctory, demonstrative of
10 inexcusable neglect, and unlawfully motivated because McGee knew that Day was
11 going to allow Turley's grievances, and but for his conversation with Day in February of
12 2018, McGee would not have opposed Steriti's requests for the 2+2 hearing. Turley also
13 argues that because McGee had a personal stake in the outcome of his grievances, the
14 Union created conflicts of interest by allowing McGee to participate in the February
15 2018 E-board vote to withdraw Turley's grievances, permitting him to vote at the March
16 29, 2018 general meeting to amend the bylaws, and allowing him to vote against
17 Turley's May 2018 grievance at the May 25, 2018 emergency membership meeting.
18 Last, Turley argues that the Union's actions were arbitrary, perfunctory, inexcusably

⁵⁴ The November 2018 grievance and the February and May 2019 grievances are not alleged in the Complaint and the Charging Party did not file a motion to amend the Complaint to include additional allegations related to those grievances pursuant to 456 CMR 17.10(1). Consequently, I decline to decide whether the Union's actions in relation to Turley's November 2018 grievance and February and May 2019 grievances violated Section 4A(4) of the Law.

1 negligent, and unlawfully motivated when the E-board voted not to pursue his May 2018
2 grievance to a 2+2 hearing, and then called an emergency membership meeting later
3 that month for the sole purpose of casting an “up or down vote” on whether to withdraw
4 Turley’s grievance.

5 The Union argues that there is no evidence that it acted arbitrarily, perfunctorily,
6 or with bad faith or hostility. Specifically, it contends that the E-board based its decisions
7 not to pursue Turley’s grievances on “lawful and compelling factors,” and on the
8 “collective will of its membership as determined by the outcome of the votes at the E-
9 board meetings” in February and May of 2018 where it “voted twice to abandon” those
10 grievances. The Union asserts that it made repeated attempts to resolve the issues of
11 seniority and bidding by deferring to Feinberg’s letters on July 20, 2017 and March 1,
12 2018, by reviewing the language of the CBA, and meeting with Turley in the Conley
13 break room in December of 2017. The Union also met with Feinberg and O’Connell in
14 February of 2018, convened E-board meetings in February and May of 2018, and called
15 an emergency membership meeting on May 25, 2018. After taking all of these actions,
16 the Union decided that Turley’s grievances lacked merit and withdrew them from further
17 processing.

18 Additionally, the Union points to Kelly’s testimony to show that the Union’s
19 practice has always been to recognize seniority by date of hire, especially concerning
20 the bids involving Morrissey, Donovan, Gibbs, and Hatch. Finally, the Union argues that
21 it did not breach its duty of fair representation because Turley failed to prove that

1 McGee used his position as Union President to bid ahead of Turley in 2018, because
2 Turley's grievances did not allege a violation of the CBA, and because the E-board—not
3 McGee—withdrew Turley's February and May 2018 grievances.

4 **1. McGee's Position as Union President**

5 I find no evidence in the record to support the allegation that the Union breached
6 its duty of fair representation by permitting McGee to use his position as Union
7 President to bid ahead of Turley on the February 2018 bid sheet. Instead, the record
8 shows that McGee bid ahead of Turley based on his interpretation of the CBA, and
9 based on his belief that he possessed more seniority than Turley according to McGee's
10 date of hire on June 18, 2007, which was almost 11 months before Turley's date of hire
11 on May 19, 2008. Even assuming that McGee was mistaken in his belief that the CBA
12 permitted him to bid over Turley in February and May of 2018, the CERB holds that
13 good faith error in judgment is insufficient to prove arbitrary conduct. See NAGE and
14 Jessie Murray, 34 MLC 30, 38, MUPL-03-4445 (Oct. 3, 2007) (citing Somerville Fire
15 Fighters Association Local 1240 I.A.F.F. and Joseph Crowley, 27 MLC 45, 47, MUPL-
16 4172 (Nov. 16, 2000) (good faith error in judgment does not constitute arbitrary
17 conduct)); see also Helen Trinqué v. Mount Wachusett Community College Faculty
18 Association, 14 Mass. App. Ct. 191, 199 (1982) (citing Berman v. Drake Motor Lines,
19 Inc., 6 Mass., App. Ct. 438, 445-446 (1978) (a possible "judgmental error" is not the
20 equivalent of arbitrary representation)). For these reasons, I find no evidence that the
21 Union violated the Law as alleged by Turley on this issue.

1 **2. The February 2018 Grievances**

2 A union's conduct is arbitrary if it fails to gather sufficient information concerning
3 the merits of a grievant's claim and fails to make a reasoned judgment in deciding
4 whether to pursue or abandon a particular grievance. AFSCME, Council 93 and Shand
5 Palmer, 31 MLC 180, 188-89, MUPL-4257 (June 3, 2005) (citing Teamsters, Local 437,
6 10 MLC at 1474-1475 and 1477-1478; Local 285, Service Employees International
7 Union (SEIU) and Vicki Stultz, 9 MLC 1760, 1764, MUPL-2461 (April 5, 1983)). A
8 union's action is perfunctory if it ignores a grievance, inexplicably fails to take some
9 required step, or gives the grievance merely cursory attention. Local 137, AFSCME,
10 Council 93 and Charles W. Bigelow, 20 MLC 1271, 1275, SUPL-2553 (H.O. Nov. 24,
11 1993), aff'd, 22 MLC 1329, (Dec. 29, 1995). A union's action is also perfunctory if its
12 treatment of a grievance is done as a matter of routine and for form's sake without
13 interest or zeal. Independent Public Employees Association, Local 195 and Elizabeth P.
14 Clarke, 12 MLC 1558, 1565-66, MUPL-2633 (Jan. 22, 1986).

15 A union's conduct is unlawfully motivated when there is "substantial evidence of
16 bad faith that is intentional, severe, and unrelated to legitimate union objectives."
17 Graham, 407 Mass. at 609; contrast IBPO, Local 338, 28 MLC at 289 (no evidence of
18 intentional, severe bad faith that was unrelated to legitimate union objectives, and no
19 evidence that personal hostility motivated the union's decision to pursue seniority vote).
20 A union's conduct is demonstrative of inexcusable neglect when, in the absence of
21 complex legal or procedural issues, it fails to follow the grievance procedure outlined in
22 a collective bargaining agreement. See, e.g., Trinque, 14 Mass. App. Ct. at 199 (while

1 ordinary negligence may not amount to a denial of fair representation, “lack of a rational
2 basis for a union decision and egregious unfairness or reckless omissions or disregard
3 for an individual employee's rights may have that effect”).

4 I agree with the Union’s argument that its actions in handling Turley’s February of
5 2018 grievances were neither arbitrary nor perfunctory. The record shows that the
6 Union investigated those grievances, reviewed the CBA, consulted with both legal
7 counsel and its International, considered Turley’s position, convened the E-board to
8 discuss the grievances and voted to withdraw them after deciding that the CBA provided
9 only for seniority by date of hire not by classification concerning bidding. Based on
10 these actions, the Union concluded that Turley’s February 2018 grievances lacked
11 merit. Thus, I find that the Union was engaged in “informed decision-
12 making...consistent with [its] duty of fair representation” when it interpreted the
13 contractual seniority provisions, and did not act in a manner that was arbitrary or
14 perfunctory when it decided to withdraw Turley’s February 2018 grievances. See, e.g.,
15 Michael Silvia and Taunton Police Supervisory Personnel Association, 31 MLC 153,
16 160, MUPL-01-4318 (March 28, 2005) (where union interpreted contractual seniority
17 provision and was concerned about “chaos and uncertainty in the bargaining unit as a
18 whole,” CERB recognized union’s discretion and consideration of the over-all union
19 membership in relation to the grievant, finding no violation); compare Teamsters Local
20 437, 10 MLC at 1477 (CERB found union’s interpretation of contract and decision not to
21 provide contractual seniority protections to charging party were “inartful, unskillful, or
22 erroneous,” but not enough to breach duty of fair representation); see, generally, Local

1 285, SEIU, 9 MLC at 1766-1768 (union made reasoned judgment about contractual
2 seniority when it pursued grievance against charging party's promotion without first
3 interviewing charging party or notifying her about the grievance-arbitration
4 proceedings).

5 I also agree with the Union's argument that its actions in handling Turley's
6 February of 2018 grievances were not demonstrative of inexcusable neglect. There is
7 no evidence showing that the Union failed to follow the grievance procedure outlined in
8 the CBA, missed any contractual deadlines, or failed to respond promptly to Turley or
9 his attorney. AFSCME, Council 93, AFL-CIO and Herbert Avant, 27 MLC 129, 131,
10 SUPL-2695 (April 9, 2001). Although Article XII of the CBA requires that the Union
11 "must" request a 2+2 hearing at step 2 after Massport "has given a negative answer to
12 the grievance," the record shows that the Union withdrew Turley's grievances before
13 Massport could give its response; and there is no evidence in the CBA or in the record
14 that expressly prohibited the Union from withdrawing those grievances at any time.

15 However, I am unpersuaded by the Union's argument that its decision to
16 withdraw Turley's February 2018 grievances was not unlawfully motivated. Relying
17 primarily on SEIU, Local 888 and Speandilove Nelson, 45 MLC 96, SUPL-17-5913
18 (Dec. 31, 2018), the Union contends that it did not act with bad faith or hostility when it
19 made that decision, but acted pursuant to legitimate Union objectives of interpreting the
20 CBA and "to reaffirm and codify the Union's longstanding past practice of one seniority
21 list, regardless of classification." The Union contends that it made "repeated attempts to
22 placate" Turley and did not treat him in a "discriminatory fashion" by withdrawing his

1 grievances. SEIU, Local 888 is distinguished procedurally because that case involved a
2 hearing officer decision that was not appealed to the CERB. See, generally, County of
3 Worcester, MCR-2234 (Sept. 10, 1976) (citing City of Chicopee School Committee,
4 MCR-1228, 1 MLC 1195 (1974) (factual determinations and legal conclusions not
5 resulting from CERB decisions have no precedential value)).

6 SEIU, Local 888 is also distinguished factually. In that case, the charging party
7 sent two letters to membership and circulated a petition to remove two union
8 representatives after the union had refused to process her grievance. In response, the
9 union published a newsletter and disseminated a “tip of the month” to membership
10 referencing “one particular employee” and “the instigator,” *inter alia*. The charging party
11 circulated among membership another written response, which prompted the union to
12 post an unsigned letter on its bulletin board that identified the charging party by name
13 and was critical in its references to her. Months later, the union conducted a
14 membership vote on whether it should adopt a new global re-bid process by seniority for
15 new shifts. A majority of members voted against the new process which effectively
16 precluded the charging party from rebidding on the shift that was the subject of her
17 earlier grievance. The union later issued a written apology to the charging party for the
18 bulletin board posting, and also issued a notice to members that clarified its bulletin
19 board policy.

20 Unlike SEIU, Local 888, the Union here neither published negative writings that
21 were critical of Turley’s position on seniority nor issued a written apology to Turley for
22 disagreeing with his position. Further, there was no evidence in SEIU, Local 888 that

1 the disputed union representatives authored those publications or had a personal
2 interest in the outcome of the membership vote. Here, there is no dispute that McGee
3 took direct action on behalf of the Union to deny Turley's grievances, including
4 convening E-board meetings, voting to amend the bylaws, and voting to withdraw the
5 grievances. McGee also had a personal interest in the outcome of Turley's grievances,
6 and benefitted personally from that action which resulted in his bidding permanently
7 ahead of Turley.

8 Beginning with the Conley break room meeting in 2017, McGee informed Turley
9 that he opposed Turley's positions on seniority and bidding as it related to the Terminal
10 Operators' bid sheet. McGee knew that Turley intended on filing a grievance if McGee
11 attempted to bid ahead of Turley on that bid sheet in February of 2018. After Turley filed
12 his grievances in February of 2018, McGee continued to oppose Turley's position
13 because it conflicted directly with McGee's personal interest in bidding ahead of Turley
14 on the Terminal Operators' bid sheet. McGee then spoke with Day who informed the
15 Union that Massport would allow Turley's grievances, and would allow every other
16 grievance filed thereafter "to infinity" if they related to the issues of seniority and bidding.
17 Although McGee was upset to learn about Massport's position from Day, there is no
18 evidence that he disclosed either his conversation with Day or Massport's position
19 concerning Turley's grievances to the E-board prior to their vote on the grievances. Nor
20 is there any evidence that McGee recused himself from participating in any Union
21 decisions related to Turley's February of 2018 grievances despite admitting to being
22 concerned later about "[p]erception" and "appearance" regarding Turley's May of 2018

1 grievance. Instead, McGee called an unprecedented E-board meeting in February of
2 2018, ignored Steriti's protest about convening the E-board for the sole purpose of
3 voting on Turley's grievances, and then participated in a 3 to 0 E-board vote against
4 pursuing those grievances to a 2+2 hearing with Massport. Although the Union argues
5 that it relied on both its interpretation of the CBA and on Feinberg's legal opinion in
6 withdrawing Turley's grievances, the culmination of McGee's actions demonstrates
7 unlawful motivation based on his personal interest in the outcome of those grievances.
8 For these reasons, I find that the Union breached its duty of fair representation to Turley
9 when it withdrew his grievances in February of 2018 in a manner that was unlawfully
10 motivated. See, e.g., Graham, 407 Mass. at 609 (although union contended grievances
11 were unmeritorious, charging party showed history of hostility and animosity between
12 herself and union officials that tainted handling of her grievances).

13 **3. The Amended Bylaws**

14 Generally, the CERB will not interfere with union rules or actions that are within
15 the legitimate domain of internal union affairs. NAGE and Vincent J. Fasano, 13 MLC
16 1525, 1526, SUPL-2343, SUPL-2344, SUPL-2345, SUPL-2346, and SUPL-2347 (March
17 12,1987). However, the CERB will intercede where an internal union action impairs the
18 policy of the Law. See Luther E. Allen, Jr. and Anthony L. Robinson and ALLIANCE,
19 AFSCME/SEIU, AFL-CIO (ALLIANCE), 8 MLC 1518, 1524, SUPL-2024 and SUPL-2025
20 (Nov. 13, 1981) (union rule conditioning eligibility for election on participating in strike
21 impaired the policy against strikes in Section 9A of the Law and interfered with

1 members' right to refrain from participation, which fell "outside the legitimate domain of
2 internal union affairs"); see also Brockton Education Association, et al. and Mario
3 DiMarzo and Thomas Cibotti, 12 MLC 1497, 1507-1508, MUPL-2740, MUPL-2777, and
4 MUPL-2778 (Jan. 7, 1986) (union's vote to censure members who participated in DLR
5 proceeding had chilling effect on other members' willingness to participate in DLR
6 proceedings in violation of 10(b)(1) of G.L. c. 150E); Boston Police Patrolmen's
7 Association, Inc. and Paul Johnson and Joseph McNulty, 8 MLC 1993, 2000-2002,
8 MUPL-2049 and MUPL-2050 (March 23, 1982), aff'd sub nom. Boston Police
9 Patrolmen's Association v. Labor Relations Commission, 16 Mass. App. Ct. 953 (1983)
10 (union rule intruded on statutory policy governing the determination of bargaining units
11 under Section 3 of G.L. c. 150E). Thus, when a union's conduct conflicts with a policy
12 implicit in the Law, the CERB weighs the union's interest in its rule or action against the
13 extent to which it may violate the Law. ALLIANCE, 8 MLC at 1524.

14 Relying on 14 Penn Plaza LLC v. Steven Pyett, 556 U.S. 247, 270-71 (2009),
15 and on Anderson v. Commonwealth Employment Relations Board, 73 Mass. App. Ct.
16 908, 909 n. 5 (2009), the Union argues that its decision to amend its bylaws at the
17 March 2018 general meeting was purely an internal Union matter that is not subject to
18 the duty of fair representation. Specifically, the Union contends that it "acted lawfully
19 and properly when [McGee] entertained [LaColla's] motion" to amend the bylaws for
20 purposes of "clarify[ing] and reaffirm[ing] the existing practice of one seniority list by
21 date of hire." [Emphasis omitted.] It also contends that the memberships' vote to adopt
22 the amendment demonstrated "the position of the vast majority" of the bargaining unit.

1 Although the bylaws were never effectuated at the March 29, 2018 general meeting due
2 to “a procedural misstep” of not being reduced to writing prior to the vote, the Union
3 maintains that the process to amend its bylaws and the outcome of that process
4 remains beyond the scope of the Law.

5 Anderson is distinguished because that case pertained to member-retirees who
6 alleged that the union discriminated against them based on age and disability in relation
7 to a contractual sick leave provision that benefited member-employees. Id., 73 Mass.
8 App. Ct. at 909. Pyett is also distinguished because that case involved member-
9 employees who filed unsuccessful federal age discrimination claims based on a binding
10 arbitration requirement in the CBA. They argued on appeal that the arbitration provision
11 was unenforceable because it impermissibly waived their rights to a federal forum. The
12 court recognized the union’s “broad authority...in the negotiation and administration of
13 [the CBA],” holding that the arbitration clause was within the permissible scope of the
14 collective bargaining process. Pyett, 556 U.S. at 255-256. Neither Anderson nor Pyett
15 involved internal union matters related to seniority. While Anderson referenced briefly
16 “internal union governance” as it related to “the union’s constitution,” the court explained
17 that the case was a pre-complaint dismissal issued by the CERB “without a hearing,
18 citing lack of probable cause.” Id. at 909; see also City of Springfield, 41 MLC 383, 383-
19 384, MUP-12-2466 (June 30, 2015) (pre-complaint dismissals have no precedential
20 value) (other citations omitted).

1 In this case, the Union called the general meeting in March of 2018 and
2 proposed language at that meeting to amend the revised bylaws because it disagreed
3 with the contractual interpretations of seniority raised in Turley's grievances. But for
4 those grievances, the Union would have never called a general meeting in March of
5 2018 to amend its bylaws by voting to include new seniority language. This is because
6 prior to March 29, 2018, the Union had never called a general membership meeting to
7 discuss the bylaws. In fact, during McGee's tenure as President between 2015 and
8 March 28, 2018, the Union never informed its members of the existence of any bylaws
9 and never provided them copies of either the original bylaws or the revised bylaws.
10 Similarly, prior to March of 2018, the Union never called a general meeting to address
11 the issue of seniority.

12 Since at least July 20, 2017, when McGee received Feinberg's first letter, McGee
13 knew that his potential move into the Terminal Operator classification would raise the
14 issues of seniority and bidding among the other Terminal Operators, including Turley. At
15 all relevant times prior to his move into the Terminal Operator classification between
16 July 20, 2017, and December 30, 2017, the Union failed to provide copies of the revised
17 bylaws to its members and failed to call a membership meeting to discuss those bylaws,
18 Feinberg's July 2017 letter, or the general issue of seniority. Moreover, during that time,
19 McGee was aware of Turley's intent to file a grievance against McGee pursuant to their
20 discussion in the Conley break room, but failed to call a general meeting or convene the
21 E-board to address the issue. Months after McGee became a Terminal Operator on
22 December 31, 2017, he continued to take no official Union action as President to either

1 clarify the issues of seniority or bidding with membership, or distribute copies of the
2 revised bylaws. Rather, McGee waited, inexplicably, until after Turley filed his first
3 grievances in February of 2018 to take official Union action against those grievances,
4 which included calling a general meeting on March 29, 2018 to vote to amend the
5 bylaws with new seniority language that effectively restricted Turley's right to file
6 grievances challenging the seniority provisions of the CBA.

7 McGee knew that advancing Turley's February of 2018 grievances to a 2+2
8 hearing with Massport would affect his ability to bid ahead of Turley on the Terminal
9 Operator bid sheet, yet McGee refused to recuse himself from participating in Union
10 actions involving those grievances. Further, Turley's February 12, 2018 letter, pointed to
11 McGee's "clear conflict of interest," requesting both "a fair hearing" and "that Phil
12 McGee be removed from this process." However, neither McGee nor anyone else from
13 the Union responded to Turley's request for McGee's removal from participating in his
14 grievances. Additionally, Feinberg's letter to Condon in March of 2018, and his letter to
15 Padolsky in May of 2018 were both silent concerning Turley's requests for "a fair
16 hearing" and for recusal. Moreover, in June of 2018, when Turley found copies of the
17 amended bylaws in the Conley break room, which included the new seniority language
18 voted at the March 29, 2018 meeting but which the Union contends never passed due
19 to a procedural error, there is no evidence that either McGee or the Union ever
20 explained that procedural error to its members or ever addressed the veracity of the
21 amended language contained in the copies found in the Conley break room.

1 There is no dispute that prior to March of 2018, the Union conducted
2 membership meetings “usually” once a year to inform the membership about contract
3 issues. However, beginning in March of 2018, the Union conducted at least three
4 membership meetings (i.e., one in March, one in May, and one in October), where the
5 first meeting pertained directly to amending the bylaws, and related indirectly to Turley’s
6 February of 2018 grievances. Nor is there any dispute that prior to March of 2018, the
7 Union never conducted a membership meeting for the purpose of discussing either the
8 bylaws or seniority. Instead, for the first time in March of 2018, the Union held a
9 membership meeting for those express purposes. Further, it is undisputed that McGee
10 participated actively in that March 29, 2018 general meeting by opening the floor for
11 discussion on the matters of seniority and whether the Union should amend its bylaws
12 to include new seniority language, he did not recuse himself from participating in those
13 discussions, he actively “seconded” LaColla’s motion to vote on whether to amend the
14 bylaws, and he voted affirmatively to amend the bylaws at that meeting. The Union was
15 aware of the issue of seniority since at least July of 2017, but waited inexplicably over
16 eight months to address it at an unprecedented general membership meeting to amend
17 the bylaws. This was a departure from the Union’s long-standing practice of conducting
18 annual membership meetings for contract issues, and never conducting membership
19 meetings for matters concerning the bylaws or seniority. In fact, it is undisputed that the
20 membership was not aware that any bylaws existed until March of 2018.

21 Based on the totality of this evidence, I find that but for Turley’s grievances, the
22 Union would not have called the general meeting on March 29, 2018, would not have

1 proposed amending its bylaws to include new seniority language, and would not have
2 called for a vote to pass that amendment. As a result of the passage of the vote, McGee
3 was now able to bid permanently ahead of Turley and other Terminal Operators who
4 believed they had more in-classification seniority than McGee per the CBA, and Turley's
5 ability to file grievances challenging the contractual seniority provisions was now
6 restricted.

7 Thus, weighing the Union's interests to conduct membership meetings and to
8 amend its bylaws against whether those interests violate the policy of the Law, I find
9 that, in this instance, the Union's actions conflict with the policy of Section 3 of the Law
10 which protects an employee's right "to engage in concerted activities for the purpose of
11 collective bargaining or other mutual aid or protection." Specifically, the public interest in
12 prohibiting the Union from interfering with, restraining, or coercing Turley from
13 exercising his protected statutory rights to file grievances that challenge contractual
14 seniority, outweighs the Union's freedom to regulate whether to conduct a general
15 membership meeting to amend its bylaws to include new seniority language that
16 restricted Turley's ability to file grievances. See, generally, City of Holyoke, 35 MLC
17 153, MUP-05-4503 (Jan. 9, 2009) (the filing and processing of a grievance by an
18 employee constitutes concerted, protected activity); see, generally, Reilly, 32 Mass.
19 App. Ct. at 416-417 (citing Clayton v. International Union, United Auto., Aerospace, &
20 Agric. Implement Wkrs. of America, 451 U.S. 679, 689 (1981) (employee not required to
21 exhaust internal union procedures where dispute remained unresolved for four years,
22 further prolongment would have "unreasonably delay[ed] [his] opportunity to obtain a

1 judicial hearing on the merits of his claim," and union procedure may have been
2 inadequate to award full relief)); ALLIANCE, 8 MLC at 1524 (union rule disciplining
3 members for refraining from striking, impaired statutory policy against strikes and
4 removed rule from legitimate domain of internal union affairs).

5 **4. The May 2018 Grievance**

6 I find no evidence that the Union's handling of Turley's May 2018 grievance was
7 arbitrary, perfunctory, or demonstrative of inexcusable neglect because the Union
8 investigated that grievance, reviewed the CBA, consulted with Feinberg, considered
9 Turley's position, convened the E-board to discuss the grievance which voted to present
10 the grievance to the membership, and conducted an emergency membership meeting in
11 May of 2018 to vote on whether to withdraw the grievance. Taunton Police Supervisory
12 Personnel Association, 31 MLC at 160; Teamsters, Local 437, 10 MLC at 1477. Also, I
13 find no evidence that the Union failed to follow the grievance procedure outlined in the
14 CBA, missed any contractual deadlines, or failed to respond promptly to Turley and his
15 attorney. AFSCME, 27 MLC at 130-31.

16 However, I find that the Union's actions of calling an unprecedented general
17 meeting on March 29, 2018 to amend the revised bylaws, coupled with McGee's
18 participation in the vote at that meeting to amend those bylaws, his participation in
19 convening a second E-board meeting in May of 2018 to vote on whether to present
20 Turley's May 2018 grievance to the membership, and then his decision to call another
21 unprecedented emergency membership meeting on May 25, 2018 for the sole purpose

1 of voting on Turley's grievance demonstrate unlawful motivation. Although McGee
2 recused himself from the E-board vote at the E-board meeting in May of 2018, there is
3 no evidence that he recused himself from discussions with the E-board prior to that
4 vote, or that he recused himself from the vote at the emergency membership meeting
5 on May 25, 2018. Instead, the record shows that McGee voted openly by hand at both
6 the March 29, 2018 meeting and the May 25, 2018 meeting, and cast votes in favor of
7 amending the revised bylaws and in favor of withdrawing Turley's May of 2018
8 grievance. This evidence shows that McGee's actions and his continued opposition to
9 Turley's positions on seniority and bidding tainted the memberships' assessment into
10 the merits of Turley's May of 2018 grievance and affected their vote not to pursue that
11 grievance. Thus, I find that the Union's decision to withdraw Turley's May 2018
12 grievance after the May 25, 2018 emergency meeting was unlawfully motivated based
13 on McGee's personal interest in the outcome of that grievance. Graham, 407 Mass. at
14 609.

15 **5. Not Clearly Frivolous**

16 Once a charging party demonstrates that a union has breached its duty of fair
17 representation, the charging party must also prove that the underlying grievances are
18 not clearly frivolous. Local 137, AFSCME, 22 MLC at 1332 (citing Pattison, 30 Mass.
19 App. Ct. at 17); NAGE, 20 MLC at 1111; Quincy City Employees Union, H.L.P.E., 15
20 MLC at 1375. If an employee's grievance is so weak that his chances before a
21 reasonable arbitrator are minimal or hopeless, the employee is not entitled to material

1 relief. Pattison, 30 Mass. App. Ct. at 17; Local 137, AFSCME, 22 MLC at 1332. Thus,
2 Turley has the initial burden to show that his grievances were not clearly frivolous. If the
3 employee sustains that burden, and the CERB finds that a union has breached its duty
4 of fair representation, the CERB will generally order the union to make the charging
5 party whole for the compensation that the charging party lost from the date of the
6 violation. United Steelworkers of America and Mark A. Muniak, 31 MLC 122, 130,
7 MUPL-4282 (March 3, 2005); see, generally, Berkley Employees Association and Gary
8 R. Joseph, 19 MLC 1647, 1650, n. 5, MUPL-3724 (Jan. 28, 1993) (employee's initial
9 burden is purposefully low because union's breach prevents employee from seeking
10 redress through the channels agreed to by the parties, including possibility of
11 compromise or settlement of grievance).

12 However, a union may limit its financial liability by proving that the grievance
13 would have been lost for reasons not attributable to the union's misconduct. United
14 Steelworkers of America, 31 MLC at 130-131. Because the Union declined to present
15 detailed evidence on the merits of Turley's grievances at the initial unfair labor practice
16 hearing, I assess only whether Turley's grievances were clearly frivolous at this stage of
17 the litigation.

18 Turley argues that his February of 2018 grievances and his May of 2018
19 grievance were not clearly frivolous because Day informed McGee in February of 2018
20 that Massport was going to allow those grievances. Turley also argues that his
21 grievances were not clearly frivolous because McGee's actions of bidding ahead of him
22 on the Terminal Operators' bid sheets in 2018 violated the contractual seniority

1 provisions. Turley argues further that his grievances raised a legitimate dispute about
2 the contractual interpretation of whether Article XV or Article IV applied in determining
3 the seniority bidding order for the Terminal Operators.

4 The Union contends that Turley's grievances are clearly frivolous because they
5 pertain to internal union matters that are neither subject to the duty of fair representation
6 nor to the DLR's jurisdiction. There is no evidence to support this contention as it relates
7 to Turley's February of 2018 grievances because the bylaws meeting did not occur until
8 over a month after Turley filed those grievances, and the Union failed to present
9 evidence of another internal union matter. Concerning Turley's May 2018 grievance, the
10 record shows that the grievance relates indirectly to the March 29, 2018 bylaws meeting
11 because the vote to amend the bylaws restricted Turley's right to file further grievances,
12 including his May of 2018 grievance. Thus, I found that the Union's actions at that
13 meeting violates the Policy of the Law, and remove the Union's vote to amend its
14 bylaws from the Union's legitimate domain.

15 The Union also contends that the grievances are clearly frivolous because they
16 are contrary to the "prevailing and long-standing" 107-years' practice of determining
17 seniority by date of hire. I disagree with this argument because the record is void of
18 evidence showing that the practice existed for 107 years. I also disagree because in
19 determining whether a grievance is not clearly frivolous, the CERB looks only to how a
20 reasonable arbitrator would weigh the merits of the grievances in relation to the CBA,
21 not whether a union's executive board or its membership believes that the grievances

1 lack merit. Pattison, 30 Mass. App. Ct. at 17; see, e.g., Local 137, AFSCME, 22 MLC at
2 1332 (if an employee's grievance is so weak that his chances before a reasonable
3 arbitrator are minimal or hopeless, the employee is not entitled to material relief).

4 Next, the Union argues that the plain language of the CBA is clear because it
5 "mandates that an employee's date of hire by Massport determines his or her place in
6 the bidding order," which "is how the Union has always conducted the quarterly
7 bidding." However, a careful review of the CBA shows that the contract is unclear in
8 several areas.

9 First, Article XV, Section 1 of the CBA defined "[s]eniority for purposes of bidding
10 on lateral and promotional vacancies...as date of hire by the Authority." That Section
11 also stated that "[s]eniority...shall for the purpose of decreasing the work force, mean
12 the length of service accumulated in a classification of work from date of hire," but did
13 not clarify whether "date of hire" referred to employment at Massport or membership
14 with the Union. In fact, Kelly testified on numerous occasions to a "date of hire by the
15 Union," and the amended bylaws referred specifically to "the Union date of hire."
16 Despite this evidence, the record is unclear whether "date of hire by the Union" refers to
17 Article IV, Section 1 (i.e., that membership is not effectuated until the "91st day of
18 employment" and that failure to "become a member" and maintain membership shall
19 "obligate [Massport] to discharge such person") or refers to something else.

20 Further, Article XV, Section 1 stated that "[a]n employee will *simultaneously*
21 *accumulate seniority rights* as well as in the classifications in which he is working," but

1 did not define the scope of that simultaneous accumulation. [Emphasis added.]
2 Moreover, Article XV, Section 1 went on to state that seniority applied differently for
3 employees who transfer “from one classification of work to another, except under lack of
4 work conditions...[and] shall retain the seniority that was acquired in the former class of
5 work for a period of ninety (90) days during which period the transfer shall be
6 considered temporary....[and] [i]f he is retained in the new class of work for more than
7 ninety (90) calendar days, his seniority in the new classification shall then be based on
8 the date of his transfer.” However, this part of the CBA failed to clarify whether the
9 phrase “lack of work conditions” holds the same meaning as the phrase “decreasing the
10 work force” stated above; and it failed to address how seniority applied for employees
11 whose 90-day, temporary transfer period fell within a quarterly bid.

12 Additionally, Article IV, Section 7 is unclear about bidding every three months in a
13 classification “on a seniority basis” because that language is silent on whether seniority
14 was based on date of hire or date in-classification. On the other hand, the language of
15 Article IV, Section 6 is clear as it related to seniority, the bid procedure, and entry level
16 positions, stating specifically that where a “unit employee retains the right to apply for
17 and use his seniority to gain entry to an entry level position in another classification,”
18 that employee’s “right to bid into an entry level position in another classification and to
19 later return to an employee’s former classification applies only to employees employed
20 in bargaining unit positions as of the date of the signing of the [CBA].” Despite this
21 contractual clarity, the record is unclear about whether Article IV, Section 6 applied to

1 McGee's move into the Terminal Operator classification on December 31, 2017
2 because there is no evidence that move was to an "entry level" position.

3 Finally, the Union makes three alternative arguments. First, it argues that Turley
4 failed to demonstrate that he suffered any harm as a result of the Union's decisions not
5 to pursue his grievances. Although Massport awarded Turley his preferred bids in seven
6 out of the eight bids in the period between February of 2018 to present, and while
7 Massport awarded Turley only "his preferred location and days off" on the remaining
8 eighth bid, the Union asserts that Turley failed to show how "McGee's move has caused
9 [Turley] to lose overtime opportunity or suffer any other financial harm." Specifically, it
10 asserts that Turley "willingly refused overtime opportunities throughout the summer of
11 2018." I disagree with the Union's assertions on this matter because Turley gave
12 un rebutted evidence that he missed opportunities to accept overtime and perform
13 temporary Terminal Operator Foremen duties due to McGee bidding ahead of him on
14 the Terminal Operator bid sheet beginning in February of 2018.

15 Second, the Union argues that the issue of quarterly bidding is moot because
16 Massport eliminated that practice "[a]fter nine months of bargaining" a successor CBA
17 where "the Union agreed to Massport's proposal to eliminate the quarterly bidding."
18 Again, I disagree with this argument because record shows that the CBA did not expire
19 until January 31, 2019, which was several months after Turley filed his first three
20 grievances. Moreover, there is no evidence in the record about when the parties

1 finalized their successor CBA or when the elimination of the quarterly bidding practice
2 became effective.

3 Third, the Union argues that Turley did not testify truthfully and “repeatedly lied”
4 about the emergency membership meeting and vote in May 2018 by testifying that the
5 vote “never happened.” The Union points to the testimony of McGee, Kelly, and Chervil,
6 and relies on the affidavits of Hatch, McNeil, Morrissey, O’Leary, Szloch, O’Connor, and
7 Mulcahy to argue that the vote did happen. However, I find no evidence that Turley lied
8 repeatedly during his testimony. Rather, Turley testified on direct examination that the
9 vote at the May 2018 meeting “never happened,” but later testified that he did not
10 “recall” whether that vote occurred. Based on the totality of Turley’s testimony, coupled
11 with the testimonies of McGee, Kelly, Chervil, Steriti, and Humphrey, and based on the
12 affidavits of Hatch, McNeil, Morrissey, O’Leary, Szloch, O’Connor, and Mulcahy, I
13 weighed all of the evidence presented and made the appropriate credibility
14 determinations.

15 For all of the reasons stated above, I find that Turley’s grievances were not
16 clearly frivolous.

17 REMEDY

18 The CERB traditionally orders unions that breach its duty of fair representation to
19 take all steps necessary to make the charging party whole for economic losses caused
20 by the union’s misconduct. Quincy City Employees Union, H.L.P.E., 15 MLC at 1374-
21 1378. Here, the Union’s unlawful conduct harmed Turley by foreclosing his ability to

1 challenge the merits of the contractual seniority bidding procedures. The Union's
2 conduct also harmed Turley by limiting his ability to perform overtime work and
3 temporary Terminal Operator Foremen duties. Consequently, the Union must first
4 attempt to remedy that by taking all steps necessary to resolve Turley's February of
5 2018 grievances and his May of 2018 grievance. These steps include submitting a
6 written request to Massport to process Turley's February of 2018 grievances and his
7 May of 2018 grievance through all necessary steps of the grievance procedure,
8 including at a 2+2 proceeding and/or at arbitration. If arbitration becomes necessary, the
9 Union's request must also include an offer by the Union to pay the full costs of the
10 arbitration, or to provide Turley with a remedy that would have been sought from an
11 arbitrator. If Massport does not agree to arbitrate or otherwise fully resolve Turley's
12 February of 2018 grievances and his May of 2018 grievance, the Union shall be liable
13 for the wages and contractual benefits that Turley lost because of the Union's conduct,
14 plus interest.

15 As previously noted, the Union elected to postpone introducing evidence
16 designed to rebut Turley's arguments concerning the merits of his grievances. Id. at
17 1376, n. 67. Therefore, if the Union is unable to resolve the grievances with Massport, it
18 may return to the DLR for a hearing to limit its liability by proving that Turley's
19 grievances were clearly without merit and would not have succeeded if arbitration had
20 taken place.

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CONCLUSION

For the reasons stated above, I conclude that the Union did not violate Section 4A(4) of the Law as alleged when McGee used his position as President to bid ahead of Turley and other members of the bargaining unit in February of 2018. However, I conclude that the Union did violate Section 4A(4) of the Law as alleged when it held a Union meeting and proposed a seniority amendment to its bylaws that placed McGee permanently above Turley on the seniority list. I also conclude that the Union violated Section 4A(4) of the Law when it withdrew Turley’s grievances in February of 2018 and in May of 2018.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the International Longshoremen’s Association, Local 809 (Local 809) shall:

1. Cease and desist from:
 - a) Failing to advance Turley’s February of 2018 grievances and his May of 2018 grievance through all necessary steps of the grievance procedure, including at a 2+2 hearing with Massport or, if a 2+2 proceeding no longer exists, at a substantially equivalent proceeding, or to arbitration;
 - b) Failing to represent Turley fairly by amending the bylaws to include seniority language that places McGee permanently ahead of Turley on the seniority list; and
 - c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action:
 - a) Request in writing that Massport waive all applicable contractual time limits and agree to conduct a 2+2 proceeding for the purpose

1 of hearing Turley's February of 2018 grievances and his May of
2 2018 grievance beginning at that step and continuing through all
3 necessary steps of the grievance procedure or, if a 2+2 proceeding
4 no longer exists, request in writing that Massport conduct a
5 substantially equivalent proceeding.
6

- 7 b) If Massport agrees to waive all applicable contractual time limits
8 and, if necessary, agrees to arbitrate the merits of Turley's February
9 of 2018 grievances and his May of 2018 grievance, Local 809 shall
10 process those grievances to conclusion in good faith and shall pay
11 the cost of arbitration if Massport accepts its offer to do so.
12
- 13 c) If Massport does not agree to waive all applicable contractual time
14 limits, and does not agree to conduct a 2+2 proceeding, or if a 2+2
15 proceeding no longer exists, Massport does not agree to conduct a
16 substantially equivalent proceeding, or does not agree to arbitrate or
17 otherwise fully resolve Turley's February of 2018 grievances and his
18 May of 2018 grievance, Local 809 shall make Turley whole for the
19 loss of compensation that he suffered as a direct result of McGee
20 bidding ahead of Turley on the Terminal Operator quarterly bid
21 sheets beginning in February of 2018 and continuing through all
22 relevant quarterly bids thereafter. Local 809's obligation to make
23 Turley whole includes the obligation to pay Turley interest on all
24 money due at the rate specified in G.L. c. 231, Section 6I,
25 compounded quarterly.
26
- 27 d) Refrain from amending the bylaws to include seniority language that
28 places McGee permanently ahead of Turley on the seniority list;
29
- 30 e) Refrain from interfering with, restraining, or coercing employees in
31 the exercise of their rights guaranteed under the Law;
- 32 f) Post immediately, signed copies of the attached Notice to
33 Employees in all conspicuous places where members of Local 809's
34 bargaining unit usually congregate or where notices are usually
35 posted, including electronic postings, if Local 809 customarily
36 communicates with its members via intranet or email. The Notice to
37 Employees shall be signed by a responsible Local 809 officer and
38 shall be maintained for at least thirty (30) consecutive days
39 thereafter. Reasonable steps shall be taken by Local 809 to ensure
40 that the copies of the Notices are not altered, defaced, or covered by
41 any other material. If Local 809 is unable to post copies of the Notice
42 in all places where notices to bargaining unit employees are

- 1 customarily posted, Local 809 shall immediately notify the Director
2 of the DLR in writing, so that the DLR can ask Massport to permit
3 the posting; and
4
5 g) Notify the DLR in writing of the steps taken to comply with this Order
6 within ten (10) days of receipt of the Decision and Order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KENDRAH DAVIS, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150A, Section 6, 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 the ten days, this decision shall become final and binding on the parties.



**THE COMMONWEALTH OF MASSACHUSETTS
NOTICE TO EMPLOYEES
POSTED BY ORDER OF A HEARING OFFICER OF THE MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS AN AGENCY OF THE COMMONWEALTH
OF MASSACHUSETTS**

The International Longshoremen's Association, Local 809 (Local 809) has violated Section 4A(4) of Massachusetts General Laws, Chapter 150A (the Law) by amending its bylaws to include language that placed President Philip McGee (McGee) permanently ahead of David C. Turley (Turley) on the seniority list, and by withdrawing Turley's February of 2018 and May of 2018 grievances in violation of its duty of fair representation. Section 3 of the Law gives employees the right to self-organization, to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection; and, to refrain from any such activities. Based on these rights, the Local 809 assures its employees that:

WE WILL NOT fail to advance Turley's February of 2018 and May of 2018 grievances through all necessary steps of the grievance procedure, including at a 2+2 hearing with Massport or, if a 2+2 proceeding no longer exists, at a substantially equivalent proceeding, or to arbitration;

WE WILL NOT fail to represent Turley fairly by amending the bylaws to include seniority language that places McGee permanently ahead of Turley on the seniority list;

WE WILL request in writing that Massport waive all applicable contractual time limits and agree to conduct a 2+2 proceeding for the purpose of hearing Turley's February of 2018 and May of 2018 grievances beginning at that step and continuing through all necessary steps of the grievance procedure or, if a 2+2 proceeding no longer exists, request in writing that Massport conduct a substantially equivalent proceeding;

WE WILL process Turley's February of 2018 and May of 2018 grievances through all necessary steps of the grievance procedure in good faith, and shall pay the cost of arbitration, if necessary, if Massport agrees to waive all applicable contractual time limits and agrees to arbitrate the merits of those grievances;

WE WILL make Turley whole for the loss of compensation that he suffered as a direct result of McGee bidding ahead of Turley on the Terminal Operator quarterly bid sheets beginning in February of 2018 and continuing through all relevant quarterly bids thereafter, including interest on all money due at the rate specified in G.L. c. 231, Section 6I, compounded quarterly if Massport does not agree to waive all applicable contractual time limits and does not agree to conduct a 2+2 proceeding, or, if a 2+2 proceeding no longer exists, does not agree to conduct a substantially equivalent proceeding, or does not agree to arbitrate or otherwise fully resolve Turley's February of 2018 and May of 2018 grievances.

WE WILL refrain from amending the bylaws to include seniority language that places McGee permanently ahead of Turley on the seniority list; and

WE WILL refrain from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

International Longshoremen's Association, Local 809

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 Labor Relations, 2 Avenue de Lafayette, Boston, MA 02111-1750 Telephone: (617) 626-7132.