

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

\*\*\*\*\*

In the Matter of	*	
	*	Case No.: MUP-13-2975
	*	
STOUGHTON SCHOOL COMMITTEE	*	Date Issued:
	*	May 21, 2014
and	*	
	*	
STOUGHTON TEACHERS ASSOCIATION	*	
	*	
	*	

\*\*\*\*\*

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

- Regina Williams Tate, Esq. - Representing the Stoughton School Committee
- Ira Fader, Esq. - Representing the Stoughton Teachers Association

HEARING OFFICER'S DECISION

Summary

1 The issue in this case is whether the Stoughton School Committee (School  
2 Committee or Committee) violated Section 10(a)(5) and, derivatively, (a)(1) of  
3 Massachusetts General Laws, Chapter 150E (the Law) when it did not advance  
4 bargaining unit members on the salary grid and pay their corresponding step increases  
5 on September 1, 2013, after the 2010-2013 collective bargaining agreement between  
6 the School Committee and the Stoughton Teachers Association (Union) had expired. I

1 find that the School Committee violated the Law as alleged.

2 Statement of the Case

3 On July 12, 2013, the Union filed a charge of prohibited practice with the  
4 Department of Labor Relations (DLR) alleging that the School Committee had engaged  
5 in a prohibited practice within the meaning of Sections 10(a)(5) and 10(a)(1) of  
6 Massachusetts General Laws, Chapter 150E (the Law). The DLR investigated the  
7 charge on September 23, 2013, and issued a Complaint of Prohibited Practice on  
8 October 16, 2013.<sup>1</sup> Count 2 of the two-count Complaint alleged that the School  
9 Committee withheld step increases from bargaining unit members pending the  
10 completion of successor bargaining negotiations without giving the Union prior notice  
11 and an opportunity to bargain to impasse or resolution over the decision and its impacts  
12 on employee wages and terms and conditions of employment. The School Committee  
13 filed an Answer to the Complaint on December 27, 2013.

14 The parties subsequently waived their right to a hearing with witness testimony  
15 and agreed to submit evidence in the form of a stipulated record. They filed briefs on or  
16 about April 25, 2014. Based on the record, which includes stipulated facts and  
17 documentary exhibits, and in consideration of the parties' arguments, I render the  
18 following opinion.

19

---

<sup>1</sup> The DLR consolidated this case for investigation with Case No. MUP-13-2974, Stoughton School Committee. Count I of the Consolidated Complaint addressed the allegations stemming from MUP-13-2974, and Count II addressed the allegations in MUP-13-2975. The parties subsequently settled MUP-13-2974.

Stipulated Facts<sup>2</sup>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38

1. The Town of Stoughton is a public employer within the meaning of G.L. c.150E, s. 1, and the Stoughton School Committee ("School Committee") is the Town's representative for purposes of collectively bargaining with the school employees. The School Committee has appointed Marguerite Rizzi as the Superintendent of Schools. Rizzi was hired as the Superintendent in Stoughton starting with the 2009-2010 school year.
2. The Stoughton Teachers Association ("STA") is an employee organization within the meaning of G.L. c.150E, s.1 and is the exclusive representative for teachers and administrators employed in the Stoughton Public School System. Andrea Pires is the elected President of the STA.
3. The STA is affiliated with the Massachusetts Teachers Association ("MTA"). The MTA has assigned Jacqueline McDonough as the Field consultant for the STA. In that capacity, Ms. McDonough assists the STA in all aspects of its role as the exclusive representative for Stoughton teachers, including participating in bargaining negotiations. She has been employed as a field consultant for the MTA for 27 years and has been assigned to work directly with the STA since 2004.
4. Since at least 1974, and possibly earlier, the parties have entered into collective bargaining agreements that were effective for two or three year periods commencing on September 1 and ending on August 31 of the contract's final year. Each bargaining agreement contained a salary grid composed of steps and columns ("column" are sometimes referred to as "lanes" and the terms are used interchangeably herein.) Each step represents one year of service and each column represents a teacher's educational attainments.
5. The parties entered into the following bargaining agreements on the following dates:
  - 1974-1976 August 28, 1974
  - 1977-1979 April 26, 1977
  - 1979-1981 April 25, 1979
  - 1981-1983 October 22, 1981
  - 1983-1985 Date is blank

---

<sup>2</sup> Although not drafted as a stipulation, the parties also agreed that each letter, notice, and email in the documentary exhibits was sent by the individual who is identified as having sent it, that each signature is authentic, and that the intended recipient received the document. If there is a conflict between a stipulated fact and the findings in the DLR's Complaint of Prohibited Practice or the School Committee's Answer, the parties agreed to resolve such conflict in favor of the stipulated facts.

- 1           1985-1987 May 27, 1986
- 2           1987-1990 September 1, 1987
- 3           1990-1992 June 17, 1991
- 4           1992-1995 October 12, 1993
- 5           1995-1998 September 11, 1995
- 6           1998-2001 September 11, 1995\*
- 7           2001-2004 June 13, 2001
- 8           2004-2007 October 12, 2004
- 9           2007-2010 November 14, 2007
- 10          2010-2013 July 7, 2011

\* Incorrect Date<sup>3</sup>

6. A hiatus between the expiration of one contract and the execution of the successor contract existed for the following periods of time:

- September 1, 1981 until October 22, 1981
- September 1, 1985 until May 27, 1986
- September 1, 1990 until June 17, 1991
- September 1, 1992 until October 12, 1992
- September 1, 1995 until September 11, 1995
- September 1, 2004 until October 12, 2004
- September 1, 2007 until November 14, 2007
- September 1, 2010 until July 7, 2011

7. Each of the hiatus periods referred to in paragraph 6, above, extended into at least one payroll period in the school year. In each of the hiatus periods except for the hiatus between the 2007-2010 bargaining agreement (Exhibit 2) and the 2010-2013 bargaining agreement (Exhibit 1), the School Committee continued the term and condition of employment, memorialized in the most recently expired bargaining agreement, of providing a step increase to all eligible teachers in accordance with the expired agreement's salary grid. Step increases took effect on September 1 of each school year and were reflected in the pay check issues for the first payroll period.

8. In June of every calendar year except June 2010 and June 2013, the School Committee issued to all incumbent teachers who were returning in the following school year a "Notice of Salary" setting forth the annual salary, including the step and lane increases, which the individual would receive in the next school year. Teachers were expected to, and did, sign the notices and return them to the school administration.

<sup>3</sup> The parties were unable to ascertain the correct date, however, it is not material to this decision.

- 1           9.     If in the final year of a contract (other than the 2007-2010 contract) the  
2           parties had not completed bargaining for a successor agreement before  
3           the end of the school year, the salary amount on the Notice of Salary for  
4           an individual teacher would reflect the step increase and lane change, if  
5           applicable, and not include any cost-of-living or other across the board  
6           salary improvements.  
7
- 8           10.    Exhibits 3A and 3B are the Notices of Salary received by Susan Cogliano  
9           and William Kellogg, both of whom were teachers in the Stoughton public  
10          schools (now retired) and members of the bargaining unit represented by  
11          the STA. These notices are a representative sample of the type of notice  
12          that they each received throughout their tenure as Stoughton teachers and  
13          that all other members of the bargaining unit received.  
14
- 15          11.    In every instance in which a contract expired without a successor contract  
16          in place, the parties reached an agreement for a successor within the first  
17          year following expiration. In every instance, they agreed that the new  
18          contract would be retroactive to the date following the prior contract's  
19          expiration, i.e. September 1. After entering into a new successor  
20          bargaining agreement, the school administration issued a new Notice of  
21          Salary to each teacher that revised the individual's annual salary based on  
22          the cost-of-living or other across the board increases the parties had  
23          agreed to in bargaining for that school year. Retroactive payments were  
24          always included.  
25
- 26          12.    In June, 2010, the parties were engaged in negotiations for a successor to  
27          the 2007-2010 bargaining agreement but were not close to resolution or  
28          impasse. The School Committee did not send out Notices of Salary,  
29          referred to in paragraphs 8 – 11, above. Instead, Rizzi sent letters to  
30          teachers returning in the 2010-2011 school year a notice of their  
31          assignments in the coming year. Exhibit 4 is a representative sample of  
32          the letters sent to all teachers in June 2010.  
33
- 34          13.    On August 5, 2010, the STA filed a charge of prohibited practice against  
35          the School Committee.<sup>4</sup> On November 4, 2010, the DLR issued a  
36          Complaint against the School Committee. (Exhibit 5.) Before the matter  
37          proceeded to an evidentiary hearing at the DLR, the parties reached an  
38          agreement for a successor contract. The agreement placed each teacher  
39          at the step on which he or she would have been placed at the start of the

---

<sup>4</sup> I take administrative notice of the fact that the DLR docketed this case as Case No. MUP-10-5937, Stoughton School Committee, and that the Union's withdrawal letter in that case read as follows: "[t]he Stoughton Teachers Association hereby withdraws the above-referenced charge and seeks voluntary dismissal of the complaint in this matter. The parties have reached a settlement of their dispute."

1 school year and made full payments retroactive to September 2010 for  
2 this cost item. Accordingly, the School Committee advanced teachers on  
3 the step schedule in May, 2011 when the parties had reached a tentative  
4 agreement for a successor collective bargaining agreement to the 2007-  
5 2010 collective bargaining agreement which had expired on August 31,  
6 2010. The parties did not resolve the prohibited practice dispute.  
7

8 14. In March 2013, the parties commenced bargaining for a successor to the  
9 2010-2013 bargaining agreement and formally exchanged proposals in  
10 April. Negotiating over specific proposals began in mid-May. By June, the  
11 parties remained far apart in their respective positions. The School  
12 Committee's package of proposals included significant structural changes  
13 to the salary grid contained in the 2010-2013 contract.  
14

15 15. During bargaining on June 13, 2013, the School Committee informed the  
16 STA negotiating team that Rizzi intended to send a letter to teachers  
17 advising them of their assignments for the 2013-2014 school year rather  
18 than a Notice of Salary. The parties exchanged written correspondence  
19 regarding the position outlined by the School Committee. (Exhibits 6 and  
20 7).  
21

22 16. On or about June 27, 2013, Rizzi issued a letter to each teacher who was  
23 returning for employment in the 2013-2014 school year. Exhibit 8 is a  
24 representative sample of the letter issued to all returning teachers.  
25

26 17. The parties did not negotiate to resolution or impasse prior to the start of  
27 the 2013-2014 school year.  
28

29 18. On September 4, 2013, Rizzi posted a notice to all teachers on SPS News  
30 regarding their first paychecks due the following day. (Exhibit 9). SPS  
31 News is an intranet system by which, among other things, the school  
32 administration communicates with all staff regarding school matters.  
33

34 19. The school system has not paid step increases to any teachers during the  
35 2013-2014 school year.  
36

37 20. During the period of time that the parties negotiated for a successor to the  
38 2010-2013 contract, the STA's position continued to be that the teachers  
39 have a right to step increases after the contract expired until and unless  
40 the parties reach an agreement in negotiations.  
41

42 21. The School Committee Chair Deborah Sovinee also addressed the public  
43 on the salary issue. (Exhibit 12.)  
44

45 22. The parties did not bargain to resolution or impasse at any time on the  
46 issue of whether the School Committee would pay step increases

1 commencing on the first payroll in September 2013. As of the date of this  
2 stipulated record, the parties continue to bargain for a successor contract  
3 to the 2010 – 2013 contract which expired on August 31, 2013.

4  
5 23. Exhibit 10 is a letter issued by the Chairman of the Stoughton Board of  
6 Selectmen to all members of the Town Meeting in Stoughton in advance  
7 of a scheduled Town Meeting. Exhibit 11 is an email response by School  
8 Committee Chair Sovinee to the Chairman.  
9

10 Facts Derived from Joint Exhibits

11 On or about May 15, 2013, Town Board of Selectman Chair John Anzivino  
12 (Anzivino) drafted a letter from the Board of Selectman to all Town Meeting  
13 Representatives giving them an overview of the direction that the Board was taking to  
14 improve Town government. The letter explained, among other things, the Board’s  
15 approach to labor relations. Anzivino’s letter stated in pertinent part as follows: “It is  
16 also our intent to do away with the past practice of granting “Step Increases” as well as  
17 “Cost of Living Increases” (emphasis in original.)

18 The 2007-2010 and 2010-2013 collective bargaining agreements do not contain  
19 so-called “evergreen” clauses.

20 Opinion

21 Unilateral Change

22 A public employer violates Sections 10(a)(5) and (a)(1) of the Law when it  
23 unilaterally alters a condition of employment involving a mandatory subject of bargaining  
24 without first bargaining with the union to resolution or impasse. School Committee of  
25 Newton v. Labor Relations Commission, 388 Mass. 557 (1983). To establish a  
26 violation, a union must demonstrate by a preponderance of evidence that there was a  
27 pre-existing practice, that the employer unilaterally changed that practice, and that the

1 change impacted a mandatory subject of bargaining. Boston School Committee, 3 MLC  
2 1603, 1605, MUP-2503, MUP-2528 (April 15,1977). The employer's obligation to  
3 bargain before changing conditions of employment extends to working conditions  
4 established through past practice, as well as those specified in a collective bargaining  
5 agreement. Town of Wilmington, 9 MLC 1694, 1699, MUP-4687 (March 18, 1983).

6 The rule prohibiting employers from making unilateral changes applies both  
7 during the term of the collective bargaining agreement and after it expires. Town of  
8 Chatham, 28 MLC 56, 57, MUP-9186 (June 29, 2001). Established terms and  
9 conditions of employment in effect at the time that a contract expires constitute the  
10 status quo, which an employer cannot change without satisfying its bargaining  
11 obligation. Town of Chatham, 28 MLC at 58. To identify the terms and conditions of  
12 employment that are in effect when a contract expires, the Commonwealth Employment  
13 Relations Board (CERB) looks to the relevant provisions of the expired agreement and  
14 the past practice between the parties, because "expired contract rights have no efficacy  
15 unless the rights have become a part of the established operational pattern and thus  
16 become a part of the status quo of the entire plant operation". Commonwealth of  
17 Massachusetts, 23 MLC 171,172, SUP-3586 (January 30, 1997) (internal cites omitted.)

18 The issue here is whether the Committee unlawfully withheld step increases to  
19 eligible teachers on September 1, 2013, after the 2010-2013 collective bargaining  
20 agreement expired. The parties do not dispute that the step increases are a mandatory  
21 subject of bargaining, and they agree that they did not bargain to impasse or resolution  
22 prior to the School Committee's decision to withhold the step increases. Thus, I begin  
23 my analysis of the terms and conditions of employment that prevailed at the expiration



1 of the 2010-2013 contract with the language of the 2010-2013 contract. The teacher  
2 salary schedules contain 13-14 steps, depending on the teacher's level of education.  
3 Article XVIII, Salaries and Other Compensation, Section VI, Teacher Salary Addenda,  
4 Part 5, provides in pertinent part as follows: "[s]tep-rate increases shall become  
5 effective in the normal course of salary progress; increments for teachers rendering  
6 satisfactory service will be awarded annually..."<sup>5</sup>

7 I next consider the past practice between the parties. To determine whether a  
8 binding past practice exists, the CERB analyzes the combination of facts upon which  
9 the alleged practice is predicated, including whether the practice has occurred with  
10 regularity over a sufficient period of time so that it is reasonable to expect that the  
11 practice will continue. Commonwealth of Massachusetts, 23 MLC at 172. The CERB  
12 inquires whether employees in the unit have a reasonable expectation that the practice  
13 will continue, and looks to whether the practice is unequivocal, has existed substantially  
14 unvaried for a reasonable period of time, and is known and accepted by both parties.  
15 Commonwealth of Massachusetts, 34 MLC 143, 146, SUP-04-5052 (June 17, 2008).

16 The Union argues, essentially, that there has been an unbroken 39-year practice  
17 of paying step increases in September of each school year, and because this practice  
18 continued during all but two<sup>6</sup> of the hiatus periods between contracts, the teachers

---

<sup>5</sup> Part 5 further provides that "...however, annual increments may be withheld from those whose work is unsatisfactory." Although the School Committee argues that the payment of step increases is discretionary, the first part of the sentence clarifies that step increases are paid in the normal course of salary progress. The situations in which the School Committee could deny a step increase to a particular teacher are not at issue here and form no part of the past practice analysis.

<sup>6</sup> The Union counts the hiatus period at issue here, that began in September of 2013, as one of the two hiatus periods.

1 reasonably believed that the practice would continue in 2013 after the contract expired.  
2 The Union asserts that the exception – which occurred when the School Committee  
3 withheld step increases during the hiatus period between the 2007-2010 and 2010-2013  
4 contracts – did not change the prior practice because the Union challenged that action  
5 at the DLR, and the parties' successful resolution of the contract restored the prior  
6 status quo.<sup>7</sup>

7 Conversely, the School Committee argues that the totality of the circumstances  
8 shows that the payment of step increases during the hiatus period between contracts  
9 did not become part of the established operational pattern. The Committee asserts that  
10 there were no hiatus periods between the majority of the contracts, and those that did  
11 exist were short and appear to be a function of finalizing contract language and  
12 scheduling a ratification vote. The Committee emphasizes that the contract does not  
13 expressly require payment of step increases during a contractual hiatus period, and  
14 maintains that the parties' conduct during the hiatus period between the 2007-2010 and  
15 2010-2013 contracts shows no established practice.

---

<sup>7</sup> The Union argues that the School Committee also violated the Law by withholding step increases in an unlawful attempt to leverage its bargaining position. Although the record includes facts that are germane to that allegation, it is not pleaded separately in the Complaint. Conduct not specifically pleaded in a complaint may form the basis for an unfair labor practice finding when the conduct relates to the general subject matter of the complaint, and the issue has been fully litigated. Town of Norwell, 18 MLC 1263, 1264, MUP-6962 (January 22, 1992). However, I do not believe that the School Committee anticipated that I would address the Union's contention as a separate allegation, and I decline to do so where the Committee may have chosen to supplement the stipulated record if it understood that broader issues were under consideration.

1           The stipulated facts disclose that between 1981 and 2013, there were eight  
2 hiatus periods between contracts. Each one extended into at least one payroll period in  
3 the school year. Before the 2013 non-payment at issue here, during each of the hiatus  
4 periods, except the one between the 2007-2010 and 2010-2013 contracts, the School  
5 Committee paid eligible teachers a step increase on September 1 of each year. The  
6 School Committee's action was unequivocal, occurred consistently during seven of the  
7 eight contractual hiatus periods, and was certainly known and accepted by both parties.  
8 There are no facts predicating the School Committee's action on the duration or  
9 purpose of the hiatus period,<sup>8</sup> and no factual reason to believe that the employees  
10 would not reasonably expect step increase payments to continue. The continuous  
11 payment over seven contractual hiatus periods here is a more frequent practice than  
12 existed in Town of Chatham, which encompassed only four contractual hiatus periods.  
13 Town of Chatham, 28 MLC at 57. The contract's silence on step increases during  
14 hiatus periods is inconsequential because the Law requires the School Committee to  
15 maintain terms and conditions of employment in effect when the contract expires – and  
16 those terms and conditions include unwritten past practices. Town of Chatham, 28 MLC  
17 at 58. Thus, the step increases had become part of the past practice between the  
18 parties unless, as the School Committee contends, their unique actions during the  
19 hiatus period between the 2007-2010 and 2010-2013 contracts changed the practice.<sup>9</sup>

---

<sup>8</sup> There are no facts to support the School Committee's assertion that the shortest hiatus periods were a function of finalizing contract language and scheduling a ratification vote.

<sup>9</sup> I also note that the Town Manager characterized the consistent payment of step increases as a past practice in his May 15, 2013 letter.

1           The School Committee contends that, because it did not pay step increases  
2 during the most recent hiatus period - the hiatus between the 2007-2010 and 2010-2013  
3 contracts - that advancing teachers on the salary schedule and paying their step  
4 increases between contracts did not become an established practice. Although the  
5 Union challenged the School Committee's non-payment, the parties did not fully litigate  
6 the Union's prohibited practice charge, and the parties did not clarify their expectations  
7 and understandings when they settled the 2010-2013 contract and charge.

8           City of Boston, 8 MLC 2057, MUP-4105 (April 23, 1982), disposes of these  
9 remaining arguments because it clarifies that the 2010 protested change did not  
10 become the new past practice. In City of Boston, the City assigned non-bargaining unit  
11 police cadets to rope off parade routes even though the patrol officers' had been  
12 performing that work – with two exceptions – for fourteen years. The CERB considered  
13 whether the two exceptions became the status quo, as the City contended, and said no;  
14 the two exceptions more accurately represented limited exceptions to an otherwise  
15 uninterrupted and lengthy practice. Id. at 2058. The CERB's determination rested in  
16 part on the fact that the union had protested one of the exceptions by filing a prohibited  
17 practice charge, and it noted that the union's subsequent failure to prosecute that  
18 charge was immaterial to its conclusion. Id. Although the School Committee factually  
19 distinguishes City of Boston because the parade roping practice there occurred more  
20 frequently than the practice at issue here, this distinction is not material. Pursuant to  
21 City of Boston, the non-payment of step increases in 2010 did not change the status  
22 quo as the Union protested the action by filing a charge at the DLR. The parties' failure  
23 to litigate the case to a conclusion or codify their expectations is of no import,

1 particularly where the School Committee paid the step increases retroactive to  
2 September 1 of 2010, thereby signaling an intent to maintain the prior practice.  
3 Consequently, the past practice in this case consists of the School Committee's  
4 advancement of eligible teachers on the step scale and payment of their step increases  
5 on September 1 of each year during the hiatus period between contracts.

6 **2011 Amendment to M.G.L. c.150E, s.7(a)**

7 The School Committee also argues that legislative changes to M.G.L. c.150E, s.  
8 7(a) allowed it to withhold a step increase on September 1, 2013. Specifically, the  
9 Committee contends that, following the amendment to Section 7(a) that the Legislature  
10 enacted in the wake of the Supreme Judicial Court's decision in Boston Housing  
11 Authority v. Nat'l Conference of Firemen and Oilers, Local 3, 458 Mass.155 (2010), the  
12 only way to continue the terms of a collective bargaining agreement after the agreement  
13 expires is through an evergreen clause, and requiring the Committee to pay step  
14 increases here would improperly extend the terms of the expired contract when the  
15 parties did not negotiate an evergreen clause. It is not clear whether the School  
16 Committee's interpretation of the statutory amendment applies in the absence of an  
17 otherwise controlling past practice, or whether its interpretation of the statutory  
18 amendment applies notwithstanding any such past practice. However, because I have  
19 found that the parties' past practice required the School Committee to pay the step  
20 increases on September 1, 2013, I need not address any argument about the effect of  
21 the 2011 amendment where there is no applicable past practice.

22 I am not persuaded by the Committee's arguments because neither the statute,  
23 nor the BHA decision support its theory that past practices are no longer binding after a

1 contract expires without an evergreen clause. In Boston Housing Authority, the SJC  
2 considered whether to vacate an arbitration award enforcing a contractual minimum  
3 staffing provision in an agreement that continued past its stated expiration date by virtue  
4 of an evergreen clause. The court held that the arbitrator exceeded his authority  
5 because an evergreen clause could not extend the terms of the collective bargaining  
6 agreement beyond three years under the plain language of Chapter 150E, Section 7(a).  
7 Id. at 165. The case holding did not address situations where, as here, the parties did  
8 not negotiate an evergreen clause, nor does the opinion suggest that the parties' past  
9 practices could no longer independently preserve terms and conditions of employment.

10 Approximately one year after the BHA decision, the Legislature enacted Chapter  
11 198 of the Acts of 2011 as an emergency law, amending Section 7(a) to permit  
12 evergreen clauses. Section 7(a) now provides in pertinent part as follows:<sup>10</sup>

13 Section 7(a) Any collective bargaining agreement reached between the  
14 employer and the exclusive representative shall not exceed a term of three  
15 years; provided, however, that the employer and the exclusive representative  
16 through negotiation may agree to include a provision in a collective bargaining  
17 agreement stating that the agreement's terms shall remain in full force and effect  
18 beyond the 3 years until a successor agreement is voluntarily negotiated by the  
19 parties....

20  
21 The emergency preamble to Chapter 198 states that: "[w]hereas the deferred operation  
22 of this act would tend to defeat its purpose, which is to ensure that public employers and  
23 public employees have appropriate tools to negotiate collective bargaining agreements,  
24 therefore it is hereby declared to be an emergency law, necessary for the immediate  
25 preservation of the public convenience." This statute does not speak to situations

---

<sup>10</sup> The School Committee makes no arguments based on Section 2 and 3 of Chapter 198 of the Acts of 2011, consequently, I need not address them here.

1 where the parties chose not to negotiate an evergreen clause. Nor does the statute  
2 modify Section 6 of Chapter 150E, the source of the School Committee's bargaining  
3 obligation and the basis for the prohibition on unilaterally changing past practices that  
4 effect mandatory subjects of bargaining. The School Committee does not explain how  
5 enabling the parties to preserve contractual terms by operation of an evergreen clause,  
6 while simultaneously allowing employers to unilaterally change unwritten past practices  
7 would advance the legislative goal. Sanctioning abandonment of past practices at the  
8 expiration of the collective bargaining agreement would, instead, contravene the  
9 declared purpose of Chapter 198.<sup>11</sup>

10 Finally, the School Committee states that the CERB cannot act as if the BHA  
11 decision and consequent legislative change have no bearing, but it fails to show how or  
12 why the BHA and amendment to Section 7 changed the past practice doctrine  
13 embodied in the good faith bargaining obligation of Section 6. It is well-settled that an  
14 employer's obligation to maintain the status quo during negotiations, even after a  
15 contract expires, extends to both contract terms and terms and conditions of  
16 employment established by past practice. Cambridge Health Alliance, 37 MLC 168,  
17 170, MUP-08-5162 (March 24, 2011); Commonwealth of Massachusetts, 19 MLC 1069,  
18 1079, SUP-3461 (April 24, 1992); Commonwealth of Massachusetts, 9 MLC 1355,  
19 1358, SUP-2585 (October 22, 1982). "Unilateral action by an employer without prior

---

<sup>11</sup> I take administrative note that, in the Senate floor debate on November 15, 2011 over HB3789, the bill that subsequently amended Section 7 of the Law, Senator Stephen M. Brewer explained that "[evergreen clauses] are an important tool to maintain the status quo." The BHA court similarly recognized that evergreen clauses are "designed to maintain the status quo in labor relations and provide for a continuing code of conduct while parties negotiate a new bargaining agreement." Boston Housing Authority, 458 Mass. at 155.

1 discussion with the union does amount to a refusal to negotiate about the affected  
2 conditions of employment under negotiation, and must, of necessity, obstruct bargaining  
3 contrary to the congressional policy." National Labor Relations Board v. Katz, 369 U.S.  
4 736, 747 (1962). In short, the School Committee's arguments offer no basis to  
5 disregard either the long-standing precedent or the rationale underlying the Law.

6 Conclusion

7 The Law required the School Committee to maintain during their negotiations the  
8 terms and conditions of employment established by past practice, and this included  
9 payment of step increases to eligible bargaining unit members. The School Committee's  
10 failure to pay step increases to eligible bargaining unit members on September 1, 2013  
11 violated Section 10(a)(5) and, derivatively (a)(1) of the Law.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the  
Stoughton School Committee shall:

1. Cease and desist from;
  - a) Unilaterally withholding step increases to eligible bargaining unit members after the expiration of the collective bargaining agreement;
  - b) Failing or refusing to bargain collectively in good faith with the Union about the payment of step increases after the expiration of the collective bargaining agreement;
  - 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 action that will effectuate the purposes of the Law:
  - a) Restore the past practice of advancing eligible Unit A bargaining unit members on the salary grid and paying eligible Unit A members their



corresponding step increases after the expiration of a collective bargaining agreement;

- b) Upon request, bargain in good faith with the Union to resolution or impasse about the payment of step increases after the expiration of the collective bargaining agreement;
- c) Make whole any employee who suffered monetary loss as a result of the School Committee's decision to withhold step increases after the expiration of the collective bargaining agreement, plus interest on any sums owed at the rate specified in M.G.L. c.231, s.6I, compounded quarterly;
- d) Post immediately in all conspicuous places where members of Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the School Committee customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
- e) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



SUSAN L. ATWATER, ESQ.  
HEARING OFFICER

**APPEAL RIGHTS**

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.02(1)(j), to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties



**THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS**

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE DEPARTMENT OF LABOR RELATIONS**

**AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Department of Labor Relations has determined that the Stoughton School Committee (School Committee) violated Sections 10(a)(5) and, derivatively, (a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to pay step increases to eligible Unit A bargaining unit members after the expiration of the Unit A collective bargaining agreement.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights: to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT fail to pay step increases to eligible Unit A bargaining unit member after the expiration of the Unit A collective bargaining agreement.

WE WILL NOT, in any like or related manner interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL pay step increases to eligible Unit A bargaining unit members after the expiration of the Unit A collective bargaining agreement.

WE WILL, upon request, bargain in good faith with the Stoughton Teachers' Association to resolution or impasse about the payment of step increases after the expiration of the collective bargaining agreement;

WE WILL make whole any Unit A bargaining unit member who suffered a monetary loss as a result of the School Committee's failure to pay step increases to eligible Unit A bargaining unit member after the expiration of the Unit A collective bargaining agreement.

\_\_\_\_\_  
Stoughton School Committee

\_\_\_\_\_  
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 of Labor Relations, 19 Staniford Street, 1<sup>st</sup> Floor, Boston MA 02114 (Telephone: (617) 626-7132).