



Lowlights and Highlights of Agency Employment Decisions Reported in 2024

Presented by Melissa R. Murray

Norris, Murray & Peloquin

January 24, 2025



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)

Disclaimer

The information provided in this presentation is for informational and training purposes only and is not legal advice.



JOINT LABOR MANAGEMENT COMMITTEE (JLMC)

STATISTICS, AWARDS, TIPS AND TRENDS

STATISTICS

YEAR	Number of Cases Filed	Open on 12/31/2022	Open on 12/31/2023	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
2023	35		32	58
2024	31		30	39

Of the 31 petitions filed in 2024, 15 were for Fire, 10 for Police Patrol units and 6 for Police Superior units. Currently there are 32 open cases on the JLMC docket (14 fire, 14 police patrol and 4 for superior officers). Two cases – 1 police patrol and 1 fire case – have an arbitrator appointed and are headed to arbitration.

Source for Statistics: Dan Morgado, former Management Representative and Philip T. Roberts, Director, Department of Labor Relations

AWARDS SUMMARY

	ARBITRATOR	AWARD YEARS	WAGES
2024			
Arlington Police (P) JLMC # 22-9174	Bonnie J. McSpiritt	FY22-FY24	Issue limited to BWC policy and whether it should be incorporated into the CBA. Arbitrator found insufficient evidence to warrant including in the parties' CBA.
Milton Fire JLMC # 22-9709	Richard Boulanger	FY23-FY25	Wage Increases: 2%, 2.5%, 2.5% Cost of Living Adjustments: .5%, 1%, .5% In FY23, add 1% to the ten (10) year step Effective July 1, 2024, drop step 1; renumber steps Assessment Centers for Deputy Chief; Increased the EMT stipend from \$1,100 (flat dollar) to 5%; Awarded light duty unless a doctor provides documentation saying FF is not capable

Prior arbitration decisions issued: 2016 (8); 2017 (6); 2018 (13); 2019 (12); 2020 (4), 2021 (4), 2022 (1), 2023 (4)

JLMC UPDATES

CASES

- Volume of cases is holding steady
- Trend of settlement over arbitration continues
- **Only 12 awards issued 2020-2024 (to date)**
- **Wages were trending up but there is some indication that is slowly/reversing**

STAFFING

- Robert Markle hired to replace Dan Morgado as new Senior Staff Representative for Management
- Tony Mazzucco selected as Vice Chair of the JLMC (awaiting appointment by Governor)
- Senior Staff Representative for Labor Donald Cummings retired January 2, 2025.

How to Prepare For Or Avoid the JLMC



□ **COMMUNICATE AND BUILD RELATIONSHIPS!**

- Be open and honest with Unions (all employees) to set expectations.
- Do your homework; know the landscape of settlements in comparable communities.
 - **But understand that there are regional differences and changing landscapes**
- Don't wait to put together comparability data (Internal and External).

□ **COST OUT PROPOSALS!**

- Understand how close or far apart the parties' proposals are.
- Compare what you are proposing to other packages given in the city/town.
- Analyze hidden costs and be clear on the long and short-term impacts of the benefits.
- Ask Union for their data or an explanation of what they are basing their proposals on
- Understand the risks (your strengths and weaknesses) of going to arbitration
- **Recognize and avoid negotiating against yourself**
- Communicate with the Management Rep and Panel Member
- Research Arbitrators; select strategically

Summary of the Landscape

- COLAs: Last year I noted that COLAs at or above 3% were becoming more common (Needham Police; Waltham Fire; Lynn Fire; Brookline Fire; Boston Fire); still true but trending downward
 - Total packages 12%-15% for 3 years depending on size of community
 - **SOME COMMUNITIES ARE GETTING MARKET ADJUSTMENTS ON TOP OF THIS**
- POST Certification Stipend: police unions are still asking for an annual “Certification Differential” or “POST Stipend” for Post; more and more communities are willing to provide/call it something else.
 - Still only two JLMC Arb Awards with POST Stipend: Westport Police = 6% POST/Brookline Police = 4% POST
 - Brookline MOA increases benefit but renames: Hazardous Duty/Regional Tactical Response Stipend (7.5%)
 - Several communities are paying **something** but not necessarily calling it POST
 - Others embracing a POST/Certification Stipend (Taunton Police 8% over 4 yrs; Needham 4%, Lexington 5%)
- Staffing shortages, burnout, difficulty hiring, length of hiring process leading to increase in use of laterals
- **NEW CIVIL SERVICE REFORM – UNKNOWN IMPACTS**
- Unions are making little movement until JLMC process
- Increasing EMT and Paramedic pay to help retain/attract personnel (competition way up)
- **Looking for increase in detail pay (Boston Fire increase by \$8/hr)**

JLMC STAFF

Joint Labor Management Committee

John Hanson, Chairman
Tony Mazzucco [proposed], Vice Chair

Management Staff Members

George Driscoll
Robert (Bob) Markel

Management Committee Members

Dean Mazzarella, Leominster Mayor (Chair)
Kathy Johnson, Worcester Asst City Manager (Ret.) (Vice Chair)
Jill Goldsmith, Chatham Town Manager
Anthony Ansaldi, Concord CFO

David Gagne, West Bridgewater Town Admin.
Mary Aicardi, Shrewsbury HR (Ret.)
Tony Mazzucco, Norwood General Manager (*nominated JLMC vice chair; will have to step down when appointed*)
Jeff Silva, Westwood Police Chief
Bill Mahoney, Springfield HR
Helen Bowler, former DLR Mediator



DEPARTMENT OF LABOR RELATIONS (DLR)

Statistics and Significant Decisions

STATISTICS

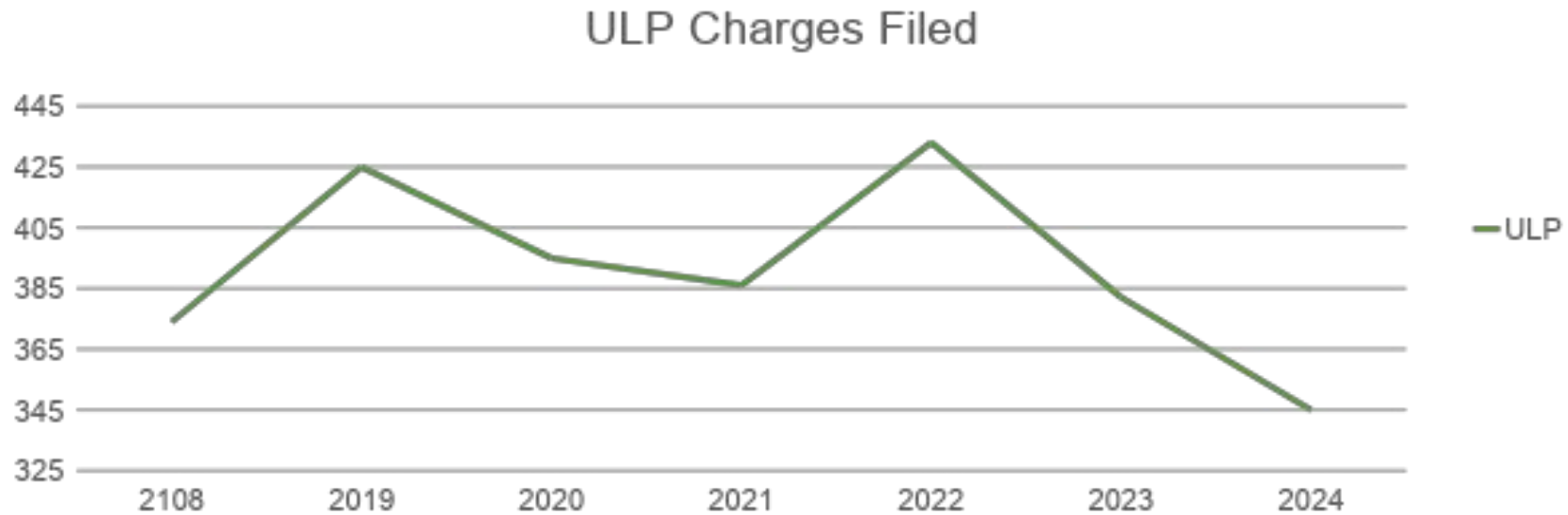
- DLR Statistics and Cases Calendar Year 2024
- Case Processing and Statistics

Case Type	# Filed 2021	# Filed 2022	# Filed 2023	# Filed 2024	# Closed 2021	# Closed 2022	# Closed 2023	#Closed 2024
Unfair Labor Practice Charges	386	433	382	345	368	428	408	422
Representation Petitions	32	53	29	23	28	54	34	32
Written Majority Authorization Petitions	15	31	31	32	15	27	27	35
Unit Clarification Petitions	18	16	15	23	17	14	16	15
Contract Mediation/Fact-Finding Petitions	72	107	72	47	48	81	96	65
JLMC Contract Mediation/Arbitration Petitions (Police/Fire)	34	54	35	31	25	26	58	39
Grievance Mediation Petitions	3	6	0	1	1	6	3	1
Arbitration	41	28	34	32	38	34	25	33

Source for Statistics: Philip T. Roberts, Director, Department of Labor Relations

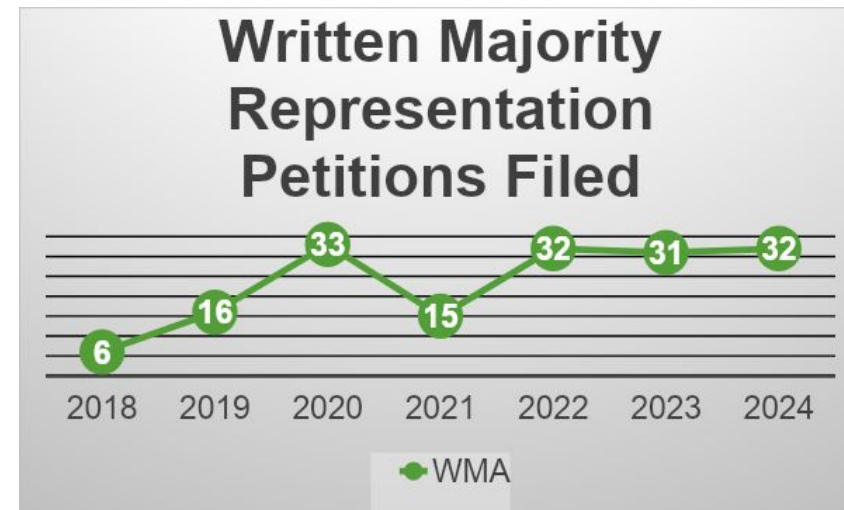
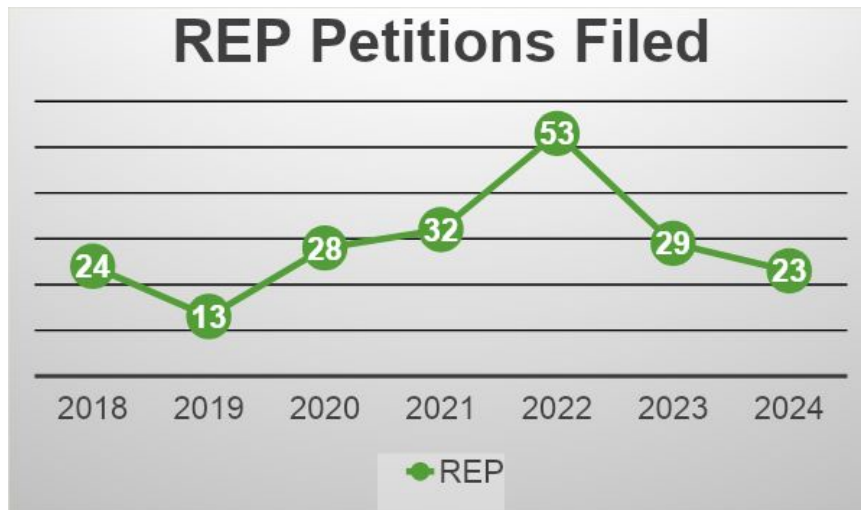
STATISTICS

ULP filings were higher immediately before the pandemic, dropped during the first two years of the pandemic, and then increased above pre-pandemic levels. In 2023 the numbers returned to pre-pandemic levels (374 in 2018) and have continued to trend downward.



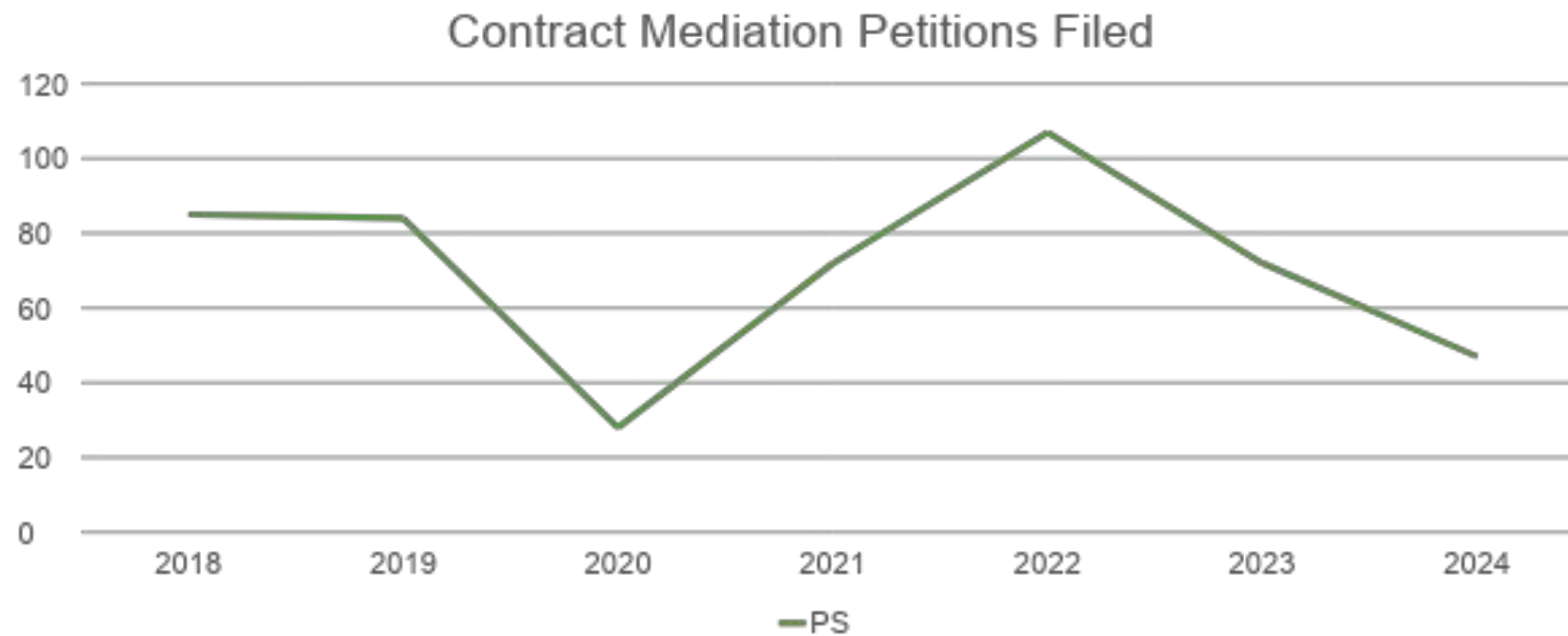
STATISTICS

Petitions for union representation have dropped, returning to pre-pandemic levels, however, Written Majority Representation Petitions remained consistent the last 3 years.



STATISTICS

Petitions for contract mediation dropped sharply during 2020, returned to greater than pre-pandemic levels in 2022, but have trended down the last 2 years, dropping below pre-pandemic levels.



What's trending at DLR?

Teacher Strikes Appear Here To Stay

- The last 2 years have brought us several decisions on teacher strikes: Haverhill (2022); Woburn (2023); and Andover (2023)
- 2024 saw the Newton Strike last January, followed by the coordinated strikes in Gloucester, Beverly and Marblehead in November 2024.
- Teacher strikes - are costly and disruptive; they are also ILLEGAL
- **The Commonwealth Employee Relations Board issued an order in Beverly that essentially told the School Committee that the strike is an improper and coercive bargaining tool and that there is no obligation to continue with mediation as long as teachers keep striking.**

NEWS

CERB Chair Marjorie Wittner Retired

Announcement of new Chair of the CERB – Lan T. Kantany (January 23, 2025)

New Case Management System

UPCOMING

Implementation of Chapter 150F (Ballot Question #3 regarding rideshare driver collective bargaining rights)



Judicial Appeals Pursuant to Section 11

Is An Involuntary Transfer An Adverse Action For Purposes Of Establishing A Prima Facie Case of Unlaw Retaliation

City of Newton v. Commonwealth Employment Relations Board, 104 Mass. App. Ct. 203 (May 22, 2024), further appellate review granted, 494 Mass. 1105 (September 6, 2024). Appeals Court Docket No. 2023-P-0455; SJC Docket No. SJC-13655

In **City of Newton and Newton Police Superior Officers Association, Mass Cop Local 401** (MUP-18-6946, MUP-19-7379, February 22, 2023) the DLR Hearing Officer dismissed a consolidated complaint alleging the City violated 150E when it took three separate adverse actions against the Union President allegedly in retaliation for engaging in protected concerted activity. The adverse actions were involuntarily transferring him from his day shift position in the Traffic Bureau to a night shift position in the Patrol Bureau (MUP-18-6946); denying his request to attend a specialized Search Warrant course (MUP-19-7379); and not selecting him for a Sergeant Specialist position (MUP-19-7379). While the parties' contract provides the City the right to transfer employees when in the best interest of the City, there was no evidence that the City had ever transferred a sergeant or lieutenant from a specialty position. The Union appealed the dismissal of all three counts and the City cross appealed certain findings. The CERB reversed the Hearing Officer's dismissal of the involuntary transfer but affirmed the dismissal of the other two counts. The CERB found that a reasonable person in the Union President's shoes would view a sudden transfer after 6 years working a day shift with weekends and holidays off, to a night shift with a schedule that could routinely include working weekends and holidays, to be a material and objective change sufficient to constitute an adverse action.

The Appeals Court reversed the CERB's decision finding the transfer was not an adverse action, and that the CERB incorrectly found that the City did not meet its burden of production. The Court determined that the transfer with a change in schedule/hours was not sufficient to establish an objective material change in the terms and conditions of the Union President's employment because he only testified that the change adversely impacted his family life rather than his working conditions. Further, the Court reasoned that where a union has bargained for a benefit in exchange for undesirable employment conditions, an employee covered by that bargain cannot suffer from an adverse employment action. In this case, the Union had bargained for a shift differential for working the night shift. The Court upheld the CERB's determination that a proving a generally good work record was not an element of the *prima facie* case.

The CERB and the Union applied for further appellate review of the Appeals Court decision, which was granted, and the matter is pending before the Supreme Judicial Court.

Strike Decisions and Enforcement Actions

Commonwealth Employee Relations Board vs. Newton Teachers Association, Middlesex County Superior Court, C.A. No. 2481CV00148

DLR case: Newton Teachers Association and Newton School Committee, 50 MLC 105, SI-23-10203 (January 24, 2024) (CERB Amended Ruling on Supplemental Strike Petition)

On January 16, 2024, the Newton School Committee (NSC) filed a strike petition alleging that a strike within the meaning of G.L. c. 150E, § 9A was about to occur and that the strike was induced, encouraged, or condoned by the Newton Teachers Association (NTA), and the Union president. The CERB issued a written Ruling on Strike Petition and Interim Order finding that the NTA and its members were about to engage in a strike, and that the Union president, in his official capacity, had induced, encouraged, and condoned the strike. Notwithstanding the Interim Order, the NTA voted to strike, and the strike began on Friday, January 19, 2024.

The CERB instituted proceedings in superior court on January 19, seeking full compliance with its Interim Order. A preliminary injunction was issued requiring, among other things, that the NTA cease and desist from striking. The Court issued a coercive prospective fine starting January 22, in the amount of \$25,000, with fines increasing each day the NTA failed to comply with the Court's order.

The strike continued and, on February 1, the CERB moved the Court for further relief, seeking an order for binding arbitration of a successor collective bargaining agreement. Separately, the NSC moved the Court to reconsider the fines ordered, to increase the amount of the fines, and to enter a judgment immediately payable for the fines accrued in the amount of \$625,000. The Court ordered that judgement would enter against the NTA in the amount of \$625,000 that would be immediately payable, at noon on February 5, 2024. Further, the Court ordered that if NTA's noncompliance continued after February 4, 2024, at 8:00 p.m., a coercive fine of \$100,000 would be imposed each day noncompliance continued.

On evening of February 2, the NTA and the NSC reached a tentative agreement collective bargaining agreement, that was subsequently ratified. Pursuant to the parties' agreement, on February 5, the NTA and the NSC moved the Court to reclassify the coercive contempt fines (\$625,000). The CERB did not oppose the motion. The Court entered a final judgment on February 20, 2024, in the amount of \$625,000 against the NTA, \$275,000 of which were classified as compensatory fines and \$350,000 were coercive contempt fines.

Strike Decisions and Enforcement Actions

Commonwealth Employment Relations Board vs. Gloucester Teachers Association and Gloucester Association of Educational Paraprofessionals, C.A. No. 2477CV01171 (Essex County Superior Court) [DLR case no. SI-24-10955].

After holding a strike investigation in which the School Committee offered un rebutted evidence that the Gloucester Teachers Association (GTA) and the Gloucester Association of Education Professionals (GAEP) had held a strike vote and voted to strike on November 7, 2024, the CERB found that a strike was about to occur and that the GTA, the GAEP, and their officers, and Rachel Rex, in her official capacity as President of the GTA, had induced, encouraged, and condoned a strike in violation of Section 9A of the Law. The CERB ordered the GTA, the GAEP, and their officers, and Rachel Rex, in her official capacity as President of the GTA, to, among other things, cease and desist from inducing, encouraging and condoning a strike.

After the Unions and its members failed to comply with the CERB's orders and went on strike, the Board sought enforcement of its orders in superior court. The Board obtained a preliminary injunction and, after the strike continued, a contempt order. The case is still pending in superior court.

Strike Decisions and Enforcement Actions

Commonwealth Employment Relations Board vs. Beverly Teachers Association, et al., C.A. No. 2477CV01172 (Essex County Superior Court) [DLR case no. SI-24-10951].

After holding a strike investigation in which the School Committee offered un rebutted evidence that the Beverly Teachers Association (BTA) had held a strike vote and voted to strike on November 7, 2024, the CERB found that a strike was about to occur and that the BTA, their officers, and Julia Brotherton, in her official capacity as President of the BTA, had induced, encouraged, and condoned a strike in violation of Section 9A of the Law. The CERB ordered the BTA, its officers, and Julia Brotherton, in her official capacity as President of the BTA, to, among other things, cease and desist from inducing, encouraging and condoning a strike.

After the BTA and its members failed to comply with the CERB's orders and went on strike, the CERB sought enforcement of its order in superior court. The CERB obtained a preliminary injunction and, after the strike continued, a contempt order.

While the strike was ongoing, on November 18, 2024, the Beverly School Committee filed a motion with the CERB seeking alternative or additional remedies following the failure by the BTA, their officers, and Julia Brotherton, in her official capacity as President of the BTA, to comply with the CERB's prior order, and after they were found to be in contempt of an order of the Essex County Superior Court requiring the BTA to return to work. **In response to the motion, the CERB ruled on November 20, 2024, that that the School Committee is not required under Chapter 150E to bargain with the BTA while the strike is ongoing.**

The case is still pending in superior court.

Strike Decisions and Enforcement Actions

Commonwealth Employment Relations Board vs. Marblehead Education Association, et al., C.A. No. 2477CV01182 (Essex County Superior Court) [DLR case no. SI-24-10959].

After holding a strike investigation in which the School Committee offered un rebutted evidence that the Marblehead Education Association (MEA) had held a strike vote and voted to strike earlier in the day on November 8, 2024, the CERB found that a strike was about to occur and that the MEA and their officers had induced, encouraged, and condoned a strike in violation of Section 9A of the Law. The CERB ordered the MEA and their officers to, among other things, cease and desist from inducing, encouraging and condoning a strike.

After the MEA and its members failed to comply with the CERB's orders and went on strike, the Board sought enforcement of its order in superior court. The CERB obtained a preliminary injunction and, after the strike continued, a contempt order.

As the strike continued, the School Committee filed a second petition on November 19, 2024 alleging that individually named respondents, Jonathan Heller, Sally Shevory, Hannah Hood, and Alison Carey, violated Section 9A(a) of the Law in their individual capacity by engaging in a strike. After an investigation, the Board found that each of the named respondents violated the Law in their individual capacity by engaging in a strike, ordered that the respondents cease and desist from engaging in the strike. After the respondents failed to comply with the Board's order, the Board sought and obtained a temporary restraining order against the individual respondents in superior court.

The case is still pending in superior court.

CERB Decisions

CERB Rightly Held Union Violated The Law When It Promoted and Supported A Warrant Article Seeking Stipends For Instructional Assistants Through Special Town Meeting Outside Of The Collective Bargaining Process.

It is well-established at DLR that a union's obligation to bargain in good faith under M.G.L. c. 150E mirrors an employer's good faith bargaining obligation under Section 10(a)(5). Boston School Committee, 37 MLC 214 (2011). Just as an employer is prohibited from directly dealing with employees on mandatory subjects of bargaining, the union violates its duty to bargain in good faith if it engages in action that undermines the status of an employer's designated exclusive bargaining representative. Union attempts to bypass the employer to achieve its goals outside of the bargaining process constitute bad faith bargaining. Town of Belmont, 7 MLC 1614 (1980).

In Andover School Committee, 50 MLC 122 (March 4, 2024), the CERB concluded the Union had failed to bargain in good faith when it bypassed the School Committee by advocating for a warrant article at a Special Town Meeting that provided for a "one-time pandemic stipend and retention premium for educational support professionals" to be funded out of Federal Covid-19 and ARPA Funds. The CERB found the Union's actions to promote and endorse the warrant article at Town Meeting were illegal and a form of self-help because it bypassed the exclusive bargaining representative (school committee) during on-going negotiations.

Employers should be prepared to act if one of their unions engage in such efforts to pressure them to bow to their demands and/or seek outside intervention in support of their bargaining agenda. Such conduct not only results in an unlawful bypass, but also interferes with, restrains, and coerces the employer in the exercise of its right to bargain over mandatory subjects through its designated exclusive representative and therefore, derivatively, violates Section 10(b)(1) of the Law. If a union petitions Town Meeting or bypasses the employer's exclusive bargaining representative through other means to achieve its failed bargaining goals, the union is purposely looking to destabilize and interfere with the collective bargaining process.

CERB Decisions

Desire to Conclude Bargaining By Ideal Funding Date Does Not Constitute Exigent Circumstances

Bristol County Commissioners and OPEIU, Local 6, SUP-20-8269 (August 19, 2024)

The Bristol County Commissioners appealed from a Hearing Officer decision holding that the Commissioners committed prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of Chapter 150E when they: 1) implemented their last best offer during successor contract negotiations with the Union when they were not at an impasse; and 2) refused to bargain with the Union at a November 2, 2020 meeting. The Hearing Officer also held that the Commissioners violated Section 10(a)(6) and derivatively, Section 10(a)(1) when they refused to participate in the mediation process at the DLR. The CERB affirmed the decision, agreeing that the parties were not at impasse, and that the Commissioner's desire to conclude bargaining by the date that the funding body met did not constitute exigent circumstances justifying implementation before bargaining to resolution or impasse.

Union's Appeal of Hearing Officer's Compliance Decision Upheld Finding No Error In the Legal Factual or Legal Analysis

OPEIU Local 6 and John F. Murphy, SUPL-14-3628 (August 29, 2024)

The CERB upheld a Hearing Officer's compliance decision that calculated the make-whole remedy that the Union owed to the Charging Party, John Murphy, to compensate him for the losses that he suffered as a direct result of the Union's breach of duty of fair representation to him. In its appeal to the CERB, the Union argued that the Hearing Officer had erred in three ways: (1) by ending back pay liability on the date the Trial Court reinstated Murphy, instead of in 2016, when the Union claims the Trial Court eliminated the position from which he had been fired; (2) by requiring the Union to prove that Murphy had not met its burden of showing that Murphy had mitigated his damages, instead of requiring Murphy to prove that he had and by then concluding that the Union had not met that burden; and (3) by not apportioning the damages between it and the Trial Court. After reviewing the hearing record, the CERB found no error in the Hearing Officer's factual or legal analysis.

Hearing Officer Decisions

Requiring Employees to Return to On-Site Work Requires Bargaining But Not Decisional Bargaining

Commonwealth of Massachusetts/Dept. of Mental Health and AFSCME Alliance 509 (SUP-21-8820, August 24, 2024).

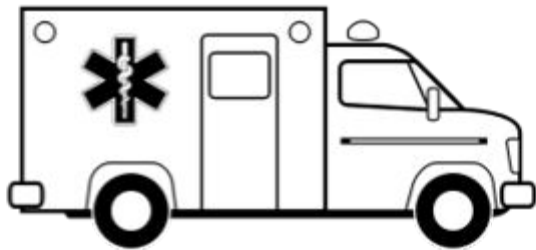
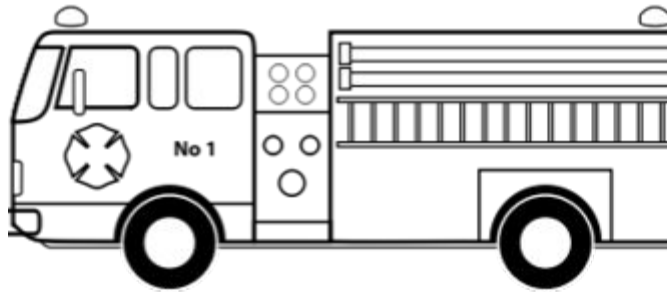
During the COVID-19 pandemic, certain employees of the Department of Mental Health (DMH) worked remotely for a short time and then were assigned to a hybrid work schedule. On August 25, 2021, DMH required certain employees who had been working remotely for approximately 1 ½ years to return to the workplace, in-person, five days a week. DMH's decision to return employees to on-site work is a level of public services decision not subject to decisional bargaining. A Hearing Officer determined that DMH, failed to bargain in good faith over the means and manner of returning bargaining unit employees to the workplace, in person five days a week, and the impact of that decision on bargaining unit employees' health and safety, in violation of Section 10(a)5) and, derivatively, Section 10(a)(1) of the Law. **Hearing Officer Gail Sorokoff denied the Union's request to have the DMH restore the status quo ante by rescinding its decision to end the remote/hybrid work schedules until it met its bargaining obligations.**

Representation Decision

Order or Agreement To Continue Bargaining Does Not Preclude A New Petition Once Extended Certification Period Ends

Berkshire Roots, Inc. and Eichelser and United Food & Commercial Workers Union, Local 1459, 50 MLC 117, CR-22-9430 (February 26, 2024)

After the United Food & Commercial Workers Union (UFCW) and the employer entered into an agreement in which they settled two unfair labor practice "blocking" charges by agreeing to extend the certification year for approximately two months beyond the date of the settlement and to continue bargaining for a first contract during that period, the UFCW filed a motion with the DLR seeking to dismiss a decertification petition that had been blocked by the unfair labor practice charges. The CERB granted the motion over the petitioner's and employer's opposition based on Commonwealth of Massachusetts, 17 MLC 1650, 1651, SCR-22-1 (April 9, 1991), in which the CERB held that if a prohibited practice complaint results in issuance of a remedial order or *settlement* that requires the employer to bargain with the incumbent, the petition will be dismissed, but following the remedial bargaining period and expiration of the extended certification year, a new petition, supported by appropriate and sufficient showing of interest, may be timely filed.



CIVIL SERVICE COMMISSION (CSC)

Statistics and Significant Decisions

STATISTICS

2024 Calendar Year Statistics – Highlights

- The Civil Service Commission received 194 new appeals in 2024 and closed out 201 appeals
- The open case inventory of appeals as of December 31, 2024 is 65
- 4 appeals have been pending before the Commission for more than 12 months as of December 31, 2024
- Average age of a pending appeal is 19 weeks as of December 31, 2024 (compare: 46 weeks (2018); 35 weeks (2021); 34 weeks (2022); 18 weeks (2023)).

Total Appeals Pending (2006 -2024) as of:

2006	2009	2012	2015	2018	2019	2020	2021	2022	2023	2024
813	220	179	90	175	190	156	158	103	72	65

Total Appeals Pending for more than 12 months (2006 -2024) as of:

2006	2009	2012	2015	2018	2019	2020	2021	2022	2023	2024
550	98	46	27	60	71	76	33	25	6	4

Source: <https://www.mass.gov/doc/2024-calendar-year-statistics/download>

AGENCY UPDATE

Modernizing the Civil Service Law

As part of the 2020 Police Reform Law, a special commission was formed to study Civil Service in Massachusetts. This commission met dozens of times between 2021 and 2024 ultimately endorsing compromise legislation in January 2024 designed to preserve the merit based protections of the civil service system while allowing cities and towns greater flexibility in how they fill vacant public safety positions.

On November 20, 2024, Governor Healey signed Chapter 238 of the Acts of 2024 into law, which includes far reaching reforms to the state's civil service law.

COMMISSIONERS

- Christopher C. Bowman, Chair
- Shawn C. Dooley, Commissioner
- Angela C. McConney, Commissioner
- Paul M. Stein, Commissioner
- Joseph A. Markey, Commissioner **(NEW)**

Hybrid Pathway

The *Modernizing of Civil Service Law* marks the most significant improvements to the civil service system in a generation.

Reform Highlights

- New alternative pathway: “hybrid” option for entry level police and fire appointments
- Larger pool of candidates to consider from traditional a civil service process
- A new regional residency preference
- Streamlined approval process for cadet programs
- DEI resources at the state level to assist cities and towns, especially with recruitment
- Standing Commission to ensure continuous improvement in civil service system

Hybrid Hiring

- Multi year written agreement with HRD to allow for hybrid hiring process for ½ of new appointments
- Biannual reporting with HRD to share statistics regarding hiring
- Working on outreach and informational meetings
- Personnel Administration Rules will need to be re-written

CSC Bypass Decisions

Commission dismissed bypass appeal as premature but stated that the Town had not properly removed position from civil service and therefore must make appointment according to civil service law.

The CSC dismissed a bypass appeal (dismissed nisi) for a promotional appointment to the position of Police Chief for the Town of Fairhaven as premature because the Town had not yet decided who to promote. **Matthew Botelho, Appellant v. Town of Fairhaven, 37 MCSR 61 (May 2, 2024)**. Initially the Town filed a motion to dismiss citing the Commission lacked jurisdiction to hear the appeal because all positions in the FPD (and the Fairhaven Fire Department [FFD]) had been removed from civil service law and the process for selection of a new Police Chief was no longer within the purview of the Commission's jurisdiction.

In January 2023, Fairhaven entered into a Delegation Agreement with HRD for an Assessment Center for the police chief position. The examination was held on June 10, 2023, and HRD issued the eligible list on August 1, 2023, with Sergeant Matthew Botelho ranking 1 of 6.

Prior to the examination, in May of 2023, at a Town meeting, the Select Board had voted to remove the Fire and Police personnel from Civil Service. After the Police Chief eligible list was issued, the Town Administrator, believing that the police chief position was no longer under civil service, conducted his own assessment by interviewing each of the six candidates on the eligible list. Thereafter the Town Administrator informed the candidates of his intention to promote a candidate tied for third place on the eligible list. The Town did not provide a list of reasons to Botelho for its decision to promote the lower ranked candidate. Prior to the incumbent police chief's retirement and before a promotion was made, Botelho filed a bypass appeal.

After the appeal was filed but prior to the Commission's decision, the Town engaged in discussions with HRD and ultimately concluded that it had not gone through the correct process and was still under civil service. HRD had reviewed the removal and determined that although the Select Board had voted to remove the Department from civil service, the Town had not followed the lawfully required procedure to do so. Because the Town accepted civil service for its police department pursuant to a town-wide ballot vote in 1938, the lawful way to revoke acceptance would be through either special legislation, or another ballot vote, pursuant to M.G.L. c. 4, § 4B., and therefore the Town remained in Civil Service. Ultimately the Town agreed that, so long as the position of FPD Police Chief remained in civil service, any vacancy in that position must be filled from then current FPD Police Chief eligible list in accordance with civil service law and rules.

CSC Bypass Decisions

Commission Upholds Bypass for Appointment To Police Officer Position Due To Finding In Psychological Exam Of Disqualifying “Category B” Condition, Despite Significant Procedural Flaws In Application Process

In *John Doe v. Springfield Police Department*, 37 MCSR 29 (February 1, 2024), the Commission found there was reasonable justification for the Springfield Police Department (“SPD”) to bypass John Doe based on the finding of a disqualifying Category B medical condition during his psychological examination.

The Appellant’s background investigation revealed he had been terminated from three prior positions for interactions involving excessive use of force. In 2014, he was terminated from a position in security/recreation at an area technical school for physically striking a student during an altercation where the student struck the Appellant first. In 2015, the Appellant was terminated from his position as a behavioral interventionist in an education program following an altercation with a student that resulted in injury to the student. And in 2017 the Appellant was terminated from his position as a residential supervisor in a youth home for injuring a resident’s wrist during a restraint. In addition, he was terminated in 2021 from an organization that teaches young adults’ vocational skills for using inappropriate language during an interaction with a client.

After the background investigation and without first making a conditional offer, the SPD required Appellant to undergo a psychological evaluation. The evaluator, Dr. Madonna, concluded that while Appellant was “very affable,” he did not possess the psychological qualifications necessary to serve as a police officer. Dr. Madonna relied on test profiles that indicated Appellant had “a low stress tolerance”, a “below average reasoning ability, and an inclination to be dominant, controlling, and to take action without sufficient thought.” He also expressed concerns about the potential misuse of force if Appellant were to become a police officer, given his history of multiple terminations involving physical contact and evaluation results indicating a tendency toward impulsivity.

Appellant underwent a second evaluation, at his own expense. His doctor concurred with Dr. Madonna, concluding that Appellant did not possess the qualifications to become a police officer. He expressed a particular concern about his several consecutive terminations and inability to manage stress in both the long- and short-term. The SPD bypassed the Appellant due to his psychological evaluations (notwithstanding the City’s procedural error in conducting the psychological evaluation prior to making a conditional offer of employment).

CSC Bypass Decisions – John Doe cont.

HRD promulgates the rules and standards for physical and psychological testing, which can be found in HRD's Initial-Hire and Physical Ability Test Standards and Physician's Guide-2020. Disqualifying medical and psychiatric conditions are grouped into "Category A" and "Category B" conditions. A "Category A" medical condition is one that "would preclude an individual from performing the essential job functions of a municipal police officer or present a significant risk to the safety and health of that individual or others." A "Category B" medical condition is one that, "based on its severity or degree, may or may not preclude an individual from performing the essential job functions of a municipal police officer, or present a significant risk to the safety and health of that individual or others."

Despite testifying they were not aware of the standards and rules promulgated by HRD, the Commission found the evaluations by Drs. Madonna and Haynes "were sufficiently thorough and professional, and identified in the Appellant abnormal psychological characteristics that could pose a significant risk to the safety and health of others should the Appellant become an SPD police officer." When read the HRD standards, both doctors testified that their opinion remained the same; that the Appellant could not perform the essential functions of a police officer. Specifically, Dr. Haynes said, "the Appellant was ill-suited for employment as a police officer; based on the results of the evaluation, she remained concerned about the risk that the Appellant would pose to the safety of others, especially given his past use of force in volatile situations."

Finding that the SPD established by a preponderance of evidence that the results of the psychological evaluation provided reasonable justification for its decision to bypass the Appellant, the Commission denied the appeal. This decision offers valuable guidance for practitioners and representatives of police and fire departments who encounter procedural errors during the application process. While addressing two specific errors made by the SPD, the Commission noted that while these errors did not prejudice the appellant, procedural errors in the application process should be addressed to prevent potential appeals in the future.

Specifically, the Commission raised the issue of requiring the Appellant to undergo a psychological evaluation prior to receiving a conditional offer of employment. "Massachusetts and federal law prescribe that a firm 'bona fide' conditional offer based on an evaluation of 'all relevant non-medical information' is necessary before a candidate can undergo medical or psychological screening." *Luis E. Cotto, Appellant v. City of Taunton*, 36 MCSR 103, 106 (2023); See G.L. c. 151B, § 4(16); Americans With Disabilities Act, 42 U.S.C. §§ 12112(d)(2)-(3); MCAD, "Guidelines; Employment Discrimination on the Basis of Handicap - Chapter 151B", § IV & § V, <http://www.mass.gov/mcad/resources/employers-businesses/emp-guidelineshandicap-gen.html> (MCAD Guidelines).

CSC Request for Investigation

The Commission declined to investigate Medford's decision to maintain its provisional promotions to Fire Chief and Deputy Fire Chief while it sought to remove the positions from civil service because the City agreed it would move forward with a promotional examination.

Under threat of investigation by the CSC, the City of Medford decided to move forward with promotional examinations for its Deputy Fire Chief and Fire Chief positions, rather than maintain provisional promotions pursuant section 15, until the positions were lawfully removed from civil service. **Re: Request for Investigation by Neil Rosie, Two Others and Medford Firefighters Union Local 1032 regarding the filling of certain positions in the Medford Fire Dept., 37 MCSR 109, 110 (June 13, 2024).**

Prior to the appeal, the City hoped to remove the chief and deputy chief positions from civil service, although a home rule petition to remove the positions had not yet been approved by the city council, much less submitted to the Legislature. The City believed this act was lawful pursuant to M.G.L. c. 31, §15, because there was no eligible list established at the time of the provisional promotion, and it had no obligation to move forward with a promotional exam if the City was in the process of removing the positions from civil service.

In its decision, the Commission noted that the provisional appointments were initially lawful but expressed concern over the intended process for making permanent appointments. Without citing to any case law or legal precedent, the Commission stated that, the City's efforts to remove the positions from civil service should have no bearing on the need to fill the positions now. No authority was cited to suggest the City was required to proceed on a particular timeline to fill the positions. The Commission did cite to the "Certification Handbook" which was issued, by its own terms, "as a general guide" in 2009 when HRD "delegated" the administration of Police and Fire appointments and promotions to appointing authorities. The guideline pertaining to provisional promotions in the absence of valid list directs appointing authorities to complete Form 13 to request to participate in the next scheduled exam. In this case, there was no exam available. Other than the Handbook, the Commission did not cite any authority to suggest that it would have a legal basis to fashion a remedy in the absence of Medford's decision to participate in the exam.

Regardless of whether the Certification Handbook is a guideline, rather than a statute or regulation, Medford had an option to follow the suggestion to submit documentation requesting to participate in the next exam cycle. In this case, HRD did not have an examination scheduled for Police Chief so no matter what authoritative status the Handbook may be deemed to have, its terms suggesting a limit on some provisional appointments do not apply to the provisional appointment of the Police Chief.

CSC Discipline Decisions

Charges of Untruthfulness Require Clear and Sufficient Evidence.

In *Christopher Alves v. Department of State Police*, D1-22-233 (December 19, 2024) the Commission voted to partially allow the appeal of a discharged state trooper, modifying his discipline from termination to a 30-day suspension for conduct unbecoming and for insubordination. The Hearing Officer determined and the Commission agreed that there was insufficient evidence to support a charge of untruthfulness. “Particularly in this era of possible decertification for untruthfulness, tenured police officers must not be branded as dishonest based on misunderstandings, unfair process, or inadvertent errors.”

Alves is a state police officer who completed the academy in May 2020 and was stationed at the SP Yarmouth Barracks. There were some concerns about Officer Alves’ behavior and interactions with the Barnstable Police Department (BPD), but those concerns were not initially shared with him. On October 20, 2020, a Lieutenant in the BPD confronted Alves about his conduct and later followed up with a report to the state police. Based on the confrontation and the way concerns were reported to the state police, Alves was concerned that he was being targeted and treated differently based on his race.

A few days before July 4, 2021, Alves was issued a body-worn camera (BWC) and provided a brief training regarding the camera. He used the camera 2-3 times before July 4, 2021. On July 5, 2021, Alves self-reported to a stabbing in Barnstable. It was a rowdy and chaotic scene. It was reported that Alves was recording Barnstable officers during the incident/response. And in fact, he did turn on his BWC when approaching a group of officers, including Lieutenant Allen, but he testified he believed he was complying with state police policy and that the scene was growing more unsecure. When confronted by Lieutenant Allen at the scene regarding his BWC, Alves failed to clearly articulate why he had activated his camera and was disrespectful. From his perspective, Lieutenant Allen was harassing and mistreating him; he filed a complaint with the BPD. Lieutenant Allen’s conduct was investigated, as was Alves’ use of the BWC and truthfulness during the investigation. He was charged with violating three rules of the state police and terminated.

On appeal, the Commission determined that the Department failed to show that the Appellant was deliberately untruthful. Rather, the Commission found that Alves was a young/unexperienced officer who received insufficient training on the use of BWC and was “being penalized for not being able to articulate every thought and feeling that went into his decision to record.” Notwithstanding this the Commission found that Alves’ behavior on July 5, 2021, was “weak and immature” and modified his termination to a 30-day suspension.

CSC Decisions - Potpourri

Nicholas Viola, Jr. v. Brockton Public Schools, D1-22-090 (December 19, 2024)

Brockton Public Schools had just cause to terminate Viola's employment due to threatening comments he made to a coworker in January 2022. The decision to terminate his employment rather than impose a lesser sanction was reasonable, considering the severity of Viola's threats, the impact they had on coworkers, and his prior history of discipline and the progressive discipline imposed. Furthermore, the appellant's argument that the discipline was discriminatory, or that his employer failed to consider a disability accommodation, was not supported by credible evidence. The hearing officer did not find Viola's testimony to be credible on this issue. There was no indication that Viola requested an accommodation for any disability. While there was mention in a 2009 letter from a former teacher that Viola had a learning disability as a student in high school, there was no evidence of any correlation between such disability and threatening remarks for which he was disciplined.

Joseph Abasciario v. Boston Police Department, D1-23-033 (December 19, 2024)

An officer who attended the January 6, 2021 riots at the Capital was terminated based on social media messages he posted or condoned. After review and consideration of the record, the hearing officer stated, "I am persuaded by the preponderance of evidence that, applying the Pickering balancing test: (1) the Appellant's tweets are private political speech on matters of public concern that fit within the scope of BPD Rule 102, Section 30 and (2) the BPD has not established an adequate justification to restrict that speech in the interest of protecting the BPD's mission or operations." As a result, the tweets cannot be sanctioned as "conduct unbecoming" under BPD Rule 102, Section 3 or as a violation of the BPD's Canon of Ethics under Rule 113, Canon 8. In this case, the hearing officer was persuaded in part by the fact that the department's initial investigation of the social media posts cleared the Appellant of any wrongdoing. The hearing officer did not give much weight to a second report, issued a year later. Furthermore, the department did not have a social media policy.

Kate Harrington v. Human Resources Division, G2-24-071 (September 5, 2024)

The Commission upheld HRD's decision that the Appellant was ineligible to take the March 25, 2023, Worcester Fire Captain examination because she failed to meet the statutory requirement of being employed in the Worcester Fire Department for at least one year after being certified for the position of Fire Lieutenant prior to the date upon which the Worcester Fire Captain examination was initially scheduled to be held. Appellant argued that, since she spent at least one year serving as a provisional Worcester Fire Lieutenant prior to November 19, 2022, that should somehow deem her eligible to sit for the Fire Captain examination.



Peace Officer Standards and Training (POST) Commission

STATISTICS, COVID-19, AND DECISIONS

POST COMMISSION

The POST Commission has mandates to (1) develop certification standards in collaboration with the Municipal Police Training Committee, (2) certify officers, school resource officers (SRO) and law enforcement agencies, (3) receive, investigate and adjudicate complaints, and (4) maintain a public database with certain disciplinary records and certification status of officers.

- **CERTIFICATION SUBCOMMITTEE:** Held 7 meetings on the subcommittee on certification which was convened in 2024 to focus on character, physical fitness, and behavioral health standards for the next round of officer certification coming in July 2025
- **DISCIPLINE RECORD RELEASES:** Issued 8 releases from January to November 2024; transitioning to monthly releases.
- **AUDITING REGULATIONS:** Promulgated 555 CMR 12.00, governing the maintenance, reporting, and audits of law enforcement records. The new regulations were effective December 6, 2024.
- **DISCIPLINARY CASES:** Presented 152 cases to the Commission, opened 76 preliminary inquires, and issued 52 Decisions and Orders (up from 19 in 2023)
- **CONCLUDED PROCEEDINGS:** Finalized discipline actions for 35 individuals and decertified 30 officers in 2024
- **COMPLAINTS:** Received about 30 public complaints and 10 law enforcement reports weekly.

OFFICER STATUS COUNTS

as of December 31, 2024



22,270 CERTIFIED	348 CONDITIONALLY CERTIFIED	339 NOT CERTIFIED	308 NOT CERTIFIED – ON LEAVE
30 DECERTIFIED (39 total to date)	34 SUSPENDED (55 total to date)	2,193 MPTC ACADEMY GRADUATES	503 SRO CERTIFIED

Officer Status Counts (status definitions)

- ❑ **Not Certified:** Officer has not satisfied all recertification requirements (i.e., failed to complete the required training, is out on excused leave, or has a disciplinary matter)
- ❑ **Not Certified (Excused Leave):** Officer is on extended leave (medical, military, family or administrative) and has not met recertification requirements
- ❑ **Conditionally Certified:** Officer has met some recertification requirements, and must satisfy all requirements within a specified time frame
- ❑ **Decertified:** A decertified officer cannot work for a law enforcement agency in any capacity.
- ❑ **School Resource Officer: (SRO)** An individual who is either a duly sworn municipal police officer with all necessary training and up-to-date certificates, including special SRO certification as required by M.G.L. c. 6E, § 3, or an officer appointed by the chief of police who is specially charged with providing law enforcement, promoting school safety and security services to elementary and secondary public schools, and maintaining a positive school climate for all students, families, and staff.
- ❑ **Administrative suspension:** All officers included in this list have been administratively suspended for failure to complete the required MPTC training

POST COMMISSION – Audit Regulations and Recertification

1. Audit Regulations. The Commission recently approved a revised version of 555 CMR 12.00 Maintenance, Reporting, and Audits of Law Enforcement Records and Information, which is posted on the Commission’s website and became effective December 6, 2024. The new regulations govern: (a) The creation and maintenance of records by agencies and officers; (b) The reporting of information by agencies and officers; and (c) The auditing of agencies and officers by or on behalf of the Commission, pursuant to M.G.L. c. 6E, § 8(d) or otherwise.

2. The Commission has completed the first 3 rounds of Recertification. Recall, all officers, as of July 1, 2021 were certified by statute. The initial recertification schedule was by last name (Officers A-H were recertified as of July 1, 2022; Officers I-P were recertified as of July 1, 2023; and Officers Q-Z were recertified as of July 1, 2024)

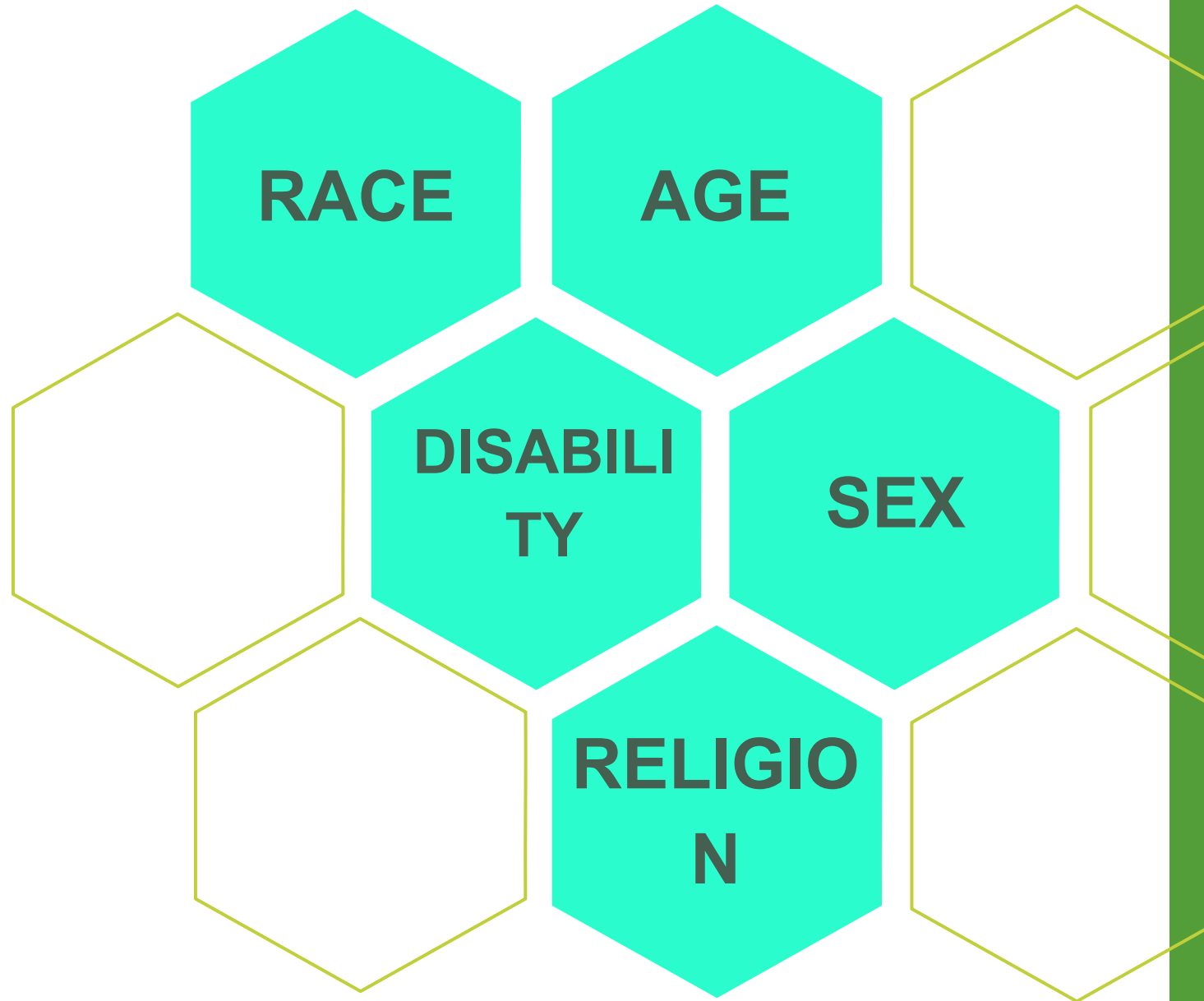
- **Officers with last names A-H will be required to be recertified on by July 1, 2025. The Commission is finalizing the 2025 recertification process and expects to have the details on its website prior to May 1.**
- **Physical & Psychological Fitness**
 - Initial certification by POST ascertained whether an agency had ever administered a physical and psychological evaluation to a given officer.
 - The statute assumes an on-going requirement of physical and psychological fitness
 - Improving officer health and wellness is a broad topic.

3. Law Enforcement Agency (LEA) Certification. At its meeting on June 20, 2024, the Commission presented a framework for discussion regarding LEA certification standards. Pursuant to M.G.L. c. 6E, § 5, the Commission is tasked with certifying all LEAs in accordance with standards developed by the Division of Police Certification. The framework is intended to guide the Commission through the necessary parts of a comprehensive LEA certification regulation and facilitate conversation around key policy decisions necessary to the development of a LEA certification scheme. Information about the proposed design, implementation and enforcement elements of **555 CMR 13.00 Law Enforcement Agency Certification** here: [Law Enforcement Agency Certification Framework and Key Policy Questions](#).



Massachusetts Commission Against Discrimination

STATISTICS, COVID-19, AND
DECISIONS



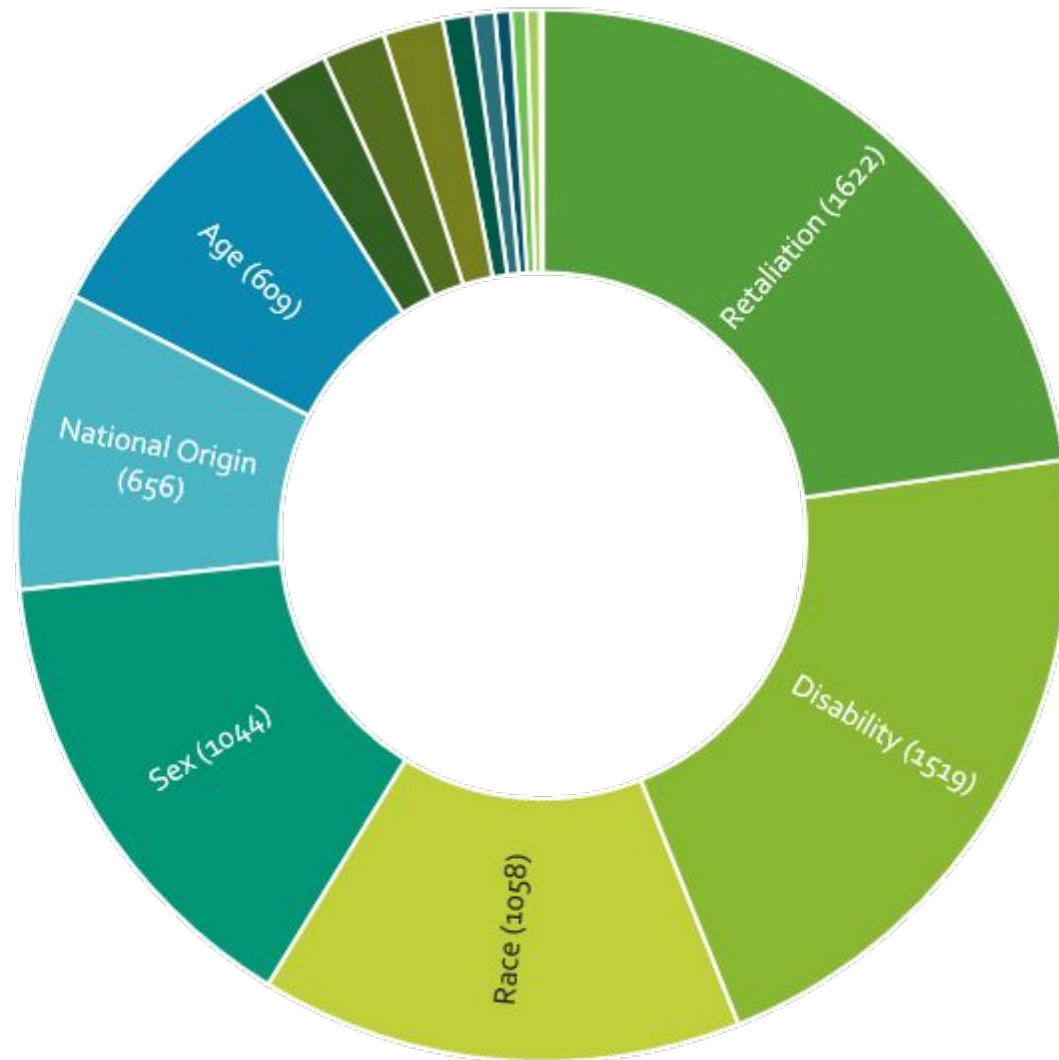
AGENCY UPDATES

- **Michael Memmolo, has been named MCAD's first ever Executive Director (May 2024). He previously served as Interim Executive Director for close to two years. His unanimous confirmation followed a thorough, open and transparent process that saw 64 candidates from diverse backgrounds apply for the position.**
- In FY24 the Commission made substantial gains in staffing, backfilling 19 positions, including 13 investigator roles, despite continuing to face staffing challenges and employee turnover. It remains understaffed and due to anticipated budget constraints in 2025 it had to eliminate 5 investigator positions that would have further expanded the agency's workforce.
- As reported previously, MCAD saw an unprecedented reduction in staff through 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. Despite significant process this year (54% reduction in its oldest cases), a substantial increase in new complaints outpaced the agency's investigative capacity resulting in an increased backlog of 2.8%
- Opened a new Worcester Office (previous Worcester Office closed in October 2022) and are in talks to open a new space in Fall River.
- **In FY24 the Agency selected a vendor for its new Comprehensive Case Management System (CCMS) to replace the prior 22-year-old case management system. For the first time in the agency's history, constituents will be able to file complaints online. Work on the project began in May 2024 and is expected to last 12-16 months.**
- In July 2024, MCAD published updated Guidelines on Harassment in the Workplace. In May 2023 it published a brief guide to the Massachusetts Parental Leave Act which includes updates on the guidelines, notice, Q & A, and a summary page.

FY24 AT-A-GLANCE

<3% growth of the case backlog	6,877 people trained in anti-discrimination law	640 public records requests
10 Public hearing & attorney fee decisions	3,553 new complaints filed	425 mediations & conciliations
640 consultations completed	10,692 informational calls conducted	16% probable cause investigative findings

AGENCY UPDATES



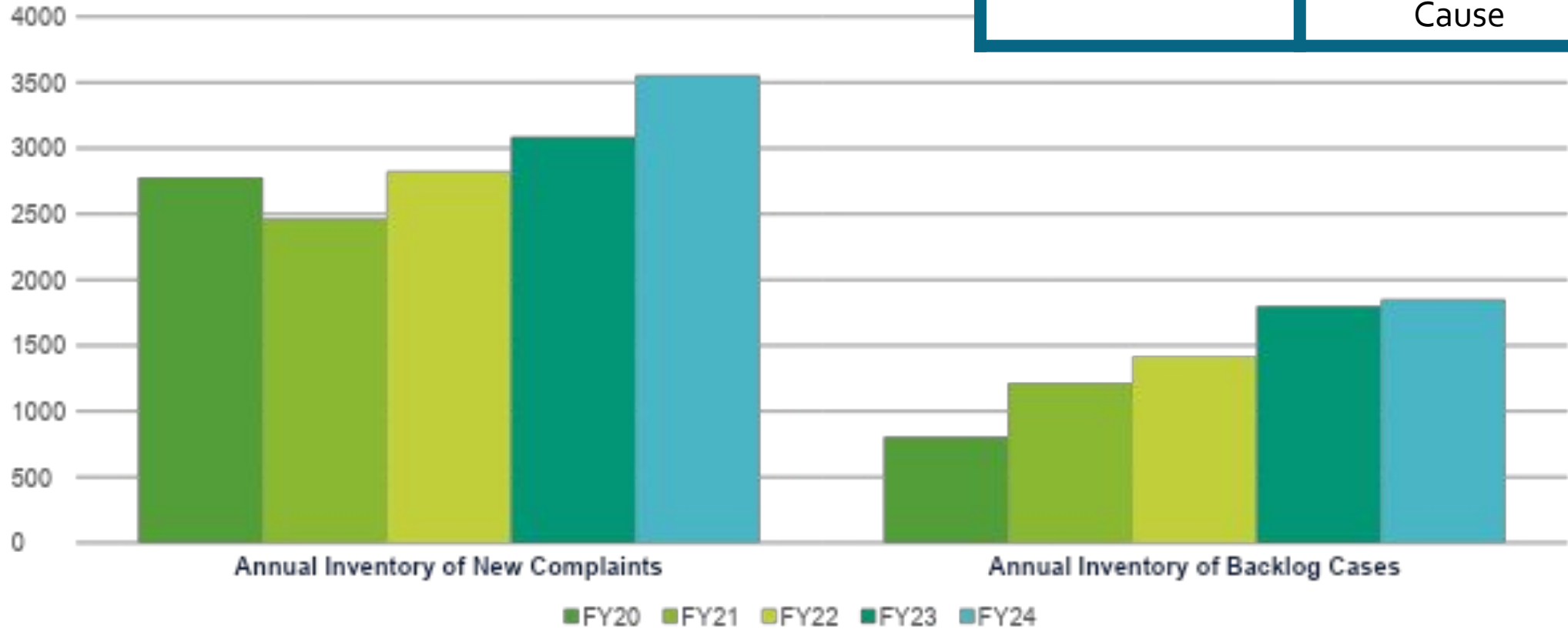
- Retaliation (1622)
- Disability (1519)
- Race (1058)
- Sex (1044)
- National Origin (656)
- Age (609)
- Sexual Orientation (151)
- Religion and Creed (138)
- Public Assistance (132)
- Gender Identity (64)
- Genetics and Other (50)
- Arrest Record (35)
- Familial Status (34)
- Military/Veteran Status (29)
- Marital Status (7)

Breakdown of Discrimination Based on Sex

Sex	641
Sexual Harassment	238
Pregnancy/Parenting	165

AGENCY UPDATES

FY24 Investigative Findings	
203 (16%) Probable Cause	1073 (84%) Lack of Probable Cause



Source: MCAD FY23 Annual Report

Noteworthy Settlements by Commission Counsel

During FY24, Commission Counsel resolved 86 discrimination cases through conciliation and negotiation, recovering \$1,413,677 in victim specific relief. The also secured affirmation relied in the form of training , reasonable accommodations and policy review.

- A retail employee claimed she was subjected to a hostile work environment based on her sex, national origin, and race/color. Complainant alleged that her de facto supervisor and co-workers made inappropriate comments, and management failed to take prompt, effective remedial action despite having ample opportunity. After an unsuccessful conciliation conference, the parties continued good-faith negotiations and settled the matter for \$20,000. The settlement also included MCAD training for the offending employees and management and the creation and posting of an anti-discrimination policy. [Suffolk County]
- An individual with two neurodevelopmental disabilities filed a complaint after being denied a reasonable accommodation request for additional training and support during the first few weeks of employment. This support was crucial for him to acclimate to his new position. Instead, the employer dismissed his requests and directed him to ask co-workers for assistance. Despite his proven track record of successfully performing similar job functions with other employers, he was terminated shortly after his hire due to alleged performance deficiencies. The Commission's investigation revealed that the employer did not consider a reasonable accommodation and failed to engage in an interactive dialogue. The parties settled for \$25,000 and agreed to provide training for the specific individual on general anti-discrimination laws and reasonable accommodation requests. [Plymouth County]
- Complainant worked in Respondent's floral department. Complainant took a leave of absence for the birth of her child and to bond with her. While on leave, Complainant discussed her return to work with Respondent and requested a few pregnancy-related accommodations. Respondent failed to accommodate her pregnancy related conditions and then terminated her employment for requesting the same. Respondent agreed to resolve the matter for a payment of \$20,000.00 to Complainant; the owners and managerial employees will attend Employment Discrimination 101, as provided by the MCAD; Respondent will provide written notice of employees' rights under the Massachusetts Pregnant Workers Fairness Act; and Respondent will designate a private, non-bathroom space specifically for employees who are nursing for the purpose of expressing breast milk. Respondent will also update and redistribute its relevant policies, employee handbooks, and written notices to employees. [Bristol County]

MCAD Full Commission Decisions

MCAD & Cleveland Coats v. Massachusetts State Police, 46 MDLR 1 (2024) (Age-Race-Emotional Distress)

The Full Commission upheld the Hearing Officer's damages award to Complainant for lost wages and emotional distress following successful claims of discrimination based on age and race (African American). Complainant was a police officer and served in the lucrative and prestigious Executive Protection Unit ("EPU"), protecting the Governor and Lt. Governor. Despite his positive performance Complainant was removed from the unit while younger white officers were allowed to remain, and he was transferred to a less prestigious unit unsuited to his skillset. The Hearing Officer awarded Complainant \$148,000 in lost overtime wages and \$250,000 in emotional distress damages. On appeal, Respondent contested the emotional distress award as disproportionate to the harm and the lost wages award as inaccurate based on an inappropriate comparator and improper evidence. The Full Commission found substantial evidence to support both damage awards. Emotional distress awards are determined on a case-by-case basis considering several criteria, including the nature and severity of the harm or mitigation efforts. Respondent argued that the emotional distress award should be reduced based on Complainant's failure to seek medical or spiritual mitigation of the emotional harm. However, as discussed by the Full Commission, mitigation is only one of several criteria to be considered in determining an emotional distress award and is not mandatory due to the highly personal nature of emotional distress and how an individual processes that distress. Regarding the lost wages award, the Full Commission did not find convincing Respondent's argument that the Hearing Officer improperly considered a comparator (another sergeant assigned to the EPU) and chalks of payroll record summaries. Because the EPU is a selective unit, Complainant was limited by the number of comparators of similar rank and experience. Complainant was able to illustrate that fluctuations in the chosen comparator's overtime opportunities were proportional to his own. The Full Commission also found that Respondent failed to demonstrate that consideration of the payroll checks was improper where there were no inaccuracies identified, and the underlying payroll records they were based on were also admitted into evidence. As such, the Full Commission affirmed the Hearing Officer's \$250,000 emotional distress award and \$148,000 in lost overtime wages. The Full Commission also affirmed the Hearing Officer's award of reduced attorney's fees in the amount of \$497,963 and costs in the amount of \$12,379.22.

MCAD Full Commission Decisions

[TIA & MCAD v. Herb Chambers 1186, Inc., 46 MDLR 53 \(2024\) \(Sexual Harassment-Retaliation-Credibility Determinations-Prohibited Evidence\)](#)

Complainant appealed to the Full Commission following the Hearing Officer's decision that the Respondent employer was not liable for discrimination based on creed, sex, sexual harassment, and retaliation under M.G.L. c. 151B, § 4(1), (4), and (16A). On appeal, Complainant argued that the Hearing Officer improperly credited evidence presented by the Respondent and, generally, did not credit evidence presented by Complainant. In support of her position concerning her own credibility, Complainant attempted to introduce new evidence of conciliation and settlement offers. In affirming the hearing decision in favor of Respondent, the Full Commission relied on the longstanding principle that credibility determinations are solely within the province of the Hearing Officer and reinforced the Commission's procedural regulations prohibiting the introduction of evidence presented as part of conciliation efforts.

[MCAD & Patricia Suomala v. Massachusetts Society for the Prevention of Cruelty to Animals, Ann Marie Manning, And Kathleen Collins, 45 MDLR 63 \(2023\) \(Retaliation\)](#)

The Full Commission affirmed the Hearing Officer's decision that Complainant's termination as the Director of Inpatient Services at the MSPCA was not in retaliation for engaging in the protected activity of reporting a sub-ordinate employee's conduct toward a coworker as sexual harassment and for urging Respondents to terminate the offending employee for such behavior. On appeal, Complainant argued that the Hearing Officer over-looked evidence that the non-retaliatory reasons Respondents presented for her termination were pretextual and erred by crediting portions of Respondents' testimony and failing to consider evidence of Complainant's good performance. The Full Commission relied on the longstanding principle that credibility determinations are solely within the province of the Hearing Officer, and the Hearing Officer is responsible for weighing the evidence presented. Respondents presented credible evidence that Complainant initially performed well as Director of Client Services, but this performance deteriorated over time, escalating to unprofessional interactions with MSPCA staff and undermining members of management in meetings with colleagues and external vendors. Complainant received an oral warning for this behavior. Complainant urged the Full Commission to consider that she received an annual raise as evidence that Respondent's reasoning for the termination was pretextual. However, Respondents presented evidence that Complainant's disrespectful behavior continued after receiving the annual raise. The Full Commission affirmed the Hearing Officer's decision and determined it was supported by substantial evidence.

QUESTIONS?

Melissa R. Murray
Norris, Murray & Peloquin
781-762-2229
mmurray@nmlabor.com
www.nmlabor.com





ACKNOWLEDGEMENTS

Thank you to the following individuals who provided information or contributed to these materials including:

- George Driscoll and Bob Markle, JLMC
- Director Roberts, DLR
- Chairman Bowman, CSC
- Director Zuniga, Executive Director, and Cynthia Campbell, POST
- Michael Memmolo, Executive Director, and Justine LaVoye, MCAD

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. The information provided is for informational and training purposes only.