

MTA Continues to Advance Public Sector Bargaining Rights

By Jonathan Conti, MTA Staff Counsel

A recent Department of Labor Relations (DLR) decision in *Belmont School Committee*, MUP-20-7867 (“*Belmont II*”), ruled: 1) Non-bargaining unit members may serve as silent bargaining representatives on the union’s bargaining team; 2) The number and composition of silent bargaining representatives may vary from bargaining session to bargaining session; and 3) A non-bargaining unit member serving as a silent representative did not constitute an unlawful attempt to force the Belmont School Committee into coalition bargaining.

This decision comes after the Commonwealth Employment Relations Board (CERB) ruled in *Belmont School Committee*, 45 MLC 185 (“*Belmont I*”), that the Union had the right to bring a “reasonable number” of silent bargaining representatives so long as it provided advance notice of the presence and the role of such representatives to the Employer.

These two decisions represent a substantial advancement for more flexibility in team composition and incorporation of other unit members on bargaining teams, not only to show strength and solidarity, but, more importantly, for coordinated bargaining purposes.

What are Silent Bargaining Representatives?

“Silent bargaining representatives” are members of a union’s bargaining team who do not speak during negotiation sessions but whose function and purpose is to provide the Union and the core bargaining team members with substantive feedback, including during caucuses; to report back to their colleagues concerning the progress of negotiations; to expose more of its members to the bargaining process; to cultivate new and emerging leaders; and to enhance transparency. They are not merely observers, but, rather, active members of the union’s bargaining team.

Union’s Bargaining Rights:

- The general rule is that a union can choose its bargaining representatives as it sees fit and the employer has no control over the union’s selection (subject to extraordinary circumstances, such as causing a “clear and present danger to the collective bargaining process”).
- Silent bargaining representatives do not have to be members of the bargaining unit whose contract is being negotiated.
- A union may vary the number and composition of its silent bargaining representatives from session to session.
- While both parties must agree to coalition bargaining, there is nothing that prevents a union from engaging in *coordinated bargaining*, whereby different bargaining units or different local unions communicate amongst themselves before or after negotiations (or even during caucus if a member from another unit is serving as a silent bargaining representative) so long as there is independent decision-making and separate bargaining processes for each of the bargaining units.