



Paul F. Toner, President
Timothy D. Sullivan, Vice President
Ann Clarke, Executive Director-Treasurer

July 21, 2011

Edward B. Srednicki, Executive Secretary
Commonwealth of Massachusetts
Department of Labor Relations
Charles Hurley Building
19 Staniford Street
Boston, MA 02114

RE: MUP: 09-5687
Winthrop Teachers Association
and the
Winthrop School Committee

Dear Mr. Srednicki:

Pursuant to Department Rule 456 CMR 15.04(3), the Winthrop Teacher Association seeks a review of the dismissal by the Division of Labor Relations of the Repudiation Allegation charge filed within the above referenced matter.

The Winthrop Teachers Association and the Winthrop School Committee were parties to an agreement that had been negotiated for the time period of September 1, 2005 through August 31, 2008. After August 31, 2008 bargaining for a successor agreement continued and eventually the parties sought the assistance of the Division by seeking a mediator. At no point during the bargaining and/or mediation process or in any other forum did the School Committee inform the union of its intent to terminate the agreement on August 31, 2008 or on some date after August 31, 2008.

At no point during the in-person investigation on March 8, 2010 did the Committee state that they had provided the union with notice that they were terminating the contract. On February 11, 2011, Committee counsel Paul Hodnett and I participated in a conference call with Investigator Margaret Sullivan. Ms. Sullivan asked if either of us wished to submit anything additional in light of the SJC decision regarding evergreen clauses, *Boston Housing Authority v. National Conference of Firemen and Oilers*, 458 Mass. 155 (2010) ("BHA"). The union had filed the charge prior to the 2010 decision and the Committee had not raised the BHA as a defense to the unions prohibitive practice charge. I have included a copy of my February 16, 2011 letter to Ms. Sullivan with this request for a review.

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Since the School Committee did not, in fact, notify the union that it desired to terminate the agreement, the agreement was renewed, and was in full force in effect, under the terms of Article XXXV. The dismissal of the repudiation allegation, due to lack of an effective collective bargaining agreement, was therefore erroneous.

Article XXXV of the Winthrop contract is readily distinguished from the kind of “evergreen clause” disapproved by the Supreme Judicial Court in *BHA*. In *BHA*, the SJC held that the following contract provision was unenforceable because it was inconsistent the limitation in G.L. c. 150E, § 7(a) of the duration of collective bargaining agreements to three years:

During any period of negotiations between the parties hereto, the provisions of this Agreement shall remain in full force and effect until such time as a new Agreement has been signed. Such negotiations will be conducted in good faith. *BHA* at 157, n. 1, 162 – 165.

However, the Court also specifically held that “the parties are free to enter into a subsequent agreement extending the prior terms and conditions of their agreement, thereby maintaining the status quo while negotiations for a new CBA are ongoing (citation omitted).” *BHA* at 165.

In the Winthrop collective bargaining agreement, Article XXXV provides as follows:

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 (emphasis added).

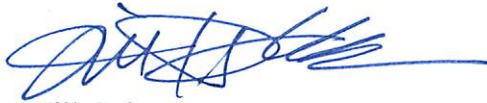
Especially in light of the highlighted language in Article XXXV, it becomes apparent that the Article creates a year-to-year extension of the agreement of the kind specifically approved in *BHA*, rather than an indefinite extension of the agreement pending negotiations of the kind disapproved in *BHA*. By neither party giving notice under Article XXXV, they elect to extend the agreement for another annual term and are then free to terminate the agreement in any subsequent year. This structure creates a three year agreement, followed by annual agreements, none of which violate the stricture in § 7(a) that “any collective bargaining agreement reached between the employer and the exclusive representative shall

Page Three
July 21, 2011

not exceed a term of three years.” Indeed, under the language of Article XXXV, in the absence of notice to terminate the contract, a new annual agreement is in place for another year and neither party is obligated to negotiate a successor agreement. The annual extension *is* the successor agreement.

Since the Winthrop contract was specifically extended through the absence of notice to terminate the agreement, and annual extension does not run afoul of *BHA*, the agreement was in full force and effect and the dismissal of the repudiation claim, due to the lack of an effective agreement, was erroneous.

Sincerely,



Jill Coleman
Consultant

/sd
Enclosures

cc: Pauline Boyajian, President
Lisa Nazzaro, MTA Consultant
Matt Jones, MTA Attorney

I hereby certify that I have served a copy of this correspondence on the following representative of the opposing party:

Name	Address:	Telephone Number
Paul Hodnett, Esq.	50 Rowes Wharf, Boston, MA 02210	617-330-7134
Method of Service: FIRST CLASS MAIL		
Signature of Person making Certification: 		Telephone Number:



Paul F. Toner, President
Timothy D. Sullivan, Vice President
Ann Clarke, Executive Director-Treasurer

February 16, 2011

Margaret Sullivan, Esq.
The Commonwealth of Massachusetts
Division of Labor Relations
19 Staniford Street, 1st Floor
Boston, MA 02114

**RE: Winthrop Teachers Association and the Winthrop School Committee,
MUP-09-5687**

Dear Ms. Sullivan:

Please consider this to be the response of the Winthrop Teachers Association (Association) to your question during our conference call on Friday, February 11, 2011: specifically, did either party wish to submit anything additional in light of the SJC decision regarding evergreen clauses?

The Association filed the above reference charge prior to the October, 2010 Supreme Judicial Court decision, *Boston Housing Authority v. National Conference of Firemen and Oilers*. The Committee has not raised the SJC decision as a defense to the Association's prohibited practice charge. The Association's charges are based on violations of chapter 150E and do not require an interpretation or application of an expired agreement.

Thank you.

Sincerely,

Jill Coleman, Consultant
Massachusetts Teachers Association

cc: Jennifer O'Connell, President, Winthrop Teachers Association
Paul Hodnett, School Committee Counsel