7

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. SUPERIOR COURT
DOCKET NO. 2481CV1191

NEWTON SCHOOL COMMITTEE,
Plaintiff
v.
NEWTON TEACHERS ASSOCIATION, UNIT A
Defendant

MEMORDANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

The parties are before the court on cross motions for judgment on the pleadings. Plaintiff Newton School Committee (the School Committee) asks the court to vacate the arbitration award mandating a student-to-aide ratio in kindergarten classrooms. Defendant Newton Teacher's Association, Unit A (the Union) asks the court to affirm the arbitration award. The court held a hearing on August 21, 2025.

Upon consideration of the pleadings, attachments, arguments, and appropriate legal standards as discussed herein, the School Committee's motion for judgment on the pleadings to vacate the arbitration award is **DENIED**, and the Union's motion to affirm the arbitration award is **ALLOWED**. The award of the Arbitrator is **AFFIRMED.**

BACKGROUND

The pleadings and attachments thereto set forth the following facts: In 2018, the Newton Public Schools (the District) decided to change the kindergarten classroom model from a hybrid part-time program to a full-day program. The District anticipated that this change would result in approximately double the children in each kindergarten classroom in the afternoons. At the time the change was anticipated, kindergarten teachers expressed to the Union the need for increased assistance by teacher aides (aides), also referred to as a "teaching assistants," to allow

the teachers to continue to educate kindergarteners in the same manner as under the hybrid model, including in small group instruction in the afternoon.

The District recognized a need to resolve the impact of full-day kindergarten on the teachers and aides prior to the 2019-2020 school year, when it had plans to transition to the full-time kindergarten model. Ultimately, the School Committee and the Union agreed to terms that included a salary category, hours of work, planning time for kindergarten aides, a stipend for teacher classroom materials, and significantly for this case, the inclusion of full-time kindergarten aides for classes of fourteen or more students (the student-to-aide ratio). The agreements were implemented on September 1, 2019, for a one-year period. The full-time kindergarten model was adopted, and the agreements were then continued into the 2020-2023 school years.

In March 2023, voters in the City of Newton rejected a 2.5% operating override for the 2023-2024 fiscal year. The result was a $4.5 million operational budget shortfall for the District. On March 16, 2023, the School Committee informed the Union that the minimum staffing provisions for aides likely could not be met for the following school year due to the budget shortfall.

The Union represents both teachers and aides. Teachers fall within Unit A of the Union, while aides fall within Unit C of the Union. Each unit has its own collective bargaining agreement (CBA) with the School Committee.

In 2018, when the District decided to move to a full-time kindergarten model, the CBAs for both Unit A and Unit C were amended. The amended version of both the Unit A and Unit C CBAs contain an identical provision regarding the kindergarten student-to-aide ratio:

> "Every kindergarten classroom with fourteen (14) or more students shall be assigned to at least one full time Category 1 Kindergarten Teaching Assistant. This "Teaching

Assistant" shall be distinct from and in addition to any other special education aides that may be assigned to particular students in the classroom."

In the Unit A CBA, this language is found within Article 19, Section 2; in the Unit C CBA, it is in Article 3, Section 6.

The Unit C CBA, however, also contains a provision stating:

"The following matters shall not be subject to the arbitration provisions of this Agreement:

A. The exclusive determination of the Committee as to the level of services to be provided in a given school year by Teacher Aides, including any changes in the level of services at any time during the school year.
B. The exclusive determination of the Committee and/or Superintendent and/or Principal as to the form, manner, and deployment of Teacher Aides in assignments based on the needs of the system.
C. Initial and subsequent appointment conditions, assignments and transfer of Teacher Aides."

The tension between the identical language in the Unit A and Unit C CBAs is at issue in the current lawsuit.

After the budget shortfall, the School Committee took the position that the Unit C contract excluded the kindergarten student-to-aide ratio staffing provision from arbitration, and the student-to-aide ratio was a "level of service" issue, not covered by a bargaining obligation under Massachusetts law. In contrast, the Union took the position that the kindergarten student-to-aide ratio in the Unit A CBA was not contractually or legally precluded from arbitration because the provision in the Unit A CBA related to the teachers' workload and enhanced the policy decision of the School Committee to move to a full-time kindergarten model.

The dispute went through a process whereby the Union declined to enter "impact bargaining" mid-year, and instead filed grievances with the School Committee contending the School Committee violated the Unit A and Unit C CBAs when it failed to assign one kindergarten aide to each kindergarten classroom with fourteen or more students. On April 11,

2023, the City of Newton's Director of Human Resources and Staffing denied the Union's grievances. The Union's grievances were advanced to the School Committee, which also denied the grievances.

On October 19, and December 8, 2023, the grievances were arbitrated before Arbitrator Jeffrey R. Cassidy. Arbitrator Cassidy issued an Arbitration Opinion and Award on April 24, 2024. The Award provides:

> "The grievance filed under the Unit A agreement is arbitrable. The grievance filed under the Unit C Agreement is not arbitrable.
> The Newton School Committee violate[d] [*sic*] Article 19 of the Unit A CBA by failing to assign a full-time kindergarten aide to each kindergarten classroom with 14 or more students for the 2023-2024 school year.
> The Newton School Committee shall cease and desist from failing to comply with Article 19 of the Unit A CBA, effective with the beginning of the 2024-2025 school year."

The School Committee asks this court to vacate the Arbitration Award as illegal, and the Union asks this court to affirm the Arbitration Award.

LEGAL STANDARDS

Judicial review of an arbitration award is limited to the grounds set forth in G. L. c. 150C, § 11. One such ground is if the arbitrator "exceeded their powers or rendered an award requiring a person to commit an act or engage in conduct prohibited by state or federal law." G. L. c. 150C, § 11(a)(3). The reviewing court is "strictly bound by an arbitrator's factual findings and conclusions of law, even if they are in error." *School Comm. of Lexington* v. *Zagaeski*, 469 Mass. 104, 110 (2014) (hereinafter, *Zagaeski*), quoting *School Comm. of Lowell* v. *Robishaw*, 456 Mass. 653, 660 (2010) (hereinafter, *Robishaw*). "This strict standard of review is highly deferential to the decision of an arbitrator, and it reflects a strong public policy in the Commonwealth in favor of arbitration." *Id.*

"However, . . . where arbitration is mandated by statute, the exclusive source of the arbitrator's authority is the statute itself." *Zagaeski*, 469 Mass. at 112. Because "courts are as well, if not better, positioned to interpret the 'law of the land' in the form of the statutes of the Commonwealth[,] . . . . the arbitrator's interpretation of the authorizing statute, particularly regarding the scope of the arbitrator's authority under the statute, is 'broader and less deferential' than in cases of judicial review of an arbitrator's decision arising from the interpretation of a private agreement." *Id.*

DISCUSSION

"Enacted in 1973, G. L. c. 150E provides a comprehensive framework for the regulation of public sector collective bargaining." *Board of Higher Educ. v. Commonwealth Employment Relations Bd.*, 483 Mass. 310, 311 (2019), citing *Labor Relations Comm'n* v. *Boston Teachers Union, Local 66*, 374 Mass. 79, 93 (1977). See Greenbaum, The Scope of Mandatory Bargaining under Massachusetts Public Sector Labor Law, 72 Mass. L. Rev. 102, 102 (1987). "The statute recognizes important collective bargaining rights for public employees and imposes significant obligations on public employers with respect to those rights." *Id.*

"In particular, G. L. c. 150E, § 2, provides: 'Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion.'" *Id.* "Public employers are obligated to 'negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment.'" *Id.* quoting G. L. c. 150E, § 6. "The statute also sets

forth practices in which public employers and employees may not engage." *Id.* at 311-312, citing G. L. c. 150E, § 10.

"Finally, the statute provides for the resolution of disputes that may arise during the collective bargaining process, or after the agreement has been finalized, during the pendency of the agreement." *Board of Higher Educ.*, 483 Mass. at 312. "Should the parties fail to come to terms as to any mandatory subject of bargaining, G. L. c. 150E, § 9, prescribes procedures to determine whether an impasse exists and how to resolve it." *Id.* "And G. L. c. 150E, § 11, sets forth a comprehensive process by which either side may bring a complaint regarding a practice prohibited by G. L. c. 150E, § 10." *Id.*

"[T]here is a 'strong public policy favoring collective bargaining between public employers and employees over the conditions and terms of employment.'" *Board of Higher Educ.*, 483 Mass. at 319, quoting *Somerville* v. *Somerville Mun. Employees Ass'n*, 451 Mass. 493, 496 (2008).

The School Committee argues that the part of the Award enforcing the Unit A provision conflicts with two significant public policies established under Massachusetts collective bargaining law, and, as such, exceeds the arbitrator's powers and must be vacated.

The School Committee first argues that the Award is contrary to G. L. c. 150E, § 5 because it enforces a provision of the Unit A teacher's CBA that directly determines the terms and conditions of the aides, who are represented by a different bargaining unit. Unit C bargained and conceded that the student-to-aide ratio was not subject to mandatory arbitration, and the student-to-aide ratio fell within the purview of the School Committee. The School Committee argues that Unit A, representing the teachers, cannot bargain the aides' workload, work type, or work frequency under the law.

The Union has a duty of fair representation to its employees, expressly recognized by statute. *Switzer* v. *Labor Relations Comm'n*, 36 Mass. App. Ct. 565, 567 (1994). General Laws c. 150E, § 5 sets forth the right and responsibility of the exclusive representative. Specifically, the statute states in part, "[t]he exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership." General Laws c. 150E, § 4 sets forth, "[p]ublic employers may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining."

As the Union points out, when bargaining over complex new policies, it is almost unavoidable that the parties will include provisions that affect employees who are not part of the bargaining unit (whether they are unionized or not). That fact by itself does not make those provisions unlawful. Instead, it means the employer may also need to negotiate with the exclusive representative of any other bargaining unit whose employees are impacted, pursuant to G. L. c. 150E, § 6. In this situation, that is exactly what happened: the representatives of the units met and negotiated with the employer together, and they reached an agreement addressing the change in kindergarten services for both the Unit A and Unit C employees.

Moreover, as the Arbitrator found here, the purpose of the Unit A provision was to support kindergarten teachers in Unit A by helping to manage their workload—not to guarantee continued employment or secure benefits for the Unit C aides. Further, as the Arbitrator points out, the School Committee has not changed its recognition of the value of the aide assistance in the delivery of kindergarten educational services since the provision was negotiated. These

factual determinations and interpretations of the parties' contract made by the Arbitrator are entitled to deference. *Zagaeski*, 469 Mass. at 110. See *School Comm. of Pittsfield* v. *United Educators of Pittsfield*, 438 Mass. 753, 758 (2003).

The School Committee also argues that the student-to-aide ratio provision of the Unit A CBA is a "level of services" provision for the Unit C employees, and under Massachusetts law, level of services is a permissive, rather than mandatory, subject of collective bargaining. The School Committee argues that the Union mischaracterizes the student-to-aide ratio as a workload issue for teachers under the Unit A CBA. As the Arbitrator found, such is not the case.

Fundamentally, the School Committee's policy determination to move to full-day kindergarten was the starting point here. It was anticipated that this change would result in approximately double the children in each kindergarten classroom in the afternoons. At the time the change was anticipated, kindergarten teachers expressed to the Union the need for increased assistance by aides to allow the teachers to continue to educate kindergarteners in the same manner as under the former hybrid model. The School Committee's policy determination to move to full-day kindergarten led to negotiations that arrived at an agreement as to the level of aide support that teachers need to effectuate the educational policy of full-day kindergarten. The predominant effect of the student-to-aide ratio was on the workload of the kindergarten teachers and to provide them with the assistance needed to enhance Newton's full-day kindergarten policy.

As the Arbitrator discusses, two decisions favoring the enforcement of the student-to-aide ratio language are *Boston Teachers Union, etc.* v. *School Comm. of Boston*, 370 Mass. 455 (1976) (hereinafter, *Boston Teachers Union*) (hiring substitute teachers for absent teachers and class size enforceable and did not infringe on school committee's prerogative to determine policy

nor contravene statutory limitations), and *Board of Higher Educ.* v. *Commonwealth Emp't Relations Bd.*, 483 Mass. 310 (2019) (hereinafter, *Board of Higher Educ.*) (cap on the percentage of courses taught by part-time faculty enforceable).[1]

In the former case, *Boston Teachers Union*, the Supreme Judicial Court concludes that a contractual provision requiring the school committee to hire substitute teachers for classroom coverage is a proper subject of bargaining because hiring substitute teachers constitutes the manner by which the parties agree to maintain class size and workload. 370 Mass. at 462-463. Once such an agreement is reached, it is enforceable if it "neither infringe[s] on the school committee's prerogative to determine policy nor contravene[s] statutory limitations." *Id.* at 463.

Boston Teachers Union is particularly instructive here because the School Committee has not changed its policy position of running a full-day kindergarten program, nor its recognition of the value of the aide assistance that it bargained for with Unit A. As the Arbitrator points out, the requirement for full-time aides was a provision aimed at helping the teachers of those classes and did not impinge on the School Committee's prerogative to set educational policy. Like the provision requiring the employment of substitute teachers for absent teachers in *Boston Teachers Union*, the provision providing aides for kindergarten teachers in the instant case concerns the teachers' workloads, which in Massachusetts is a mandatory subject of bargaining.

Similarly, in the latter case, *Board of Higher Educ.*, the capping of courses taught by part-time employees was intended to assist full-time faculty in managing their workload, which is exactly the intention of the student-to-aide ratio language. 483 Mass. at 315. The conclusion of the Supreme Judicial Court in *Board of Higher Educ.* further demonstrates the enforceability of a contract provision if the predominate effect of the provision is impact on bargaining unit

[1] The other cases cited in the arguments were reviewed by the Arbitrator, and I find his reasoning sound.

member workload, and the provision does not impermissibly intrude on nondelegable managerial prerogatives, as is the case here. See *id.*

The cases discussed above support the Arbitrator's conclusion that the student-to-aide ratio is arbitrable under the Unit A contract. These cases—central to the Arbitrator's analysis and conclusion—affirm that a contractual provision is enforceable when its predominant effect concerns the workload of the bargaining unit members impacted by it, and when it does not impermissibly interfere with a nondelegable management prerogative. In this instance, the student-to-aide ratio provision meets those criteria and thus falls within the scope of arbitrable issues under the contract.

CONCLUSION AND ORDER

For the reasons set forth above, the School Committee's motion for judgment on the pleadings to vacate the arbitration award is **DENIED**, and the Union's motion to confirm the arbitration award is **ALLOWED**. The award of the Arbitrator is **AFFIRMED**.

So ordered this 12th day of November 2025.

Sarah Weyland Ellis
Justice of the Superior Court