

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

Case No.

Friedrich Lu, Plaintiff

v

Thomas M Menino; City of Boston; William F Sinnott; Caroline Driscoll; Trustees of Boston Public Library; George Hulme; Boston Public Health Commission; Local 1526, American Federation of State, County, and municipal Employees; and Boston Public Library Professional Staff Association; Department of Labor Relations, Defendants

COMPLAINT

(1) The court has subject matter jurisdiction over this case pursuant to Mass Gen Law (Gen L)

Chap 231A, § 1.

(2) Defendants: Of City of Boston, Thomas M Menino is its mayor for the past two decades;

William F Sinnott Corporate Counsel; and Caroline Driscoll Assistant Corporate Counsel. Trustees of

Boston Public Library (Trustees or Library, interchangeably hereafter) and Boston Public Health

Commission are bodies politic bearing "Boston" in their names. George Hulme is security director of the

Library in the pertinent period. The individuals are sued in both official and personal capacities. Two

labor unions represent different sets of Library employees: Local 1526, American Federation of State,

County, and municipal Employees and Boston Public Library Professional Staff Association (PSA;

which "is no longer affiliated with CWA," per its (former) counsel). The last two are sued so that they

can have their say, if they so choose. A regulatory agency, the state Department of Labor Relations is

sued for its clerical, rather than adjudicatory, function or lack thereof; record of its administrative proceedings is presumed public.

(3) Menino lords over Boston. Worse, in word and in deed Menino has treated as his fiefdoms any and all agencies bearing "Boston" in the names.

(a) In its official website, the city lists BPL as its "department." See City Department, City of

Boston, undated

<http://www.cityofboston.gov/government/citydept.asp>

(retyped and attached as an exhibit; cf US S Ct Rule 33.1 (a “standard typesetting process” for every document” filed in that court except one proceeding in forma pauperis)), which also listed are Boston Housing Authority (BHA), Boston Redevelopment Authority (BRA), Boston Public Health Commission (BPHC), Boston Water & Sewer Commission (BWSC), city council, city clerk (who is independently elected), and Zoning Board of Appeal.

(b) In the matter of City of Boston, Boston Public Library and Professional Staff Association, CWA Local 1333, AFL-CIO (2010) (case No: CAS-08-3727) ("Ruth Kowal (Kowal) has been the Library's Director of Administration and Finance since March of 2009. [Even so,] Kowal testified that either the City or the Board of Trustees are responsible for approving the Library's major policy decisions")

(c) Mayor Thomas M Menino of City of Boston reportedly domineer over supposedly independent government agencies that happen to bear "Boston" in their names.

(i) Inside the BRA; Critics say it's a tool of mayor's office; Agency under fire. Boston Herald, June 7, 2013. (cover);

(ii) three reports in the inside pages:

(A) Dave Wedge, Richard Weir and Erin Smith, Agency's Independence Has Eroded, Critics Say.

http://bostonherald.com/news_opinion/local_coverage/2013/06/bra_s_independence_has_eroded_critics_say

(B) Chris Cassidy, BRA; How it works--and is funded

http://bostonherald.com/news_opinion/local_coverage/2013/06/bra_how_it_works_and_is_funded

("The agency receives no funding from the city")

(C) Mayor's Prints All Over Skyline (vignette).

http://bostonherald.com/news_opinion/local_coverage/2013/06/mayor_s_prints_all_over_skyline

(palazzo photos in print, but not shown online)

(c) In the meantime, he has made those agencies a moving target: now you see it, now you don't.

See (7).

(4)(a) On June 22, 2013 under 42 USC § 1983 and Gen L Chap 12, § 111 (civil rights violations), Friedrich Lu filed a verified complaint against Trustees and George Hulme. Lu v Hulme, US Dist Ct No 12-cv-11117-MLW. Sinnott and Driscoll purportedly are defending the two defendants there.

(b) City inserted itself--not by substituting for Trustees and/or Hulme or becoming a co-defendant as a permissible or indispensable party, Fed Rule Civ Proc **--but by representing them as defense lawyers. Taunting City's fancy footwork (to avoid legal exposure but at the same time using federal defendants as cat's paw at their expense, to promote City's agenda, Lu fought City's legal representation vigorously--even bitterly. Ignoring a century and a half of legal development in state case law, federal district judge Mark L Wolf sided with City and defendants there. Lu vowed to challenge the ruling in the state court (as an alternative to appeal to First Circuit from judgment entered at federal district court). And it looks futile to move federal district court to certify the question to this court. So here he is, requesting interpretation of state law (in the broad sense: including City's Municipal Code, but excluding federal law).

(5) At the end of the day, though, City's legal representation raises an issue of first impression in Massachusetts jurisprudence--about exact relationship between the City and Trustees as well as that between the City and a Library employee, about interpretation of a specific Municipal Code, and about

City's legal representation of Trustees (This--City's defending Trustees in adversarial proceedings--is not the first time. Lu can not say with certainty it happens all the times. The issue is murky, presumably because Trustees' adversaries have so far overlooked the issue.)

(6) Lu viewed City's intervention as bully tactics. The irony is City's Law Department has a diametric perception about Lu's lawsuits. Considering City's spat with Lu over federal defendants yet another lawsuit from Lu against the City, the receptionist of Law Department on Jan 3, 2013 ran Lu out of Department foyer and warned him not to set foot again--followed a couple of hours later by an email from assistant corporate counsel Nicole Loughlin: "if you need to contact me, please do so via email."

(7) Lu sued the City (but not Boston Public Health Commission) in Lu v Doe, Suffolk Super Ct Civil Action No 01-0129E. While the case was ongoing (no discovery allowed), the City removed Web pages that tended to show its Emergency Shelter Department was an alter ego of Boston Public Health (when administering the homeless). The superior court (Fahey J) sided with the City's argument that Boston Public Health Commission is not part of the City--and ended the case. Now the City argues Trustees is a branch of the City!

(8) Lu prays for declaratory judgment

(a) that Trustees is not a unit or division within the City under organic law;

(b) that Trustees is not subsidiary of the City under corporate law;

(c) in terms of labor relations: that Trustees is the direct and exclusive employer of Boston workers (from president down, Library trusteeship being an unpaid position), who receive salary and benefits from Trustees, and that the City is not their employers--be it direct or indirect;

(d) that trustees and City are two separate, independent legal entities, without one subsuming the other, much like Commonwealth of Massachusetts and then Massachusetts Turnpike Authority

immortalized in Levy v Acting Governor (2002) 436 Mass 736;

(e) that Municipal Code 5-8.2 enjoins the City (including its Law Department) from acting as counsel to represent the Trustees and the latter's employee(s), which reads in toto: "No person connected with the Law Department shall, except as hereinbefore provided, appear in court in any case to which the City is not a party;" and

(f) that judicial estoppel bars the City from taking a position: Trustees is a constituent part of the City--contrary to its previous stance Public Health Commission was not a constituent part of the City.

Plaintiff: Friedrich Lu, pro se *Friedrich Lu*
Date: October 17, 2013
Address: % St Francis House, Lafayette Station, Boston, MA 02112
email: x2flu@yahoo.com

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

Case No.

Friedrich Lu, Plaintiff

v

Thomas M Menino et al, Defendants

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT

Plaintiff Friedrich Lu moves for summary judgment in his favor. Memorandum of law follows.

A preliminary matter.

(1) In the federal case, Corporate Counsel William F Sinnott and his aide Caroline Driscoll act as defense lawyers for Trustees of Boston Public Library (Trustees or Library interchangeably) and Library's security director George Hulme. They insist the Library is a city agency and that Hulme, as well as trustees (individuals rather than the legal person Trustees) are Library employees (a fact not in dispute)--and therefore City or "municipal employees." The other two assertions are bones of contention here and in the federal court (which are not found in Lu's federal complaint but arose in the course of federal litigation). For this reason, the state case is distinguishable from England reservation. *England v Louisiana State Board of Medical Examiners* (1964) 375 US 411, 420-421. This is so within the First Circuit. Compare *Geiger v Foley Hoag LLP Retirement Plan* (CA1 2008) 521 F.3d 60, 67 (circuit precedents: "The right to reserve claims only arises where a federal court abstains [under Pullman] from deciding a federal issue to enable the state court to address an antecedent state law issue"); *Barreto-Rosa v Varona-Mendez* (CA1 2006) 470 F.3d 42, 47 with *San Remo Hotel, LP v City & County of San Francisco* (CA9 1998) 145 F.3d 1095, 1106, n 7 (citing a circuit precedent discussing England reservation); *United Parcel Service, Inc v California Public*

Utilities Commission (CA9 1996) 77 F.3d 1178, 1184 (“More significantly for our purposes [England reservation], this circuit has not required litigants to file first in federal court in order to reserve the right to a federal hearing under England”).

(2)(a) The downside of England reservation is a state court may walk over it, decide the federal question, and pulls the rug from under the federal court. *Id.*, 77 F.3d, at 1186 (“One of the difficulties inherent in the *England* process is that a plaintiff walks a fine line between saying too little and saying too much”) anticipated *San Remo Hotel, LP v City & County of San Francisco* (CA9 2004) 364 F.3d 1088, 1093 (“Although they could have also asserted their federal claims for adjudication in California [state] court, plaintiffs specifically reserved their federal claims for adjudication in federal court”), 1095 (“we specifically rejected Dodds’ argument that their reservation of federal takings claims under England prevented operation of the issue preclusion doctrine”); cert granted (2005) 545 US 323, 332 (California Supreme Court noted England reservation but went ahead to decide federal questions anyway), 334 (even so, the hotel “did not seek a writ of certiorari from California Supreme Court’s decision in this Court” but instead returned to Federal District Court);

(b) This was the major stumbling block Lu has wrestled with for months, since last May when he vows at federal court to seek a definitive ruling from state court on the rankling issue of legal representation. To put it politely, Lu does not trust federal district judge Mark L. Wolf, any more than other judges (which is forgivable given what he went through in the past two decades: corruption permeates judicial systems *in* (not merely *of*) Massachusetts, which then blame the victim). Forum shopping is perfectly legal. However Lu has never done it (mostly because his cases were terminated in a flash, quicker than he could utter *ouch*). Winning is not everything. There are

values as important if not more so; dignity, for one, is singularly human. Thus in Norse mythology, gods will stoically march toward Ragnarök.

(c) Lu's initial plan was to present the federal complaint to the state court, invoke England reservation and move to resolve housekeeping issues of legal representation, once the City jumps in (as its modus operandi). Ergo, in Lu's calculation, any state trial court will do (including district court but not land or probate court, of course). That plan nonetheless opened the door for Judge Wolf to lose his case, against Lu's wish. Agonizing for months, Lu settles on the instant mode, following much tweaking on the concept. The result is a brand new complaint, based on a single state cause of action and stripped of federal elements.

(3) Lu is not implying Massachusetts court system, supervised by Supreme Judicial Court, ignores or overlooks England reservation. Far from it. The only reported case mentioning the reservation is *Levy, supra*, 436 Mass, at 737, n 3. Lu viewed the case file, in which plaintiffs' filings ("complaint" and other papers) had not broached England reservation, which presumably was discussed in the hearings, then. (Plaintiffs' counsel struck Lu as inexperienced and odd, but this court respects their reservation. Sheer luck perhaps helped those plaintiffs; see next.) This court (SJC single justice session) has very limited jurisdiction: unlike superior court which has concurrent jurisdiction for declaratory judgment, this court shuns tort and handles little equity. That is why Lu selects this forum.

I

(1) *Villages Development Co, Inc v Secretary of Executive Office of Environmental Affairs* (1991) 410 Mass 100, 106 ("To secure declaratory relief in a case involving administrative action, a plaintiff must show that (1) there is an actual controversy; (2) he has standing; (3) necessary parties

have been joined; and (4) available administrative remedies have been exhausted [not applicable here]”)

(2) City of Boston is a necessary party. Mass Rule Civ Proc 19(a); Gen L Chap 231A, § 8; Springfield Preservation Trust, Inc v Roman Catholic Bishop of Springfield (1979) 7 Mass.App. Ct. 895 ("Although the building commissioner of Springfield was made a party he is not the city, cf Mayor of Cambridge v Dean (1938) 300 Mass 174, 176, and does not represent its interest for purposes of c 231A, Section 8").

(3) It is unclear if labor unions are necessary parties. With abundance of caution, Lu sues both in a fog of war.

II

(1) Regarding establishment of attorney-client relationship, federal court looks to state court in civil and criminal cases alike. Estate of Keatinge v Biddle (CA1 2002) 316 F.3d 7, 8-9 (Maine state law holds the issue of an attorney-client relationship is one of fact).

(2) Jarosz v Palmer (2002) 436 Mass 526, 527-528, 532 (To show attorney-client relationship exists, a client has burden of proof with a preponderance of evidence).

(3) FDIC v Ogden Corp (CA1 2000) 202 F.3d 454, 460 ("In a discovery dispute, the burden to establish an applicable privilege rests with the party resisting discovery. If the privilege is established and the question becomes whether an exception to it obtains, the devoir of persuasion shifts to the proponent of the exception. We look to Massachusetts law to determine the scope of both the asserted privilege and the exception in this case") (citation omitted); Mass Eye and Ear Infirmary v QLT Phototherapeutics, Inc (CA1 2005) 412 F.3d 215, 225-226 (A client (QLT) meets its burden of establishing attorney-client privilege to the communications in question. Then the

party (MEEI) challenging the privilege carries the burden of establishing that any communications are discoverable).

A

(1) Exhibits 1 and 2 respectively are:

(a) City's July 13, 2012 opposition, through its arm Law Department, to Lu's "motion to disqualify so-called counsel" and

(b) Judge Wolf's Mar 30, 2013 Memorandum and Order pp 6-8 only.

(2) In a pre-motion email exchange with Lu in the federal case, the City insists:

"The Law Department represents all city departments, including the Boston Public Library and its Trustees, who are appointed by the Mayor. As a BPL employee, Mr Hulme is a city employee * * * The Law Department advises and represents the Trustees in all matters concerning the BPL, including all of its branches. The Trustees themselves are a separate legal entity by statute. That said, they are considered special municipal employees of the City of Boston under Massachusetts law. As for Mr. Hulme, all library employees are City of Boston employees.

(3) Definitions within state law are not helpful to the instant case: they are limited to certain topics, such as Gen L Chap 31A (Municipal Personnel System), § 2 ("municipality" and "municipal employee"); Chap 268A (Conduct of Public Officials and Employees), § 1 ("municipal agency," "municipal employee" and "special municipal employee"); plus Chap 109 (Labor and Industries), § 178G ("municipal employer" and municipal "employee"--repealed in 1973); Act of Incorporation; Board of Trustees. Boston Public Library, undated

<http://www.bpl.org/general/trustees/act.htm>

(full title: Acts of 1878, Chap 114: An Act to incorporate the Trustees of the Public Library of the City of Boston; amendments of 1887, 1953, and 1885) ("Members of said Board of Trustees shall not receive any pecuniary compensation, and shall be deemed to be special municipal employees for

the purposes of chapter 268A of the General Laws").

(4) On occasions, City and Trustees roil the water by not sufficiently distinguishing themselves through words or deeds. For example: Job Opportunities. Boston Public Library, undated.

<http://www.bpl.org/general/jobs.htm> ("Boston Public Library posts all of its career opportunities on the City of Boston website, on the Boston Career Center page"). However, the law is clear on their separateness.

(5)(a) Lu was excluded from the Library on June 13, 2012 and stepped into rain. There he met an acquaintance, who screamed, "This is discrimination. Go to City Hall." Then and there, Lu knew neither was correct. (Discrimination or no, this is not the forum.) Anyone with keen observation knows Library is separate from the City. Trustees hires and fires its own employees, including Library president. Matt Viser, Trustees to Replace BPL Head; Margolis praised; Need for change cited. Boston Globe, Nov 4, 2007.

http://www.boston.com/news/local/massachusetts/articles/2007/11/04/trustees_to_replace_bpl_head/

(Trustees of BPL ousted BPL president Bernie Margolis)

(b) Boston Mayor Thomas Menino had clashed Margolis for a decade, but could not boot him out until the mayor replaced trustees one by one, and assumed control of board of trustees.

(c) In the pending federal action Lu sued Hulme and Trustees. Had Lu sued the City for Library misdeed, the City would surely have moved to dismiss for mistaken identity. See Part V, *infra*.

(6) Trustees enjoys "capacity to sue and be sued" under state law. Fed R Civ Proc 17(b)(2) and (3); Mass R Civ Proc (real party in interest). In Lu's federal lawsuit, it is indisputable that the City is a non-party--it is not a named party and has no stake; the City has not asked to substitute for or join

defendants there, see Fed.R.Civ.P. 19 (required joinder), 20 (permissible joinder)-- *precisely* because it can not by law and said rules. In sum, Trustees is *not* part and parcel of the City, it is crystal clear.

Thus it is oxymoronic, and a shame, that Lu needs to go further.

(7)(a) In the same vein, Boston School Committee is similarly situated (as Trustees), see School Committee. Boston Public Schools, undated

<http://www.bostonpublicschools.org/committee>

(appointment of committee members by mayor since 1992)

, has the capacity to sue and to be sued, as well as is empowered to enter a contract with labor

union: *collective bargaining agreement between Boston Teachers Union Local 66 AFT*

Massachusetts , ATF, AFL-CIO and Boston School Committee.

(b) Ditto zoning board of appeals, Gen L Chap 40A, sec 12 ("mayor subject to confirmation of the city council, or board of selectmen shall appoint members"); Board of Appeals of Rockport v Decarolis (1992) 32 Mass.App.Ct. 348, 351 ("The individual members of a public board need not be named as parties to a suit brought on behalf of the board").

(8)(a) The city barely mentions library in its charter or Municipal Code, both of which are supplied in the website of Boston City Council.²

<http://www.cityofboston.gov/citycouncil/>

(b) There is nothing in the charter. Municipal Code states:

(i) "2-7.2 Appointment by Mayor * * * For the term of five (5) years, beginning with the first day of May in the year of appointment: one trustee of the Boston Public Library."

(ii) "11-8 LIBRARY DEPARTMENT AND TRUSTEES OF THE PUBLIC LIBRARY.
11-8.1 Duties of Trustees.

The Library Department shall be under the charge of a Board of nine (9) Trustees, who shall adopt such measures as shall extend the benefits of the institution as widely as possible, and may from time to time establish branch libraries and delivery stations in different sections of the City; and shall annually appoint an examining Committee of not less than five (5) persons, not members of the Board who, with one of the Board as Chairman, shall examine the library and make to the

Board a report of its conditions.

(St. 1853 c. 38; St. 1878 c. 114; St. 1885 c. 266 §§ 6, 12; Rev. Ord. 1961 c. 18 § 1; CBC 1975 Ord. T11 § 350; Ord. 1989 c. 6; Ord. 1994 c. 5 §§ 1, 2)

11-8.2 Annual Report.

The Board shall, in its annual report, include a statement of the condition of the library, the number of books that have been added thereto during the year, the report of the Committee appointed to examine the library, and the total amount of money received from fines and sales. (Rev. Ord. 1961 c. 18 § 2; CBC 1975 Ord. T11 § 351)"

(8) Library is not a branch of City of Boston. The following explains that from two different perspectives.

III A

Trustees of BPL is a body corporate, a legal person of its own right. See *Kargman v Boston Water and Sewer Commission* (1984) 18 Mass.App.Ct. 51 (interpreting Massachusetts Tort Claims Act, Gen. Law Chap 258), 52 ("In the Boston Water and Sewer Reorganization Act of 1977, St. 1977, c. 436, effective July 18, 1977, the Legislature created the commission as a 'body politic and corporate and political subdivision of the commonwealth'), 54 (explaining "body politic and corporate"), 557, n. 7 (attributes of "separate corporate existence"). Trustees exhibits most of the attributes listed in n. 7.

(1) Trademark

<http://www.trademarkia.com/boston-public-library-78266386.html>

("On Tuesday, June 24, 2003, a US federal trademark registration was filed for BOSTON PUBLIC LIBRARY by TRUSTEES OF THE PUBLIC LIBRARY OF THE CITY OF BOSTON, BOSTON 02199. The USPTO has given the BOSTON PUBLIC LIBRARY trademark serial number of 78266386. The current federal status of this trademark filing is REGISTERED")

(2) Trustees of BPL has its own chief financial officer.

Board of Trustees Meeting. Boston Public Library, Mar 23, 2011.

http://www.bpl.org/general/trustees/fy12_bpl_budget_trustee_presentation_2011march23.pdf

(FY12 funding sources at page 2: city (\$36.94M) and state (\$3.9M) originally)

(3) Trustees hires and fires its own employees (presumably including defendant George Hulme), not just its president. John M Guilfoil, BPL to Eliminate 40 Jobs; Branch closings on slate. Boston Globe, Oct 1, 2010.

http://www.boston.com/news/local/massachusetts/articles/2010/10/01/bpl_to_eliminate_40_jobs_branch_closings_on_slate/

(4) Trustees of BPL holds assets of its own, citation in Complaint (3), and may transfer to the City. See Committee on Economic Development and Planning, Boston City Council, Dec 8, 2011 (mentioning state attorney general suing both the City and Trustees over Kirsten branch of the Library; A memo on "Docket #1238 Message and order authorizing the city to accept from the Trustees of the Public Library of the City of Boston the former Kirstein Building located at 20 City Hall Avenue, Ma 02108 (Ward 03, Parcel 02865000)")

(a) If Trustees of BPL had been an arm of the city, the transfer would not have been necessary.

(b) Law Department of the City did represent Trustees of BPL in this superior court case, but nobody raised it as an issue (in any event, the case is not a legal precedent).

B

(1) In an unguarded moment, the City concedes as much. See Comprehensive Annual Financial Report; Fiscal year ended June 30, 2011. City of Boston,

Dec 21, 2011.

http://www.cityofboston.gov/Images_Documents/FY2011%20CAFR_tcm3-29923.pdf

(pages i (“December 21, 2011”) and 4 "*Discretely Presented Component Units*--These are legally separate entities for which the City has financial accountability but function independent of the City. For the most part, these entities operate similar to private sector businesses and the business-type activities described above. The City's four discretely presented component units are the Boston Public Health Commission, the Boston Redevelopment Authority, the Economic Development Industrial Corporation, and the Trustees of the Boston Public Library").

Page numbers are at upper right or left corner.

(2) Trustees of the Public Library of Melrose v City of Melrose (1944) 316 Mass 584, 586 (“Sections 38 and 39 of title 7 of the [Melrose city] charter, as amended, provide so far as here material as follows: ‘Section 38. A board of trustees of the public library, to consist of six persons, is hereby established, which shall have control of the public library department. Section 39’”).

Concerning “public library department,” see next.

(3) City of Boston v Dolan (1937) 298 Mass 346, 351-353, 356 (final decree is modified as hereinbefore stated, and as modified is affirmed"). Of note, "[t]hrough the corporation of Trustees of the Public Library of the City of Boston is in one sense a municipal agency," *id.*, at 352, likely alluded to *Broadhurst v City of Fall River* (1932) 278 Mass. 167, 170-171 (power of General Court; degree of separation between finance department and City of Fall River).

C

Under corporate law, Trustees is not a subsidiary corporation of the City.

(1) *In re Grand Jury Subpoena* (CA1 2001) 274 F.3d 563, 572 (Citing *Ogden*; Attorney who had served as principal outside counsel for subsidiary corporation, and who had also represented former officers of subsidiary in their personal capacities, could theoretically have represented

officers individually with respect to grand jury investigation, so that their communications would be protected by attorney-client privilege; however, this attorney-client relationship would only extend to those communications which involved officers' individual rights and responsibilities arising out of their actions as officers of corporation)

(2) Two separate corporations, Trustees is not a subsidiary of Boston. Boston on one side and Trustees and Hulme on the other can not pass the five-benchmark test (eg, Boston can not waive privileges of the latter). Ibid. Trustees and Boston are two separate corporations. A Fortiori, Boston can represent neither Trustees nor Hulme, in view of the explicit proscription of city council embodied in the Municipal Code 5-8.2.

IV

Rulings from Massachusetts administrative proceedings stands out like a sore thumb insofar as they goes against the grain of (at least implicit) state appellate court decisions. Lu however has a hard time weighing their precedential value. Cf *Thurdin v SEI Boston, LLC* (2008) 452 Mass 436, 455, n 27 ("Superior Court opinions have no precedential value"). Moreover, not making case file available to the public (Lu included) counts against the Department of Labor Relations (Department). Cf *Leahy v Local 1526, American Federation of State, County, and Municipal Employees* (1987) 399 Mass 341, 352 ("From our review of the record, it is clear that the proceedings before the [Labor Relations] commission never reached the point of a judgment on the merits of the issue in this case").

A State Administrative Proceedings in General

(1) First thing first: an aggrieved party may appeal Department ruling to state appeals court. Gen L Chap 150E, § 11 (last paragraph).

(2) Adjudication of an administrative proceeding binds the parties. *Alba v Raytheon Co* (2004) 441 Mass 836; *Astoria Federal Savings & Loan Assoc v Solimino* (1991) 501 US 104, 107-108.

(3) The adjudication binds the issuing agency as well as prospective parties. *Tofias v Energy Facilities Siting Board* (2001) 435 Mass 340, 349 ("A party to a proceeding before a regulatory agency * * * has a right to expect and obtain reasoned consistency in the agency's decisions. The requirement of reasoned consistency does not mean that an agency may never deviate from its original position, but rather means only that any change from an established pattern of conduct must be explained") (citations omitted; internal quotation marks omitted); *Boston Gas Co v Dept of Public Utilities* (1989) 405 Mass 115, 120-121 ("It is generally unacceptable for an agency to announce a new standard in its final decision in an adjudicatory proceeding and then rule, often not surprisingly, that a party who had no notice of that standard failed to meet it") (citations omitted); *National Labor Relations Board v Wyman -Gordon Co* (1969) 394 US 759, 765-766 ("Adjudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein. They generally provide a guide to action that the agency may be expected to take in future cases. Subject to the qualified role of stare decisis in the administrative process, they may serve as precedents") (plurality decision)(citation and footnote omitted).

(4) A court is, as a rule of thumb, is deferential to an agency's ruling, rule-making and regulation arising from its interpretation of pertinent law. See *Fitchburg Gas & Electric Lights Co v Dept of Public Utilities* (2011) 460 Mass 800, 811-812 ("Ordinarily courts grant great weight to an agency's interpretation of its own rulings. However * * * this principle is one of deference, not abdication") (internal quotation marks omitted)

(5) Said adjudication, like any court decisions, does not bind a non-party such as *Lu. Martin v*

Wilks (1989) 490 US 755, 762 ("A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings").

B Department's Rulings in Particular

- (1) Established in 2008 Division of Labor Relations was renamed Department of Labor Relations (Department). In the Matter of Town of Bourne and Professional Firefighters of Bourne, IAFF Local 1717 (2011) 38 MLC 47, at n 1 (Case No: MUP-10-5928) ("Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the Department of Labor Relations. References to the Department include the Division of Labor Relations. Pursuant to Chapter 145 of the Acts of 2007, the Department 'shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission.' The Commonwealth Employment Relations Board (Board) is the body within the Department charged with deciding adjudicatory matters. References in this decision to the Board include the former Labor Relations Commission (former Commission)")
- (2) The Department of Labor Relations as well as its predecessors ("Department") does not always its rulings in Massachusetts Labor Cases (MLC).
- (3) To view case files and ask questions, Lu reached out repeatedly to the Department (specifically director Erika F Crystal and chair of Commonwealth Employment Relations Board Marjorie Wittner), which did not bother to respond. Due to Department's refusal to deal with Lu, Lu is clueless about its odd practice and what authority, if any, should be accorded to Department's published and unpublished rulings.
- (4) Lu asked Local 1526 why it complained about both the City and the Library, for what the Library did; 1526 allowed: "The BPL is a department of the City of Boston."

(5) In Department rulings listed below, all attorneys "representing the City of Boston/Boston Public Library"--to wit: Samantha Doepken, Stephen B Sutliff, T Martin Roach, Paul Curran, Robert Boyle, and Joseph Sarno--were employed in pertinent period by Office of Labor Relations, City of Boston (namely none were outside counsel hired by the Trustees).

C

(1) Exhaustive search yields nine cases--eight from the Department--in state administrative proceedings that at least alludes to the conjoined-twin status of the City and the Library, judging from the captions; (a) and (h) explicitly found Library was a branch of the City.

(2) The eight Department rulings are arranged latest first.

(a) In the matter of City of Boston, Boston Public Library and Professional Staff Association, CWA Local 1333, AFL-CIO (date issued July 12, 2010; case No. CAS-08-3727; Westlaw number: 2010 WL 2811559)

Quote:

"The highest-ranking officer at the Boston Public Library responsible for formulating or determining policy, conducting collective bargaining and having substantial responsibility involving the exercise of independent judgment of an appellate responsibility is the President. Since October 2008, that position has been held by Amy Ryan. Prior to October 2008, that position was held by Ruth Kowal, as Acting President, and prior to that, by Bernard Margolis. The President is appointed by and reports to the Trustees of the Public Library of the City of Boston.

"A nine-member Board of Trustees governs the Library. According to Article III, Sections 1 and 2 of the Board of Trustees' Bylaws, as revised in 1985, the Board of Trustees has 'as its prime duty the responsibility of the general administration of the Library and the representation of its interests and needs.' The Board is 'responsible for establishing objectives of the Library' and "shall determine the policies which are to govern the achievement of these objectives.'

"Ruth Kowal (Kowal) has been the Library's Director of Administration and Finance since March of 2009. [Even so,] Kowal testified that either the City or the Board of Trustees are responsible for approving the Library's major policy decisions.

"The President of the Library is appointed by and reports to the Board of Trustees.

(b) In the matter of City of Boston, Boston Public Library and Professional Staff Association,

CWA Local 1333 and AFSCME Council 93 (2010) (May 14, 2010; Case Nos. CAS-07-3692, CAS-07-3708; 2010 WL 1970220)

(c) In the matter of City of Boston, Boston Public Library and Professional Staff Association, CWA Local 1333, AFL-CIO. 35 MLC 293 (May 21, 2009; Case No. CAS-08-3727; 2009 WL 1740192)

(d) In the Matter of City of Boston and AFSCME Council 93, Local 1526, AFL-CIO. 35 MLC 289 (May 20, 2009; Case No. MUP-04-4077; 2009 WL 1740195)

(e) In the matter of City of Boston/Boston Public Library and Professional Staff Association, CWA Local 1333, AFL-CIO and AFSCME, Council 93, Local 1526, AFL-CIO. (May 21, 2008; Case No. MUP-08-5142; 2008 WL 5395603)

(f) In the matter of City of Boston/Boston Public Library and AFSCME, Council 93, AFL-CIO. (Oct 26, 2006; Case No: MUP-05-4410; 2006 WL 6165557)

(g) In the matter of City of Boston and AFSCME, Council 93, Local 1526, AFL-CIO. 32 MLC 173 (June 2, 2006; Case No. MUP-02-3623; 2006 WL 6165542)

(h) In the matter of City of Boston/Boston Public Library and American Federation of State, County and Municipal Employees, Council 93, AFL-CIO, Local 1526. 26 MLC 215 (May 31, 2000; Case No. MUP-2081; 2000 WL 35733288)

("The City, on behalf of the BPL, filed an answer to the Commission's Complaint * * * [Finding of Fact:] Founded in 1848, the BPL is an administrative agency of the City, as well as a separately chartered state non-profit corporation. It is governed by a nine member Board of Trustees (the Trustees) and its employees are represented by three different unions, Local 1526 of AFSCME, Council 93, the Professional Staff Association (PSA) and a graphics union")

D

(1) The Department's aforesaid rulings comported with *Fleming v City of Boston/Boston Public Library*, 22 MDLR 8, 8 (Feb 3, 2000; No. 93-BEM-1079; 2000 WL 33665423) (Finding of Fact: "Respondent City of Boston ('respondent') employs more than six people and is an employer as defined by Gen L Chap 151B, § 1 (5). Boston Public Library ('BPL' or 'library') is a division of respondent and employs more than six people. The BPL is not a separate legal entity from respondent. Although this complaint concerns a practice of the BPL, the City of Boston is the proper party respondent"). The published decision is identical to that in Westlaw. MCAD says old case files, such as that of 2000 "were destroyed."

(2) However, a "recommended decision" from state Division of Administrative Law Appeals--*Linehan v Boston Public Library*. (Aug 15, 2007; Docket Nos. CS-07-540, D-04-429; 2007 WL 2580401)--had a caption that did not include the City. Massachusetts Civil Service Reporter did not indicate whether to accept the recommendation.

E

(1) All the haphazard pell-mell is embodied in collective bargaining agreements between unions on the one hand and City and Trustees on the other. *City of Boston, Boston Public Library v Professional Staff Association* (2004) 61 Mass.App.Ct. 105, 115 (collective bargaining agreement), 116 ([Arbitrator's] Award directed decision to Boston Public Library, but not City of Boston), n. 1 ("Neither party seeks the termination of Ms Henry as a BPL employee"). Take notice of "[n]either" (excluding the city) and a "BPL employee" (not city employee).

(2)(a) The collective bargaining agreement (CBA) on file in the underlying (superior) court of the aforesaid case was signed (in late 1990s) by both officials of both the City and the library

(president, that is; but not of the trustees themselves).

(b) On another occasion, a CBA was signed by the City (in absence of the Trustees) and the same union. See Collective Bargaining Agreements. City of Boston, undated.

<http://www.cityofboston.gov/labor/agreements.asp>

(PSA 2002 - 2006 CBA) Page 1 of the text (not numbered) stated the agreement was between "the City" and PSA.

(c) Then there was a memorandum of agreement between the Trustees and PSA (signed by Trustees officials but no the City; not shown), which is the one mentioned in Meetings, Board of Trustees, Boston Public Library, May 22, 2001

<http://www.bpl.org/general/trustees/oldermeetings/trusteeagenda5101.htm>

("The President reported that the Library has reached a contract settlement with the Professional Staff Association and noted that a copy of the Memorandum of Agreement was included in the packets delivered to the Board in advance of the meeting. Following discussion among the Board, on a motion duly made and seconded, it was 'VOTED: to endorse the terms of the Professional Staff Association Agreement for July 1, 1999 through June 30, 2002'")

V
A

(1) In Lu v Doe, Suffolk Super Ct Civil Action No 01-0129E (whose certified docket is Exhibit 3), defendant City stated in the memorandum of law (Exhibit 4; under penalties of perjury, Lu states that the memorandum is reproduced verbatim, including italics and brackets with insertions, but excluding the "[sic]") accompanying its (City's) motion to dismiss:

"The Public Health Commission has the power to sue and to be sued, prosecute and defend actions relating to its properties and affairs, and to be liable in tort * * * The Public Health Commission, not the City of Boston, is therefore the appropriate party to an action alleging any misconduct Long Island Annex * * * Public Health Commission is a separate legal entity from the

City of Boston

(2) The court swallowed City's argument hook, line, and sinker:

Docket #9: 'Motion (P #5) denied as to Plffs injunctive relief as to City of Boston as Plff has failed to established likelihood of success in this claim as to the City of Boston. Further, the City's Motion to Dismiss is granted and the Plffs motion for SJ [summary judgment] is DENIED on the grounds that the Public Health Commission, an independent public agency, perates [sic] and controls the Long Island Annex. The City of Boston is not a proper party to an action alleging misconduct by the Shelter (Fahey J) Notice sent 2/20/01 (dated 2/16/01)

(a) Paper #5 was in fact Lu's Supplemental Complaint [rather than a "motion," though he did have a motion for injunctive relief against the City.

(b) City's memorandum in support of motion to dismiss was undated. The motion to dismiss is not listed in the docket (Exhibit 4) or found in state court's case file. City did file one in federal court after it had removed the case from state superior court; federal court of appeals subsequently remanded the case back to state superior court.


(c) Appearing at present in the docket only, Judge Fahey's order is not found in state case file. Lu did not receive it back then; unaware of dismissal Lu kept on trucking until judges halted him. Consult the docket.

(d) In any event, the City prevailed over Lu on that issue, whatever its merit and however it achieved it (corruptly or not). Now the City must taste the fruit of its past victory.

B

Judicial estoppel dictates the City not maintain an opposite stance to gain unfair advantage. See *Commonwealth v Middlemiss* (2013) 465 Mass 627, 636-638; *Greene Archives, Inc v Marilyn Monroe LLC* (CA9 2012) 692 F.3d 983. See also *Graham v Quincy Food Service Employees Assoc and Hospital, Library and Public Employees Union* (1990) 407 Mass 601, 605, n 2 ('union's

conduct estops it from raising the issue. See Brown v Quinn (1990) 406 Mass 641, 645-646").

Plaintiff: Friedrich Lu, pro se 
Date: October 18, 2013
Address: % St Francis House, Lafayette Station, Boston, MA 02112
email: x2flu@yahoo.com

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

SUCV2001-00129
Lu v Doe et al

File Date 01/09/2001 Status Disposed (disp)
Status Date 07/18/2001 Session E - Civil E. 3 Pemberton Sq, Boston
Origin 1 - Complaint Case Type B99 - Misc tort
Track F - Fast track Lead Case Jury Trial Unknown

DEADLINES

	Service	Answer	Rule12/19/20	Rule 15	Discovery	Rule 56	Final PTC	Judgment
Served By								
Filed By	04/09/2001	06/08/2001	08/08/2001	06/08/2001	11/05/2001	12/05/2001		03/05/2002
Heard By							01/04/2002	

PARTIES

Plaintiff
Friedrich Lu
St Francis House
PO Box 499 Lafayette Station
Boston, MA 02112
Active 01/09/2001 Notify

Defendant
John Doe
Served: 01/24/2001
Dismissed by Court Order 02/20/2001

Defendant
City of Boston
as amended
Served: 01/24/2001
Dismissed by Court Order 02/20/2001

HEREBY ATTEST AND CERTIFY ON
October 10, 2013 THAT THE
FORWARDING DOCUMENT IS A FULL
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH BONDYAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

Michael Joseph Bondyan
Assistant Clerk Magistrate

ENTRIES

Date	Paper	Text
01/09/2001	1.0	Affidavit of indigency of Friedrich Lu and request for waiver, substitution or state payment of fees & costs. Filing fee, service fee waived
01/09/2001		Origin 1. Type B99, Track F.
01/09/2001	2.0	Complaint of Friedrich Lu filed
01/09/2001	3.0	Civil action cover sheet filed
01/19/2001	4.0	Motion to appoint special process server & Allowed (Lopez J)
01/24/2001	5.0	Supplemental complaint of Friedrich Lu
01/24/2001	6.0	SERVICE RETURNED: John Doe(in hand on 1/19/01)
01/24/2001	7.0	SERVICE RETURNED: City of Boston(in hand on 1/23/01)

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

SUCV2001-00129
Lu v Doe et al

Date	Paper	Text
02/20/2001		Motion (P#5) denied as to Pliffs injunctive relief as to City of Boston as the Plff has failed to establish likelehood of success in this claim as to the City. Further, the City's Motion to Dismiss is granted and the Pliffs motion for SJ is DENIED on the grounds that the Public Health Commission, an independent public agency, perates and controls the Long Island Health Annex. The City of Boston is not a proper party to an action alleging misconduct by the Shelter (Fahey J) notice sent 2/20/01 (dated 2/16/01)
03/12/2001	8.0	Motion of plff for sanctions against City (w/o opposition)
03/13/2001	9.0	Motion of plff to further supplement complaint (w/o opposition)
03/20/2001		Motion (P#9) Motion Denied without prejudice for failure to comply with Superior Court Rule 9A (Giles, Justice) (Dated 3/15/01) Notices mailed 03/19/2001
03/26/2001	10.0	Motion of plff to reconsider (w/o opposition)
04/02/2001	11.0	Plff's informative motion re: delineate the boundary of the instant action
04/04/2001	12.0	First motion of plff to compel discovery by deflt City of Boston (w/o opposition)
04/04/2001	13.0	Second motion of plff to compel discovery by deflt City of Boston (w/o opposition)
04/11/2001		Motion (P#10) allowed and Plff's motion for further supplement complaint is now Allowed (Maria I. Lopez, Justice) Notices mailed April 10, 2001 (Dated 4/9/01)
04/11/2001		Motion (P#11) This case was dismissed on 2/20/01 by order of Judge Fahey (Lopez,J) Notice Sent 4/12/01
04/11/2001		Motion (P#12) Denied This case was dismissed by 2/20/01 Order of J Fahey (Lopez,J) Notice Sent 4/12/01
04/19/2001	14.0	Motion of plff to reconsider Court's Order of April 11, 2001 denying first motion to compel discovery (w/o opposition)
05/03/2001		Motion (P#14) denied (Maria I. Lopez, Justice) Notices mailed May 02, 2001 (dated 5/1/01)
05/10/2001		Case status changed to 'Needs review for answers' at service deadline review
05/24/2001	15.0	Plff's third motion to compel discovery (w/o opposition)
07/18/2001		(Case disposed on 2/20/02) (See Endorsement for P#12)
09/13/2001		Motion (P#15) - No action taken for failure to comply with Rules 9A, 9C, and 30A of the Superior Court (Fabricant,J) (Dated 9/10/01) notice sent 9/12/01
09/17/2001	16.0	Motion of plff for reconsideration of Court Order dated Sept 10, 2001 (w/o opposition)
09/21/2001		Motion (P#16) denied (Judith Fabricant, Justice) Notices mailed September 20, 2001 (entered 9/19/01)

EVENTS

MASXP-20110425
landvirg

Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket

10/19/2011
04:23 PM

SUCV2001-00129
Lu v Doe et al

Date	Session	Event	Result
02/15/2001	Civil E. 3 Pemberton Sq. Boston	Motion/Hearing: order of notice held at the "F" session 2/15/01- under advisement	Event held as scheduled