HEARING OFFICER’S DECISION

SUMMARY

The issue is whether the Service Employees International Union, Local 888 (Union) breached its duty of fair representation to Speandilove Nelson (Nelson) in violation Section 10(b)(1) of Massachusetts General Laws Chapter 150E (the Law) by acting in a manner that was arbitrary, perfunctory, and motivated by hostility when it 1) posted on a Union bulletin board a negative and critical response to a petition that Nelson had circulated in an effort to remove certain Union representatives and 2) conducted a membership vote on a global shift re-bid after reaching settlement with the Commonwealth of Massachusetts/Executive Office of Health and Human Services'
Soldiers' Home (Employer). Based on the record, and for the reasons explained below, I conclude that the Union did not breach its duty of fair representation to Nelson because its actions were not arbitrary, perfunctory, or motivated by hostility.

STATEMENT OF THE CASE

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

On October 17, 2017, Nelson filed a request for review of the dismissal pursuant to DLR Regulation 456 CMR 15.05 (9), to which the Union filed no response. On February 6, 2018, the Commonwealth Employment Relations Board (CERB) issued a ruling concluding that there was probable cause to warrant a hearing to determine whether the Union violated the Law by conducting a membership vote on a global shift
re-bid after reaching a settlement agreement with the Employer. Therefore, on February
8, 2018, the DLR issued an amended two count complaint (Complaint on Remand) of
prohibited practice on remand by the CERB, alleging that the Union had violated
Section 10(b)(1) of the Law.

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

STIPULATED FACTS

1. The Commonwealth of Massachusetts, acting through the Executive Office of
   Health and Human Services (Employer) is a public employer within the
   meaning of Section 1 of the Law.

2. Service Employees International Union, Local 888 (Union) is an employee
   organization within the meaning of Section 1 of the Law.

3. The Union is the exclusive bargaining representative for Statewide Bargaining
   Unit 2, which includes, but is not limited, to certain Certified Nursing
   Assistants employed at the Soldiers’ Home in Chelsea, Massachusetts
   (Soldiers’ Home).

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

5. In or around the fall of 2016, the Employer contacted the Union to negotiate the terms of a reorganization of staff at the Soldiers' Home.

6. As a result of the negotiations, the Union and Employer agreed to conduct a shift re-bid in December 2016 whereby bargaining unit members could bid in order of seniority for new shifts on the floor on which they currently work.

7. During a meeting on or around December 6, 2016, Nelson circulated a letter titled "Stronger Together," calling for a membership meeting and stating, in part, the following:

   Since our union has not made themselves (sic) available to us about our grievances, it is time we take our grievances to the union...Collectively, we can change the way the union represents us, now and in the future.

8. On or around the December 6, 2016 meeting, Nelson circulated a letter titled "Blurred Lines," calling for the Union to hold a membership meeting and stating, in part, the following:

   Members feel like they were forced to sign on a bidding which was forced on them. And the union representatives sat in silence while our hands were forced and they asked us to sign the paper...Now is the time for the union to live up to its claims. If not, I foresee that the members will seek strength in themselves, independent of the union.

9. On or around December 11, 2016, Nelson circulated a petition to remove the current chapter representatives based on a "lack of communication and proper representation" and a "conflict of interest in leadership."

FINDINGS OF FACT

Background

The Union is the exclusive bargaining representative for Statewide Bargaining Unit 2, which includes, but is not limited to, certain Certified Nursing Assistants (CNAs) and Licensed Practical Nurses (LPNs) employed at the Soldiers' Home. The Soldiers' Home is located in Chelsea, MA and is administered by the Employer, the Commonwealth of Massachusetts, acting through the Executive Office of Health and
Human Services. At all relevant times, and since at least October 2014, Nelson worked as a CNA and was a member of the bargaining unit represented by the Union.

2016 Staff Reorganization

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

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

\(^2\) By interoffice memorandum to Nelson dated December 16, 2016, the Employer confirmed that the schedule assigned to Nelson on December 6 became effective on January 8, 2017.
concluded, Nelson asked the Union to file a grievance on her behalf concerning the
re-bidding process. On the same date, Nelson circulated two letters claiming that the
Union had not done anything to assist members in their grievances over the shift
bidding procedure and calling for a Union membership meeting.

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

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

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

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

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

1. Based on seniority. As was clearly stated in the first bidding letter given
to us by management.

2. Globally/all units
3. All shifts

4. All hours

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

Dear Members of SEIU Local 888:

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

Thank you fellow members.

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

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

We, the members of SEIU Local 888 have decided that we no longer need the representation of our current chapter leaders. This is based on the following reasons: we have experienced a lack of communication and proper representation. Also, we perceive a conflict of interest in leadership. Effective immediately we request that they should cease and desist in representing us in any union matters and a new vote will be for new representatives.

Sincerely,

The Members of SEIU Local 888

Later on December 11, Union Business Representative Neal O'Brien (O'Brien) emailed Nelson. In that email, titled “Removal of Peter Lanceleve and Neal O’Brien,” O'Brien conveyed the following:

Good Afternoon Love [Nelson],

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

DLR Case No. SUP-17-5757

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

4 In the instant charge, Nelson alleged that the Union violated Section 10(b)(1) by failing to file a grievance on her behalf in this matter and in other matters that had occurred in 2014. Because the CERB affirmed the DLR investigator's dismissal of these allegations in its February 6, 2018 ruling, the issue of whether the Union violated the Law by failing to file grievances on Nelson's behalf is not before me.
own for select positions that were secretly withheld from the global shift re-bid and
unilaterally changing the shift of certain bargaining unit members after they specifically
bid on different shifts. The Union’s charge was docketed as DLR Case No.
SUP-17-5757. On or around May 5, 2017, the Union and the Employer resolved the
matter and the Union withdrew the charge.

Union’s Newsletter Update Re: the Soldiers’ Home

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

The newsletter continued:

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

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

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5 I take administrative notice of DLR Case No. SUP-17-5717, which the Union filed with
the DLR on January 11, 2017. On May 5, 2017, the Union notified the DLR that the
parties had resolved the matter and withdrew the charge accordingly.
We are asking for you to provide us with your email to figure out the best time for an onsite general membership meeting be [sic] to keep you abreast of anything that is going on pertaining to Union business. We will fight back at every turn and continue to support you...

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

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

Nelson’s Response to Union’s Newsletter Update

After the Union’s newsletter was distributed among the membership, Nelson circulated a written response titled “Stronger Together” and “The Voice of the Members,” which addressed the Union’s leadership team. In her response, Nelson suggested that the Union’s leadership team refer to the December 2016 re-bid
procedure as an unfair labor practice instead of a "sweetheart deal" and elaborated with
the following:

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

... 

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

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

1. Based on seniority, as was clearly stated in the first bidding letter given to us by management.

2. Globally/all units

3. All shifts

4. All hours

Stronger Together
The [V]oice of the Members
Union Bulletin Board Posting

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

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

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

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

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6 Christine Wilson (Wilson), a bargaining unit member of the Union and employee of the Soldiers’ Home, testified as a witness for Nelson. On direct examination, Wilson testified that she noticed the letter posted on an unlocked bulletin board, and that she had removed the letter to make a copy before returning the letter to the unlocked bulletin board and presenting the copy she made to Nelson. Wilson also testified that she did not know who posted the document on the bulletin board. Another witness for Nelson, Lyneth Martin (Martin), testified that the letter was posted in the “2 East Nursing Station,” and that she did not know who posted the document on the bulletin board or when the document had been placed on the bulletin board.
In response to the posting, Nelson emailed Union representatives John Magner (Magner), O’Brien and Peter Lanceleve (Lanceleve) on January 27, 2017. In that email, titled “Bulletin Board,” Nelson wrote:

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

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

I want to point out that over the last year, a number of decisions have been made at the Chelsea Soldier’s [sic] [H]ome by the Union leadership that leave many of the members feelings unrepresented. I dare say, that if there was a way to get an unbiased “Vote of Confidence” made, the results would not be favorable. Having failed to get our immediate leadership to respond to this situation, I want to bring this to your attention.

As a result of unfair labor practices that occurred on 8 December, we collected 80 signatures and presented them to the union office, voicing our disapproval. I have attached a copy of the petition. At the same time, we presented a document listing what we wanted the union to work on.

Nelson also attached a copy of the petition signed by approximately 80 bargaining unit members, and the document titled “Blurred Lines,” which Nelson had written and earlier distributed.

2017 Settlement and Membership Poll
On March 27, 2017, the Union and the Employer settled Case No. SUP-17-5717. As a result of the settlement, the Employer agreed to conduct a new global re-bid process in which bargaining unit members would be allowed to bid in order of seniority for new shifts throughout the Soldiers’ Home. The Employer, however, verbally asked the Union to poll its members to determine whether a new global re-bid process should take place at all. Accordingly, the Union agreed to poll bargaining unit members to determine whether they wanted to participate in a new global re-bid process.

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

Please be advised there is a members meeting scheduled for all Soldiers’ Home LPN’s and CNA’s on …Thursday, April 27, 2017…

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

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

8 Prior to the April 18 mailing, the Union had scheduled a general membership meeting for the evening of March 29, 2017 and had included the following items in the meeting agenda: 1. “…ULP’s [unfair labor practices], grievances and other actions taken against the Soldiers’ Home administration.” 2. “We will also discuss appropriate actions needed from members to address the [r]ebid of nursing dept. [department]. … 5. “We will discuss as time allows any and all issues brought by the members in good standing and recognized by the Chapter Chair.”
didn’t show up for the December 2016 re-bid, they would assign employees into positions arbitrarily.

The Union subsequently filed several unfair labor practice charges with the Massachusetts State Labor Board against the Soldiers’ Home regarding the December 2016 re-bid. As a result of these legal actions the Soldiers’ Home management has agreed to have a global re-bid.

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

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

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

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

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

Dear Ms. Nelson,

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

We applied a thorough and conscientious effort to locate the author of this document. We were unable to locate or speak to anyone that would take responsibility. We did however, discuss with the leadership team how
inappropriate it was and will continue discovery to hopefully find the
responsible party.

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

Sincerely,

/ls/ Mark Dello Russo
President

Union Communication Re: Posting Materials on Bulletin Board

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

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

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

OPINION

Once a union acquires the right to act for and negotiate agreements on behalf of
employees in a bargaining unit, Section 5 of the Law imposes on that union an
obligation to represent all bargaining unit members without discrimination and without
regard to employee organization membership. Quincy City Employees Union, H.L.P.E.,
15 MLC 1340, 1355, MUPL-2883 and MUP-6037 (Jan. 24, 1989), aff'd sub. nom., Patti-
Mass. 1104 (1991). Under the Law, an employee organization has a statutory duty to
serve the interest of all its members without hostility or discrimination towards any and
to exercise its discretion in complete good faith and honesty.

Massachusetts State College Association, 24 MLC 1, 3, SUPL-2588 (July 24,
1997). Section 5 of the Law permits unions a wide range of reasonableness in
representing the often-conflicting interests of employees; and thus, vests unions with
considerable discretion to pursue or not pursue a grievance in a manner that is not
improperly motivated, arbitrary, perfunctory, or demonstrative of inexcusable
(citing Baker v. Local 2977, State Council 93, American Fed'n of State, County &
Federation of State, County and Municipal Employees, Council 93, AFL-CIO and Daryl
D. Dunlap (Dunlap), 27 MLC 113, 115, SUPL-2696 (Feb. 9, 2001) (citing National
Association of Government Employees v. Labor Relations Commission (NAGE), 38
file a grievance and whether to pursue it though all levels of the contractual grievance-
arbitration procedure).

A union's action is perfunctory if it ignores a grievance, inexplicably fails to take
some required step, or gives the grievance merely cursory attention. American
Federation of State, County and Municipal Employees and Charles W. Bigelow
(Bigelow), 20 MLC 1271, 1275, SUPL-2553 (H.O. Nov. 24, 1993), aff'd, 22 MLC 1329,
(Dec. 29, 1995). A union's action is also perfunctory if it is done as a matter of routine
and for form's sake, without interest or zeal. Independent Public Employees
Association, Local 195 and Elizabeth P. Clarke (Clarke), 12 MLC 1558, 1565-66,
MUPL-2633 (Jan. 22, 1986). A union’s conduct is arbitrary if it fails to gather sufficient information concerning the merits of a grievant’s claim and fails to make a reasoned judgment in deciding whether to pursue or abandon a particular grievance. AFSCME, Council 93 and Shand Palmer (Palmer), 31 MLC 180, 188-89, MUPL-4257 (June 3, 2005) (citing Teamsters, Local 437 and James L. Serratore (Serratore), 10 MLC 1467, 1474-75 and 1477-78, MUPL-2566 (March 21, 1984); Local 285, SEIU and Vicki Stultz (Stultz), 9 MLC 1760, 1764, MUPL-2461 (April 5, 1983)).

Nelson’s Argument

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

The Union’s Argument

Conversely, the Union argues that its conduct was not perfunctory, arbitrary or motivated by hostility with respect to either the January 26 bulletin board posting or the April 2017 membership polling. The Union contends that Nelson did not provide
sufficient evidence to support the two allegations of the Complaint on Remand, and
therefore has failed to satisfy the burden of proof necessary to find that the Union
violated the Law in the manner alleged. In addition, the Union further asserts that it had
already addressed Nelson's concerns regarding the January 26 bulletin board posting in
good faith and that it has sufficiently demonstrated that the April 2017 membership
polling was proper in light of its March 27 settlement agreement with the Employer.

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

January 26 Bulletin Board Posting

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

Instead, the record shows that between January 26 and July 6, 2017, the Union
distributed a notice to membership concerning the use of Union bulletin boards and
admonished its members against posting disparaging and personal information about
management or union membership. Although Nelson maintains that Union officials
were responsible for writing and posting the document titled "Our Leaders' Response"
on the Union bulletin board, Nelson did not introduce any evidence establishing that the Union, either through an official or a member, was responsible for posting that document on January 26. In analyzing the tone and tenor of the Union's newsletters and other official correspondence in the record with the document that was posted on January 26, I find that the Union's official communications and the January 26 document could have been authored and posted by individuals who were not Union officials. In addition, the record does not yield any information about who could have posted the document. However, the record does show that the Union bulletin board was unlocked and located in a public hallway, and that any person walking in that hallway had access to the bulletin board.\footnote{The testimonies of Nelson, Wilson, Martin and O'Neal each attest to this fact.} For these reasons, I find that the Union's conduct with respect to the January 26 bulletin board posting was not perfunctory. Contrast Clarke, 12 MLC at 1565-66 (union acted perfunctorily when it did nothing to help process a grievance and had no explanation as why it did not pursue the grievance).

In addition, there is no evidence of any hostility or unlawful animus existing between the Union and Nelson. Nothing in the record demonstrates that the Union's communications rose to the level of hostility against Nelson personally. Although the document titled, "Our Leaders' Response," was highly critical of Nelson and her effort to the remove certain Union officials, there is no evidence that the Union adopted the position referenced in the document or that it had written or posted the document. As previously stated, I find that the Union took reasonable steps to acknowledge the matter and address the issue to Nelson's satisfaction and demonstrated good faith and a lack of hostility by its continued attempts to resolve the issues. See generally
International Brotherhood of Police Officers, Local 338, 28 MLC 285, 289, MUPL-4225 (March 15, 2002); Contrast Graham v. Quincy Food Service Employees Association, 407 Mass. at 609 (union member showed history or hostility and animosity between herself and union officials concerning the running of the union that arguably tainted the handling of her grievance). Although Nelson contends that the Union failed to properly respond to her requests for assistance, the record indicates that after she notified the Union about the January 26 bulletin board posting, the Union subsequently took steps to address Nelson's concerns. A failure to notify a charging party of information about the status of an issue does not, standing alone, constitute a breach of the duty of fair representation. See generally AFSCME and Virginia Palma, 28 MLC 196,199, SUPL-2725 (January 4, 2002).

April 2017 Membership Polling

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

\textsuperscript{10} On cross-examination, however, Nelson asked Magner why the March 27 settlement agreement did not contain language expressly stating that the polling of the Union’s membership was a condition set by the Employer. In response, Magner testified that, while nothing in the agreement says that polling would be done, that condition was nonetheless established when the Union and the Employer discussed the parameters for negotiating settlement, and was not part of the settlement agreement.
re-bid in the first place, and that formal negotiations would occur only if the Union’s membership voted in favor of the proposed global re-bid. Magner also testified that the settlement agreement with the Employer consisted of polling the unit members and, if members voted in favor of the global re-bid, then the Union and the Employer would further negotiate over a global re-bid procedure pursuant to the terms of the settlement agreement.

In addition, the Union did not act arbitrarily or with hostility here because it gathered sufficient information concerning the merits of its unfair labor practice charge against the Employer and made a reasoned judgment in deciding to poll its membership as a necessary part of settling the charge. The Union’s testimonial and documentary evidence shows that the Union’s actions were not arbitrary but were well-reasoned and fully-supported by the information gathered. See Vaca v. Sipes, 386 U.S. 171, 194 (1967). Further, Nelson did not provide any evidence that established the polling of its members was improper in light of these uncontroverted facts, nor did Nelson produce any evidence showing the Union took any steps to alter the outcome of the membership vote so that the members would be inclined to vote against a global re-bid. There is no evidence that the Union’s decision to settle the unfair labor practice charge contravened any Union policy or procedure, nor is there evidence that the Union’s decision stemmed from deliberate bad faith or personal hostility. On the contrary, the evidence shows that the Union demonstrated good faith by entering into an agreement with the Employer that stood to benefit all members, including Nelson. See generally Local 285 SEIU, 9 MLC 1760, MUPL-2461 (April 5, 1983).
Because there is no evidence showing that the Union's actions were perfunctory, arbitrary, or motivated by hostility, but fell within the bounds of permissible discretion afforded to unions under the Law, I find that the Union did not breach its duty of fair representation to Nelson. Graham, 407 Mass. at 606 (citing Baker, 25 Mass. App. Ct. at 441); NAGE, 38 Mass. App. Ct. at 613 (union has considerable discretion in determining whether to file a grievance and whether to pursue it though all levels of the contractual grievance-arbitration procedure).

CONCLUSION

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

COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS

JENNIFER MALDONADO-ONG, ESQ., HEARING OFFICER

APPEAL RIGHTS

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