



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
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August 22, 2013

Case No.: MUP-13-2603
Charging Party: Stoughton Teachers Association
Respondent: Stoughton School Committee
Date Filed: 02/11/2013

NOTICE OF COMPLAINT

PROCEDURE FOR SCHEDULING HEARING

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:

HEARING 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 **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

Edward B. Srednicki

Edward B. Srednicki
Executive Secretary

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**

PROCEDURE FOR SCHEDULING OF THE HEARING

Case No.: MUP-13-2603
Charging Party: Stoughton Teachers Association
Respondent: Stoughton School Committee
Date Filed: 02/11/2013

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. **If the Charging Party fails to submit dates or submit a written statement explaining why they have been unable to submit mutually agreed upon dates, the charge will be dismissed.**
4. 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 without good cause and written mutual consent of all parties in conformance with 456 CMR 12.06.**
5. All Hearings will be held in the DLR's offices located at 19 Staniford Street, 1st Floor, Charles F. Hurley Building, Boston, MA 02114.
6. 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-13-2603
Charging Party: Stoughton Teachers Association
Respondent: Stoughton School Committee
Date Filed: 02/11/2013

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 **JANUARY 1, 2014 AND MARCH 31, 2014.**

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 mediate prior to 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	*	
	*	Case No.: MUP-13-2603
STOUGHTON SCHOOL COMMITTEE	*	
	*	Date Issued:
and	*	
	*	August 22, 2013
STOUGHTON TEACHERS ASSOCIATION	*	
	*	

COMPLAINT OF PROHIBITED PRACTICE AND PARTIAL DISMISSAL

On February 11, 2013, the Stoughton Teachers Association (Union) filed a charge of prohibited practice with the Department of Labor Relations (DLR), alleging that the Stoughton School Committee (School Committee) had engaged in prohibited practices within the meaning of Sections 10(a)(5), 10(a)(2) and 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law).¹ Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.04 of the DLR's Rules, I conducted an in-person investigation of the allegations contained in the charge on August 1, 2013. Based on the evidence presented, I have found probable cause to believe that violations have occurred. For the reasons explained below, I have decided to dismiss the remaining allegations.

¹ The Union alleges that the School Committee independently violated Section 10(a)(1) of the Law by the actions described in Count II, Count III and Count IV. I find that the alleged independent violations are subsumed by my finding of probable cause to believe that the School Committee derivatively violated Section 10(a)(1) of the Law in Counts II, III and IV.

COMPLAINT

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

Count I

1. The Town of Stoughton (Town) is a public employer within the meaning of Section 1 of the Law.
2. The School Committee is the Town's collective bargaining representative for the purpose of dealing with school employees.
3. The Union is an employee organization within the meaning of Section 1 of the Law.
4. The Union is the exclusive representative for teachers employed by the Town and working in the Stoughton Public School System.
5. In June 2011, the Massachusetts Department of Elementary and Secondary Education (DESE) established new regulations regarding the evaluation of teachers.
6. On June 29, 2012, the Massachusetts legislature approved Chapter 131 of the Acts of 2012, an act providing for the implementation of education evaluation systems in school districts which states:

Beginning in school year 2012-2013, any [school district participating in the Commonwealth's Race to the Top activities] that has not already commenced an evaluation training program shall not require teachers to be evaluated until the district has published an evaluation training schedule for teachers, principals and administrators who are required to be evaluated under [section 38 of chapter 71]. Each such district shall publish a training schedule not later than October 1, 2012.
7. The Stoughton School District participates in the Commonwealth's Race to the Top activities.
8. On August 22, 2012, the Union and the School Committee began negotiations over the implementation of the new teacher evaluation system and the required training program.

9. On October 1, 2012, Deputy Superintendent Jonathan Ford (Ford) emailed a training schedule to all bargaining unit members while negotiations were still ongoing.
10. The training schedule referred to in paragraph 9 affects wages and hours and is a mandatory subject of bargaining.
11. The School Committee took the action described in paragraph 9 without bargaining with the Union to resolution or impasse over the decision to implement the evaluation training schedule and the impact of the decision on employee terms and conditions of employment.
12. By the conduct described in paragraphs 9 and 11, the School Committee has failed to bargain in good faith by implementing an evaluation training schedule without bargaining with the Union to resolution or impasse over the decision and the impact of the decision on employee terms and conditions of employment in violation of Section 10(a)(5) of the Law.
13. By the conduct described in paragraphs 9 and 11, 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.

Count II

14. The allegations in paragraphs 1 through 11 are re-alleged.
15. On October 9, 2012, the Union decided to boycott any training session scheduled after school or on Saturdays while the parties continued to bargain over the training schedule.
16. On October 23, 2012, the parties came to a tentative agreement on the training schedule.
17. On October 31, 2012, Ford asked Union President Andrea Pires (Pires) to notify bargaining unit members that an agreement had been reached and that the boycott referred to in paragraph 15 had been lifted. Pires declined Ford's request until the parties finalized the tentative agreement referred to in paragraph 16.
18. On November 1, 2012, Ford used the Stoughton Public Schools' intranet messaging service, "First Class," to send a message to the entire staff using the address "SPS News." Ford wrote that the parties agreed that "all evaluation training sessions . . . can be accessed by all staff members" and explained the details of the tentative agreement.

19. Ford attached a "revised educator evaluation training schedule" to the message referred to in paragraph 18.
20. The School Committee took the action described in paragraph 19 without bargaining with the Union to resolution or impasse over the decision to implement the revised evaluation training schedule and the impact of the decision on employee terms and conditions of employment
21. By the conduct described in paragraphs 19 and 20, the School Committee has failed to bargain in good faith by implementing an evaluation training schedule without bargaining with the Union to resolution or impasse over the decision to implement the evaluation training schedule and the impact of the decision on employee terms and conditions of employment in violation of Section 10(a)(5) of the Law.
22. By the conduct described in paragraph 19 and 20, 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.

Count III

23. The allegations in paragraphs 14 through 19 are re-alleged.
24. On November 1, 2012, Pires responded to Ford's message using SPS News. Pires wrote:

In spite of what . . . Ford wrote to you, we have not finalized our agreement with the School Committee because we are still waiting for a response from the School Committee to the Memorandum of Agreement that we sent to them last Friday. Accordingly, the boycott shall continue until the language is finalized. Also, the scheduling of a new early release day is subject to negotiations. Please do not assume that the additional release day will be on Friday, December 21st.

25. Approximately forty-five minutes after Pires sent the message referred to in paragraph 24, Superintendent Maguerite Rizzi (Rizzi) sent an email directly to Pires:

SPS News is never to be used for union business, and therefore you should take your message down immediately and send it through the emails that teachers have provided you to conduct union business.

26. Later on November 1, 2012, Pires explained to Rizzi that she used SPS News because she needed to respond to Ford's message to correct his "misinformation."
27. Rizzi responded on November 2, 2012:

Your justification of the use of First Class is incorrect. Nothing posted by the administration can alter the restrictions governing the union's use of the First Class system. It is not within your purview to decide what messages we post to our employees. We will discuss this at a future date, in the meantime, your use is restricted to the list of things that [the former Union President] and I agreed. Under the circumstances, that arrangement will also be reviewed, and possibly revised. This restriction predates your tenure by many years. Please refer to Mr. Sarno's message at the bottom of the list on SPS News. You may not use the First Class system again in this manner, no matter what you see posted there by administrators.
28. Shortly thereafter, the School Committee removed Pires's message referred to in paragraph 24.
29. A rule prohibiting employee discussion of Union matters is a mandatory subject of bargaining.
30. The School Committee took the actions described in paragraphs 25, 27 and 28 without giving the Union prior notice and an opportunity to bargain to resolution or impasse over the decision to prohibit employee discussion of Union matters using SPS News and the impact of that decision on bargaining unit members' terms and conditions of employment.
31. By the conduct described in paragraphs 25, 27, 28 and 30 the School Committee has failed to bargain in good faith with the Union by prohibiting employee discussion of Union matters using SPS News without giving the Union prior notice and an opportunity to bargain to resolution or impasse about the decision and the impacts of the decision on employees' terms and conditions of employment in violation of Section 10(a)(5) of the Law.
32. By the conduct described in paragraph 25, 27, 28 and 30 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.

Count IV

33. The allegations contained in paragraphs 1 through 10 are re-alleged.

34. On November 13, 2012, the parties reached agreement on an evaluation training schedule and memorialized it in a memorandum of agreement (MOA). The MOA provided that all teachers would attend a training session on the new teacher evaluation system on December 21, 2012.
35. Between November 13, 2012 and December 4, 2012, the School Committee provided teachers with an option to opt-out of the December 21 training session.
36. Several individual bargaining unit members told Ford that the Union informed them that they were required to attend the December 21 training session. Ford told each one that a teacher could opt-out if he or she completed another form of training, and that the Union "does not have the authority to require anyone to do anything."
37. By the conduct described in paragraph 35 and 36, the School Committee has failed to bargain in good faith by repudiating the MOA referred to in paragraph 34 in violation of Section 10(a)(5) of the Law.
38. By the conduct described in paragraph 35 and 36, the School Committee has derivatively interfered with, restrained, and coerced its employees in the exercise of its rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

Count V

39. The allegations contained in paragraphs 1 through 4 are re-alleged.
40. Jacqueline McDonough (McDonough) is a Massachusetts Teachers Association field consultant working with the Union.
41. On January 10, 2013, Rizzi send an email to Union officers informing them that she would only communicate with them directly and not through McDonough, their chosen representative.
42. By the conduct described in paragraph 41, 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.

PARTIAL DISMISSAL*

Alleged violation of Section 10(a)(2)

The Union also alleges that the School Committee violated Section 10(a)(2) of the Law by Rizzi's refusal to speak to the Union through McDonough, the Union's

chosen representative. Section 10(a)(2) of the Law provides that it is unlawful for a public employer to "dominate, interfere, or assist in the formation, existence, or administration of any employee organization." Employer domination has been found in cases where the employer initiates or provides the impetus for the formation of an organization, dictates its form and structure, or selects its representatives. Blue Hills Regional Technical School District, 9 MLC 1271, 1277 (1982) (citing Clapper's Mfg., Inc. v. United Brotherhood of Carpenters & Joiners of America, 196 NLRB 324, 333 (1970)).

In Blue Hills Regional Technical School District, the Superintendent decided that the school district's cafeteria employees needed representation and created the Cafeteria Workers Association (CWA). 9 MLC at 1272. The Cafeteria Director, under direction from the Superintendent, hand-picked three specific cafeteria employees to serve as representatives for the CWA during negotiations for a new collective bargaining agreement. The Superintendent then chose two of those three hand-picked employees to submit a list of proposed benefits and attend meetings to discuss the new agreement. Id.

Rizzi's statement in her January 10, 2013 email is not analogous to the type of employer domination found in Blue Hills Regional Technical School District. 9 MLC at 1276-68. The School Committee did not hand-pick certain individuals to represent the Union, and continued to bargain with the Union after Rizzi refused to speak directly to McDonough. Accordingly, I do not find probable cause to believe that the School Committee violated the Law in the manner alleged, and dismiss this portion of the charge.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



NICHOLAS CHALUPA, ESQ., INVESTIGATOR

***APPEAL RIGHTS**

The charging party may, within ten (10) days of receipt of this order seek a review of the dismissal by filing a request with the Commonwealth Employment Relations Board, pursuant to DLR 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.