

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	
TOWN OF ATHOL	*	Case No.: MUP-13-3153
	*	
and	*	Date Issued: December 23, 2014
	*	
PERMANENT ATHOL FIREFIGHTERS	*	
ASSOCIATION, LOCAL 1751	*	

Hearing Officer:

Nicholas Chalupa, Esq.

Appearances:

Albert Mason, Esq.	-	Representing the Town of Athol
Patrick Bryant, Esq.	-	Representing the Permanent Athol Firefighters Association, Local 1751

HEARING OFFICER'S DECISION

Summary

1 The issues in this case are whether the Town of Athol (Town) failed to bargain in
2 good faith by not providing the Permanent Athol Firefighters Association, Local 1751
3 (Union) with information that is relevant and reasonably necessary for the Union to
4 execute its duties as collective bargaining representative, and whether the Town
5 interfered with, restrained and coerced its employees in the exercise of their rights
6 guaranteed under Section 2 of G.L. c. 150E (the Law). Based upon the Town's Waiver
7 of Hearing pursuant to 456 CMR 15.08, in which it admitted the allegations in the

1 complaint, I conclude that the Town violated Section 10(a)(1), Section 10(a)(5), and,
2 derivatively, Section 10(a)(1) of the Law.

3 Statement of the Case

4 On September 25, 2013, the Union filed a charge of prohibited practice with the
5 Department of Labor Relations (DLR) alleging that the Town had engaged in prohibited
6 practices within the meaning of Section 10(a)(5), and derivatively, 10(a)(1) of the Law. A
7 DLR investigator conducted an investigation on December 20, 2013, and at that time,
8 the Union orally amended its charge to allege an additional violation of Section 10(a)(5)
9 of the Law, and an independent violation of Section 10(a)(1) of the Law. On January 14,
10 2014, the investigator issued a complaint of prohibited practice and a partial dismissal.
11 On January 23, 2014, the Town filed an answer and Motion to Dismiss in which it
12 denied certain allegations in the complaint, including allegations that the Town violated
13 the Law. The DLR scheduled the case for a hearing on November 25, 2014.

14 On November 24, 2014, the Town filed a motion to waive the hearing, which I
15 subsequently allowed. By its motion, the Town amended its answer and admitted all of
16 the allegations in the complaint. Because the Town admitted to the allegations in the
17 complaint, there was no need for a hearing. The allegations of the complaint now
18 admitted as true constitute the facts and legal conclusions upon which I base my order,
19 and they are as follows:

20 Count I

- 21 1. The Town is a public employer within the meaning of Section 1 of the Law.
22
23 2. The Union is an employee organization within the meaning of Section 1 of
24 the Law.
25

- 1 3. The Union is the exclusive bargaining representative for certain
2 employees, including full-time and probationary firefighters and
3 paramedics that work for the Town.
4
- 5 4. On or about September 18, 2013, the Union asked the Town to provide all
6 documentation, evidence and any other related items to a meeting with a
7 probationary employee, a member of the bargaining unit described in
8 paragraph 3.
9
- 10 5. The information referred to in paragraph 4 is relevant and reasonably
11 necessary to the Union's performance as the exclusive collective
12 bargaining representative.
13
- 14 6. The Town failed to provide the information referred to in paragraph 4.
15
- 16 7. By the conduct described in paragraph 6, the Town has failed to bargain in
17 good faith by not providing the Union with information that is relevant and
18 reasonably necessary for the Union to execute its duties as collective
19 bargaining representative in violation of Section 10(a)(5) of the Law.
20
- 21 8. By the conduct described in paragraph 6, the Town has derivatively
22 interfered with, restrained and coerced its employees in the exercise of
23 their rights guaranteed under Section 2 of the Law in violation of Section
24 10(a)(1) of the Law.
25

Count II

- 26
- 27
- 28 9. The allegations in paragraphs 1-6 are re-alleged.
29
- 30 10. On December 20, 2013, the Union and the Town attended a [DLR] in
31 person investigation regarding the conduct described in paragraphs 4-6.
32
- 33 11. At the December 20, 2013, investigation, Town Manager Michael Szlosek
34 (Szlosek) criticized the Union President Lester Lacki (Lacki) for not
35 previously meeting with him to settle the charge prior to the scheduled
36 investigation. Szlosek also criticized Lacki for "wasting his day off".
37
- 38 12. By the conduct described in paragraph 11, the Town has interfered with,
39 restrained and coerced its employees in the exercise of their rights
40 guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of
41 the Law.
42

43
44

1 Opinion

2 Section 10(a)(5)

3 If a public employer possesses information that is relevant and reasonably
4 necessary to an employee organization in the performance of its duties as the exclusive
5 collective bargaining representative, the employer is generally obligated to provide the
6 information upon the employee organization's request. City of Boston, 32 MLC 1, MUP-
7 1687 (June 23, 2005) (citing Higher Education Coordinating Council, 23 MLC 266, 268,
8 SUP-4142 (June 6, 1997)). The employee organization's right to receive relevant
9 information is derived from the statutory obligation to engage in good faith collective
10 bargaining, including both grievance processing and contract administration. Id.

11 Section 10(a)(1)

12 An employer violates Section 10(a)(1) of the Law if it engages in conduct that
13 tends to restrain, coerce or interfere with employees in the free exercise of their rights
14 under Section 2 of the Law. Town of Mashpee, 11 MLC 1252, MUP-5141 (November
15 20, 1984). Section 2 of the Law provides that employees shall have the right to form,
16 join, or assist any employee organization for the purpose of bargaining collectively
17 through representatives of their own choosing on questions of wages, hours, and other
18 terms and conditions of employment. The pertinent inquiry regarding a Section 10(a)(1)
19 violation is the effect that the employer's conduct would tend to have on "reasonable
20 employees." Mass. Board of Regents (U.Mass. Medical Center), 14 MLC 1397, 1401,
21 SUP-2901 (December 21, 1987). The subjective impact of the employer's conduct is not
22 determinative. City of Fitchburg, 22 MLC 1286, 1292, MUP-9843 (November 28, 1995).
23 The Commonwealth Employment Relations Board (Board) has recognized that

1 expressions of anger, criticism or ridicule directed to employees' protected activities
2 constitute interference, restraint and/or coercion of employees. Groton-Dunstable
3 Regional School Committee, 15 MLC 1551, MUP-6748 (March 20, 1989) (employer
4 interfered with protected activity when it admonished employee for choosing not to
5 discuss the merits of a grievance with the employer before moving it to Level 3 of the
6 grievance procedure).

7 Here, the Town has admitted to all facts alleged in the complaint. The facts as
8 alleged constitute a violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) and
9 an independent violation of 10(a)(1) of the Law. Therefore, I enter the order below.

10 ORDER

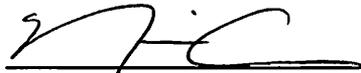
11
12 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town
13 shall:

- 14
15 1. Cease and desist from:
- 16
17 a. Failing and refusing to bargain collectively in good faith with the Union
18 by refusing to provide relevant and reasonably necessary information
19 when requested by the Union.
 - 20
21 b. Making statements that would tend to interfere with, restrain or coerce
22 employees in the exercise of their rights guaranteed under the Law.
 - 23
24 c. In any like or similar manner interfering with, restraining or coercing
25 employees in the exercise of their rights protected under the Law.
- 26
27 2. Take the following action that will effectuate the purposes of the Law.
- 28
29 a. Immediately provide the Union with all documentation, evidence and
30 any other related items concerning a meeting with the probationary
31 employee described in paragraph 3 of the Complaint.
 - 32
33 b. Sign and post immediately in conspicuous places employees usually
34 congregate or where notices to employees are usually posted,
35 including electronically, if the Town customarily communicates to its
36 employees via intranet or email, and maintain for a period of thirty (30)

- 1 consecutive days thereafter signed copies of the attached Notice to
- 2 Employees.
- 3
- 4 c. Notify the DLR within ten (10) days after the date of service of this
- 5 decision and order of the steps taken to comply with its terms.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



NICHOLAS CHALUPA
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.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations has held that the Town of Athol (Town) has violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain in good faith by not providing the Permanent Athol Firefighters Association, Local 1751 (Union) with information that is relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative. The hearing officer also held that the Town violated Section 10(a)(1) of the Law when it interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law.

Section 2 of the M.G.L. Chapter 150E gives public employees the following rights:

to engage in self-organization: to form, join or assist any union;
to bargain collectively through representatives of their own choosing;
to act together for the purpose of collective bargaining or other mutual aid
or protection; and
to refrain from all of the above.

WE WILL NOT fail to bargain in good faith with the Union by refusing to provide relevant and reasonably necessary information when requested.

WE WILL NOT make statements that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL take the following affirmative action to effectuate the purposes of the Law:

Upon request of the Union, provide information that is relevant and reasonably necessary to their duties as exclusive collective bargaining representative.

Town of Athol

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF THE
MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations has held that the Town of Athol (Town) has violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain in good faith by not providing the Permanent Athol Firefighters Association, Local 1751 (Union) with information that is relevant and reasonably necessary for the Union to execute its duties as collective bargaining representative. The hearing officer also held that the Town violated Section 10(a)(1) of the Law when it interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law.

Section 2 of the M.G.L. Chapter 150E gives public employees the following rights:

to engage in self-organization: to form, join or assist any union;
to bargain collectively through representatives of their own choosing;
to act together for the purpose of collective bargaining or other mutual aid
or protection; and
to refrain from all of the above.

WE WILL NOT fail to bargain in good faith with the Union by refusing to provide relevant and reasonably necessary information when requested.

WE WILL NOT make statements that would tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL take the following affirmative action to effectuate the purposes of the Law:

Upon request of the Union, provide information that is relevant and reasonably necessary to their duties as exclusive collective bargaining representative.

Town of Athol

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).