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THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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October 19, 2017

Case No.: SUP-17-6091 & SUP-17-6195
Charging Party: MASS. STATE COLLEGE/ASSOC OF PROFESSIONAL ADMIN
Respondent: BOARD OF HIGHER EDUCATION
Date Filed: 7/18/2017

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 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
Acting Director/Executive Secretary

Encl. Complaint of Prohibited Practice

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

PROCEDURE FOR SCHEDULING OF THE HEARING

Case No.: SUP-17-6091 & SUP-17-6195
Charging Party: MASS. STATE COLLEGE/ASSOC OF PROFESSIONAL ADMIN
Respondent: BOARD OF HIGHER EDUCATION
Date Filed: 7/18/2017

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.
2. 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.
3. 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.
4. 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.
5. 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.**
6. All Hearings will be held in the DLR's offices located at 19 Staniford Street, 1st Floor, Charles F. Hurley Building, Boston, MA 02114.
7. 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.: SUP-17-6091 & SUP-17-6195
Charging Party: MASS. STATE COLLEGE/ASSOC OF PROFESSIONAL ADMIN
Respondent: BOARD OF HIGHER EDUCATION
Date Filed: 7/18/2017

HEARING

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

The parties agree that the following three dates between **JULY 1, 2018 AND SEPTEMBER 30, 2018** are acceptable for scheduling the expedited hearing

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

BOARD OF HIGHER EDUCATION

and

MASSACHUSETTS STATE
COLLEGE ASSOCIATION/MTA/NEA,
and ASSOCIATION OF
PROFESSIONAL
ADMINISTRATORS/MTA/NEA

Case Nos.: SUP-17-6091
SUP-17-6195

Date Issued: October 18, 2017

CONSOLIDATED COMPLAINT OF PROHIBITED PRACTICE

The Massachusetts State College Association/MTA/NEA (MSCA) and the Association of Professional Administrators/MTA/NEA (APA) filed charges of prohibited practice with the Department of Labor Relations (DLR) on July 18, 2017 and September 1, 2017, respectively, alleging that the Board of Higher Education (Board) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law). The DLR docketed the MSCA charge as case number SUP-17-6091, and the APA charge as case number SUP-17-6195. Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.05(3) of the DLR's Rules, I conducted a consolidated in-person investigation on October 2, 2017. Based on the evidence presented during this investigation, I have found probable cause to believe that a violation occurred. Therefore, 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:

Count I

1. The Board is a public employer within the meaning of Section 1 of the Law.
2. The MSCA is an employee organization within the meaning of Section 1 of the Law.
3. The MSCA is the exclusive bargaining representative for a unit that includes professors, instructors, and librarians employed by the Board at state universities.
4. The MSCA and the Board are parties to a collective bargaining agreement for the period July 1, 2014 through June 30, 2017.
5. The parties commenced negotiations for a successor contract on January 31, 2017, and subsequently held negotiation sessions on March 23, 2017; April 18, 2017; May 15, 2017; June 12, 2017; June 21, 2017; June 29, 2017; July 12, 2017; August 8, 2017; August 23, 2017; September 14, 2017; and September 26, 2017.
6. At the March 23, 2017 negotiation session referred to in paragraph 5, MSCA representatives offered an initial salary proposal, and requested that the Board provide an economic proposal including salaries as well.
7. Board representatives responded to the MSCA proposal referred to in paragraph 6 by stating that they did not have financial parameters or authority to offer economic proposals, or words to that effect.
8. At the following 8 negotiation sessions held between April and August of 2017, referred to in paragraph 5, MSCA representatives requested that the Board provide an economic proposal.
9. Over the course of the negotiation sessions referred to in paragraph 8, Board representatives stated that they did not have financial parameters or authority to offer economic proposals, or words to that effect.
10. Board representatives offered an initial economic proposal to the MSCA at the September 14, 2017 negotiation session, referred to in paragraph 5.
11. The Board did not grant its negotiation representatives authority to offer or bargain economic proposals, including salary proposals, between the commencement of successor negotiations in January of 2017 through August of 2017.
12. The Board's failure to authorize bargaining representatives to offer economic proposals during the negotiation sessions referred to in paragraphs 6-9 frustrated the bargaining process.

13. By the conduct described in paragraphs 11 and 12, the Board has failed to bargain in good faith by delaying authorization for its negotiating team to offer and bargain economic proposals in violation of Section 10(a)(5) of the Law.
14. By the conduct described in paragraphs 11 and 12, the Board 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

15. The allegation in paragraph 1 is re-alleged.
16. The APA is an employee organization within the meaning of Section 1 of the Law.
17. The APA is the exclusive bargaining representative for a unit of professional employees employed by the Board at state universities.
18. The APA and the Board are parties to a collective bargaining agreement for the period January 1, 2014 through December 31, 2016.
19. The parties commenced successor negotiations October 24, 2016, and subsequently held negotiation sessions on December 15, 2016; February 8, 2017; March 15, 2017; April 12, 2017; May 8, 2017; June 8, 2017; and September 25, 2017.
20. During the February 8 and March 15, 2017 negotiation sessions referred to in paragraph 19, APA representatives asked whether Board representatives had financial parameters.
21. During the negotiation sessions referred to in paragraph 20, Board representatives said that they did not have financial parameters or authority to bargain economic issues, or words to that effect.
22. During the April 12, 2017 negotiation session referred to in paragraph 19, APA representatives offered an initial salary proposal to the Board.
23. Board representatives responded to the APA salary proposal referred to in paragraph 22 by stating that they did not have financial parameters or authority to offer economic proposals, or words to that effect.
24. During the May 8 and June 8, 2017 negotiation sessions referred to in paragraph 19, APA representatives asked whether Board representatives had received the financial parameters necessary to offer an economic proposal.

25. During the negotiation sessions referred to in paragraph 24, Board representatives said that they did not have financial parameters or authority to bargain economic issues, or words to that effect.
26. The parties cancelled a negotiation session scheduled for June 19, 2017, because Board representatives had no authority to bargain economic issues.
27. During the September 25, 2017 negotiation session referred to in paragraph 19, Board representatives offered an initial economic proposal to the APA.
28. The Board did not grant its negotiation representatives authority to offer or bargain economic proposals, including salary proposals, between the commencement of successor negotiations in October of 2016 and August of 2017.
29. The Board's failure to authorize bargaining representatives to offer an economic proposal during the negotiation sessions referred to in paragraphs 20-26 frustrated the bargaining process.
30. By the conduct described in paragraphs 28 and 29, the Board has failed to bargain in good faith by delaying authorization for its negotiating team authority to offer and bargain economic proposals in violation of Section 10(a)(5) of the Law.
31. By the conduct described in paragraphs 28 and 29, the Board 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.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KATHLEEN GOODBERLET, INVESTIGATOR