

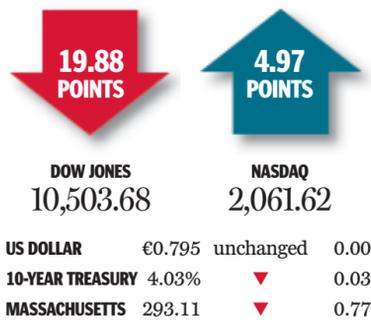
# Business

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THE BOSTON GLOBE WEDNESDAY, MAY 25, 2005

## Markets

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**STEVE BAILEY**  
Downtown

## Mr. Rogers' legacy

Sitting across the bargaining table, management's labor lawyer had come armed with a fistful of demands for givebacks it wanted from some of its lowest-paid workers. Among them: a big cut in overtime pay, rollbacks in health and retirement benefits, and an end to sick-leave buybacks.

All across corporate America, managements are leaning on their most vulnerable workers because they can. Executive compensation is up; those at the bottom are fighting just to hold their own. The only thing different about this particular negotiation is that it is not taking place at US Airways or NStar, but at a world-famous center of enlightenment in Boston, the Museum of Fine Arts.

**The MFA is a place with far too many unhappy employees.**

Million-dollar donors to the MFA's record \$425 million capital campaign can rest assured that director Malcolm Rogers is not squandering their money. The man the Globe last year called "one of the most polarizing museum directors in the country" is at it again. With attendance and returns on its endowment both down, the museum says it is facing hard times. It has cut 41 people over the past two years; now it is demanding a series of givebacks in what is becoming an ugly contract standoff with its 130 security guards.

Rogers' legacy project, however, is on track: Work could get underway in a year on British architect Norman Foster's grand design to eventually double the size of the already huge museum, says deputy director John Stanley. In the long run, that is what Rogers will want to be remembered for — not "The Boston Massacre," in which he summarily fired two longtime curators and 16 others a few years ago. And certainly not for cutting overtime for some anonymous security guards.

But the museum — and its supporters who write the checks — should think hard before squeezing its lowest-paid workers just because it can. A museum is not just a business, but a public trust, whose obligations to do the right thing go well beyond maximizing returns for the shareholders. For a \$75 million-a-year operation like the MFA, whatever it can squeeze out of the security guards is chump change. But if you are making the minimum of \$11.45 an hour working the galleries as a guard, every buck counts in a place like Boston. Rogers, by comparison, made \$567,000 in fiscal year 2004.

The number one issue is overtime. Guards are now paid overtime on anything over eight hours a day. The museum wants to pay overtime only after 40 hours a week, which it says is consistent with all other museum employees. Michael Raysson, president of the guards union, says it will cost full-time guards about \$1,600 a year and part-time guards — increasingly the norm — up to \$2,000 a year. In exchange, the museum is offering 2 percent annual raises. "Most of our people get by week to week," Raysson says. "They can't afford to lose money."

No kid grows up dreaming of being a museum security guard. But it is a job that matters. The guards are the face of the museum and sometimes the only thing between an irreplaceable Rembrandt and a curious 7-year-old. The job requires the ability not to go nuts standing in a gallery hour after hour, year after year, and a very good pair of shoes. Many of the guards are artists themselves, who love being around the place.

"Protecting the art is the job," one guard told me, as he shooed two young girls who were about to give Claude Monet's "Poppy Field in a Hollow" a little caress.

The Museum of Fine Arts does have a business to run. Citizens Financial chief Larry Fish, who knows something about running a successful business, likes to say you can't have happy customers and unhappy employees. Right now, the MFA is a place with far too many unhappy employees. That, too, is becoming Malcolm Rogers' legacy.

Steve Bailey is a Globe columnist. He can be reached at [bailey@globe.com](mailto:bailey@globe.com) or at 617-929-2902.

## State home sales sag 10% in April

Agents blame cool weather, but condo market is still hot

By Chris Reidy  
GLOBE STAFF

While low mortgage rates and an improving jobs picture boosted US housing sales to an unexpected record in April, sales softened for Massachusetts single-family homes, according to reports released yesterday. Local real estate agents blamed the weather.

The number of single-family homes sold was 3,658, down 10.4 percent from April 2004. It marked the first year-to-year double-digit percentage decline since April 2003, the Massachusetts Association of Realtors reported.

Condominium sales remained strong in April, with the median selling price hitting an all-time high of \$275,000.

Real estate agents said the normally busy month for residential sales was affected by below-normal temperatures. They expect a rebound.

Yesterday's housing reports reflected sales that closed in April. There is usually

### MASSACHUSETTS MEDIAN SELLING PRICE

Change from April 2004 to April 2005

Single-families: +5.9%  
Condominiums: +14.6%

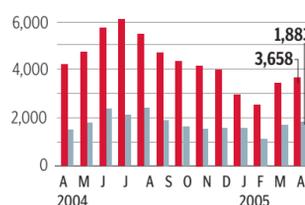


SOURCE: Massachusetts Association of Realtors

### MASSACHUSETTS SALES

Change from April 2004 to April 2005

Single-families: -10.4%  
Condominiums: +13.2%



GLOBE STAFF GRAPHIC

## A challenge to nonprofits



GLOBE STAFF PHOTO/DAVID KAMERMAN

Yolanda Mason-Reid with her 6-year-old son Jeremy Reid. The death of her husband, Howard Reid, 37, last year is one of six deaths or serious complications related to obesity surgery reported to Massachusetts public health officials since 1998.

### Suit by family of patient who died seeks exception to law shielding charities

By Liz Kowalczyk  
GLOBE STAFF

The family of a patient who died after obesity surgery is using a novel legal strategy to demand \$8.5 million from Beth Israel Deaconess Medical Center, maintaining that the state's cap on financial damages against hospitals does not apply to the case.

The decades-old charitable immunity law limits

damages against nonprofit institutions to \$20,000, and judges have refused to override the law. In a case two years ago, the Supreme Judicial Court overturned a \$4.1 million award ordered by a lower court against Brigham and Women's Hospital, saying it could be held liable for only \$20,000 in the case of a severely brain-damaged Dover teenager.

But lawyers for the family of Howard Reid, who died after surgery at Beth Israel Deaconess in January 2004, argue that the Boston hospital advertised the weight-loss procedure on the radio and in newspapers as safe and effective, essentially operating as a commercial entity rather than a nonprofit.

"Our view is that these stomach banding procedures are profit centers, that the hospitals advertise, they make promises, they do all things businesses do," said John Swomley of Boston, one of the

Reid family attorneys.

Paul McTague of the Boston law firm Martin, Magnuson, McCarthy, & Kenney, who represents the hospital, said he could not discuss details of the case, but that he does not believe the facts support overriding the charitable immunity cap.

Trial lawyers routinely have complained that the law unfairly protects hospitals, schools, and nonprofit groups found liable for wrongful conduct. Malpractice lawyers have circumvented the monetary limit by filing negligence lawsuits against doctors, who are not protected by the cap and who carry multimillion-dollar insurance policies.

In some cases, they have sued hospitals and asked judges to overturn the cap. In several recent cases, state courts have ruled that only the Legislature can

LAWSUIT, Page C4

## CVS takes step to keep fake drugs off shelves

Firm tightens criteria for picking suppliers

By Jenn Abelson  
GLOBE STAFF

CVS Corp. said yesterday it would stop buying drugs from wholesalers that use middlemen in an effort to crack down on counterfeiters infecting the drug supply.

The disclosure comes several weeks after the country's second-largest drug distributor said it would curb the trading of pharmaceuticals with secondary wholesalers, and three years after a 16-

year-old liver transplant patient was injected with a fake version of the Epogen drug bought from CVS.

"CVS will only purchase pharmaceuticals directly from the manufacturer, or from wholesalers who certify that they are not trading in the secondary drug market," Chris Bodine, CVS's executive vice president of merchandising and marketing, said in a statement. "If we are unable to receive those assurances, those wholesalers' contracts will not be renewed."

Wholesalers that buy drugs from other vendors and not directly from manufacturers have come under increased scrutiny. Regulators suspect that these middlemen — which a healthcare expert estimates handle about 10 percent of the country's drug supply — are partly responsible for counterfeiters in the market, including those of Viagra and Lipitor.

Some states have proposed bills to protect the nation's drug supply chain and last month, the three largest US drug distributors said they received subpoenas from the New York state attorney general as part of a probe into purchases between wholesalers.

CVS, Page C2

## NStar service faces test amid strike and storm

Utility says it's ready but warns of delays if damage widespread

By Peter J. Howe  
GLOBE STAFF

As a windy northeaster bore down on Eastern Massachusetts last night, NStar was bracing for the first serious test of the electric utility's service since nearly 1,900 workers went on strike eight days ago.

"We're prepared to do whatever it

takes to restore power should it go out during the storm, and with two-thirds of our workers on strike, there is the possibility of delays if there is widespread damage," NStar spokeswoman Caroline Allen said late yesterday.

Allen said managers redeployed to front-line repairs "will be out there working hard" to minimize storm impacts and added that the utility has "prepared to mobilize additional resources to deal with any power outages that occur," but declined to elaborate.

As of 11:30 p.m. last night, about

NSTAR, Page C3

### \$5.1b power deal

Making a major move in the energy industry, billionaire investor Warren Buffett will pay cash to acquire electric utility PacifiCorp. C2

### Staying on at Gillette

At least a third of the Boston shaving firm's senior management will remain with the combined Gillette and Procter & Gamble after the deal is complete. C4