



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
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JULY 12, 2011

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RELATIONS BOARD

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Case No.: MUP-09-5687
Charging Party: WINTHROP TEACHERS ASSOCIATION, INC.
Respondent: WINTHROP SCHOOL COMMITTEE
Date Filed: 10/29/2009

**PLEASE REVIEW CAREFULLY AS THE DEPARTMENT'S PROCEDURES FOR THE
SCHEDULING OF HEARINGS HAS CHANGED**

NOTICE OF COMPLAINT

Pursuant to G.L. c. 150E, § 11, the Department of Labor Relations (Department or DLR) issues the attached Complaint of Prohibited Practice in the above-referenced case.

You are further notified that, pursuant to Sections 12.11 and 15.06 of the Department's Rules, the Respondent shall file an **Answer** to this Complaint within ten (10) days from the date of service by the Department. The Respondent shall specifically admit, deny or explain each of the facts alleged in the Complaint, unless it is without knowledge, in which case it shall so state, such statement operating as a denial. All factual allegations in the Complaint to which no answer is filed or any factual allegation in the Complaint not specifically denied or explained in an answer filed, shall be deemed to be admitted to be true and may serve as a basis of findings. The Respondent shall serve an additional copy of the Answer on the opposing party or its counsel, if any.

Pursuant to 456 CMR 13.02 and, for cases filed prior to November 15, 2007, the attached Standing Order, the DLR will schedule a Hearing before a Hearing Officer. At the Hearing, all parties to the proceedings will have the right to appear in person, to examine and cross-examine witnesses, to produce evidence and otherwise support or defend this Complaint. The Department will schedule the Hearing in accordance with the following instructions:

SCHEDULING INSTRUCTIONS

The Department directs the Parties to confer as soon as possible relative to the scheduling of the hearing in accordance with the attached **INTERIM PROCEDURE FOR SCHEDULING OF THE HEARING**.

Once the parties have conferred and agreed on a date or dates, please indicate same and fax the attached form back to the DLR at (617) 626-7157. **IT IS THE RESPONSIBILITY OF THE CHARGING PARTY TO INITIATE DISCUSSIONS WITH THE RESPONDENT AND TO PROVIDE THE DEPARTMENT WITH THE AGREED-UPON DATES.**

Once scheduled, the Department will assign the case to a Hearing Officer. The Hearing Officer will conduct a Pre-Hearing Conference in-person or by telephone prior to the Hearing and require the filing of a Joint Pre-Hearing Memorandum.

ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

MEDIATION:

Please be advised that the DLR will make a mediator available to the parties if the parties agree to voluntary participation in mediation of issues associated with the above-referenced Complaint. Mediation will not delay the scheduled hearing date.

ARBITRATION:

Pursuant to Chapter 151, Section 577 of the Acts of 1996, parties may submit the case to an impartial arbitrator, subject to the requirements set forth in such statute.

Very truly yours,
DEPARTMENT OF LABOR RELATIONS

Michael A. Byrnes
Director

Encl. Complaint of Prohibited Practice
Interim Procedure for Scheduling of the Hearing
Standing Order 2009-1

COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
19 STANIFORD STREET, 1ST FLOOR
BOSTON, MA 02114

INTERIM PROCEDURE
FOR SCHEDULING OF THE HEARING

Case No.: MUP-09-5687
Charging Party: WINTHROP TEACHERS ASSOCIATION, INC.
Respondent: WINTHROP SCHOOL COMMITTEE
Date Filed: 10/29/2009

The parties are directed to confer as soon as possible in order to schedule the Hearing in the above-referenced case. **IT IS THE RESPONSIBILITY OF THE CHARGING PARTY TO INITIATE DISCUSSIONS WITH THE RESPONDENT AND TO PROVIDE THE DEPARTMENT WITH THE AGREED-UPON DATES.**

1. Using the attached form, the parties must agree to three (3) dates for the Hearing **within the period specified on the form and must estimate the amount of hearing time necessary for the Hearing.** In addition, the Parties are directed to confer as to whether they are willing to engage the services of a DLR Mediator for possible settlement. Utilization of a mediator will not delay the commencement of the Hearing.
1. Once the parties have agreed upon three (3) dates for the Hearing or mediation, the Charging Party shall, **within thirty (30) days of the issuance of this notice**, fax or mail a completed copy of the attached form to the DLR at **617-626-7157**.
2. **If the Parties are unable to agree on a date to schedule the Hearing, then the Department will schedule the Hearing and notify the parties of same.**
3. Based upon the availability of Hearing Rooms and/or Hearing Officers, the DLR will then issue a formal Notice of Hearing. **Once the parties have agreed on a date, the DLR will not grant postponements of the Hearing absent good cause shown in conformance with 456 CMR 12.06.**
4. All Hearings will be held in the DLR's offices located at 19 Staniford Street, 1st Floor, Charles F. Hurley Building, Boston, MA 02114.
5. All mediations will take place at a location that is mutually agreeable to the parties.

COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
19 STANIFORD STREET, 1ST FLOOR
BOSTON, MA 02114

POST-COMPLAINT HEARING/MEDIATION SCHEDULING
FORM

PLEASE FAX BACK TO 617-626-7157
(or mail to the above address)

Case No.: MUP-09-5687
Charging Party: WINTHROP TEACHERS ASSOCIATION, INC.
Respondent: WINTHROP SCHOOL COMMITTEE
Date Filed: 10/29/2009

HEARING

The Parties agree that _____ days are required for the Hearing.

The parties in the above-referenced matter have conferred and agree that the following dates are acceptable for the scheduling of the Hearing (three (3) dates **MUST** be provided): Between JULY 1, 2012 AND SEPTEMBER 30, 2012.

The dates must be within the following window:

Date: _____

Date: _____

Date: _____

MEDIATION

- ☐ Please check this box if **ALL** parties in the above-referenced matter have conferred and agree to engage in mediation. If the parties agree to mediation, they must THE HEARING.

The parties in the above-referenced matter have conferred and agree that the following date(s) are acceptable for the scheduling of mediation session(s):

Date: _____

Time: _____

Date: _____

Time: _____

Date: _____

Time: _____

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

WINTHROP SCHOOL COMMITTEE

and

WINTHROP TEACHERS ASSOCIATION

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Case No. MUP-09-5687

Date Issued:

July 12, 2011

COMPLAINT OF PROHIBITED PRACTICE AND PARTIAL DISMISSAL

The Winthrop Teachers Association (Association) filed a charge with the Department of Labor Relations¹ on October 29, 2009, alleging that the Winthrop School Committee (School Committee) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of M.G.L.c.150E (the Law).

Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.04(3) of the Division's Rules, I conducted an in-person investigation on March 8, 2010² and find probable cause to believe that a violation occurred and, for the reasons stated below, dismiss other allegations.

COMPLAINT

This Complaint of Prohibited Practice shall issue and the parties will be given an opportunity to be heard for the purpose of determining the following allegations:

¹ Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the Department of Labor Relations.

² At the time of the investigation, the parties were engaged in successor contract negotiations under the auspices of a Department mediator. The parties subsequently attempted to resolve the present case as part of those successor contract negotiations but were unsuccessful.

1. The Town of Winthrop (Town) is a public employer within the meaning of Section 1 of the Law.
2. The School Committee is the collective bargaining representative of the Town for the purpose of dealing with school employees.
3. The Association is the exclusive bargaining representative for teachers and certain other professional employees employed by the School Committee.
4. Prior to May 1, 2009, the School Committee did not have an Advanced Placement Training and Awards Program (APTAP) whose purpose was to have more students take and achieve higher scores on advanced placement (AP) exams.
5. On or about May 1, 2009, the School Committee entered into an agreement with the Massachusetts Math & Science Initiative (MMSI) to develop an APTAP at the High School.
6. The School Committee allowed MMSI to determine the selection criteria for unit members who wanted to join APTAP.
7. The School Committee obligated unit members who took part in APTAP to attend nine days of training, which included five days of summer institute training, two days of College Board training, and two days of MMSI training.
8. The School Committee required unit members who participated in APTAP to hold weekly one-hour tutorial sessions at the end of the school day, to convene student prep sessions on three Saturdays during the school year, and to attend training during the summer.
9. The School Committee paid certain unit members stipends for their involvement in APTAP and awarded them bonuses contingent upon their students achieving certain scores on the AP exams.
10. The School Committee permitted MMSI to decide the criteria that the School Committee used to evaluate the performance of unit members who took part in APTAP.
11. Selection criteria, hours of work, work schedules, mandatory training, wages, and criteria for evaluation are mandatory subjects of bargaining.
12. The School Committee took the actions referred to in paragraphs 6 through 10 without giving the Association an opportunity to bargain to resolution or impasse.

13. By the conduct described in paragraphs 6 through 10 and 12, the School Committee has failed to bargain in good faith by unilaterally changing unit members' selection criteria, work schedules, hours of work, wages, and criteria for evaluation as well as unilaterally imposing compulsory training in violation of Section 10(a)(5) of the Law.
14. By the conduct described in paragraphs 6 through 10 and 12, the School Committee has derivatively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

ORDER OF DISMISSAL *

For the following reasons, I have decided to dismiss the remaining allegations in the Association's charge, which allege that the Association violated Section 10(a)(5) of the Law by: 1) engaging in direct dealing; and 2) repudiating the parties' collective bargaining agreement.

Direct Dealing Allegation

It is well established that the duty to bargain collectively requires that an employer not deal directly with employees regarding matters that are properly the subject of negotiations with a bargaining unit's exclusive representative. Suffolk County Sheriff's Department, 28 MLC 253, 259-259 (2002); Millis School Committee, 23 MLC 99, 100 (1996); Blue Hills Regional School Committee, 3 MLC 1613 (1977). An employer's direct dealing with employees in the bargaining unit violates the employee organization's statutory right to speak exclusively for the employees who have selected it to serve as their sole representative. Service Employees International Union, AFL-CIO, Local 509 v. Labor Relations Commission, 431 Mass. 710, 715 (2000). Here, the Association asserted that certain administrators discussed APTAP and its training and evaluation requirements with unit members before the School Committee notified the

Union about the program. However, the Association could not provide any specific information in support of its allegation, including the identities of the administrators and the unit members, the dates on when the discussion(s) allegedly took place, and a description of the alleged substance of those discussions. Therefore, I do not find probable cause to believe that the School Committee violated Section 10(a)(5) of the Law in the manner alleged by the Association and those portions of the Association's charge are dismissed.

Repudiation Allegation

Here, the Association alleges that the School Committee repudiated certain provisions of the parties' collective bargaining agreement by making changes to the work schedule, compensation, selection criteria, and criteria for evaluation of unit members who participated in APTAP. The statutory obligation to bargain in good faith includes the duty to comply with the terms of a collectively bargained agreement. Commonwealth of Massachusetts, 26 MLC 165, 168 (2000) (citing City of Quincy, 17 MLC 1603 (1991)); Massachusetts Board of Regents of Higher Education, 10 MLC 1196 (1983). A public employer's deliberate refusal to abide by an unambiguous collectively bargained agreement constitutes a repudiation of that agreement in violation of the Law. Town of Falmouth, 20 MLC 1555 (1984); aff'd sub nom., Town of Falmouth v. Labor Relations Commission, 42 Mass. App. Ct. 1113 (1997). Here, the Association and the School Committee were parties to a collective bargaining agreement that, by its terms, was in effect from September 1, 2005 through August 31, 2008 (2005-2008 Agreement). Article XXXV, Section 1 of the 2005-2008 Agreement stated:

This Agreement shall become effective as of September 1, 2005, and shall continue in full force and effect until August 31, 2008 and from year to year thereafter unless either party notifies the other party prior to July 1, 2007, or any July 1 thereafter of its desire to terminate or modify the Agreement.

Here, the School Committee indicated that it notified the Association on July 1, 2008 of its intent to terminate the 2005-2008 Agreement effective August 31, 2008. The School Committee could not repudiate a collective bargaining agreement that was no longer in effect when the events in question here took place. Rather, the School Committee's actions are more appropriately alleged as a unilateral change allegation. Accordingly, I do not find probable cause to believe that the School Committee violated Section 10(a)(5) of the Law in the manner alleged by the Association, and this portion of the Association's charge is dismissed.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN, INVESTIGATOR

APPEAL RIGHTS

*The charging party may, within ten (10) days of receipt of this order seek a review of this dismissal by filing a request with the Commonwealth Employment Relations Board, pursuant to Department rule 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. Within seven (7) days of receipt of the charging party's request for review, the respondent may file a response to the charging party's request.