

# Lowlights and Highlights of Agency Employment Decisions Reported in 2022

A Presentation to the Massachusetts Municipal Association Annual Meeting

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Presented by Melissa R. Murray

Norris, Murray & Peloquin

January 20, 2023



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## AGENDA

Joint Labor Management Committee (JLMC)

Department of Labor Relations (DLR)

Civil Service Commission (CSC)

Peace Officer Standards and Training (POST) Commission

Massachusetts Commission Against Discrimination (MCAD)

# Joint Labor Management Committee (JLMC)

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STATISTICS, AWARDS, TIPS AND TRENDS

# STATISTICS

YEAR	Number of Cases Filed	Open on 12/31/2021	Open on 12/31/2022	Closed
2016	63	1	0	1
2017	67	0	0	0
2018	44	0	0	0
2019	55	3	0	3
2020	20	2	0	2
2021	34	26	4	22
2022	52		39	13
			43	41

The 52 cases filed in 2022 were split 26 police cases and 26 fire cases. The JLMC authorized 24 cases for 3(a) Hearings and subsequently 8 cases for arbitration. Of the 8 authorized for arbitration, 3 have settled to date. Of the 5 remaining cases, 2 are in the hearing process (1 started this past Wednesday) and the rest are scheduled to follow in the coming weeks.

# AWARDS SUMMARY

	ARBITRATOR	AWARD YEARS	WAGES
<b>2022</b>			
New Bedford Patrol	Michael Ryan	FY19-FY21	2%, 2%, 2% (plus increases in education; civilianize positions)
<b>2021</b>			
Arlington Police (P)	Bruce Fraser	FY19-FY21	2%, 2%, 1% (plus new 1% steps at 7 and 10 years)
New Bedford Fire	Ira Lobel	FY20-FY22	2%, 2%, 2% (plus new 3% step at 28 years)
Worcester Police (S)	Lawrence Holden	FY18-FY20	2% (12/1/17), 2%, 2% (plus increase rank differential 3/1/2020)
Framingham Fire and Deputy Fire Chiefs	Bonnie McSpiritt	FY21-FY23	2%, 2%, 2% (plus increases in education, haz duty)

*Prior arbitration decisions issued: 2016 (8); 2017 (6); 2018 (13); 2019 (12); 2020 (4),*

# TIPS AND TRENDS

## How to Prepare For Or Avoid the JLMC

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- Propose serious, well-thought-out proposals.
- Do your homework; know the landscape of settlements in comparable communities. Don't wait to put together comparability data (Internal and External).
- **COST OUT PROPOSALS!** Understand how close or far apart the parties' proposals are. Analyze hidden costs and be clear on the long and short-term impacts of the benefits being negotiated.
- Ask Union for their data or an explanation of what they are basing their proposals on
- Double check the Union's "facts" and figures
- Understand the risks (your strengths and weaknesses) of going to arbitration
- Use the Mediation Process; communicate with the Management Reps and Panel Member
- Select your arbitrator wisely
- **Continue exploring settlement options while preparing for arbitration – clearly there is still not a lot of interest or enthusiasm for going to arbitration**

# TIPS AND TRENDS

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## Trends: What To Avoid, What To Watch

- COLAs at 2% or 2.5% are still the norm, but more 3% are popping up (Needham Police; Waltham Fire)
- POST Certification Stipend: several police unions are asking for an annual “Certification Differential” or “POST Stipend” for being certified AS REQUIRED BY LAW by the POST Commission. (Needham 4% stipend; Lexington 5% stipend)
- Increasing EMT and Paramedic pay to help retain/attract personnel
- Juneteenth being added to many contracts
- Per piece staffing still a focus for fire
- Proposals/Demands for one-time ARPA payments; these have varied wildly but appear to have slowed, fallen into some patterns (Belmont Fire/\$2,000; Waltham/\$3,000; Swampscott/\$5,000)
- Staffing shortages, burnout, difficulty hiring length of hiring process may lead to increase in use of laterals
- Many communities still interested in exiting civil service; seeking relief as hiring challenges increase
- Unions are making outrageous initial proposals followed by minor or inconsequential concessions
- Fall out from Chelmsford Decision has been minimal – highlights the importance of every panel establishing from the onset how deliberations and any subsequent communications are handled

# Chelmsford Decision

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Town of Chelmsford v. NEPBA, Local 20, 49 MLC 38 (Sept. 6, 2022)

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In September, the DLR found that Chelmsford failed to bargain in good faith based on *ex parte* communications between labor counsel and the Management Representative to a three-member arbitration panel. The DLR found that Chelmsford's Town Manager and Labor Counsel unlawfully communicated with an arbitration panel member in an attempt to gain confidential information in order to influence an arbitration award, and also misled the Town's Finance Committee and Town Meeting, among many other violations of law. With respect to the *ex parte* communication, the decision essentially created a rule against such communication where none had existed before.

It also provided what one of my colleagues deemed the most naïve sentence written in almost 50 years of c.150E: “For this reason, a Committee Member's role is not to advocate for a party's interest, but rather to advocate for the dispute resolution process.”

- Panel members other than the neutral arbitrator are advocates – they are not neutral
- In Chelmsford, no explicit instructions were provided by the neutral arbitrator in terms of communications by the two other panel representatives; SET GROUND RULES FOR COMMUNICATION UP FRONT
- Impact is reportedly minimal but at the same time, there was only one arbitration decision in 2022.



# JLMC STAFF

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## Joint Labor Management Committee

John Hanson, Chairman

### Management Staff Members

George Driscoll  
Daniel Morgado

### Management Committee Members

Jill Goldsmith, Chatham Town Manager  
Dean Mazarella, Leominster Mayor  
Richard Tranfaglia, Natick Dir. of Human Resources (Ret.)  
Kathleen Johnson, Worcester Assistant City Manager (Ret.)  
Lisa Yanakakis, Weston Asst Town Manager/HR Director

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# Department of Labor Relations (DLR)

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STATISTICS, COVID-19, AND DECISIONS

# STATISTICS

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## DLR Statistics and Cases Calendar Year 2022

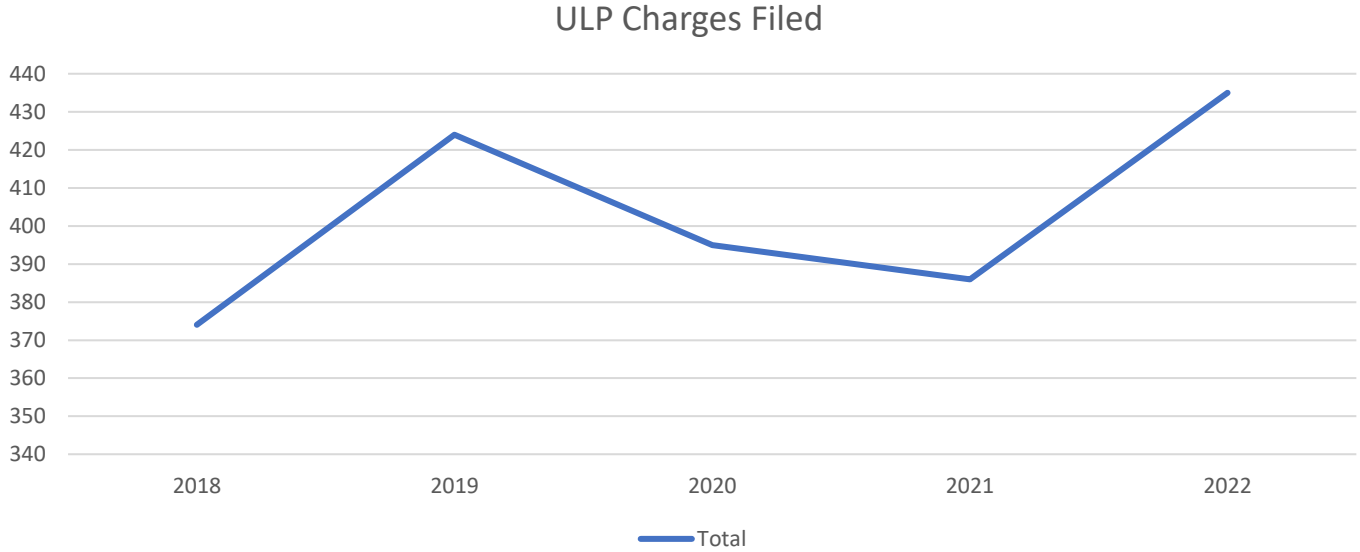
### Case Processing and Statistics

Case Type	# Filed 2021	#Filed 2022	# Closed 2021	# Closed 2022
Unfair Labor Practice Charges	386	<b>433</b>	368	<b>428</b>
Representation Petitions	32	<b>53</b>	28	<b>54</b>
Written Majority Authorization Petitions	15	<b>31</b>	15	<b>27</b>
Unit Clarification Petitions	18	<b>16</b>	17	<b>14</b>
Contract Mediation/Fact-Finding Petitions	72	<b>107</b>	48	<b>81</b>
JLMC Contract Mediation/Arbitration Petitions (Police/Fire)	34	<b>54</b>	25	<b>26</b>
Grievance Mediation Petitions	3	<b>6</b>	1	<b>6</b>
Arbitration	41	<b>28</b>	38	<b>34</b>

# STATISTICS

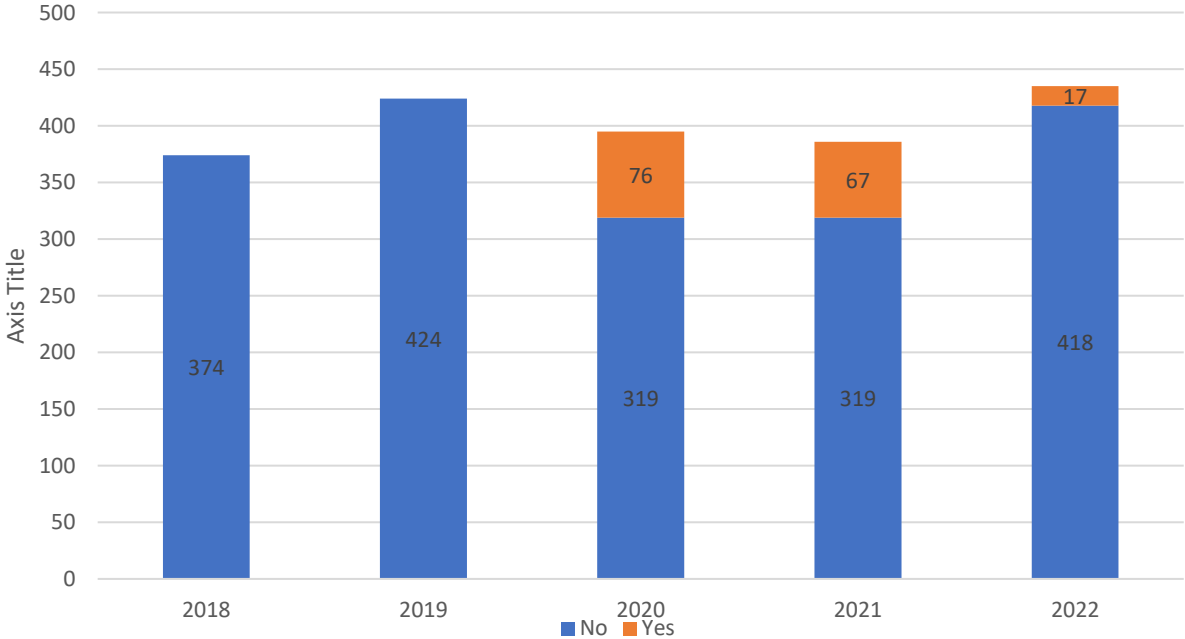
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ULP filings were higher immediately before the pandemic and after dropping during the first two years of the pandemic, they have since increased above pre-pandemic levels.



# STATISTICS

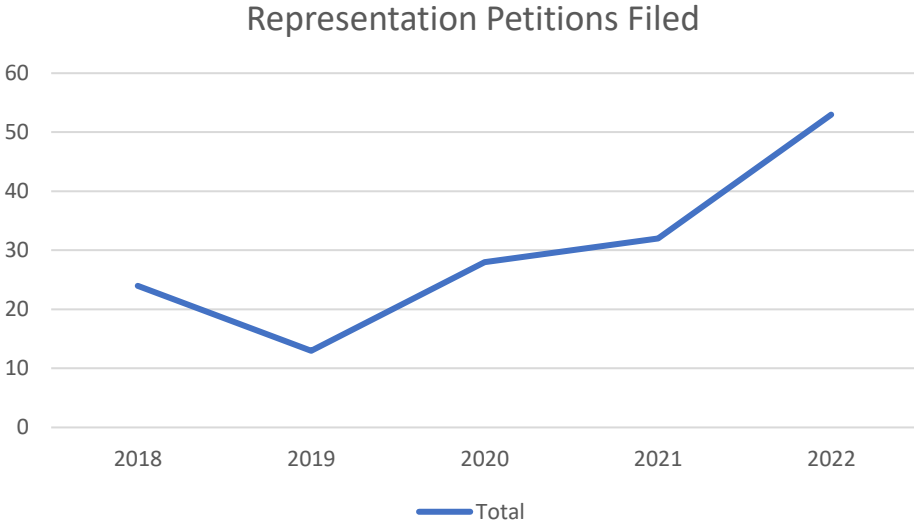
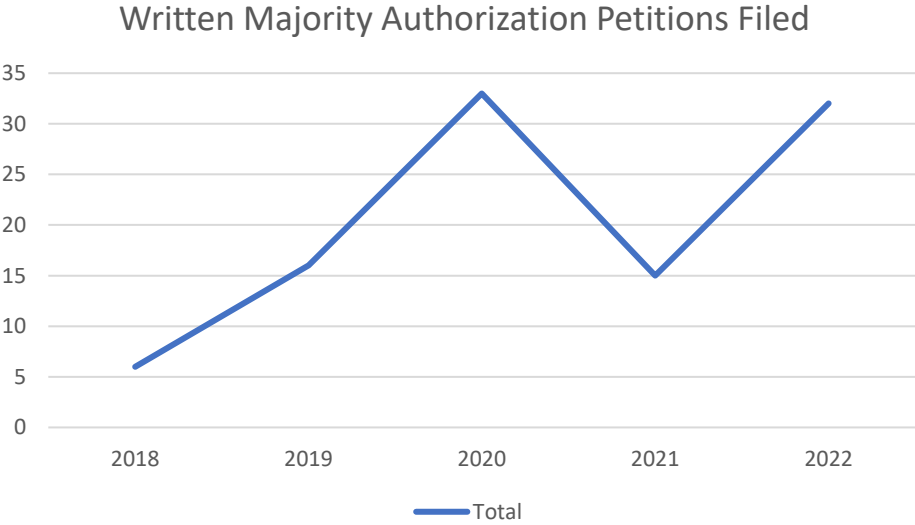
The number of COVID-related ULPs has declined significantly over the previous two years. Of the 433 ULP charges filed this year only 17, or 3.9%, involved COVID-related matters.



# STATISTICS

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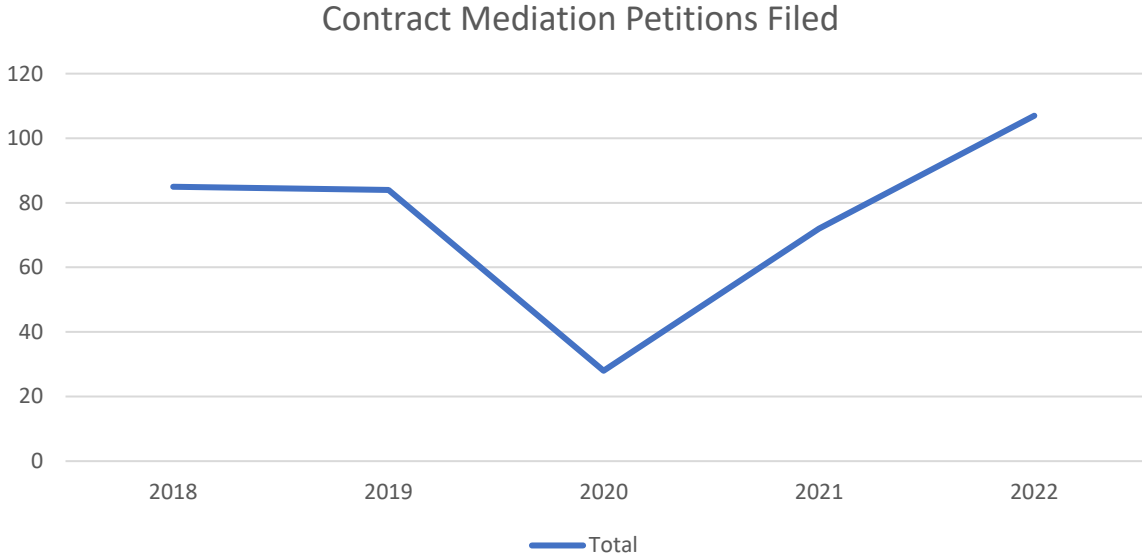
Petitions for union representation, however, either through written majority authorization or election, have continued to increase during the pandemic.



# STATISTICS

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Petitions for contract mediation dropped sharply during 2020 and returned to greater than pre-pandemic levels in 2022.



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## COVID-19

### [DLR Procedures In 2023](#)

With the onset of the pandemic, the DLR began conducting all proceedings remotely via videoconference. This included ULP investigations and hearings, as well as mediation. Starting in June 2022, the DLR resumed conducting all hearing in ULP and Representation cases in person. The DLR has also resumed in-person mediation and arbitration, upon request of the parties and where the circumstances indicated that the in-person proceedings could be conducted safely. Investigation of ULP charges will continue to take place via videoconference for the foreseeable future.



# DECISIONS

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## Significant CERB decisions

### Town of Scituate and Scituate Firefighters Union, Local 1464, IAFF, 48 MLC 287, MUP-18-6943 (March 28, 2022)

The Town appealed a Hearing Officer's decision holding that it violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when the Town's Fire Chief issued orders that reduced the number of firefighters assigned to a fire engine when responding to an alarm without giving the union prior notice and an opportunity to bargain to resolution or impasse. The Hearing Officer concluded that the orders could negatively impact bargaining unit members' safety, and thus the Town was obligated to give notice and an opportunity to bargain before implementing the change. The CERB agreed. It rejected the Town's argument that because there was no evidence that any firefighter had to respond to an alarm alone, the union had failed to demonstrate that its staffing changes had a significant effect on firefighter safety. The CERB emphasized that the Law requires employers to give notice and an opportunity to bargain over mandatory subjects of bargaining *prior* to implementing contemplated changes. To excuse an employer from pre-implementation bargaining obligation simply because no dire consequence had yet resulted from the decision would be contrary to the duty to bargain in good faith and expose bargaining unit members to risk that might have been avoided through pre-implementation bargaining.

# DECISIONS

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## **Boston Vaccine Mandate Decisions**

City of Boston and Boston Police Superior Officers Federation, MUP-21-9008  
City of Boston and Boston Firefighters, IAFF, Local 718, MUP-21-9002  
(CERB Ruling on Partial PC Dismissal, December 29, 2022)

The Union appealed the DLR Investigator's partial dismissal of charges alleging Boston violated Section 10(a)(5) of the Law by implementing a vaccine mandate policy in December 2021 without first bargaining to resolution or impasse over the decision to impose the policy and the impacts of that policy on bargaining unit members terms and conditions of employment and by repudiating an MOA that the City had entered into with the respective unions that permitted testing in lieu of vaccination.

The CERB affirmed the Investigator's ruling that the City did not have to bargain over its decision to impose the mandate because the decision fell within the City's exclusive managerial prerogatives to make decisions regarding public health and safety. For similar reasons the CERB affirmed that those aspects of the MOA relating to the vaccine/testing mandate were not enforceable and thus, the City did not repudiate the MOAs by imposing the policy.

The CERB also agreed with the Investigator that exigent circumstances related to the emergence of the Omicron variant permitted the City to impose a deadline for concluding negotiations prior to implementation. The CERB determined however that a hearing was warranted to determine whether the one-month deadline that the City imposed was reasonable and necessary and remanded this aspect of the charge to the Investigator to issue a complaint consistent with its ruling.

# DECISIONS

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## **CAS Petition/Representation Decisions**

Town of Middleborough and New England Police Brotherhood Association, MCR-21-8734, CERB Decision in the First Instance (April 1, 2022)

The CERB dismissed a petition filed by the NEPBA seeking to represent civilian dispatchers and a dispatcher/E-911 coordinator who were part of a Town-wide bargaining unit in a separate bargaining unit. The CERB rejected the NEPBA's argument that the dispatchers retained separate bargaining unit status based solely on a 1988 certification. The CERB therefore applied its two-prong severance test and determined that although the petitioned-for employees constituted a functionally distinct appropriate unit, the NEPBA had failed to show that negotiating concerns resulting from those differences had caused or were likely to cause conflicts and divisions within the bargaining unit.

Medford School Committee and Teamsters Local 25, MCR-21-8931 (July 5, 2022)

Teamsters Local 25 filed a petition seeking to represent a unit of school administrators that had been represented by the Medford Administrators Association for over 40 years. The School Committee opposed the petition on the ground that the unit was no longer appropriate and should be separated into three distinct units. The Teamster's petition was not a severance petition, however, and CERB determined that the appropriateness of the unit should be decided by the criteria set forth in Section 3 of the Law rather than a severance standard. Under Section 3, CERB found the unit appropriate and directed an election in that unit.

Town of Deerfield and United Public Service Employees Union, Local 424, CAS-21-8441 (October 18, 2022)

Union sought to accrete newly-created position of Assistant Highway/Public Works Superintendent to a unit of highway employees. The CERB determined that the new position is not managerial but that it is a supervisory position and declined to accrete the position into the same unit with the employees he supervises.

# DECISIONS

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## Teacher Strike Decisions

Brookline Educators and Jessica Wender-Shubow and Brookline School Committee, 48 MLC 320, SI- 22-9294 (May 12, 2022).

After a strike investigation, the CERB found that a strike was about to occur and that the Union, its officers, and the Union president, acting in her capacity as Union president, had violated Sections 9A(a) and (b) of the Law by inducing, encouraging, and condoning the strike in violation of Section 9A of the Law. In so holding, the CERB found that emails that the Union sent to its members in the days leading up to the strike containing “FAQ’s” and flyers, clearly condoned the strike and encouraged members to participate.

Haverhill School Committee, Massachusetts Teachers Association, Haverhill Education Association, Tim Briggs and Christine Hickey, SI-2-9605, (Strike Ruling, October 15, 2022).

The Haverhill School Committee filed a petition with the DLR for strike investigation on Wednesday October 12, 2022. The petition alleged that a strike was about to occur and that the Massachusetts Teachers Association (MTA), the Haverhill Education Association (HEA), and two members of HEA’s bargaining unit in both their individual and official capacities, were inducing, encouraging, or condoning that strike in violation of section 9A of the law. After a strike investigation, the CERB issued a ruling confirming the School Committee’s allegations. The CERB ordered the parties to, among other things, cancel the scheduled strike vote and planned strike, and to cease from inducing, encouraging and condoning the strike.

# DECISIONS

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## Teacher Strike Decisions, cont./DLR Litigation

*Commonwealth Employment Relations Board vs. Haverhill Education Association, et al.*, C.A. No. 2277CV00990; DLR case no. SI-22-9605.

The CERB filed a complaint in Superior Court to enforce its orders after finding that a strike was about to occur, or was occurring, pursuant to M.G.L. ch. 150E, Section 9A, and that it was being condoned, encourage, and induced by the Haverhill Education Association (“HEA”) and the Massachusetts Teachers Association (“MTA”). The Court issued a temporary restraining order, and then a preliminary injunction. After the strike continued and HEA and MTA violated the temporary restraining order and preliminary injunction, the Court issued a contempt order, ordering coercive prospective fines against HEA and MTA if the HEA and MTA continued to violate the preliminary injunction and contempt order. After the strike continued for another day after the contempt order was issued, and the HEA and MTA violated the contempt order, those coercive fines were ordered due and payable by the Court on December 19, 2022, pursuant to an entry of judgment. The total fines ordered by the Court was \$110,000 from the HEA and \$50,000 from the MTA.

# DECISIONS

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## DLR Litigation

*City of Everett v. Commonwealth Employment Relations Board*, 101 Mass. App. Ct. 1122 (Oct. 27, 2022) (unpublished decision), further appellate review denied on Dec. 15, 2022. DLR case no. MUP-19-7133.

The CERB held that the City of Everett failed to bargain with the Everett Firefighters, International Association of Firefighters, Local 143 (Union) when it implemented a new selection process for the Fire Chief position without impact bargaining with the Union prior to implementation. The CERB recognized that the City had a nonbargainable managerial prerogative to select an assessment center as the sole basis for scoring and ranking candidates on an eligible list for promotion to Fire Chief, and to determine the exercises used in the assessment center; the weight given for education or experience; the criteria or standards measured; how the assessment center is scored; and to select the successful candidate. However, the CERB held that notwithstanding these managerial rights, the City had a statutory duty to bargain over the means and impacts of its decision to use an assessment center to the extent that they implicated mandatory subjects of bargaining such as the scheduling and timing of the assessment center and orientation sessions, the format and adequacy of training materials, the availability of paid leave to prepare for the examination, the cost to participate, the right of the unsuccessful participants to receive feedback, and the security of the assessment center directly impact bargaining unit members' ability to prepare for and participate in the assessment center, potentially improve their performance on future assessment centers, and help ensure the fairness and validity of the results. The Appeals Court reversed the CERB decision and held that the processes for promotions to managerial positions, here the position of Fire Chief, did not impact the terms and conditions of employment of bargaining unit members and therefore were not subject to mandatory bargaining. The Union and the CERB sought further appellate review from the Supreme Judicial Court. The applications for further appellate review were denied.

# Civil Service Commission (CSC)

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STATISTICS, COVID-19, AND DECISIONS

# STATISTICS

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## 2022 Calendar Year Statistics – Highlights

- The Civil Service Commission received 176 new appeals in 2022 and closed out 231
- The open case inventory of appeals as of December 31, 2022 is 103
- 25 appeals have been pending before the Commission for more than 12 months as of December 31, 2022
- Average age of a pending appeal is 34 weeks as of December 31, 2022.

### **Total Appeals Pending (2006 -2022) as of:**

2006	2009	2012	2015	2018	2019	2020	2021	2022
813	220	179	90	175	190	156	158	103

### **Total Appeals Pending for more than 12 months (2006 -2021) as of:**

2006	2009	2012	2015	2018	2019	2020	2021	2022
550	98	46	27	60	71	76	33	25



## AGENCY UPDATES

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### CIVIL SERVICE LEGISLATIVE PANEL

As part of the 2020 Police Reform Law, a special commission was formed to study Civil Service in Massachusetts. The report issued by the Special Legislative Commission to Study and Examine the Civil Service Law is available on the MMA's website.

### COMMISSIONERS

Christopher C. Bowman, Chair

Shawn C. Dooley, Commissioner **(NEW)**

Angela C. McConney, Commissioner **(NEW)**

Paul M. Stein, Commissioner

Kevin M. Tivnan, Commissioner

# DECISIONS

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## In the Courts: Civil Service Promotion Exams

### **Tatum et al., v. Commonwealth of Massachusetts, et al, 0984CV00576 (Suffolk Superior Court, Oct. 27, 2022).**

On October 27, 2022, Judge Wilkins ruled following a bench trial that the Human Resources Division (“HRD”) administered written promotional exams for Police Sergeant in 2005, 2006, 2007, 2008, 2010, and 2012 knowing that those exams had an “unnecessary, plain, and obvious adverse impact” upon Black and Hispanic police officers.

### **> In Re: Request for Investigation – Professional Firefighters of Massachusetts (PFFM), et al. v. Human Resources Division (HRD), 35 MCSR 360 (Nov. 28, 2022)**

The petitioners, various fire unions, filed a request for an investigation with the Civil Service Commission regarding the cancellation of the statewide Fire Lieutenant and Captain promotional exams scheduled for November 19, 2022, because of the impact of the Tatum decision. The Fire promotional exams were created, formatted, and administered in the same manner as the examinations at issue in Tatum. The Commission held a show cause conference on November 9, 2022. At the conclusion of the show cause conference, HRD agreed to submit a detailed plan regarding administering the fire promotional examinations in March 2023.

### **> In Re: Request for Investigation – International Brotherhood of Police Officers (IBPO) and Human Resources Division, 35 MCSR 400 (Dec. 15, 2022)**

In another case related to the fallout from Tatum, the IBPO petitioned the Commission to investigate HRD’s decision not to score the promotional examinations for Police Sergeant, Lieutenant, and Captain from September 2022. The Commission directed the IBPO to file a more definite statement to explain why an investigation is necessary given the establishment of the Stakeholders Committee in the PFFM proceeding.

# DECISIONS

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## **Bypass-Nepotism Concerns Call Process Into Question**

### **Neenan v. City of Quincy, 35 MCSR 21 (February 24, 2022)**

Citing the appearance of bias and nepotism, the Commission allowed the bypass appeal of a police officer candidate who was bypassed in favor of the Mayor's son. The Mayor and Police Chief recused themselves from the hiring process and hired an outside advisor, the former Secretary of the Executive Office of Public Safety, to conduct the selection process, however, the Commission still concluded that the selection process may have been tainted to favor the selection of the Mayor's son. Relying on its similar holding in Lima v. City of Somerville, 30 MCSR 103 (2017), Commissioner Bowman questioned whether the City would have accepted the Appellant's explanations regarding the omissions on his applications had the Mayor's son not been the next ranked candidate.

### **Lima v. City of Somerville, 35 MCSR 244 (August 25, 2022)**

For the second time, the Commission allowed the bypass appeal of a firefighter candidate due in part to concerns of nepotism in the hiring process. Although Lima gave a questionable response to an interview question about observing another firefighter under the influence of drugs or alcohol, the City was unable to convince the Commission that his response was reasonable justification for his bypass. Specifically, the Commission observed that several other candidates ranked below Lima, many of whom were related to or had close ties to other City employees, provided "equivocal" and flawed answers to the impaired firefighter hypothetical.

# DECISIONS

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## **Bypass – Untruthfulness**

### **Damas v. Boston Police Department, 35 MCSR 222 (August 11, 2022)**

Last year we reported that the CSC dismissed 3 consolidated bypass appeals from 2017, 2018 and 2019, in which BPD cited the same reasons for bypass including failure to include information regarding his expulsion from high school, providing inconsistent information about resisting arrest and a disorderly conduct event from several years ago. Damas v. Boston Police Department, 34 MCSR 9 (February 11, 2021). In 2022, the Commission reversed the bypass of Damas over the objection of the BPD which argued that the applicant's untruthfulness, if proven, should not become stale and instead should operate as a permanent bar to service in law enforcement.

## **Discipline – Domestic Abuse**

### **Griffin v. Town of Easton, 35 MCSR 1 (Jan. 27, 2022)**

In a 3-2 decision, the CSC overturned the termination of a Deputy Fire Chief, modifying the penalty to a demotion to firefighter. The Appellant was alleged to have physically assaulted his ex-girlfriend and threatened her with her loaded service-weapon at her home. The Appellant was arrested, charged, and prosecuted following the incident but was later acquitted on all charges. Following his acquittal, the Appellant moved for Summary Decision however, the CSC explained the Appellant's acquittal on the criminal charges did not entitle him to Summary Decision as a matter of law given the lower preponderance of the evidence standard used at the Commission proceedings. Commissioners Bowman and Littleman dissented and voted to uphold the Appellant's termination, although both acknowledged it was a "difficult case." They argued that an appointing authority is entitled to terminate a public safety employee, especially one in a supervisory or command position, for engaging in domestic abuse. The dissenting Commissioners focused on the Appellants' refusal to cooperate with the internal investigation and failure to testify at the appointing authority termination hearing to refute complainant's version of the incident.

# Peace Officer Standards and Training (POST) Commission

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STATISTICS, COVID-19, AND DECISIONS

# POST COMMISSION

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On December 12, 2022, POST released Lists of Certified Law Enforcement Officers and Newly Certified Graduates. These are available on the POST Commission website. “The first installment of this public database contains 8,228 recertified officers with last names A-H and 1,094 officers who have graduated from academies since December 1, 2021. The database is available on the POST website: [Certified Law Enforcement Officer database](#) and contains 9,322 records from 431 law enforcement agencies. The data is current as of December 9, 2022.

In the coming weeks they expect to release additional information on certification, including information for not recertified individuals. [No date for this yet].

On January 3, 2023 POST Commission Suspended Fifteen Law Enforcement Officials (list on website).

The Commission is working on an Annual Report. The reporting period of this first report will be from inception (April 2021) to the close of this last calendar year (December 2022).

- Goal is to discuss the report at the February commission meeting and issue the report sometime in March.
- You can anticipate that the annual report will include a summary of activities of the period including the certification information, and other relevant information we might be able to share at that time.

They are currently not able to provide information regarding appeals. There is a process set out on the website.

# Massachusetts Commission Against Discrimination

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STATISTICS, COVID-19, AND DECISIONS

## AGENCY UPDATES

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- Recently celebrated 75th Anniversary of the founding of the MCAD in 1946.
- Last fiscal year the MCAD focused on addressing the setbacks and delays caused by the COVID-19 pandemic. This fiscal year the Commission has prioritized rebuilding and fortifying the agency to maintain its effectiveness to better serve the public.
- The MCAD saw an unprecedented number of staff attrition from retirements and low staffing levels during the pandemic that resulted in an unavoidable increase to the agency's backlog—both investigative and post-probable cause cases—and longer wait times for the parties.
- The unprecedented staffing shortage made performance on the agency's workshare agreements with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC) impossible to complete, resulting in a loss of nearly \$400,000 in anticipated revenue in FY22, and exposing the vulnerabilities of this precarious funding structure. In May, Senator Sonia Chang-Diaz filed a Senate amendment to free the MCAD from reliance on federal contracts by increasing the MCAD's state appropriation from \$4.6 million to \$7.6 million in order to fully fund the MCAD.



## STATISTICS/UPDATES

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- Commission Counsel resolved 92 discrimination cases through conciliation and negotiation, recovering \$1,900,055 in victim specific relief. In addition, the agency secured affirmative relief in the form of antidiscrimination training and policy reviews. The following is a description of some representative matters, which were resolved by settlement during the 2022 fiscal year, classified by the type of alleged discrimination.
- In FY22, MCAD hired a new Senior Hearing Officer (Jason Barshak, Esq.) for the first time in more than 25 years after the retirement of the entire Hearings Unit in 2020. The MCAD added a second Hearing Officer (Simone Liebman, Esq.) to the Hearings Unit this year. Officer Barshak conducted a virtual public hearing in May 2022 and conducted a second virtual public hearing in June 2022 (which was completed in July 2022). The Hearings Unit issued a decision in March 2022 in a case conducted by Chairwoman Sunila Thomas George. From October 2022 through the end of the year there were only three hearing decisions issued.
- The Full Commission issued a decision in MCAD and Quinones v. Zamani, dba Coolidge Corner Dental, 16-BEM-02792 (August 2022) affirming the Hearing Officer's July 2018 order granting \$12,800.00 in lost wages and **\$135,000.00** in emotional distress damages with 12% interest per annum. The Commission also granted Complainant's request for \$15,330.00 in attorney's fees.

# DECISIONS

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**MCAD and Reed v. Pipefitters Association of Boston, Local 537, and Leo Fahey, 44 MDLR 22 (2022)** (disability, reasonable accommodation, labor union)

The Full Commission affirmed the Decision of the Hearing Officer finding the Respondent labor union liable for disability discrimination. The Full Commission also affirmed the dismissal of the individual liability and retaliation claims against Respondent Fahey and the retaliation claim against the union. The Complainant had a hearing impairment that prevented her from understanding what was being said at union meetings, and she submitted written accommodation requests to the union for stenographic recordings of those meetings. Respondents denied those requests and offered alternatives that did not meet the Complainant's needs. The Hearing Officer determined that the union discriminated against the Complainant by failing its duty to reasonably accommodate her. This Decision represents the first time that the Commission interpreted the prohibition on disability discrimination within M.G.L. c. 151B, § 4(2) to encompass a duty on labor unions to reasonably accommodate their members. The Full Commission affirmed the Hearing Officer's award of \$25,000 in emotional distress damages.

# DECISIONS

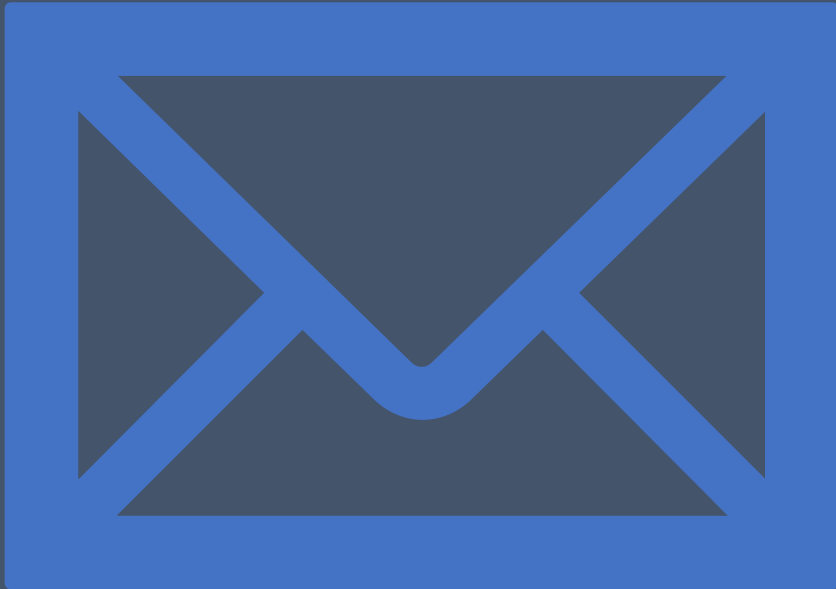
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**Rosa Silva and MCAD v. Acushnet Co., et al, 44 MDLR 33 (2022)** (age/gender discrimination, hostile work environment)

A terminated 66-year-old pad print operator at a South Coast plant manufacturing Titleist golf balls was unable to show unlawful gender or age discrimination in any form where the employer was able to prove her discharge was due to poor performance and insubordination.

**Yerica Santiago and MCAD v. Caregivers of Massachusetts, 44 MDLR 61 (2022)** (sexual harassment/hostile environment; retaliation in connection with maternity leave, disability)

Hearing Officer Simone R. Liebman awarded a wrongfully transferred and then terminated employee of a home health agency \$132,560 in back pay and \$30,000 in emotional distress damages after she established she was fired because of the employer's disability bias based on her postpartum depression and anxiety. The Complainant also suffered from retaliatory actions from the employer in the form of a transfer to another office that imposed longer commuting times and minimal job responsibilities. Claims charging sex/maternity discrimination and sexual harassment were dismissed as either time barred or insufficiently proven as to the employer's motivations.



# QUESTIONS

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- Chairman Bowman, CSC
- Director Zuniga, POST
- Michael Memmolo, Interim Executive Director, MCAD
- Antoine Fares, Ian Keefe, Brett Sabbag and Phil Collins at Norris, Murray & Peloquin

For more detail on DLR and CSC cases, please see our firm's Management Commentary in Landlaw's publication of these cases.

NOTICE: This presentation and the content herein does not purport to give legal advice for any specific situation, or, come to think of it, even a general situation.