

Commonwealth of
Massachusetts
Department of Labor Relations

FY2019 ANNUAL REPORT



July 1, 2018 - June 30, 2019

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Director

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EXECUTIVE SUMMARY

On November 14, 2007, pursuant to Chapter 145 of the Acts of 2007, the Legislature reorganized the Commonwealth's neutral labor relations agencies into the Division of Labor Relations (DLR). On March 11, 2011, under Chapter 3 of the Acts of 2011, "An Act Reorganizing the Executive Office of Labor and Workforce Development," the DLR's name was changed from the Division of Labor Relations to the Department of Labor Relations.

The DLR protects employees' rights to organize and choose bargaining representation and ensure that employers and unions benefit from, and comply with, the Commonwealth's collective bargaining statutes. To carry out this mission, the DLR conducts elections, hears representation cases, investigates and hears unfair labor practice cases, resolves labor disputes through mediation and arbitration, and issues orders in cases that parties are unable to resolve through alternative dispute resolution methods. The DLR comprises (1) hearing officers, arbitrators, mediators and support staff, (2) the Commonwealth Employment Relations Board (CERB), an appellate body responsible for reviewing hearing officer orders and issuing final decisions, and (3) the Joint Labor Management Committee (JLMC), a committee including labor and management representatives, which uses its procedures to encourage municipalities and their police officers and fire fighters to agree directly on terms to resolve their collective bargaining disputes or on a procedure to resolve these disputes.

As reflected in the charts found later in this report, during the past fiscal year, the DLR opened 638 new cases and closed 739 cases. The majority of those cases are unfair labor practice cases. The inventory of cases on the DLR's open docket has remained below historical averages during FY2019. At the end of FY2019, the DLR had approximately 421 open cases at various stages of case processing, including administrative and judicial appeals. The DLR has maintained its ability to issue timely probable cause determinations and hearing officer decisions. In FY2019, the DLR issued probable cause determinations in an average of 4.76 weeks and hearing officer decisions in an average of 19.48 weeks. With consistent funding and staffing levels, the DLR will strive to improve on these averages in the next fiscal year.

The DLR continued to use its mediation services to facilitate settlements in all case classifications. In addition to contract mediation, grievance mediation and traditional unfair labor practice mediation, mediators continue to provide expedited mandatory mediation services in all ULP Level I cases. The DLR's continued use of mediation facilitates the parties' relationships and provides significant cost-savings to them. During this past fiscal year, DLR mediators conducted 216 contract mediation sessions, 35 grievance mediations and 155 unfair labor practice mediation sessions.

During the past fiscal year, the CERB published 7 Hearing Officer Appeal decisions, 4 representation case decisions, and decided 21 requests for review of Investigator pre-hearing dismissals.

During the past fiscal year, there were 46 JLMC cases filed. The DLR mediators, working under the JLMC's oversight, conducted 65 contract mediations. The JLMC conducted 12 Section 3(a) hearings.

The DLR offers a myriad of services to accomplish its mission, including those listed below.

- Processing Prohibited Practice Charges
- Representation Petitions and Elections
- Written Majority Authorization Petitions
- Unit Clarification Petitions
- Interest Mediation
- Mediation of Prohibited Practice Charges
- Grievance Mediation
- Grievance Arbitration
- Investigation, Prevention and Termination of Strikes
- Litigation

In FY2019, the DLR began a review of historical case-tracking data to determine appropriate time targets for case processing events in all the various types of cases the DLR handles. This review is in response to the report of the Office of the State Auditor. The goal will be to develop performance standards for all case types going forward. Also in FY2019, the DLR migrated its computer systems (Outlook email, Word, etc.) to a cloud-based platform using Amazon Web Services. In addition, the DLR continued its review of the next generation of cloud-based software to replace its current case management system, with the ultimate goal of continuing to use technological advances to provide better service to our stakeholders. The key objective of this initiative is to integrate the DLR's web-based forms and document e-file application with its case and document management system into a single unified software system. Improving the functionality of the DLR's web based public documents search system, which gives the public and stakeholders the ability to search the DLR's case management system and retrieve frequently requested public documents and online dashboards that provide real time case management information, is also included in this review.

OVERVIEW OF DLR SERVICES

In order to provide prompt and fair resolution of labor disputes, the DLR provides the following services:

1. Initial Processing and Investigation of Prohibited Practice Charges

The majority of DLR cases are unfair labor practice cases filed pursuant to G.L. c. 150A or G.L. c. 150E. Charges of prohibited practice may include various allegations, including, for example, allegations that an employer discriminated or retaliated against an employee because the employee had engaged in activities protected by law; allegations that an employer or employee organization has failed to bargain in good faith; or allegations that an employee organization has failed to properly represent a member of the bargaining unit.

After an initial review to determine if the case is properly before the DLR and that it meets the DLR filing requirements, the Director will first determine whether the case should be deferred to the parties' own contractual grievance procedure. If the Director determines that the case is properly before the DLR, s/he will classify the case as a Level I or Level II case based on the case's relative impact to the public. Cases where resolution of the dispute has the greatest urgency will be processed first and the time frame for completion of the investigation will be 60 days, depending on the level of urgency. Level II cases with less urgency will be investigated between 60 and 90 days from the filing date.

At the investigation, the investigator is statutorily obligated to explore whether settlement of the charge is possible. If such discussions do not result in settlement, the investigator will proceed with the investigation. The investigator will expect the parties to present evidence from individuals with first-hand knowledge during the probable cause investigation. The intent of the in-person probable cause investigation is to have both parties present all the evidence at the investigation, and therefore, most investigations have the record closed at the end of the in-person investigation.

After the record is closed, the investigator will issue the probable cause determination, which is generally a written dismissal or a Complaint of Prohibited Practice. The investigator may also direct the charge to an alternative dispute resolution mechanism (including deferral to the parties' grievance/arbitration procedure). Cases dismissed following an investigation may be appealed to the Commonwealth Employment Relations Board (CERB). If affirmed by the Board, appeals can be made to the Massachusetts Appeals Court.

If the probable cause determination is a Complaint of Prohibited Practice, the case will be scheduled for a hearing on the merits to determine whether the respondent violated the law as alleged in the Complaint. The DLR will once again evaluate and differentiate the cases as Level I or Level II cases. Cases identified as Level I Complaint cases will be scheduled for hearing as soon as practicable, given caseload and staffing, depending on the level of urgency. In addition, because the DLR mandates mediation in all Level I cases, mediation will take place before the hearing. Cases identified as Level II cases will be scheduled within six months to a year from the Complaint.

2. Hearings and Appeals

After the hearing is scheduled, before a hearing takes place, the DLR requires that the parties file a Joint Pre-Hearing Memorandum and attend a Pre-Hearing Conference in order to clarify the issues for hearing.

The prohibited practice hearing is a formal adjudicatory process. Parties to the proceedings have the right to appear in person, to examine and cross-examine witnesses, to produce evidence and otherwise support or defend against the Complaint. Additionally, the sworn testimony is recorded and preserved electronically. At the close of the hearing, the parties often provide the Hearing Officer with post-hearing legal briefs. The Hearing Officer then issues a written decision, determining whether a violation of the Law has occurred. The DLR's goal is to issue decisions in Level I cases within three months from when the record is closed. In Level II cases, the DLR's goal is to issue a decision within six months from the time the record is closed.

A party who disagrees with the Hearing Officer's decision can appeal to the CERB by filing a Request for Review. In most cases, both sides file briefs with the CERB in support of their respective positions. After review of the record and consideration of the issues, the CERB then issues its decision, following the general impact time frame. Once the CERB issues its decision, the decision is final and can be appealed to the Massachusetts Appeals Court.

The DLR attorneys are authorized by statute to defend the CERB decisions at the Appeals Court.

3. Representation Issues

In all cases that involve representation issues, i.e. representation (or decertification) petitions, written majority authorization petitions, and unit clarification cases, the DLR is statutorily mandated to determine an "appropriate" bargaining unit. To make that determination, the CERB considers community of interest among the employees, the employer's interest in maintaining an efficient operation, and the employees' interest (or lack thereof) in representation.

In all cases, the DLR assists and encourages the parties to reach agreement concerning an appropriate unit. In FY2019, the DLR resolved 47% of its representation cases through voluntary agreement over the scope of the bargaining unit. When no agreement is reached, however, a DLR hearing officer conducts a hearing after which the hearing officer issues a written decision either dismissing the petition or defining the bargaining unit and directing an election. These decisions can be appealed to the CERB but there is no court appeal.

a. Representation Petitions and Elections

The DLR conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever (1) an employer files a petition alleging

that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit, (2) an employee organization files a petition, accompanied by an adequate showing of interest, alleging that a substantial number of employees wish to be represented by the petitioner, or (3) an individual files a petition accompanied by an adequate showing of interest, alleging that a substantial number of employees in the bargaining unit no longer wish to be represented by the current employee organization. Depending on the size of the unit and the relative cost, the DLR conducts elections either on location or by mail ballot.

In FY2019, the DLR docketed 27 representation petitions and conducted 6 elections, involving 236 voters. A graph detailing these representation elections is available in the Case Statistic section of the Report.

b. Written Majority Authorization Petitions

The card check law provides that the DLR “shall certify to the parties, in writing, and the employer shall recognize as the exclusive representative for the purposes of collective bargaining of all the employees in the bargaining unit, a labor organization which has received a written majority authorization....” Therefore, a union that provides the DLR (or a designated neutral) with proof of majority support (50% plus one) of an appropriate bargaining unit will be certified by the DLR as that bargaining unit’s exclusive bargaining representative without an election. The DLR issued regulations which provide respondents with the right to file objections and challenges prior to a certification. Since the card check law requires certification within 30 days, the DLR seeks to work with the parties to expedite all WMA petitions.

In FY2019, 12 written majority authorization petitions were filed. The DLR issued certifications in 6 of those petitions that were supported by 53 written majority authorization cards. A graph detailing the written majority authorization certifications issued in FY2019 is available in the Statistical Reports section of the Report.

c. Unit Clarification Petitions (CAS)

A party to an existing bargaining relationship may file a petition with the DLR seeking to clarify or amend an existing bargaining unit or a DLR certification. Currently, the DLR investigates such petitions through a written investigation procedure and the CERB issues decisions resolving such cases. The information that an employer or employee organization must include in a CAS petition is specified in 456 CMR 14.04(2) and 14.03(2). An individual employee has no right to file a CAS petition. 456 CMR 14.04(2). Any CAS petition found to raise a question of representation must be dismissed and the question of representation addressed by filing a representation petition.

In FY2019, the DLR received 10 CAS petitions.

4. Labor Dispute Mediation

One of the most important services offered by the DLR is labor dispute mediation in both the public and the private sectors. The DLR’s mediation services can be categorized as follows:

a. Interest Mediation

Interest mediation is contract negotiation mediation. The DLR provides mediators to assist parties from the public and private sectors who are involved in such disputes. The DLR jurisdiction extends to all public sector labor contract disputes, though contract disputes involving municipal police and fire fighters are mediated through the procedures and rules adopted by the JLMC. The DLR places a high priority on interest mediation because the prevention and prompt settlement of labor contract disputes benefits the negotiating parties, and stable labor relations benefit the local community and the Commonwealth. As such, the DLR's mediation services are one of the most cost efficient and valuable forms of local aid provided by the Commonwealth. In the event that there are prohibited practice charges pending when a DLR mediator is involved in a contract dispute, the mediator attempts to resolve the charges as part of the overall settlement. The laws the DLR enforces provide a roadmap of what occurs if negotiations breakdown. In all public sector cases, except those involving police and fire, the next step is fact finding and the DLR maintains a panel of private neutrals to provide fact-finding services. In JLMC cases, the next step is arbitration and the JLMC maintains a panel of private neutrals to provide private arbitration services.

b. Mediation of Prohibited Practice Charges

The formal mediation of prohibited practices charges is one of the most important features of the reorganization statute. Prior to the reorganization, there was no regular communication between the BCA, the JLMC and the LRC. Since the reorganization, the DLR affords the parties numerous opportunities, both formal and informal, to avail themselves of the DLR's mediation services. The DLR requires mediation of all Level 1 prohibited practice hearings.

c. Grievance Mediation

The DLR provides mediation services to parties who desire to mediate grievances arising out the collective bargaining agreement. The DLR offers grievance mediation to all parties who file for grievance arbitration. In some cases, DLR mediators assist parties on an ongoing basis to settle numerous grievances. The DLR received 37 requests for grievance mediation during FY2019.

5. Grievance Arbitration

The DLR provides grievance arbitration services that are utilized by all sectors of the Commonwealth's labor relations community. In the past fiscal year, the DLR has received 52 grievance arbitration petitions from a variety of employer and employee representatives involving state, county, and municipal government, including police departments, fire departments, public works departments, and school departments. Many of the disputes are settled before a hearing is held. If the disputes are not settled, then DLR arbitrators hold evidentiary hearings, hear arguments and accept briefs. After the close of the hearing and submission of briefs, if any, the DLR arbitrator issues an award.

6. Investigation, Prevention and Termination of Strikes

Strikes by public employees in Massachusetts are illegal. G.L. c. 150E, § 9A. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the DLR for an investigation. The DLR immediately schedules an investigation of the allegations contained in the petition and the CERB decides whether an unlawful strike has occurred or is about to occur. If the CERB finds unlawful strike activity, the CERB issues a decision directing the striking employees to return to work. The CERB may issue additional orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the CERB's order, but judicial enforcement of the order sometimes necessitates Superior Court litigation. Such litigation can result in court-imposed sanctions against strikers and/or their unions. In FY2019, no petitions were filed requesting investigation of a strike.

7. Litigation

As noted above, parties in prohibited practice cases issued by the DLR may appeal the final decision of the Commonwealth Employment Relations Board to the Massachusetts Appeals Court. In those cases, in addition to serving as the lower court—responsible for assembling and transmitting the record for appellate review—the CERB is the appellee and the DLR's Chief Counsel defends the CERB decision on appeal. Although a rare occurrence, M.G.L. c.150E also authorizes the DLR to seek judicial enforcement of its final orders in the Appeals Court or of its interim orders in strike cases in Superior Court. DLR attorneys represent the DLR and the CERB in all litigation activities.

8. Other Responsibilities

a. Requests for Binding Arbitration (RBA)

A party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration may petition the DLR to order grievance arbitration. These "Requests for Binding Arbitration" (RBA) are processed quickly by the DLR to assist the parties to resolve their grievances.

b. Information on Employee Organizations

Pursuant to M.G.L. c. 150E, §§ 13 and 14, the DLR maintains files on employee organizations. Those files include the name and address of current officers, an address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Every employee organization is also required to file an annual report with the DLR containing: the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to its officers. Although M.G.L. c. 150E authorizes the DLR to enforce these annual filings by commencing an action in the Superior Court, the DLR's current

resources prohibit such action. Instead, by regulation, the DLR employs various internal case-processing incentives to ensure compliance with the filing requirements.

c. Constituent Outreach

In an effort to foster better labor relations, the DLR is always willing to make presentations before assembled labor and/or management representatives in order to speak about the latest developments at the DLR. For instance, each spring, the Director, the CERB and the DLR’s Chief Counsel participate in the planning and presentation of the Annual Workshop for Public Sector Labor Relations Specialists sponsored by the Labor & Employment Law Section of the Boston Bar Association. Additionally, throughout the year, the DLR makes formal and informal presentations before various bar associations, union meetings, and employer association groups.

**Selected Decisions and Rulings of the Commonwealth Employment Relations Board
(CERB)
FY2018**

July 1, 2018 – June 30, 2019

Massachusetts Department of Transportation and United Steelworkers, 45 MLC 5, SUP-14-3576, SUP-14-3640 (August 21, 2018) (Decision on Appeal of Hearing Officer Compliance Decision)

Where MassDOT's appeal of a Hearing Officer's compliance decision was based upon new information that the Hearing Officer did not have before her when rendering her decision, the CERB upheld the Hearing Officer's decision holding that MassDOT failed to comply with a CERB order by failing to post two notices.

Judicial Appeal: None.

University of Massachusetts (Dartmouth) and AFSCME Council 93, 45 MLC 19, CAS-16-5404 (August 30, 2018) (CERB Decision in First Instance)

Where a newly-created Student Loan Manager (SLM) position performed educational and counseling duties in addition to those that had been performed by an AFSCME administrative assistant title that the University eliminated after the incumbent retired, the CERB held that the SLM shared a greater community of interest in terms of similarity of work, level of discretion exercised, work contacts, and required training and experience with the Educational Services Unit (ESU) represented by the AFT than with AFSCME's bargaining unit. The CERB therefore declined to disturb the University's placement of the SLM in the ESU and dismissed AFSCME's accretion petition.

City of Boston and Boston Police Patrolmen's Association and Boston Police Superior Officers Federation, 45 MLC 26, MUP-16-5315, MUP-16-5350 (August 30, 2018)(Decision on Appeal of Hearing Officer Decision)

The CERB affirmed a Hearing Officer decision holding that the City of Boston violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by implementing a mediation program for certain citizen complaints against officers without first giving the charging party unions (Unions) notice and an opportunity to bargain to resolution or impasse about the impacts of this program. As a remedy, the Hearing Officer ordered the City to rescind the mediation program for new citizen complaints filed against the Union's bargaining unit members until the City complied with the order to offer to bargain with the Unions. In affirming the Hearing Officer's decision, the CERB rejected the City's argument that the Police Commissioners' statute precluded the City from engaging in impact bargaining. The CERB also found no merit to the City's claim that the mediation program had no actual impacts on police officers. Rather, it agreed with the Hearing Officer that the mediation program impacted the Police Department's disciplinary rules and other mandatory subjects of bargaining. The CERB also rejected the City's contention that it had bargained to impasse with the Unions because the evidence did not reflect that the parties had exhausted all potential for compromise. Finally, the CERB affirmed the rescission remedy because at least two of the impact bargaining issues, including who would serve as mediators, and officer eligibility for the program, could not be separated from the decision to implement the mediation program and did not inevitably result from the managerial decision.

Judicial Appeal: None

City of Boston and Boston Police Superior Officers Federation, 45 MLC 79, MUP-06-4699 (October 18, 2018) (Decision on Cross-appeal of a Hearing Officer Compliance Decision)

City of Boston appeal – After the Appeals Court ruled that the City could not raise an issue on appeal that it had failed to raise to the CERB in the case below, the City raised the same issue during a subsequent compliance hearing. The Hearing Officer declined to entertain the issue and the City appealed. The CERB affirmed, holding that the Hearing Officer properly held that a compliance hearing does not provide a second chance to raise matters that were not appealed, or not properly appealed, in the underlying decision.

Boston Police Superior Officers Federation appeal – Where the evidence showed that the City would not have had to hire additional superior officers to fill the City Hall security position at issue in this proceeding, the CERB upheld the Hearing Officer’s determination that the backpay that she awarded to bargaining unit members did not include base pay, but only the stipend that bargaining unit members would have received had the City not eliminated the position in repudiation of a settlement agreement.

Judicial Appeal: None

Boston Teachers Union and Ann Marie O’Keeffe, 45 MLC 92, MUPL-16-5167 (December 28, 2018)
(Decision on Appeal of Hearing Officer Decision)

Where the Charging Party was unable to demonstrate that she would have been able to return to work as of the end date of the medical leave of absence that she was seeking at the time of her termination, the CERB affirmed a Hearing Officer’s decision holding that the Union’s liability for damages that the Charging Party suffered as a result of its failure to file a timely demand for arbitration of her termination ended as of the date the Charging Party would have returned from leave. Contrary to the Charging Party’s assertions on appeal, the record did not reflect that the Charging Party had returned to work at a different job as of the date the leave would have ended. Moreover, where the Charging Party was unable to confirm that she would have returned to work as of the last day of the requested medical leave, the CERB distinguished the general rule that any uncertainty in damages must be resolved in favor of the wrongdoer. Here, the Charging Party herself was the cause of the uncertainty.

Judicial Appeal: *BTU* – Withdrawn. *O’Keeffe* – Filed. CERB’s decision to dismiss appeal as untimely summarized below.

Boston Teachers Union and Ann Marie O’Keeffe, 45 MLC 92, MUPL-16-5167 (January 24, 2019) - Ruling on BTU Motion to Clarify/Modify Order and for Compliance Hearing

Where the Union filed a motion to clarify or modify an order that the CERB had issued the month before, the CERB denied the motion on grounds that it was based upon information that the CERB did not have when it issued that order. Also, where the Union filed a motion for a compliance hearing to address the CERB’s interest calculation, the CERB dismissed the motion as premature for two reasons – the Union’s failure to establish that there was a genuine dispute as to compliance, and the fact that the Union had filed a Notice of Appeal regarding the same issue. To avoid inconsistent decisions and conserve scarce agency resources, it is the DLR’s practice to hold compliance hearings in abeyance pending resolution of a judicial appeal.

Springfield School Committee and Springfield Association of School Custodial Employees, 45 MLC 117, MUP-17-6312 (February 20, 2019) – Ruling on Appeal of Denial of Motion to Reinstate Deferred Charge of Prohibited Practice

Where an arbitration award, which issued after the DLR investigated the charge and deferred it to arbitration, fully resolved the first count of the charge and met all other criteria for post-arbitration award deferral, the CERB affirmed the Investigator’s denial of the Union’s motion to reinstate this aspect of the charge. However, where the parties stipulated at investigation that they had not submitted the second count of the charge to arbitration; where the investigation record showed that the Union could not have presented this issue at arbitration because the charge was deferred *after* the arbitration hearing had already taken place; and where,

throughout the investigation, the Employer argued that the Union had failed to file a “timely” grievance over this aspect of the charge, and did not otherwise provide any assurance that it would waive procedural defenses if the Union filed a *new* grievance over this issue, the CERB reversed the Investigator’s decision not to reinstate this aspect of the charge, and remanded it to the Investigator for further processing.

Judicial Appeal: None

Boston Teachers Union and Ann Marie O’Keeffe, __ MLC __, MUPL-16-5167 (March 28, 2019) – Ruling on a Motion to Strike Untimely Appeal

Where the Charging Party first filed a notice of judicial appeal on February 27, 2019, more than 30 days after the DLR emailed a copy of the CERB’s December 28, 2018 decision to her, the CERB held that the Charging Party was barred from obtaining judicial review of the CERB decision pursuant to M.G.L. c 150E, §11(i), and granted the Union’s motion to strike the appeal as untimely. Because the 30-day deadline set forth in Section 11(i) is statutory and absolute, i.e., it contains no provisions for extension, tolling, or exceptions for good cause, nothing in the CERB’s or Appeals Court rules required a different outcome. It is well-established that a statutory appeal period cannot be overridden by a contrary agency or court rule. Moreover, because the first paragraph of M.G.L. c. 30A, §14 states, “where a statutory form of judicial review or appeal is provided, such statutory form shall govern in all respects except as to standards of review,” and M.G.L. c. 150E, §11(i) provides that the proceedings in the appeals court are governed by M.G.L. c. 30A, §14 only “insofar as applicable,” O’Keeffe was required to file her notice of appeal within 30 days of receiving the CERB’s decision, and the tolling and good cause exceptions set forth in M.G.L.. c. 30A, §14(l) did not apply.

Judicial Appeal: Pending.

Selected Litigation
July 1, 2018 – June 30, 2019

This list reflects closed cases only. There are cases currently in the SJC and Appeals Court that are pending oral argument or where oral argument is complete and a decision is forthcoming.

JUDICIAL APPEAL OF CERB DECISION ON APPEAL OF PROBABLE CAUSE DISMISSALS:

Ben Branch, William Curtis Connor, Deborah Curran and Andre Melcuk, Appellants v. Commonwealth Employment Relations Board, Appellee and Massachusetts Society of Professors, MTA/NEA; Hanover Teachers Association, MTA/NEA; Professional Staff Union, MTA/NEA, Intervenor-Appellees, 481 Mass. 810 (2019).

DLR Case FSU/MTA/NEA and Branch, Connor, Curran, and Melcuk, ASF-14-3744, 14-3919, 14-3920 (11/18/2014) (unpublished)

Four public employees (Employees), who are represented by local affiliates of the Massachusetts Teachers Association/NEA (Unions) but have not joined the Unions, brought charges at the DLR challenging constitutionality of compulsory agency fees and exclusive representation under G.L. c. 150E, § 12. They also alleged various prohibited practices.

After conducting a series of in-person investigations into all charges, a DLR investigator issued a single dismissal finding, in part, that exclusive representation, standing alone, does not violate the law but rather is expressly authorized by G.L. c. 150E. She also summarily dismissed the challenges to agency fees since such fees had not been deemed unconstitutional or inconsistent with G.L. c. 150E at the time of her decision. Upon review pursuant to an appeal brought under G.L. c. 150E, § 11, the CERB affirmed the investigator.

The employees then appealed to the appeals court, but while the case was pending in the Appeals Court the U.S. Supreme Court held that states and public sector unions may not, consistent with the First and Fourteenth Amendments, collect agency fees from non-union members of public sector bargaining units and that the employee must clearly and affirmatively consent to paying such fees. *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). The SJC transferred the Employees' appeal to its docket sua sponte.

The SJC found that the Employees' challenges to agency fees and the previous manner of collecting them were now moot since the Unions ceased collecting agency fees from nonunion employees and could not resume collecting them without disobeying *Janus*. The SJC further decided that the Employees' remaining challenge to the Unions' internal rules, limiting nonmembers' participation in internal Union decisions such as bargaining strategy, coupled with the Unions' status as the "exclusive representative" of the Employees' bargaining units where the Unions' internal rules do not constitute state action where 1. the Supreme Court has previously held that exclusive representation does not

violate the speech or associational rights of nonunion employees, which was not disturbed by *Janus*; and 2. where the Employees enjoy many opportunities to be heard regarding the terms and conditions of their employment without joining or supporting the Unions.

The Employees have filed a Petition for Certiorari in the U.S. Supreme Court which is currently pending. No.19-51.

JUDICIAL APPEAL OF CERB DECISION ON APPEAL OF HEARING OFFICER DECISIONS:

James W. Kelley, Appellant v. Commonwealth Employment Relations Board, Appellee; Appeals Court Number 2018-P-0513

DLR Case James W. Kelley and Boston School Committee, 42 MLC 236, MUP-11-1191 (03/18/2016)

Dismissed by Appeals Court for lack of prosecution. (08/01/2018)

Mass Correction Officers Federated Union (MCOFU) v. Commonwealth Employment Relations Board, Appeals Court Number 2017-P-1546

DLR Case Mass Correction Officers Federated Union and Glennis Olgadez, 42 MLC 72 SUPL-12-2283 (08/24/2015)

Dismissed with prejudice by Appeals Court upon MCOFU's motion to withdraw and dismiss pursuant to Mass.R.A.P. 29(b) (after all briefs filed).

Bd. Of Higher Ed and Jon Bryan, 43 MLC 148 SUP-14-3771 (11/30/2016)

3/22/2019 withdrawn by Appellant with prejudice

DEPARTMENT OF LABOR RELATIONS

FY2019 CASES RECEIVED

JULY 1, 2018 – JUNE 30, 2019

MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	Avg./month	%/month
Unfair Labor Practice	26	33	33	33	24	26	28	34	35	39	42	29	382	31.83	60%
Representation Cases	1	2	0	5	1	2	6	1	2	5	2	0	27	2.25	4%
Unit Clarification (CAS)	0	0	0	0	1	1	4	0	3	0	1	0	10	0.83	2%
Other (SI, AO, RBA)	0	0	0	0	1	0	1	0	0	0	0	0	2	0.17	0%
Grievance Arbitration	13	2	5	4	2	6	3	2	5	6	1	3	52	4.33	8%
Grievance Mediation	1	1	1	1	0	3	19	6	1	3	0	1	37	3.08	6%
Contract Mediation	20	4	5	7	8	4	1	5	7	3	9	9	82	6.83	13%
JLMC	6	3	5	6	1	1	3	5	3	6	2	5	46	3.83	7%
TOTAL	67	45	49	56	38	43	65	53	56	62	57	47	638	53.17	100.00%

DEPARTMENT OF LABOR RELATIONS
FY2019 CASES CLOSED
 JULY 1, 2018 – JUNE 30, 2019
 MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	Avg./month	%/month
Unfair Labor Practice	28	43	38	67	40	34	49	35	34	36	32	31	467	38.92	63.19%
Representation Cases	2	0	2	2	3	1	1	1	4	4	7	3	30	2.50	4.06%
Unit Clarification (CAS)	0	2	0	1	3	0	3	1	1	0	1	1	13	1.08	1.76%
Other (SI, AO, RBA)	0	0	0	0	0	0	1	0	1	0	1	0	3	0.00	0.41%
Grievance Arbitration	3	5	1	2	5	6	8	6	6	1	3	3	49	4.08	6.63%
Grievance Mediation	0	0	0	1	1	1	2	5	14	6	0	4	34	2.83	4.60%
Contract Mediation	11	6	8	11	13	14	4	2	2	0	11	6	88	7.33	11.91%
JLMC	3	6	2	2	4	5	1	2	4	12	6	8	55	4.58	7.44%
TOTAL	47	62	51	86	69	61	69	52	66	59	61	56	739	61.33	100.00%

DEPARTMENT OF LABOR RELATIONS
FY2019 CASE PROCESSING DATA
 JULY 1, 2018 – JUNE 30, 2019
 MONTHLY WITH TOTALS AND AVERAGES

PROBABLE CAUSE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Investigations Held	9	6	17	8	9	11	10	6	10	10	22	12	130	10.83
Dismissals Issued	4	2	0	4	1	4	6	0	2	4	2	4	33	2.75
Complaints Issued	4	6	9	8	5	8	9	7	6	8	4	8	82	6.83
Total Probable Cause	8	8	9	12	5	12	15	7	8	12	6	12	114	9.50
Avg. # Wks Invest. To PC (monthly)	3.60	5.01	4.50	3.97	2.84	7.28	7.39	2.20	4.29	4.30	3.52	4.26		
Total # Wks Invest. To PC	28.80	40.10	40.60	47.60	14.20	87.30	110.90	15.20	34.30	51.60	21.10	51.10	542.80	4.76

HEARINGS	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Pre-Hearing Conferences Held	6	6	1	7	6	6	4	10	3	4	2	5	60	5.00
Hearings Held	3	3	5	6	6	3	4	6	5	1	1	1	44	3.67
Misc. Rulings/R-Case Dec./CAS Dec.	0	1	0	1	1	0	0	0	3	3	1	0	10	0.83
HO Decisions Issued	0	3	2	1	0	2	1	0	2	1	0	0	12	1.00
Avg. # Wks Ripe to HO Dec. (monthly)	0.00	3.70	31.80	9.14	0.00	9.00	29.10	0.00	42.70	12.70	0.00	0.00		
Total # Wks Ripe to HO Dec.	0.00	11.00	63.60	9.14	0.00	18.00	29.10	0.00	85.40	12.70	0.00	0.00	228.94	19.08

DEPARTMENT OF LABOR RELATIONS
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 MONTHLY WITH TOTALS AND AVERAGES

CERB	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Admin. Appeals Filed - PC	2	3	1	0	1	0	2	1	2	0	2	2	16	1.33
Admin. Appeals Filed - HO Dec.	0	0	0	0	0	0	0	1	4	1	0	0	6	0.50
PC Decision Issued & Remands	3	1	1	2	4	2	2	3	1	0	2	0	21	1.75
HO Appeal Decision Issued	0	4	0	1	0	1	0	0	0	0	0	1	7	0.58
CERB Dec. 1st Inst. RCase or CAS Dec.	0	1	0	0	0	0	0	0	0	0	0	2	3	0.25
Misc. Rulings	2	0	0	0	0	0	3	0	2	1	1	0	9	0.75
Avg. # Wks to Issue PC Decision (monthly)	24.31	11.14	16.86	22.86	16.94	22.96	24.00	11.14	8.29	0.00	10.14	0.00		
Total # Wks Ripe to PC Decision	72.94	11.14	16.86	45.71	67.77	45.91	48.00	33.43	8.29	0.00	20.27	0.00	370.32	17.63
Avg. # Wks Ripe to HO App. Dec. (monthly)	0.00	29.29	0.00	52.86	0.00	34.57	0.00	0.00	0.00	0.00	0.00	5.57		
Total # Wks Ripe to HO App. Dec.	0.00	117.14	0.00	52.86	0.00	34.57	0.00	0.00	0.00	0.00	0.00	5.57	210.14	30.02

MEDIATION & ARBITRATION	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Arbitrations Held	1	0	1	0	1	0	0	1	0	0	1	1	6	0.50
Arbitration Decision Issued	1	1	0	1	0	2	0	0	0	1	1	1	8	0.67
Grievance Mediations Held	0	0	0	0	0	1	0	0	15	4	0	4	24	2.00
Contract Mediations Held	7	15	10	7	9	9	16	12	7	8	14	11	125	10.42
ULP Mediations Held	4	11	11	11	13	11	15	12	16	14	13	15	146	12.17
Avg. # Wks Initial Contract Invest./Mediation to Close	22.20	26.00	10.69	27.60	31.59	17.44	18.14	6.43	16.07	0.00	19.10	19.90		
Total # Wks Initial Contract Invest./ Mediation to Close	252.88	173.56	121.86	270.29	410.72	244.16	72.57	12.86	32.14	0.00	210.14	119.10	1920.28	21.82
Avg. # Wks Ripe to Arbitration Decision (monthly)	4.00	12.10	0.00	28.40	0.00	28.71	0.00	0.00	0.00	41.60	32.70	10.00		
Total # Wks Ripe to Arbitration Decision	4	12.1	0	28.4	0	57.42	0	0	0	41.6	32.7	10	186.22	23.28

DEPARTMENT OF LABOR RELATIONS
FY2019 CASE PROCESSING DATA
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 MONTHLY WITH TOTALS AND AVERAGES

JLMC	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Contract Mediations Held	5	7	7	3	5	5	2	3	0	1	4	4	46	3.83
3A Hearings Held	0	0	0	0	0	0	2	0	1	1	1	1	6	0.50
Tentative Agreements	3	3	8	3	0	2	4	7	0	5	7	0	42	
Tentative Agreements Ratified (TAR)	2	4	1	3	0	5	0	1	3	2	6	0	27	2.25
Arbitration Awards Issued	0	1	1	1	2	2	0	2	0	1	2	0	12	1.00
Total # Wks Initial Investigation/Mediation to TAR	76.72	82	16	81	0	85	0	14.86	78.43	47.29	119.56	0	600.86	22.25
Avg. # Wks Initial Investigation/Mediation to TAR	38.36	20.50	16.00	27.00	0.00	17.00	0.00	14.86	26.14	23.65	19.93	0.00		
Total # Wks Initial Investigation/Mediation to Arb. Award	0.00	67.86	94.71	57.71	205.29	236.15	0.00	203.43	0.00	105.14	136.00	0.00	1106.29	92.19
Avg. # Wks Initial Investigation/Mediation to Arb. Award	0.00	67.86	94.71	57.71	102.65	118.08	0.00	101.72	0.00	105.14	68.00	0.00		

JUDICIAL APPEALS	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Probable Cause Appeals Filed	1	0	0	0	0	1	0	2	2	0	0	1	7	0.58
CERB-HO Decision Appeals Filed	0	0	0	0	0	0	1	0	0	0	0	0	1	0.08
Records Assembled	0	0	1	0	0	0	0	0	2	0	1	0	4	0.33
Total # Wks Ripe to Rec. Assembled	0	0	23.1	0	0	0	0	0	2.86	0	9.14	0	35.1	8.78
Avg. # Wks Ripe to Rec. Assembled	0.00	0.00	23.10	0.00	0.00	0.00	0.00	0.00	1.43	0.00	9.14	0.00		

FY2019 REPRESENTATION ELECTIONS*
(EXCLUSIVE OF WRITTEN MAJORITY AUTHORIZATION PETITIONS)

Unit Size	MUNICIPAL		STATE		PRIVATE		TOTAL	
	No. of Elections	No. of Voters						
<10	2	11					2	11
10-24	1	14					1	14
25-49	2	63	1	34	1	28	4	125
50-74								
75-99	1	86					1	86
100-149								
150-199								
200-499								
> 500								
Total	6	174	1	34	1	28	8	236

* NOTE: In FY2019, parties filed 15 representation petitions. The above chart contains information only on elections conducted by the DLR in FY2019.

**FY2019
WRITTEN MAJORITY AUTHORIZATION
CERTIFICATIONS***

Size of Unit	Municipal		State		Private		Total	
	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS
Under 10	5	34					5	34
10-24					1	19	1	19
25-49								
50-74								
75-99								
100-149								
150-199								
200-499								
Above 500								
TOTAL	5	34			1	19	6	53

* Note: The number of certifications represents the number of petitions filed that resulted in the Department issuance of a certification. In FY2019 a total of 12 written majority authorization petitions were filed. The DLR did not issue a certification in 6 cases either because the DLR dismissed the petition or the petitioner withdrew the petition.

DEPARTMENT OF LABOR RELATIONS STAFF LISTING
AS OF JUNE 30, 2019

EMPLOYEES, FUNCTIONAL TITLES AND PAYROLL TITLES

Last Name	First Name	Functional Title	Payroll Title	FTE
Ackerstein	Joan	Board Member, CERB	Per Diem	
Atwater	Susan	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Bonner	Kerry	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Cummings	Donald	JLMC Staff Rep./Labor	Program Coordinator III	0.50
Davis	Kendrah	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Driscoll	George	JLMC Staff Rep./Management	Program Coordinator III	0.50
Dickson	Robert	Mediator	Program Coordinator III	0.50
Eustace	Kimberly	Program Coordinator	Program Coordinator III	1.00
Evans	Will	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Feldman-Boshes	Erica	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Gabriel	Jane	Chief Counsel	Program Manager VIII	1.00
Goodberlet	Kathleen	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Gookin	Carol	Mediator	Program Coordinator III	1.00
Griffin	Joseph	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Hanson	John	Chair, JLMC	Per Diem	
Hatfield	Timothy	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Hubley	Joseph	JLMC Staff Rep./Labor	Program Coordinator III	0.50
Lev	Katherine	Board Member, CERB	Per Diem	
Marra	John	Mediator	Program Coordinator III	0.50
Morgado	Daniel	JLMC Staff Rep./Management	Program Coordinator III	0.50
Murray	Kevin	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Roberts	Philip	Director	Administrator IX	1.00
Siciliano	Shirley	Election Specialist	Collective Barg. Elect. Spec. II	0.40
Singh	Samantha	Election Specialist	Collective Barg. Elect. Spec. II	1.00
Skibski	Sara	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Sorokoff	Gail	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Srednicki	Edward	Mediator	Program Coordinator III	0.50
Sullivan	Margaret	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Sunkenberg	James	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Ventrella	Meghan	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Wittner	Marjorie	Chair, CERB	Administrator IX	1.00

There shall be an advisory council to advise the DLR concerning policies, practices, and specific actions that the DLR might implement to better discharge its labor relations duties. Chapter 145 of the Acts of 2007.

DLR Advisory Council Membership

Labor

Kathrine Shea, Esq.	Pyle, Rome, Ehrenberg, PC
Bryan McMahon	President Emeritus, NEPBA
Sheryl Pace-Webb	National Association of Government Employees (NAGE)
John Mann	National Association of Government Employees (NAGE)
<i>Vacant</i>	

Management

Nicholas Anastasopoulos, Esq.	Mirick, O'Connell, DeMallie & Lougee, LLP
Denise Casey	Deputy Town Manager, Town of Wilmington
Jodi Ross	Town Manager, Town of Westford
Michele Heffernan	General Counsel, Human Resources Division
<i>Vacant</i>	

At-Large

Jay Siegel	Arbitrator
David Lucchino	Co-Founder/ CEO Frequency Therapeutics
<i>Vacant</i>	

DEPARTMENT OF LABOR RELATIONS
FY2019 EXPENDITURES BY APPROPRIATION
AND OBJECT CLASS

Object Class	Description	7003-0900 Amount Expended	7003-0902 Amount Expended	Total Amount Expended
AA	Employee Compensation	\$2,099,964.21	\$224,597.89	\$2,324,562.10
BB	Employee Travel Reimbursement	\$17,535.92	\$5,899.20	\$23,435.12
CC	Contracted Services	\$0	\$0	\$0
DD	Medicare, Unemployment, Univ. Health, Workers Comp.	\$35,900.86	\$3,858.74	\$39,759.6
EE	Administrative Expenses	\$24,812.59	\$0	\$24,812.59
FF	Facility Operational Expenses	\$221,964.88	\$0	\$221,964.88
GG	Space Rental	\$8,775.00	\$0	\$8,775.00
HH	Consultant Service Contracts	\$0	\$0	\$0
JJ	Programmatic Operational Services	\$18,800.00	\$0	\$18,800.00
KK	Equipment Purchases	\$0	\$0	\$0
LL	Equip. Lease, Maintenance, Repair Expenses	\$3,757.91	\$0	\$3,757.91
NN	Infrastructure	\$1,623.62	\$0	\$1,623.62
UU	Information Technology	\$125,505.93	\$0	\$125,505.93
Total Expended		\$2,558,640.92	\$234,355.83	\$2,792,996.75