

Commonwealth of
Massachusetts
Department of Labor Relations

FY2021 ANNUAL REPORT



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EXECUTIVE SUMMARY

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

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

As reflected in the charts beginning on page 23 of this report, during the past fiscal year, the DLR opened 600 new cases and closed 581 cases. The majority of those cases are unfair labor practice (ULP) cases. Of the 384 ULP cases filed in FY2021, 87 involved COVID-related matters. The inventory of cases on the DLR's open docket in FY2021 is approximately 10% higher than the previous year, largely due to COVID-related delays in case processing. At the end of FY2021, the DLR had approximately 488 open cases at various stages of case processing, including administrative and judicial appeals. The DLR has maintained its ability to issue timely probable cause determinations and hearing officer decisions. On average, in FY2021, the DLR issued probable cause determinations in 43 days and hearing officer decisions in 128 days. While it is expected that COVID-related challenges will continue, with consistent funding and staffing levels, the DLR will strive to maintain or improve on these averages in the next fiscal year.

The DLR continued to use its mediation services to facilitate settlements in all case classifications. In addition to contract mediation, grievance mediation, and traditional unfair labor practice mediation, mediators continued to provide expedited mandatory mediation services in all ULP Level I cases. In response to the COVID-19 pandemic, the DLR offered immediate mediation in all COVID-related unfair labor practice cases. Of the 94 COVID-related cases pending during FY2021, 69 of them were resolved, in large part due to the DLR's mediation efforts. The DLR's continued use of mediation helps facilitate the parties' relationships and provides significant cost-savings. During this past fiscal year, DLR mediators conducted 157 contract mediation sessions, 9 grievance mediations, and 169 unfair labor practice mediation sessions.

During the past fiscal year, the CERB published 3 Hearing Officer Appeal decisions, 6 representation case decisions, and decided 28 requests for review of Investigators' dismissals of charges for lack of probable cause.

During the past fiscal year, there were 30 JLMC cases filed. The DLR mediators, working under the JLMC's oversight, conducted 50 contract mediations. The JLMC conducted 6 Section 3(a) hearings.

The DLR offers many services to accomplish its mission, including:

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

In FY2021, the DLR continued its work with a consortium of small agencies, including the State Ethics Commission and the Department of Mental Health, with the assistance of EOTSS, to procure a common case management platform, available to the consortium agencies and other similarly situated small agencies. Use of this common platform will allow DLR to integrate its web-based forms and e-filing application with its case and document management system into a single software system. Improving the functionality of the DLR's web-based public documents search system, which gives the public and stakeholders the ability to search the DLR's case management system and retrieve frequently requested public documents and online dashboards that provide real time case management information, is also included in this project.

OVERVIEW OF DLR SERVICES

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

1. Initial Processing and Investigation of Prohibited Practice Charges

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

After an initial review to determine if a case is properly before the DLR and that it meets the DLR filing requirements, the Director will determine whether the case should be deferred to the parties' own contractual grievance procedure. A case that is properly before the DLR will be classified as a Level I or Level II case based on its relative impact to the public. Level I cases, where resolution of the dispute has the greatest urgency, will be processed first; the time frame for completion of the investigation will be 60 days, depending on the level of urgency. During the past year, all COVID-related cases were assigned a Level I priority. Cases with less urgency are assigned a Level II priority and investigated between 60 and 90 days from the filing date.

At the investigation, the investigator is statutorily obligated to explore whether settlement of the charge is possible. If such discussions do not result in settlement, the investigator will proceed with a probable cause investigation. The investigator will expect the parties to present evidence from individuals with first-hand knowledge. The intent of the probable cause investigation is to have both parties present all evidence at the investigation, and, as a result, most investigations have the record closed at the end of the investigation. In FY2021, all investigations have been conducted remotely via videoconference.

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

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

2. Hearings and Appeals

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

The Prohibited Practice hearing is a formal adjudicatory process. Parties to the proceedings have the right to appear, to examine and cross-examine witnesses, to produce evidence and otherwise support or defend against the Complaint. In FY2021, all hearings have been conducted remotely via videoconference. Additionally, the sworn testimony is recorded and preserved electronically. At the close of the hearing, the parties often provide the Hearing Officer with post-hearing legal briefs. The Hearing Officer then issues a written decision, determining whether a violation of the Law has occurred. The DLR's goal is to issue decisions within 240 days of closing the record.

A party who disagrees with the Hearing Officer's decision can appeal to the CERB by filing a Request for Review. In most cases, both sides file briefs with the CERB in support of their respective positions. After review of the record and consideration of the issues, the CERB issues its decision, generally within six months after the appeal is filed. Once the CERB issues its decision, the decision is final and can be appealed only to the Massachusetts Appeals Court.

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

3. Representation Issues

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

In all cases, the DLR assists and encourages the parties to reach an agreement concerning an appropriate unit. In FY2021, the DLR resolved 83% of its unit clarification cases through voluntary agreement over the scope of the bargaining unit and in 90% of election cases, elections were conducted after voluntary agreement over the scope of the bargaining unit. When no agreement is reached, a DLR hearing officer conducts a hearing, after which the Hearing Officer issues a written decision either dismissing the petition or defining the bargaining unit and directing an election. These decisions can be appealed to the CERB but there is no court appeal.

a. Representation Petitions and Elections

The DLR conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever: (1) an employer files a petition alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit; (2) an employee organization files a petition, accompanied by an adequate showing of

interest, alleging that a substantial number of employees wish to be represented by the petitioner; or (3) an individual files a petition accompanied by an adequate showing of interest, alleging that a substantial number of employees in the bargaining unit no longer wish to be represented by the current employee organization. Depending on the size of the unit and the relative cost, the DLR conducts elections either on location or through mail-in ballots, however, during the past year, due to COVID concerns, all elections have been conducted by mail.

In FY2021, the DLR docketed 28 representation petitions and conducted 13 elections, involving 204 voters. A chart detailing these representation elections is available in the Case Statistics section of this Report.

b. Written Majority Authorization Petitions

The card check law (Chapter 120 of the Acts of 2007) provides that the DLR “shall certify to the parties, in writing, and the employer shall recognize as the exclusive representative for the purposes of collective bargaining of all the employees in the bargaining unit, a labor organization which has received a written majority authorization . . .” Therefore, a union that provides the DLR (or a designated neutral) with proof of majority support (50% + 1) of an appropriate bargaining unit will be certified by the DLR as that bargaining unit’s exclusive bargaining representative without an election. The DLR-issued regulations provide respondents with the right to file objections and challenges prior to a certification. Since the card check law requires certification within 30 days, the DLR seeks to work with the parties to expedite all written majority authorization petitions.

In FY2021, 27 written majority authorization petitions were filed. The DLR issued certifications in 15 petitions that were supported by a total of 779 written majority authorization cards. A chart detailing the written majority authorization certifications issued in FY2021 is available in the Statistical Reports section of this Report.

c. Unit Clarification Petitions (CAS)

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

In FY2021, the DLR received 18 CAS petitions.

4. Labor Dispute Mediation

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

a. Interest Mediation

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

b. Mediation of Prohibited Practice Charges

The formal mediation of prohibited practices charges is an important feature of the reorganization statute (Chapter 145 of the Acts of 2007). The DLR affords the parties numerous opportunities, both formal and informal, to avail themselves of the DLR’s mediation services and requires mediation of all Level I prohibited practice hearings.

c. Grievance Mediation

The DLR provides mediation services to parties who desire to mediate grievances arising out of the collective bargaining agreement. The DLR offers grievance mediation to all parties who file for grievance arbitration. In some cases, DLR mediators will assist parties on an ongoing basis to settle numerous grievances. The DLR received 5 requests for grievance mediation during FY2021.

5. Grievance Arbitration

The DLR provides grievance arbitration services that are utilized by all sectors of the Commonwealth’s labor relations community. In the past fiscal year, the DLR received 41 grievance arbitration petitions from a variety of employer and employee representatives involving state, county, and municipal governments, including police departments, fire departments, public works departments, and school departments. Many of these disputes are settled before a hearing is held. If the disputes are not settled, then DLR arbitrators hold evidentiary hearings, hear arguments, and accept briefs. After the close of the hearing and submission of briefs, if any, the DLR arbitrator will issue an award.

6. Investigation, Prevention and Termination of Strikes

Strikes by public employees in Massachusetts are illegal. G.L. c. 150E, § 9A. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the DLR for an investigation. Upon receipt, the DLR immediately schedules an investigation of the allegations contained in the petition and the CERB decides whether an unlawful strike has occurred or is about to occur. If the CERB finds unlawful strike activity, the CERB issues a decision directing the striking employees to return to work. The CERB may issue additional orders designed to help the parties resolve the underlying dispute. Most strikes end after the CERB issues an order, but judicial enforcement of the order sometimes necessitates Superior Court litigation. Such litigation can result in court-imposed sanctions against strikers and/or their unions. In FY2021, the DLR received three strike petitions. All three petitions involved allegations that teachers engaged in strikes over the decision to return to in-person instruction during the COVID-19 pandemic. In one case, the investigation was conducted the day after the petition was docketed, and the decision was issued within hours after record was closed. In the second case, the investigation was conducted two days after the petition was docketed, and case settled shortly thereafter. In the third case, the investigation was conducted the day the strike began, and the decision was issued later that same day. The CERB’s prompt action ensured continuity of instruction for the affected students and the decisions provided clarity for other school systems in the Commonwealth. As a result, no further job actions have occurred in the Commonwealth to date.

7. Litigation

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

8. Other Responsibilities

a. Requests for Binding Arbitration (RBA)

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

b. Information on Employee Organizations

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

by regulation, the DLR employs various internal case-processing incentives to ensure compliance with the filing requirements.

c. Constituent Outreach

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

Decisions and Rulings of the Commonwealth Employment Relations Board (CERB)
July 1, 2020 – June 30, 2021

Unfair Labor Practices

City of Somerville and Somerville Police Employees Association, 47 MLC 59, MUP-17-5980 (October 2, 2020) (CERB Decision on Appeal of Hearing Officer Decision)

The CERB affirmed a Hearing Officer decision holding that the employer violated the Law by: (a) requiring a former union vice-president to disclose certain internal communications with the union president, (b) issuing an order prohibiting the president and former vice-president from communicating with most other employees about an internal affairs investigation, and (c) questioning the former vice-president and president about those union communications during internal affairs interviews. The CERB found that discussions between the two union officers about an upcoming maritime training over which the union had demanded to bargain and was contemplating filing a grievance were concerted activities that did not lose their protected status when the union president unsuccessfully asked the then-union vice president to withdraw from the training at the last minute. The CERB agreed with the Hearing Officer that this conduct neither disrupted employer operations nor was indefensibly disloyal to the employer and thus, the employer's conduct would not tend to interfere with, restrain and coerce employees in the exercise of their rights protected under Section 2 of the Law.

Judicial Appeal: None

Commonwealth of Massachusetts/Secretary of Administration and Finance and SEIU, Local 509, 47 MLC 160, SUP-19-7352 (March 8, 2021) (CERB Decision in First Instance)

A majority of the CERB (Chair Wittner and Member Ackerstein) concluded that an unlawful unilateral change to bargaining unit members' terms and conditions of employment was made when managers at MassHealth began using a previously unused feature of MassHealth's computer-based phone system to surreptitiously listen in on phone calls that certain employees had with members of the public, without first giving the exclusive representative prior notice or an opportunity to bargain. The CERB held that this was a bargainable change to terms and conditions of employment because this type of telephone monitoring increased the nature and type of information available to managers and the likelihood of employees being disciplined. Member Strong dissented on grounds that the electronic surveillance was done in the course of an investigation into specific employees' high-volume/short duration phone calls and was therefore merely a more efficient way of enforcing existing work rules that required no bargaining.

Judicial Appeal - Pending

Commonwealth of Massachusetts/Secretary of Administration and Finance and National Association of Government Employees, 47 MLC 226, SUP-19-7599 (March 30, 2021) (CERB Decision in First Instance)

The CERB held that the Commonwealth of Massachusetts, Secretary of Administration and Finance made an unlawful unilateral change in October 2019 when it began deducting the maximum amount of employee contributions permitted under the Paid Family and Medical Leave Act (PFMLA) from the paychecks of state employees represented by the National Association of Government Employees (NAGE) without first bargaining with NAGE to resolution or impasse. In so holding, the CERB rejected the Commonwealth's defenses that the parties were at an impasse when it implemented the payroll deductions or that circumstances beyond its control justified unilateral implementation.

Andover Education Association, et. al. and Andover School Committee, 47 MLC 33, SI-20-8176 (September 8, 2020) (CERB Decision in First Instance)

The CERB held that the Union and its members' one-day refusal to work inside school buildings on the first day of professional development was an unlawful strike within the meaning of Chapter 150E. The CERB rejected the Union's argument that it had not engaged in a strike because its members were performing their duties, albeit outside of the school building. The CERB emphasized that Chapter 150E defines a strike *either* as a refusal to perform all or part of required duties *or* a concerted refusal to report to duty. The CERB clarified that in an era where remote work is possible, the term "report to duty" means working not only when but also where the employer has ordered its employees to report. The CERB also disagreed with the Union that the bargaining unit members who remained outside the school building were able to perform all their duties. It found that they were unable to perform health and safety-related activities that had to be performed inside school buildings, such as Wi-Fi testing, mask breaks, and classroom set-up. The CERB held that during a global pandemic, activities that explained and tested these new protocols were intrinsic to the teachers' duties. With respect to other aspects of the petition, the CERB rejected the School Committee's argument that a strike was imminent because the strike lasted for only one day and there was no basis in the record to conclude that the Union was planning another one. The CERB nevertheless rejected the Union's request to dismiss the matter as moot because it had only voted to suspend the one-day action but had not disavowed it.

Brookline Educators Union et al. and Brookline School Committee, 47 MLC 79, SI-20-8287 (November 3, 2020).

The CERB inferred the existence of an unlawful strike when, on November 1, 2020, in the context of negotiating a memorandum of agreement (MOA) regarding COVID-19 protocols, 90% of the Union's membership voted to strike on November 3, 2020, as a result of their dissatisfaction with the School Committee's proposal regarding future changes to social distancing protocols, and roughly 77% of teachers and 46% of paraprofessionals required to show up for professional development duties on November 3, 2020 called in sick or took a personal day. The CERB further concluded that the Union and the Union president, in her official capacity, had encouraged and condoned the strike in violation of the Law when the Union president reported the results of the strike vote to the School Committee without repudiating it or taking any affirmative steps to discourage any future withholding of services. Because, at the time of the strike investigation, the Union had not otherwise denounced the action or provided assurance that the teachers and paraprofessionals would return to work on November 4, 2020, the CERB ordered the Union and its officers to, among other things, cease and desist from engaging in an unlawful strike and to inform their members of their obligation not to participate in any unlawful work stoppages. The CERB also ordered both parties to bargain in good faith over the MOA.

CERB Decisions and Rulings on Representation, Written Majority and Unit Clarification Matters

Littleton School Committee, 47 MLC 6, CAS-19-7235 (July 21, 2020) (CERB Decision in the First Instance)

The CERB granted a unit clarification petition filed by the Littleton Educators' Association to accrete the title of Therapeutic Mental Health Counselor (TMHC) to a unit of teaching and non-teaching professionals in the Littleton Public Schools. The bargaining unit included school adjustment counselors and school psychologists, who, like the TMHC, provided direct therapeutic and counseling services to students with emotional and mental health needs. The CERB concluded that, notwithstanding a number of differences between the positions, including lack of required DESE licensure, the TMHC shared a sufficient community of interest with other

bargaining unit members in terms of similar skills, duties, educational qualifications, work location, hours, wages, benefits, and regular interaction with other bargaining unit members to warrant accretion to the unit.

Town of Erving and New England Police Benevolent Association, 47 MLC 43, MCR-20-7978 (September 15, 2020) (CERB Decision in First Instance)

The issue in this case was whether the position of sergeant should be excluded from the petitioned-for bargaining unit of police department employees on grounds that he is: (a) a managerial employee within the meaning of Section 1 of G.L. c. 150E, (b) a supervisor, and/or (c) because his inclusion in the bargaining unit would otherwise create intra-unit conflicts of interest. After the hearing, the CERB concluded that the sergeant was not a managerial employee or a true supervisor whose presence in the unit would create irreconcilable conflicts. In so holding, the CERB rejected as speculative and unsupported the Town's argument that including the sergeant in the unit would violate G.L. c. 268A, the Commonwealth's Conflict of Interest Law. The CERB further concluded that even if it had concluded that the sergeant was a true supervisor, it would have included him in the bargaining unit anyway, because he was the only sergeant on the police force, and the CERB disfavors creates one-person bargaining units when there is a larger unit in which the employee can be placed.

Cultivate Holdings and United Food and Commercial Workers, Local 1445, 47 MLC 56, WMAP-20-8085 (September 24, 2020) (CERB Ruling on Request to Reinvestigate Certification by Written Majority Authorization)

Cultivate Holdings, LLC, a private-sector company that grows and dispenses medical and adult-use cannabis products, filed a motion to reinvestigate a certification by written majority authorization (WMA) that the DLR issued. Cultivate's main argument was that the employees in the unit were not agricultural employees within the meaning of G.L. c. 150A and thus the DLR lacked jurisdiction to issue the certification. After reviewing the applicable statutory and regulatory scheme, the CERB determined that these jurisdictional questions were for the DLR and not the CERB to decide in the first instance and remanded the request to the DLR for further processing.

Southeastern Massachusetts Regional 911 District (SEMRECC) and Massachusetts Coalition of Police, 47 MLC 66, WMAM-20-8054 (October 14, 2020) (CERB Ruling on Request to Reinvestigate Certification by Written Majority Authorization)

The Massachusetts Coalition of Police filed a WMA petition with the DLR. During the verification process, the DLR, acting as the Neutral, investigated SEMRECC's outcome-determinative challenges that Operations Supervisors should be excluded from the unit because they supervise other unit members and because, acting in that capacity, they allegedly unduly influenced the Communications Officers to sign WMA cards. The Neutral found that SEMRECC had not sustained its burden of proving either challenge. The Neutral subsequently issued a report verifying the Union's majority support, and the DLR certified the unit based on that report. SEMRECC subsequently filed a request with the DLR pursuant to 456 CMR 14.15 to reinvestigate the certification. The CERB denied the request. After reviewing the applicable statute and regulations, the CERB found that nothing in G.L. c. 150E or the DLR's regulations provides for a right of reinvestigation, reconsideration, or appeal of a neutral's dismissal of outcome determinative challenges during the WMA verification process. The CERB therefore held that an employer must do more than disagree with the grounds for the dismissal and/or seek a second opportunity to establish the validity of its challenges to establish good cause pursuant to 456 CMR 14.15 to reinvestigate the certification.

Commonwealth of Massachusetts/Secretary of Administration and Finance and New England Police Benevolent Association and SEIU, Local 509, 47 MLC 123, SCR-20-8199 (December 16, 2020) (Ruling on Motion to Dismiss)

The New England Police Benevolent Association (NEPBA) filed a petition to sever seven separate job titles that are currently represented by SEIU, Local 509 (Local 509) in statewide bargaining unit 8. The Commonwealth filed a motion to dismiss the petition, which Local 509 supported. The CERB granted the petition pursuant to 456 CMR 14.07(1), which describes the statewide bargaining units and provides that no petition filed under G.L. c. 150E, §4 that seeks certification in a bargaining unit not in substantial accordance with those descriptions shall be granted with respect to employees of the Commonwealth, except in “extraordinary circumstances.” The CERB has previously held that a statewide bargaining representative’s disinterest in representing certain bargaining unit members did not create extraordinary circumstances to allow those employees to form a new unit. For that and other reasons, the CERB held that even assuming that NEPBA’s claims of Local 509’s “pervasive violation of the duty of fair representation” towards the petitioned-for employees were treated as true, there were not extraordinary circumstances that warranted entertaining the NEPBA’s petition.

New England Treatment Access, LLP and United Food and Commercial Workers, Local 1445, 47 MLC 145, WMAP-20-8074 (February 1, 2021) (Ruling on Request to Reinvestigate Certification by Written Majority Authorization)

The CERB denied the employer’s request to reinvestigate a certification by written majority authorization. The employer argued that it inadvertently made a mistake in the hire dates of one of the employees on the employee list it provided to the neutral, and that this error affected the results of the verification. The CERB rejected the request, holding that under the DLR’s WMA regulations, 456 CMR 14.19 *et seq.*, the employer could not raise its purported hire-date error for the first time post-certification. Further, based on a number of considerations, including the importance of bringing finality to DLR representation proceedings, the CERB found that the late-raised error did not constitute good cause to reinvestigate the certification under 456 CMR 14.15.

Town of Seekonk and Seekonk Public Safety Dispatch and Police Clerical and AFSCME Council 93, Local 1701, AFL-CIO, 47 MLC 152, MCR-20-8220 (February 8, 2021) (Ruling on Motion to Treat Prohibited Practice Charge as Blocking Charge)

The CERB denied a motion filed by the incumbent union AFSCME seeking to have its prohibited practice charge alleging that the Town of Seekonk violated G.L. c. 150E, §§ 10(a)(5), 10(a)(2) and, derivatively, 10(a)(1) block a representation petition filed by an independent union. The DLR Investigator issued a complaint alleging that the Town unlawfully refused to engage in successor contract negotiations with AFSCME. However, where the allegations in the complaint and evidence in the investigation record demonstrated that the employees’ desire for different representation occurred before the employer allegedly refused to bargain and continued even after the town resumed bargaining, the CERB found that the alleged conduct would not interfere with employee free choice.

Green Thumb Industries and United Food and Commercial Workers, Local 1459, WMAP-21-8450 (April 29, 2021) (Unpublished Ruling on Request to Reinvestigate Certification by Written Majority Authorization)

The CERB denied an employer’s request to reinvestigate a certification by written majority authorization. The employer sought review of the DLR Neutral’s dismissal of forty-eight outcome-determinative challenges that were based on the employer’s assertion that it intended to hire forty-eight additional agricultural employees once it completed plans to expand its operations across the street. The CERB dismissed the request for reinvestigation based on Southeastern Massachusetts Regional 911 District (SEMRECC), 47 MLC 66, 67, WMAM-20-8054 (October 14, 2020), described above. From a policy standpoint, the CERB found that the employer’s expansion and hiring plans lacked sufficient definiteness to warrant revoking the certification, especially given the quick timeline that the Legislature has imposed upon the DLR to complete the WMA verification process.

City of Everett and Teamsters Local Union No. 25 and New England Police Benevolent Association, Inc., 47 MLC 313, MCR-20-8331 (June 30, 2021) (Ruling on Motion to Treat Prohibited Practice Charge as Blocking Charge)

A DLR investigator issued a complaint alleging that the City of Everett had engaged in prohibited practices within the meaning of Sections 10(a)(2) and 10(a)(1) of the Law when: (1) an acting supervisor urged dispatchers who were represented by Teamsters Local 25 (Teamsters) to select the NEPBA as their exclusive representative instead, and (2) the City failed to discipline employees who had granted NEPBA representatives unauthorized access to the secure dispatch center on several occasions to solicit on-duty support for the NEPBA. The Teamsters filed a motion to allow the unfair labor practice charge to block further processing of the NEPBA's representation petition. The CERB granted the motion, finding that the acts that formed the basis of the complaint, when viewed together, would reasonably tend to impair the dispatchers' freedom of choice in the election.

Methuen School Committee and Methuen Education Association (Secretaries), 47 MLC 271, CAS-18-7037 (May 26, 2021) (CERB Decision in the First Instance)

The CERB granted a unit clarification petition to accrete the position of Family Resource Center Enrollment Specialist (FRCES) to the union's clerical bargaining unit. The CERB held that the FRCES was not a managerial employee within the meaning of G.L. c. 150E, § 1, and that the two incumbents in this title shared community of interest with other bargaining unit members in terms of similarity of skills, functions, pay, working conditions, work contact, and training.

City of Boston/Boston Public Library and Professional Staff Association, 47 MLC 291, CAS-19-7093 (May 27, 2021) (CERB Decision in the First Instance)

The issue before the CERB was whether unrepresented Metadata and Imaging Assistants (Assistants) should be accreted to a bargaining unit of librarians and other employees represented by the Professional Staff Association (PSA). The CERB concluded that a unit clarification petition was not the appropriate proceeding to add these positions to the PSA's bargaining unit where the parties' CBA contained a provision granting the employer the right to contract out work provided that no bargaining members were laid off in the exercise of that right, and where the union was aware when it entered into successor agreements that the Library was using contractors to perform bargaining unit work similar to that performed by the Assistants.

Selected Litigation
July 1, 2020 – June 30, 2021

Overall Status of Judicial Appeals at Close of FY21

Total Records Assembled	9
Total Cases Closed	6
Total Cases Pending Before Appeals Court or SJC	6
Total Cases Pending Record Assembly	9

Judicial Appeal of CERB Reviews of Probable Cause Dismissals:

This list reflects closed cases only. There are cases currently in the SJC and Appeals Court that are pending briefing, oral argument, or decision.

Thomas V. Ralph v. Commonwealth Employment Relations Board, 20-P-1004 (1/12/2020)
DLR Case: Thomas V. Ralph and Mass. Coalition of Police, MUPL-19-7521 (2/24/2020)
(unpublished).¹

Thomas V. Ralph (Ralph) is employed as a sergeant in the Town of Webster (Town) Police Department. Prior to January 2019, the International Brotherhood of Police Officers (IBPO) was the exclusive collective bargaining representation of patrol and superior officers in the Town. In October 2018, Ralph was issued a verbal counseling, which the IBPO grieved.

In January 2019, while the grievance was still pending, the Massachusetts Coalition of Police (MassCOP) became the exclusive collective bargaining representative of the bargaining unit. MassCOP evaluated the merits of Ralph's grievance and the bargaining unit voted against arbitrating the grievance. Ralph appealed the decision before MassCOP's Board of Directors, which then voted against proceeding to arbitration.

Ralph filed a charge at the DLR alleging that MassCOP's decision not to proceed to arbitration violated its duty of fair representation to him in violation of Section 10(b)(1) of the Law. A DLR investigator dismissed the charge, finding that MassCOP was not bound by the IBPO's original decision to pursue the grievance, and that its own decision not to pursue Ralph's grievance was made from the rational belief that the grievance lacked merit. Upon review, the CERB affirmed the investigator.

¹ The CERB does not publish its reviews of probable cause dismissals in the Massachusetts Labor Cases (MLC) reporters.

Ralph appealed the CERB’s decision to the Appeals Court pursuant to G.L. c. 150E, § 11(i). Prior to CERB filing a brief in this matter, Ralph and MassCOP entered into a settlement and Ralph filed a motion to dismiss. On January 12, 2021, the Appeals Court dismissed the case with prejudice.

Michael Loconto v. Commonwealth Employment Relations Board, 99 Mass. App. Ct. 1117 (2021) (unpublished opinion)

DLR Case: *Michael Loconto and Commonwealth of Massachusetts (Dept. of Transitional Assistance)*, SUP-19-7555 (4/10/2020) (unpublished).

Until his termination in April 2019, Michael Loconto (Loconto) was employed by the Department of Transitional Assistance (DTA). He was a member of Service Employees International Union, Local 509 (Union) and served as a Union steward between 2017 and February 2018. On February 27, 2018, DTA placed Loconto on involuntary unpaid leave as a result of his “concerning” behavior, pursuant to a provision of the collective bargaining agreement between the Commonwealth and the Union. DTA notified Loconto that he would not be permitted to return to work without undergoing a full medical and psychological evaluation by a licensed medical professional.

Loconto immediately applied for and was granted leave pursuant to the Family and Medical Leave Act (FMLA). Over the course of the next year, Loconto requested numerous extensions of his leave time. Each time, DTA granted Loconto’s request and reiterated that Loconto would not be permitted to return to work without providing satisfactory documentation of his fitness. On April 26, 2019, DTA terminated Loconto’s employment, citing Loconto’s exhaustion of all available leave time and his failure to submit required medical documentation certifying his ability to return to work. The Union filed a grievance challenging Loconto’s decision, which was pending arbitration at the time of the DLR investigation.

Loconto brought charges at the DLR on September 5, 2019, alleging that the DTA placed Loconto on involuntary unpaid leave and subsequently terminated his employment in retaliation for his concerted, protected activity in violation of G.L. c. 150E, § 10(a)(3). A DLR investigator dismissed the charge, finding that Loconto’s allegation that the DTA retaliated against him when it placed him on involuntary, unpaid leave on February 27, 2018, was untimely because Loconto filed the charge after the six-month period of limitations set forth in 456 CMR 15.04 had expired. The investigator also found that Loconto failed to establish a prima facie case of unlawful discrimination under Section 10(a)(3) with respect to his termination.

Loconto requested reviewed by the CERB pursuant to G.L. c. 150E, § 11. The CERB affirmed the investigator’s finding that the Loconto’s allegation regarding his placement on leave was untimely. The CERB also affirmed the Investigator’s finding that Loconto failed to establish probable cause that DTA refused to provide Loconto with a Commonwealth-designated physician to conduct a fitness for duty examination and terminated Loconto in retaliation for his concerted, protected activity. In

reaching this conclusion, the CERB determined that Loconto's claim that the DTA was contractually obligated to provide him with a physician to perform a fitness for duty evaluation but refused to do so was insufficient, by itself, to evince probable cause that DTA had discriminated against Loconto. The CERB found that Loconto failed to demonstrate discrimination because, among other things, he provided no evidence that the DTA deviated from past practice or treated Loconto differently from other employees in requiring Loconto to provide a fitness for duty certification from his own healthcare provider. The CERB also concluded that the DTA's stated reasons for terminating Loconto—that he failed to supply documentation of his ability to return to work and exhausted all of his available leave options after being out of work for fourteen months—were not trivial. Finally, while the CERB recognized that Loconto was engaged in concerted, protected activity when he discussed his employment status with his Union on April 9, 2019, just two weeks prior to his termination, it applied well-established precedent to conclude that Loconto could not meet his prima facie case based on timing alone.

Loconto appealed the CERB's decision to the Appeals Court. The Appeals Court determined that: (1) Loconto's claim that DTA violated the CBA by failing to provide him with a Commonwealth-designated physician was not proper because such a claim must be brought by the Union as a party to the contract; (2) Loconto failed to argue that the CERB's determination was erroneous and substantial evidence supported the CERB's conclusion that there was no evidence that Loconto suffered from prohibited retaliation; and (3) substantial evidence supported CERB's conclusion that Loconto's claim regarding his placement on involuntary unpaid leave was untimely.

Loconto filed a motion to file a Request for Further Appellate Review (FAR) with the SJC late, which the SJC allowed until June 21, 2021 (Case No. FAR-28210). Loconto never filed a FAR application and the SJC closed the matter on August 6, 2021.

Suzete B. Costa v. Commonwealth Employment Relations Board, 486 Mass. 1113 (2020)
Lower Court Decision: *Suzete B. Costa v. Commonwealth Employment Relations Board*, 98 Mass. App. Ct. 1115 (2020) (unpublished opinion)
DLR Case: *Suzete B. Costa and OPEIU, Local 6*, SUPL-19-7555 (4/10/2020) (unpublished)

Suzete Costa (Costa) is employed by the Trial Court and a member of OPEIU, Local 6 (Union). In February 2013, Costa applied for a promotional position. She was notified in December 2014 that another employee had been selected. In January 2015, the Union filed a grievance on Costa's behalf to challenge the hiring decision. Following a Step 3 grievance hearing in July 2016, the Union and the Trial Court reached a settlement agreement, which included a position reclassification to higher grade and pay level as well as back wages. The Union notified Costa of the terms of the agreement; Costa did not agree with the terms and complained that Union failed to adequately communicate with her during its negotiations with the Trial Court.

Costa filed a prohibited practice charge in August 2017, alleging that the Union breached its duty of fair representation in violation of G.L. c. 150E, § 10(b)(1) by processing her grievance in an untimely manner and resolving her grievance without her knowledge or consent. A DLR hearing officer dismissed the charge. The CERB affirmed the dismissal, finding that the Union timely complied with the filing requirements outlined in the parties' contractual grievance procedure and that the Union had periodically updated Costa on the status of her grievance and its efforts to negotiate a settlement. The CERB also found no evidence to support a finding that the Union's failure to advise Costa of the settlement terms in advance was improperly motivated. Ultimately, the CERB found that the Union's decision to settle the grievance fell within the broad discretionary power afforded to unions in pursuing and settling members' grievances.

Costa appealed the CERB's decision to the Appeals Court pursuant to G.L. c. 150E, § 11(i). The Appeals Court upheld the dismissal, finding that the Union properly processed the grievance before settling the claim and that although the process took considerable time, there was no evidence that Costa was prejudiced by the delay, nor did any lapses in the Union's communications with Costa compromise her position. The Appeals Court also held that it was reasonable for the CERB to find that the Union made a reasoned judgment to forego the risk of arbitration in favor of a secure result favorable to Costa, particularly in the absence of evidence that the Union's settlement of the grievance was improperly motivated.

On November 16, 2020, Costa filed a FAR application with the SJC. The SJC denied Costa's FAR application on January 15, 2021.

Sylvie Sinapah v. Commonwealth Employment Relations Board, 98 Mass. App. Ct. 1107 (2020) (unpublished opinion)

DLR Cases: *Sylvie Sinapah and United Auto Workers*, SUPL-15-4357 (1/29/2016); *Sylvie Sinapah and UMass Amherst*, SUP-15-4454 (1/29/2016) (unpublished)

Sylvie Sinapah (Sinapah), a French citizen, was hired for a one-year appointment as a paid postdoctoral research associate at UMass Amherst (UMass) on a J-1 visa commencing on February 2, 2014. Multiple conflicts arose between Sinapah and her supervisors at UMass, and by the end of her employment, she had accumulated a thirty-day suspension.

In SUPL-15-4357, Sinapah brought charges at the DLR alleging that her union, United Auto Workers (Union) breached its duty of fair representation owed to her under G.L. c. 150E, § 10(b)(1) when it decided not to submit Sinapah's grievance to arbitration. A DLR investigator dismissed the charge, finding that the Union had engaged in extensive negotiations on Sinapah's behalf to resolve Sinapah's grievance, obtained a reasonable settlement offer, and made a reasoned decision not to arbitrate a grievance that it believed lacked merit.

In SUP-15-4375, Sinapah brought charges at the DLR alleging that UMass refused to extend her visa status in retaliation for her protected concerted activity in violation of G.L. c. 150E, § 10(a)(3). The same DLR investigator dismissed the charge, finding that Sinapah presented no evidence that the UMass’s decision was motivated by animus towards her protected concerted activity.

Sinapah requested review by the CERB in both cases, pursuant to G.L. c. 150E, § 11, claiming that the Investigator erred in dismissing her charges and that the Investigator arbitrarily excluded her exhibits. In separate decisions, the CERB found no procedural irregularities and affirmed the dismissals. Sinapah appealed both dismissals to the Appeals Court, but while her appeals were pending in the Appeals Court, she filed motions with the CERB in both cases seeking permanent impoundment of all DLR records. In separate rulings issued on the same day, the CERB denied the motions as overbroad without holding any hearings, which Sinapah also appealed to the Appeals Court.

In a consolidated decision, the Appeals Court affirmed both CERB decisions. The Appeals Court determined that: (1) Sinapah’s allegations that the DLR Investigator and the CERB demonstrated bias against were unsupported by the record and that the CERB appropriately rejected her procedural claims; (2) the CERB did not exceed the bounds of its discretion in affirming both dismissals; and (3) the CERB was justified in concluding that the plaintiff’s requests to permanently impound the entirety of both investigation records were overbroad and without good cause.

On March 26, 2020, without filing an application for Further Appellate Review (FAR), Sinapah filed a “Motion to Stay Proceedings Until Results of Federal Litigation of Exact Claims Are Issued” with the SJC (Case No. FAR-27797), which the CERB opposed. The SJC denied the motion on January 15, 2021 and extended the deadline to file a FAR application until February 1, 2021. Sinapah filed subsequent motions for “a statement of reasons” for the SJC’s order, which was issued without explanation, and for reconsideration, but failed to file a FAR application by the deadline. On April 15, 2021, the SJC denied Sinapah’s motions and, because no FAR application had been filed, the SJC ordered the matter closed. On May 12, 2021, Sinapah filed a second motion for reconsideration of the SJC’s January 15, 2021 order denying stay and a motion to file a FAR application late. On October 22, 2021, the SJC denied Sinapah’s May 12 motions.

Judicial Appeal of CERB Decisions on Appeal of Hearing Officer Decisions

This list reflects closed cases only. There are cases currently in the SJC and Appeals Court that are pending briefing, oral argument, or decision.

Ann Marie O’Keeffe v. Commonwealth Employment Relations Board, 97 Mass. App. Ct. 1122 (2020) (unpublished opinion)

DLR Case: Ann Marie O’Keeffe and Boston Teachers Union Local 66, 45 MLC 92, MUPL-16-5167 (12/28/2018)

A DLR Hearing Officer determined that the Boston Teachers Union Local 66 (Union) breached its duty of fair representation owed to Ann Marie O’Keeffe (O’Keeffe) when it filed an untimely demand for arbitration of her termination in violation of G.L. c. 150E, § 10(b)(1). Because O’Keeffe was unable to demonstrate that she would have been able to return to work as of the end date of the medical leave of absence that she was seeking at the time of her termination, the Hearing Officer held that the Union’s liability for damages ended as of the date O’Keeffe would have returned from leave. On review, the CERB affirmed the Hearing Officer’s decision.

O’Keeffe filed a notice of judicial appeal on February 27, 2019, more than 30 days after the DLR emailed a copy of the CERB’s December 28, 2018 decision to her. The BTU filed a motion to strike the judicial appeal as untimely. The CERB held that O’Keeffe was barred from obtaining judicial review of the CERB decision pursuant to G.L. c. 150E, §11(i) and granted the Union’s motion to strike the appeal.

O’Keeffe appealed the ruling to the Appeals Court, which affirmed the CERB’s decision striking her notice of judicial appeal as untimely. On August 31, 2020, O’Keeffe filed an Application for Further Appellate Review with the SJC (Case No. FAR-27809). The SJC denied O’Keeffe’s FAR application on December 30, 2020.

Miscellaneous Judicial Appeals of CERB Decisions

Chelmsford School Committee vs. Commonwealth Employment Relations Board, 99 Mass.App.Ct. 906 (2021)

DLR Case: Chelmsford School Committee and Chelmsford Federation of Teachers, AFT Local 3569, MUP-17-6374 (9/11/2019) (unpublished)

In a case of first impression, the CERB evaluated the sufficiency of a DLR-approved unilateral settlement agreement (Agreement) that the Chelmsford School Committee (School Committee) entered into to resolve a seventeen-count complaint alleging three separate Section 10(a)(3) violations and fourteen separate independent Section 10(a)(1) violations. Based on that Agreement and the notice that the School Committee agreed to post as part of the Agreement, a DLR hearing officer withdrew the complaint on grounds that further proceedings would not effectuate the purposes of the Law. The Chelmsford Federation of Teachers (Union) appealed the withdrawal of the complaint to the CERB. After review, the CERB set aside the Agreement and remanded the matter to the DLR for further processing without prejudice to future settlement negotiations. The CERB found that the Agreement failed to resolve the dispute in a manner that both settled the private disputes underlying the complaint and the public rights embodied in the Law because the Agreement contained a non-admission clause and otherwise failed to repudiate the conduct alleged in all seventeen, “hotly-contested” counts of the complaint in a fact-specific, unambiguous manner.

The CERB’s ruling notified the parties that there was no right to judicial appeal because it was not a final order within the meaning of G.L. c. 150E, § 11. Nonetheless, the School Committee filed a notice of judicial appeal on October 11, 2019. The CERB filed a motion to dismiss for lack of jurisdiction on February 19, 2021, arguing that the CERB’s remand order did not constitute final agency action necessary for judicial review. The School Committee opposed the motion, arguing that if it was not allowed to appeal the CERB’s order, it would be harmed by losing the chance to mount a direct challenge to the CERB’s rejection of the Agreement.

The Appeals Court agreed that the CERB’s remand order was not a final agency action subject to judicial review, noting that this was not a case where the appellant could show that a question of law that the party has an entitlement to have resolved could escape judicial review unless an interlocutory appeal were heard; but rather, if the final agency decision were adverse to the School Committee, the School Committee would then have an opportunity to seek judicial review. The nature and extent of any prohibited practices found and what remedy was appropriate would remain live issues in such an appeal.

During the pendency of the appeal, a DLR hearing officer conducted a full hearing and both the School Committee and the Union filed post-hearing briefs. The hearing officer’s decision on the merits is pending.

DEPARTMENT OF LABOR RELATIONS

FY2021 CASES RECEIVED

JULY 1, 2020 – JUNE 30, 2021

MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	Avg./month	%/month
Unfair Labor Practice	30	33	29	38	38	27	35	33	32	26	35	28	384	32.00	64%
Representation Cases	5	0	7	12	4	4	14	3	2	1	2	0	54	4.50	9%
Unit Clarification (CAS)	1	1	0	1	6	0	4	0	3	0	2	0	18	2.77	3%
Other (SI, AO, RBA)	0	0	2	0	1	0	0	0	0	0	0	0	3	0.25	1%
Grievance Arbitration	9	2	2	4	1	6	3	4	5	4	5	3	48	4.00	8%
Grievance Mediation	1	0	0	0	1	1	2	0	0	0	0	0	5	0.77	1%
Contract Mediation	2	3	3	8	3	0	2	8	8	4	10	7	58	4.83	10%
JLMC	5	1	0	2	0	2	3	3	4	3	2	5	30	2.50	5%
TOTAL	53	40	43	65	54	40	63	51	54	38	56	43	600		100.00%

DEPARTMENT OF LABOR RELATIONS
FY2021 CASES CLOSED
 JULY 1, 2020 – JUNE 30, 2021
 MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	Avg./month	%/month
Unfair Labor Practice	39	32	36	34	32	26	33	22	57	33	25	16	385	32.08	66.27%
Representation Cases	10	2	2	2	7	3	6	4	4	4	5	3	52	4.33	8.95%
Unit Clarification (CAS)	1	1	1	1	2	0	1	0	4	3	4	1	19	1.58	3.27%
Other (SI, AO, RBA)	0	0	1	1	1	0	0	0	0	0	0	0	3	0.25	0.34%
Grievance Arbitration	10	8	3	2	4	2	1	2	3	5	5	1	46	3.83	7.92%
Grievance Mediation	2	0	1	0	0	2	0	0	1	0	0	0	6	0.50	1.03%
Contract Mediation	2	8	4	1	4	3	2	0	1	5	3	8	41	3.42	7.06%
JLMC	6	1	3	2	1	5	2	0	1	2	3	4	30	2.50	5.16%
TOTAL	70	52	51	43	51	41	45	28	71	52	45	33	582		100.00%

DEPARTMENT OF LABOR RELATIONS
FY2021 CASE PROCESSING DATA
 JULY 1, 2020 – JUNE 30, 2021
 MONTHLY WITH TOTALS AND AVERAGES

PROBABLE CAUSE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Investigations Held	33	20	9	10	17	16	18	10	12	18	16	11	190	15.83
Dismissals Issued	3	10	7	2	1	5	6	2	3	2	5	2	48	4.00
Complaints Issued	7	12	11	13	6	9	9	2	13	9	12	12	115	9.58
Total Probable Cause	10	22	18	15	7	14	15	4	16	11	17	14	163	13.58
Total # Days Invest. to PC Decision	611	663	702	614	106	704	586	168	1132	456	509	797	7048	43.24

HEARINGS	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Pre-Hearing Conferences Held	5	10	5	7	4	10	6	5	6	6	7	14	85	7.08
Hearings Held	3	7	13	9	13	10	9	13	11	15	8	10	121	10.08
Misc. Rulings/R-Case Dec./CAS Dec.	2	2	10	8	1	0	0	0	0	2	0	0	25	2.08
Hearing Officer Decisions Issued	3	0	1	1	2	3	1	0	5	1	4	1	22	1.83
Total # Days Ripe to Hearing Officer Decision	574	0	238	82	182	270	86	0	579	85	578	151	2825	128.41

DEPARTMENT OF LABOR RELATIONS
FY2021 CASE PROCESSING DATA
 JULY 1, 2020 – JUNE 30, 2021
 MONTHLY WITH TOTALS AND AVERAGES

CERB	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Admin. Appeals Filed – Probable Cause	1	4	3	8	2	0	4	1	1	2	0	2	28	2.33
Admin. Appeals Filed - HO Decision	0	0	0	1	0	0	0	0	2	0	0	0	3	0.25
Probable Cause Decision Issued & Remands	4	1	0	5	1	1	3	0	0	1	3	0	19	1.58
Hearing Officer Appeal Decision Issued	0	0	0	1	0	0	0	0	0	0	0	0	1	0.08
CERB Dec. 1st Inst. R-Case or CAS Decision	1	0	0	0	1	0	0	0	2	0	2	0	6	0.50
Misc. Rulings	1	2	2	2	3	2	0	2	0	2	0	2	18	1.50
Total # Days Ripe to PC Decision	204	90	0	307	31	100	171	0	0	120	332	0	1355	71.32
Total # Days Ripe to Hearing Officer App. Decision	0	0	0	129	0	0	0	0	0	0	0	0	129	129.0
Total # Days CERB Dec. 1st Inst. R-Case or CAS Decision	19	0	0	0	1	0	0	0	186	0	253	0	459	76.50

MEDIATION & ARBITRATION	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Arbitrations Held	2	0	2	1	2	0	2	0	0	3	0	1	13	1.08
Arbitration Decision Issued	3	2	0	1	0	1	1	1	1	1	1	1	13	1.08
Grievance Mediations Held	1	0	0	0	1	0	2	3	1	0	0	0	8	0.67
Contract Mediations Held	4	5	0	1	3	8	11	8	19	13	6	18	96	8.00
ULP Mediations Held	12	9	11	13	17	25	24	15	16	10	11	4	167	13.92
Total # Days Initial Contract Invest./ Mediation to Close	316	2021	387	0	1173	173	84	0	83	252	145	1458	6092	148.6
Total # Days Ripe to Arbitration Decision	473	535	0	256	0	288	261	102	191	1	215	1	2323	178.7

DEPARTMENT OF LABOR RELATIONS
FY2021 CASE PROCESSING DATA
 JULY 1, 2020 – JUNE 30, 2021
 MONTHLY WITH TOTALS AND AVERAGES

JLMC	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Contract Mediations Held	3	1	3	5	0	3	0	11	11	5	3	5	50	4.17
3A Hearings Held	0	0	1	1	1	0	0	1	1	0	0	1	6	0.50
Tentative Agreements	0	1	0	0	0	1	1	1	1	1	2	5	13	1.08
Tentative Agreements Ratified (TAR)	3	0	0	1	0	0	1	0	2	1	0	1	9	0.75
Arbitration Awards Issued	0	0	0	0	0	0	0	0	1	0	0	1	2	0.17
Total # Days Initial Investigation/Mediation to TAR	1188	0	0	216	0	0	138	0	292	313	0	160	2307	256.33
Total # Days Initial Investigation/Mediation to Arb. Award	0	0	0	0	0	0	0	0	388	0	0	434	822	411.00

JUDICIAL APPEALS	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Probable Cause Appeals Filed	0	0	0	0	0	0	0	0	0	1	0	0	1	0.08
CERB-Hearing Officer Decision Appeals Filed	0	0	0	0	0	0	0	0	0	1	0	0	1	0.08
Records Assembled	0	0	0	0	1	0	0	0	0	1	0	0	2	0.17
Total # Days Ripe to Rec. Assembled	0	0	0	0	278	0	0	0	0	21	0	0	299	149.50

FY2021 REPRESENTATION ELECTIONS*
(EXCLUSIVE OF WRITTEN MAJORITY AUTHORIZATION PETITIONS)

Unit Size	MUNICIPAL		STATE		PRIVATE		TOTAL	
	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters
<10	7	44					7	44
10-24	2	30	1	11			3	41
25-49	2	51					2	51
50-74	1	68					1	68
75-99								
100-149								
150-199								
200-499								
> 500								
Total	12	193	1	11			13	204

* NOTE: In FY2021, parties filed 28 representation petitions. The above chart contains information only on elections conducted by the DLR in FY2021.

**FY2021
WRITTEN MAJORITY AUTHORIZATION
CERTIFICATIONS***

Size of Unit	Municipal		State		Private		Total	
	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS
Under 10	8	54			2	17	10	71
10-24	2	35	1	11	1	14	4	60
25-49	2	88			1	25	3	113
50-74	3	185					3	185
75-99								
100-149								
150-199								
200-499			1	350			1	350
Above 500								
TOTAL	15	362	2	361	4	56	21	779

* Note: In FY2021 a total of 27 written majority authorization petitions were filed. The DLR did not issue a certification in 7 cases either because the DLR dismissed the petition or the petitioner withdrew the petition.

DEPARTMENT OF LABOR RELATIONS STAFF LISTING
AS OF JUNE 30, 2021

EMPLOYEES, FUNCTIONAL TITLES AND PAYROLL TITLES

Last Name	First Name	Functional Title	Payroll Title	FTE
Accica	Holly	Investigator	Counsel I	1.00
Ackerstein	Joan	Board Member, CERB	Per Diem	
Atwater	Susan	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Bertrand	Jill	Chief Counsel	Program Manager VIII	1.00
Cummings	Donald	JLMC Staff Rep./Labor	Program Coordinator III	0.50
Davis	Kendrah	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Driscoll	George	JLMC Staff Rep./Management	Program Coordinator III	0.50
Eustace	Kimberly	Program Coordinator	Program Coordinator III	1.00
Feldman-Boshes	Erica	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Goodberlet	Kathleen	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Gookin	Carol	Mediator	Program Coordinator III	1.00
Griffin	Joseph	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Hanson	John	Chair, JLMC	Per Diem	
Hatfield	Timothy	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Hiller	Sara	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Hubley	Joseph	JLMC Staff Rep./Labor	Program Coordinator III	0.50
Kantany	Lan	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Krok	Jeffrey	Investigator	Counsel I	1.00
Marra	John	Mediator	Program Coordinator III	0.50
Morgado	Daniel	JLMC Staff Rep./Management	Program Coordinator III	0.50
Murray	Kevin	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Roberts	Philip	Director	Administrator IX	1.00
Shockey	Carey	Investigator	Counsel I	1.00
Siciliano	Shirley	Election Specialist	Collective Barg. Elect. Spec. II	0.40
Singh	Samantha	Election Specialist	Collective Barg. Elect. Spec. II	1.00
Sorokoff	Gail	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Srednicki	Edward	Mediator	Program Coordinator III	0.50
Strong	Kelly	Board Member, CERB	Per Diem	
Sullivan	Margaret	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Sunkenberg	James	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Ventrella	Meghan	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Wittner	Marjorie	Chair, CERB	Administrator IX	1.00

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

DLR Advisory Council Membership As of June 30, 2021

Labor

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

Management

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

At-Large

Jay Siegel	Arbitrator
<i>Vacant</i>	
<i>Vacant</i>	

DEPARTMENT OF LABOR RELATIONS
FY2021 EXPENDITURES BY APPROPRIATION
AND OBJECT CLASS

Object Class	Description	7003-0900 Amount Expended	7003-0902 Amount Expended	Total Amount Expended
AA	Employee Compensation	\$2,161,862.71	\$230,902.77	\$2,392,765.48
BB	Employee Travel Reimbursement	\$34.20	\$0.00	\$34.20
CC	Contracted Services	\$0.00	\$0.00	\$0.00
DD	Medicare, Unemployment, Univ. Health, Workers Comp.	\$42,021.90	\$4,479.51	\$46,501.41
EE	Administrative Expenses	\$29,764.60	\$0.00	\$29,764.60
FF	Facility Operational Expenses	\$168,027.40	\$0.00	\$168,027.40
GG	Space Rental	\$100,782.31	\$0.00	\$100,782.31
HH	Consultant Service Contracts	\$0.00	\$0.00	\$0.00
JJ	Programmatic Operational Services	\$142,677.35	\$0.00	\$142,677.35
KK	Equipment Purchases	\$16,027.35	\$3,091.00	\$19,118.35
LL	Equip. Lease, Maintenance, Repair Expenses	\$5,613.21	\$0.00	\$5,613.21
NN	Infrastructure	\$7,759.73	\$0.00	\$7,759.73
UU	Information Technology	\$94,592.09	\$0.00	\$94,592.09
Total Expended		\$2,769,162.85	\$238,473.28	\$3,007,636.13