

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

COURT ADMINISTRATOR OF THE
TRIAL COURT OF THE COMMONWEALTH
OF MASSACHUSETTS

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES

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Case No. SUP-13-3133

Date Issued: December 23, 2014

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

- Jean Strauten Driscoll, Esq. - Representing the Court Administrator of the Trial Court of the Commonwealth of Massachusetts
- Natalie L. Lorenti, Esq. - Representing the Court Administrator of the Trial Court of the Commonwealth of Massachusetts
- Michael F. Manning, Esq. - Representing the National Association of Government Employees

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1 The issue in this case is whether the Court Administrator of the Trial Court of the
2 Commonwealth of Massachusetts (Trial Court or the Employer) violated Section
3 10(a)(5) and, derivatively, Section 10(a)(1) of Chapter 150E (the Law) by repudiating a
4 March 6, 2012 Memorandum of Understanding (March 6, 2012 MOU) that it had
5 entered into with the National Association of Government Employees (Union). Based

1 upon a plain reading of the March 6, 2012 MOU, I find that the Trial Court did not violate
2 the Law in the manner alleged.

3 STATEMENT OF THE CASE

4 On September 23, 2013, the Union filed a charge with the Department of Labor
5 Relations (DLR) in Case No. SUP-13-3133, alleging that the Trial Court had violated
6 Sections 10(a)(5) and (1) of the Law. A DLR hearing officer investigated the matter on
7 November 5, 2013 and issued a complaint of prohibited practice on November 19,
8 2013. The Trial Court filed its answer to the complaint on December 2, 2013.

9 On or about September 17, 2014, the Trial Court and the Union submitted a
10 stipulated record in lieu of an evidentiary hearing. The stipulated record consisted of
11 nineteen stipulated facts and thirteen documentary exhibits. The parties also agreed to
12 amend enumerated paragraphs 7, 9 and 10 of the complaint.¹ The parties filed post-
13 hearing briefs on or about October 31, 2014. After considering all of the evidence and
14 arguments presented by the parties, I render the following decision.

Stipulated Facts

15 1. The Employer is a public employer within the meaning of Section 1 of the Law.

¹ Amended paragraph 7 states: On January 17, 2013 the Employer posted a memorandum regarding PO voluntary transfers stating that PO's who are transferred within the past three years are eligible to request a transfer to certain courts.

Amended paragraph 9 states: The Employer did not post a memorandum similar to the one referenced in paragraph 7 regarding PO voluntary transfers, allowing ACPOs who transferred within the past three years to be eligible to request a transfer to the Franklin-Hampshire Juvenile Court in or around August 2013.

Amended paragraph 10 states: By the conduct described in paragraphs 8 and 9, the Court Administrator of the Trial Court has failed to bargain in good faith by repudiating the terms of the ACPO MOU referred to in paragraph 5, in violation of Section 10(a)(5) of the Law.

- 1 2. The Charging Party, NAGE (Union) is an employee organization within the
2 meaning of Section 1 of the Law.
3
4 3. The Union is the exclusive collective bargaining agent of employees employed by
5 the Employer including Probation Officers (POs) and Assistant Chief Probation
6 Officers (ACPOs).
7
8 4. Since at least 1997 and at all times material to this case, the collective bargaining
9 agreements covering POs and ACPOs have contained the following provision
10 covering both POs and ACPOs:

11
12 Section 16.02(3) When the Chief Justice for Administration and
13 Management determines (1.) [that] a permanent or temporary
14 transfer is to be made from a particular department or division,
15 and (2.) the length of said transfer, volunteers will be sought from
16 said department or division. A volunteer will be transferred
17 provided the operational needs of the courts are satisfied as
18 determined in the sole discretion of the Chief Justice for
19 Administration and Management.²

- 20
21 5. G.L.c.276, Section 83 and 211B, Section 9A confer the following statutory
22 authority on the Commissioner of Probation, with the approval or upon the
23 authority of the Court Administrator:³
24
25 6. During negotiations for at least the last two collective bargaining agreements the
26 Union has proposed a voluntary transfer program for ACPOs based upon a
27 similar program for POs already agreed to by the parties. The program would
28 allow interested ACPOs to seek a transfer based upon their own preferences.
29
30 7. The Employer and the Union reached agreement on a voluntary ACPO transfer
31 pilot program which was reduced to writing and executed as a memorandum of
32 understanding dated March 6, 2012.
33
34 8. The ACPO transfer program was based on the voluntary PO program and
35 includes the following paragraph:

36
37 2. As is the case with PO transfers, any ACPO transferred under this
38 program will not be eligible for another transfer for a period of three
39 years. However, the parties agree to waive this rule as long as the
40 similar three year rule is waived for PO transfers.
41

² The position of Chief Justice for Administration and Management was eliminated by Chapter 93 of the Acts of 2011 and the Employer is now the Court Administrator.

³ The parties attached copies of the text of G.L.c.276, Section 83 and 211B, Section 9A.

- 1 9. The "three year rule" was waived for the PO program postings each year since at
2 least 2007, including 2012 and 2013.
- 3 10. Irene Kennedy-Murphy was transferred under the voluntary ACPO program in
4 April 2012 to Hampshire Superior Court from Franklin-Hampshire Juvenile Court.
5
- 6 11. ACPO Kennedy-Murphy was the only supervisor at the Hampshire Superior
7 Court following her transfer and was the "point person" for that court.
8
- 9 12. The Acting Chief Probation Officer (CPO) at Hampshire Superior Court was
10 suspended from that position starting on 10/26/11 until his termination on July 31,
11 2013 after conviction on federal criminal charges. During this time Ms. Kennedy-
12 Murphy was not paid or given the title of Acting Chief.
13
- 14 13. There was no subsequent voluntary ACPO transfer program.
- 15
- 16 14. The permanent position of Chief Probation Officer (CPO) at Hampshire Superior
17 Court was posted in December 2012.
18
- 19 15. Ms. Kennedy-Murphy applied for the CPO position but was not the successful
20 applicant.
21
- 22 16. The new CPO was appointed effective July 28, 2013. At that time there were
23 three POs and one ACPO at the Hampshire Superior Court.
24
- 25 17. Ms. Kennedy-Murphy was transferred back to the Franklin-Hampshire Juvenile
26 Court in August 2013.
27
- 28 18. The Employer has transferred ACPOs who were Acting Chiefs but who were not
29 selected for the permanent positions.
30
- 31 19. The last sentence of the Memo dated November 13, 2011 has been part of
32 Voluntary Transfer Memos since at least 2007.
33

34 Supplementary Facts⁴

35 On March 5, 2012, Ronald P. Corbett (Corbett), Acting Commissioner of
36 Probation, issued a memorandum (March 5, 2012 Memorandum) to chief probation
37 officers (CPOs) in all court departments regarding voluntary transfers for assistant chief

⁴ The supplemental facts come from the various exhibits that the parties submitted.

1 probation officers (ACPOs) referred to here as the ACPO voluntary transfer program.

2 The March 5, 2012 Memorandum stated in pertinent part:

3 As you know, the Office of the Commissioner of Probation (OCP) for many
4 years has conducted a voluntary transfer program for Probation Officers
5 (PO's). After discussions with NAGE/SEIU, we have agreed to pilot a
6 similar program this year for Assistant Chief Probation Officers (ACPO's).
7 Similar to the PO program, this transfer program is limited to permanent
8 ACPOs who have completed three or more consecutive years of full-time
9 employment in the Judiciary in their respective positions. OCP has
10 selected the courts to which a transfer may be requested

11
12 The following procedures have been developed to ensure the timely
13 collection and transmittal to OCP of the names of those ACPOs to those
14 listed Courts:

15
16 1. The Chief Probation Officer (CPO) in each court will notify ACPO's
17 under his/her supervision of the transfer opportunities.

18 ...

19
20
21 5. OCP will attempt to accommodate each request on the basis of
22 need for personnel in a court and the number of ACPO's
23 expressing interest in transferring to a particular court. Staffing
24 levels will be considered in evaluating requests for transfer.
25 ACPO's, who wish to volunteer for more than one court, must
26 indicate the courts to which they are requesting transfer in order of
27 preference.

28
29 6. Transfer requests shall be given fair consideration. An ACPO's
30 seniority will be considered but shall not be the deciding factor on a
31 request for transfer. The denial of a request for transfer shall not
32 be subject to the arbitration provisions of the collective bargaining
33 agreement.

34
35 7. Any ACPO so transferred shall not apply for another transfer until
36 the expiration of three years from the date of transfer (unless such
37 rule is waived by mutual agreement of the parties). A request for
38 transfer will not impact an ACPO's pending application for the
39 recently posted CPO positions.⁵

⁵ Corbett attached a list of courts for which ACPOs could make voluntary transfer requests. Hampshire Superior Court was on that list.

1 The next day the Union and the Trial Court executed the March 6, 2012 MOU that
2 stated in pertinent part:

3 The hiring freeze that has remained in place since October 2008 and the
4 voluntary retirement incentives that were implemented due to the fiscal
5 crisis have caused a significant staffing shortage in supervisory positions
6 within the Probation Service. To address this staffing shortage in calendar
7 year 2012, there is a need to transfer Assistant Chief Probation Officers
8 (ACPOs) to meet the needs of the various courts. The parties mutually
9 agree to pilot the following voluntary transfer program that is based on the
10 Probation Officer (PO) transfer program contained in Section 16.02A of
11 the collective bargaining agreement:

- 12
13 1. As is the case with PO transfers, this program is limited to
14 permanent ACPO's who have completed three or more consecutive
15 years of full-time employment in their respective positions.
16
- 17 2. As is the case with PO transfers, any ACPO transferred under this
18 program will not be eligible for another transfer for a period of three
19 years. However, the parties agree to waive this rule for as long as
20 the similar three-year rule is waived for PO transfers.
21
- 22 3. OCP [Office of the Commissioner of Probation] will identify the
23 courts to which ACPO's can request a voluntary transfer based
24 upon the need for probation personnel in those courts. For
25 purposes of this pilot, OCP will identify up to 12 courts unless
26 otherwise agreed to by the parties.
27
- 28 4. OCP will develop and distribute transfer material consistent with the
29 material distributed for Probation Officer transfers outlined in the

1 memorandum dated November 30, 2011 except as amended by
2 this MOU.⁶

- 3
- 4 5. Transfer requests will be given fair consideration. An ACPO's
5 seniority will be considered but shall not be the deciding factor on a
6 request for transfer. The OCP reserves the right to deny a transfer
7 request and such a denial shall not be subject to the arbitration
8 provisions of the collective bargaining agreement.
- 9
- 10 6. The parties understand that consistent with PO transfers, ACPO's
11 who are transferred are not eligible for travel reimbursement.
- 12
- 13 7. Although this is a pilot program offered this calendar year, the
14 parties will consider incorporating it into Section 16.02A of the
15 collective bargaining agreement if they find it was mutually
16 beneficial.

⁶ The November 30, 2011 Memorandum from Corbett stated in relevant part:

As you know, the Office of the Commissioner of Probation (OCP) for many years has conducted a voluntary transfer program for Probation Officers (PP's) during the month of January pursuant to Section 16.02A of the collective bargaining agreement. After discussions with NAGE/SEIU, we have agreed to start this year's transfer program earlier due to the staffing shortages that exist in many Probation Offices.

Pursuant to Section 16.02A of the collective bargaining agreement with the NAGE/SEIU Local 5000, those PO's who have completed three or more consecutive years of full-time employment in the Judiciary in the position of PO may request transfer to the courts selected by the Acting Commissioner of Probation. **For this year only, PO's who transferred within the past three years are eligible to request a transfer as are PO's who are working less than a full-time schedule. [Emphasis in original]....**

6. Transfer requests shall be given fair consideration. A PO's seniority will be considered but shall not be the deciding factor on a request for transfer
....

7. Any PO so transferred shall not apply for another transfer until the expiration of three years from the date of transfer.

Subsequent PO Voluntary Transfer Requests

1 On January 17, 2013, Ellen Slaney (Slaney), Acting Commissioner of Probation,
2 issued a memorandum (January 17, 2013 memorandum) regarding the voluntary PO
3 transfer program that stated in pertinent part:

4 Pursuant to Section 16.02 of the collective bargaining agreement with the
5 NAGE/SEIU, Local 5000, those PO's who have completed three or more
6 consecutive years of full-time employment in the Judiciary in the position
7 of PO may request transfer to the courts selected by the Acting
8 Commissioner of Probation.... **For this year only, PO's who transferred**
9 **within the past three years are eligible to request a transfer as are**
10 **PO's who are working a less than a full-time schedule [Emphasis in**
11 **original]....**

12
13 6. Transfer requests shall be given fair consideration. A Probation
14 Officer's seniority will be considered but shall not be the deciding factor on
15 a request for transfer....

16
17 7. Any PO so transferred shall not apply for another transfer until the
18 expiration of three years from the date of transfer.⁷

19 On October 22, 2013, Edward Dolan (Dolan), Commissioner of Probation, issued
20 a memorandum (October 22, 2013 Memorandum) regarding the voluntary PO transfer
21 program that stated in pertinent part:

22 As you know Section 16.02A of the collective bargaining agreement with
23 NAGE/SEIU, Local 5000 authorizes the Office of the Commissioner of
24 Probation (OCP) to conduct an annual voluntary transfer program for
25 Probation Officers (PO's) during the month of January. After discussions
26 with NAGE/SEIU, we have agreed to start this year's transfer program
27 earlier to address the staffing shortages that still exist in many Probation
28 Offices.

29
30 Pursuant to Section 16.02A of the collective bargaining agreement, PO's
31 who have completed three or more consecutive years of full-time
32 employment in the Judiciary in the position of PO may request transfer to
33 the courts selected by the Commissioner of Probation. For this year only,

⁷ Slaney attached a list of courts for which POs could make voluntary transfer requests. Hampshire Superior Court was not on that list.

1 PO's who transferred within the past three years are eligible to request a
2 transfer as are PO's who are working a less than full-time schedule....

3
4 6. Transfer requests shall be given fair consideration. A PO's
5 seniority will be considered but shall not be the deciding factor on a
6 request for transfer....

7
8 7. Any PO so transferred shall not apply for another transfer until the
9 expiration of three years from the date of transfer.⁸

10 Opinion⁹

11 Section 6 of the Law requires public employers and unions that represent their
12 employees to meet at reasonable times to negotiate in good faith regarding wages,
13 hours, standards of productivity and performance, and any other terms and conditions
14 of employment. The statutory obligation to bargain in good faith includes the duty to
15 comply with the terms of a collectively bargained agreement. Commonwealth of
16 Massachusetts, 26 MLC 165, 168, SUP-3972 (March 13, 2000) (citing City of Quincy,
17 17 MLC 1603, MUP-6710 (March 20, 1991)); Massachusetts Board of Regents of
18 Higher Education, 10 MLC 1196, SUP-2673 (September 8, 1983). A public employer's
19 deliberate refusal to abide by unambiguous collectively bargained agreement
20 constitutes a repudiation of that agreement in violation of the Law. Town of Falmouth,
21 20 MLC 1555, MUP-8114 (May 16, 1994), aff'd sub nom., Town of Falmouth v. Labor
22 Relations Commission, 42 Mass. App. Ct. 1113 (1997). If the evidence is insufficient to
23 find an agreement or if the parties hold differing good faith interpretations of the
24 language at issue, the Commonwealth Employment Relations Board (CERB) will

⁸ Dolan attached a list of courts for which POs could make voluntary transfer requests. Hampshire Superior Court was not on that list.

⁹ The DLR's jurisdiction in this matter is uncontested.

1 conclude that no repudiation has occurred. Commonwealth of Massachusetts, 18 MLC
2 1161, 1163, SUP-3439, SUP-3556 (October 16, 1991).

3 The issue before me is whether the Trial Court repudiated the March 6, 2012
4 MOU by transferring Kennedy-Murphy from Hampshire Superior Court to Franklin-
5 Hampshire Juvenile Court in August 2013, and by failing to post a memorandum
6 allowing ACPOs, who transferred within the past three years, to be eligible to request a
7 transfer to the Franklin-Hampshire Juvenile Court in or around August 2013. The Union
8 contends that pursuant to the provisions of the parties' March 6, 2012 MOU, ACPOs,
9 who transferred pursuant to the voluntary ACPO transfer program, were not eligible for
10 another transfer for a period of three years (three-year rule). The Union asserts that
11 because the Trial Court transferred Kennedy-Murphy to Franklin-Hampshire Juvenile
12 Court only sixteen months after she transferred to Hampshire Superior Court pursuant
13 to the voluntary ACPO transfer program, the Trial Court repudiated the March 6, 2012
14 MOU. Further, the Union asserts that because the March 6, 2012 MOU refers to a
15 waiver of the three-rule, the Trial Court violated the March 6, 2012 MOU by not
16 complying with the posting provisions necessary to secure that waiver. Conversely, the
17 Trial Court argues that Kennedy-Murphy's August 2013 transfer did not fall within the
18 ambit of the March 6, 2012 MOU. The Trial Court contends that even if Kennedy-
19 Murphy's August 2013 transfer was subject to the provisions of the March 6, 2012
20 MOU, the three-year rule had been waived. Therefore, the Trial Court did not repudiate
21 the March 6, 2012 MOU.

August 2013 Transfer

1 As a preliminary issue, I must determine whether Kennedy-Murphy's August
2 2013 transfer was subject to the provisions of the March 6, 2012 MOU. The Trial Court
3 cites to both statutory and contractual authority in support of its argument that it has the
4 right to transfer employees. The Employer also points out that it transfers employees
5 for reasons that are unrelated to the voluntary ACPO transfer program, including
6 disciplinary transfers, requests for reasonable accommodations under the Americans
7 with Disabilities Act, medical requests, and the need to separate a complainant and
8 respondent during a pending investigation.¹⁰ However, the present case does not
9 concern a challenge to the Trial Court's right to transfer employees, but instead
10 examines whether the Trial Court and the Union negotiated an agreement that placed
11 restrictions on Kennedy-Murphy's eligibility to transfer, and whether the Trial Court
12 failed to adhere to that agreement. It is undisputed that Kennedy-Murphy originally had
13 transferred to Hampshire Superior Court in April 2012 pursuant to the voluntary ACPO
14 transfer program, and that the March 6, 2012 MOU described the program's
15 parameters.

16 I turn first to consider the portion of the March 6, 2012 MOU that addresses the
17 three-year rule. The CERB gives effect to the clear meaning of the bargained-for
18 language and does not inquire into the parties' intent where the words of the agreement
19 are unambiguous. Boston School Committee, 22 MLC 1365, 1376, MUP-8125 (January

¹⁰ The record before me does not show that Kennedy-Murphy's August 2013 transfer was for any of the above-enumerated reasons. Rather, the Trial Court transferred Kennedy-Murphy because she did not receive the promotion to CPO at Hampshire Superior Court for which she applied.

1 9, 1996) (citing City of Worcester, 2 MLC 1281, 1285, MUP-2260 (January 8, 1976)).

2 Paragraph 2 of the March 6, 2012 MOU states in pertinent part:

3 As is the case with PO transfers, any ACPO transferred under this
4 program will not be eligible for another transfer for a period of three years.

5 Reading Paragraph 2 carefully, giving its words their plain and normal meaning, I
6 conclude that the provision imposes a three year waiting period before ACPOs
7 transferred under the voluntary ACPO transfer program become eligible for another
8 transfer. Thus, Kennedy-Murphy had a three-year waiting period from the date of her
9 transfer to Hampshire Superior Court until she was eligible to transfer to another court.

10 However, the Trial Court argues that the three-year rule should not render
11 Kennedy-Murphy ineligible to transfer in August 2013 because the voluntary ACPO
12 transfer program was a pilot program in 2012, and the voluntary ACPO transfer program
13 did not re-occur in subsequent years. However, while the ACPO transfer program may
14 not have re-occurred, a plain reading of Paragraph 2 as well as the entire March 6,
15 2012 MOU does not reveal that the three-year rule lapsed if the parties did not renew
16 the voluntary ACPO transfer program in subsequent years. Thus, I conclude that
17 Kennedy-Murphy's eligibility to transfer in August 2013 was subject to the provisions of
18 the March 6, 2012 MOU.

19 Merits

20 Having concluded above that Kennedy-Murphy's eligibility to transfer was limited
21 by the three-year rule and having facts before me that show that the Trial Court
22 permitted Kennedy-Murphy to transfer back to Franklin-Hampshire Juvenile Court from
23 Hampshire Superior Court within sixteen months of transferring to Hampshire Superior
24 Court pursuant to the voluntary ACPO transfer program, I consider the Trial Court's

1 argument that the March 6, 2012 MOU permits the three-year rule to be waived under
2 certain circumstances. Specifically, the Trial Court focuses on the portion of Paragraph
3 2 of the March 6, 2012 MOU that states:

4 However, the parties agree to waive this rule [the three-year rule] for as
5 long as the similar three-year rule is waived for PO transfers.

6 Because the three-year rule has been waived for the voluntary PO transfer program
7 each year since at least 2007, including 2012 and 2013, the Trial Court argues that the
8 three-year rule also has been waived for ACPOs. However, the Union contends the
9 March 6, 2012 MOU needs to be read in conjunction with the Trial Court's March 5,
10 2012 Memorandum. Although the Trial Court's March 5, 2012 Memorandum refers to a
11 waiver of the three-year rule by the mutual agreement of the parties, the Memorandum
12 does not link the three-year rule for ACPOs and a waiver of the three-year rule for the
13 voluntary PO transfer program and, in fact, makes no mention of the voluntary PO
14 transfer program.

15 Upon review, I do not find the Union's argument to be persuasive. First, the
16 record before me shows that the parties executed the March 6, 2012 MOU one day
17 after the Trial Court issued the March 5, 2012 Memorandum. Thus, the terms of the
18 March 5, 2012 Memorandum do not supersede the terms of March 6, 2012 MOU.
19 Rather, the March 6, 2012 MOU represents the Trial Court's and the Union's mutual
20 and ultimate agreement concerning the voluntary ACPO transfer program to which the
21 parties evinced their assent by their representatives' signatures. See Commonwealth of
22 Massachusetts/Commissioner of Administration and Finance, 30 MLC 43, 46, SUP-
23 4768 (September 17, 2003) (consistent with an employer and a union having agreed
24 upon certain terms of a settlement, they executed a settlement agreement containing

1 those terms). Moreover, contrary to the Union's argument, the March 5, 2012
2 Memorandum and the March 6, 2012 MOU are not inconsistent. The language in the
3 March 6, 2012 MOU expands upon the bare reference to a waiver that is present in the
4 March 5, 2012 Memorandum.

5 I turn now to consider the language of Section 2 of the March 6, 2012 MOU.
6 Because I find that language to be clear and unambiguous, I need not reach the parties'
7 bargaining history concerning the March 6, 2012 MOU. A plain reading of that section
8 shows that the parties agreed to waive the three-year rule contingent on a waiver of the
9 three-year rule for the voluntary PO transfer program. Although the Union argues that
10 the waiver of the three-year rule for ACPOs should be contingent on future postings of
11 the voluntary ACPO transfer program, the March 6, 2012 MOU contains no such
12 contingency. See City of Worcester, 2 MLC at 1285 (party intending to avoid the legal
13 consequences of an agreement should make that intention clear in the language of the
14 agreement). The parties' waiver of the three-year rule for the voluntary PO transfer
15 program in 2013 triggered a waiver of the three-year rule for the voluntary ACPO
16 transfer program. Thus, the waiver of the three-year rule for the voluntary ACPO
17 transfer program made Kennedy-Murphy eligible to transfer in August 2013.

18 CONCLUSION

19 Based on the record and for the reasons stated above, I conclude that the Trial
20 Court did not repudiate the terms of the March 6, 2012 MOU by transferring Kennedy-
21 Murphy from Hampshire Superior Court to Franklin-Hampshire Juvenile Court in August
22 2013 and by failing to post a memorandum allowing ACPOs who transferred within the

- 1 past three years to be eligible to request a transfer to the Franklin-Hampshire Juvenile
- 2 Court in or around August 2013.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11, and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, the decision shall become final and binding on the parties.