

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *

CITY OF LYNN *

and *

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, *
COUNCIL 93, AFL-CIO, LOCAL 230 *

Case No. MUP-12-1897

Date Issued: June 13, 2014

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Wayne Soini, Esq. - Representing American Federation of State,
County and Municipal Employees, Council
93, ALF-CIO, Local 230

John C. Mihos, Esq. - Representing the City of Lynn

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the City of Lynn (City) violated Section 10(a)(5)
2 and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the
3 Law) by failing to bargain in good faith with the American Federation of State, County
4 and Municipal Employees, Council 93, AFL-CIO, Local 203 (AFSCME or Union) by
5 changing the Computer Operator's work location without first providing the Union with
6 notice and an opportunity to bargain to resolution or impasse about the decision and the

1 impacts of the decision on employees' terms and condition of employment. I find that
2 the City violated the Law as alleged.

3 **STATEMENT OF THE CASE**

4 On June 5, 2012, the Union filed a Charge of Prohibited Practice (Charge) with
5 the Department of Labor Relations (DLR) alleging that the City had violated Section
6 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On December 17, 2012, a duly-
7 designated DLR investigator issued a Complaint of Prohibited Practice and Partial
8 Dismissal (Complaint), alleging that the City had violated Section 10(a)(5) and,
9 derivatively, Section 10(a)(1) of the Law by failing to bargain in good faith with the Union
10 over the decision to change the work location of the Computer Operator. On December
11 27, 2012, the City filed its Answer.

12 I conducted a hearing on October 23, 2013, at which the parties were afforded a
13 full opportunity to be heard, examine and cross-examine witnesses and introduce
14 evidence. On November 26, 2013, the City and the Union filed their post-hearing briefs.
15 Base on the record, I make the following findings of fact and render the following
16 decision.

17 **ADMISSIONS OF FACT**

18 The City admitted to the following facts:

- 19 1. The City is a public employer within the meaning of Section 1 of the Law.
20 2. The Lynn School Committee (Committee) is the collective bargaining
21 representative of the City for purposes of dealing with school employees.
22

- 1 3. The Union is an employee organization within the meaning of Section 1 of
- 2 the Law.
- 3
- 4 4. The Union is the exclusive collective bargaining representative for clerical
- 5 and non-professional employees employed by the Committee, including
- 6 the position of Computer Operator.
- 7
- 8 5. In February of 2012, the Committee hired a bargaining unit member into
- 9 the unit position of Computer Operator.
- 10
- 11 6. Effective February 2012, the Committee required the Computer Operator
- 12 to work in the personnel office and the data entry office.
- 13

STIPULATIONS OF FACT

- 14
- 15
- 16 1. The Committee operates public schools within the municipality of the City
- 17 of Lynn.
- 18
- 19 2. Certain clerical and non-professional employees of the Committee have
- 20 been recognized as a bargaining unit.
- 21
- 22 3. Among other positions recognized by the exclusive bargaining
- 23 representative thereof, AFSCME, Council 93, Local 1736, at all times
- 24 relevant and material, is the position of Computer Operator.
- 25
- 26 4. The position of Computer Operator in the Personnel Office was vacant
- 27 from July 1, 2009 to February 21, 2012.
- 28
- 29 5. In February of 2012, the Committee posted and filled the position of
- 30 Computer Operator, designating it as a double worksite/hybrid position
- 31 that encompassed both the Personnel Office and the data entry office
- 32 (Data Center).
- 33

FINDINGS OF FACT

34 The Committee has at least three bargaining unit positions that are itinerant (i.e.,

35

36 where the incumbent employee works at more than one job site): working foreman,

37

38 technology; principal clerk and stenographer; and computer operator. The Committee

39 has employed computer operators in the Personnel Office, Payroll Office and the Data

1 Center. The Payroll Office is in a location separate from both the Personnel Office and
2 Data Center. The Personnel Office is located in a different building from the Data
3 Center. Prior to August of 2013, the Personnel Office was located at 90 Commercial
4 Street, which was a five-minute walk across the street from the Data Center. In August
5 of 2013, the Committee relocated the Personnel Office to 100 Bennett Street, which
6 was a 20-minute walk from the Data Center.

7 On October 17, 2005, the Committee sent a memorandum to "All Clerical
8 Personnel" regarding clerical staff vacancies, including a permanent-full time position
9 that was a dual-site assignment located in the Personnel/Data Center.¹ On June 19,
10 2008, the Committee posted a vacancy announcement for an untitled "TBD" position
11 that was located in the Personnel and Payroll Office and included the following duties
12 and responsibilities:

13 **Personnel/Payroll**

- 14
- 15 1. Under the direction of the Business Administrator and Human Resource
 - 16 Manager, prepare clerical postings in accordance with the Local #1736
 - 17 Contract.
 - 18 2. Update and maintain a list of substitute clerks in order of seniority,
 - 19 category and availability.
 - 20 3. Update and maintain Civil Service roster, Section 67 Report.
 - 21 4. Prepare requisitions for Cafeteria (Labor Service) positions. Assist the
 - 22 Human Resource Manager with interview scheduling and processing
 - 23 paperwork related to the employment process. Complete all necessary
 - 24 related forms for signature by the School Business Administrator and
 - 25 submit same to City Labor Service Director.
 - 26 5. Prepare all necessary forms for Official Service employees for signature
 - 27 by the Business Administrator and submit them to State Human Resource

¹ The parties stipulated that this was a Computer Operator position and that the previous incumbent in that position was Gina Markos (Markos).

1 Division. Examples include Requisitions, Absence and Termination
2 Notices (Form 56) and Reemployment/Reinstatement List Notification
3 (Form 39).

4 6. Prepare and maintain a schedule for switchboard coverage.

5 7. Assist the Personnel Office as necessary: filing, phone coverage, mass
6 mailings, handling the public, etc.

7 8. Assist the Business Administrator and Human Resource Manager as
8 necessary.

9 9. Perform other duties to support the payroll and personnel offices as
10 necessary.

11
12 On June 25, 2009, the Committee appointed Donna M. Barry (Barry) to the
13 position of "Prov[isional] Computer Operator" located in the Personnel Office, effective
14 July 1, 2009. Soon after, Barry left the Personnel Office and transferred to the Payroll
15 Office where she performed the duties and responsibilities of a computer operator. At
16 Barry's departure, the Committee effectively abolished the computer operator position in
17 the Personnel Office and ended all dual-site assignments for that position. During that
18 time, the only computer operators employed by the Committee worked in the Payroll
19 Office, Transportation Office and Special Education (SPED) Office.

20 On October 7, 2010, the Committee posted a clerical staff vacancy
21 announcement for a position titled "Permanent Full-Time Computer Operator;" however,
22 that position was not a dual-site assignment.

23 On January 26, 2012, the Committee posted a vacancy announcement for a new
24 position of Permanent Full-Time Computer Operator that was a dual-site assignment
25 located primarily in the Personnel Office with itinerant, secondary assignments in the
26 Data Center. The job description required the applicant to:

27 1. Maintain employee district database using current system including but

1 not limited to entering and updating all employee information for new hires
2 as well as current staff members.

3 2. Maintain MyTRS information in the MyTRS database.

4 3. Maintain Highly Qualified data both state and federal qualifiers for
5 employees.

6 4. Assist with the contractual Teacher and Teacher Aide bid process.
7 Duties may include preparation and distribution of notifications, seniority
8 dates, and mass mailings. Along with distributing any changes to staff
9 organization to various stakeholders as changes occur due to leaves of
10 absence, retirements, etc. [SIC]

11 5. Maintain teacher licensure information based on DESE requirements in
12 database; assist Human Resources Manager in tracking progress toward
13 licensure.

14 6. Maintain and track progress toward licensure using District Database
15 and DOE records: maintain DESE files for Vocational Teacher Licensure.

16 7. Maintain database pursuant to Civil Service and Labor Service
17 employees. Prepare lists for submittal to Civil Service for Certification.

18 8. In conjunction with the Data Center, assist in the development of new
19 computer codes to reflect changes in staff assignments,
20 programs/department, teacher licenses, and tables for educational
21 credentials. Along with working closely with the Data Center inputting and
22 maintaining data files to facilitate the generation of reports. [SIC]

23 9. Call teacher aide substitutes on a rotating basis.

24 10. Work with and assist potential job candidates along with other tasks
25 pursuant to the Human Resources Department.

26 11. Perform other HR duties as assigned by the Human Resources
27 Manager and/or administrators as needed.

28
29 The Committee e-mailed the January 26, 2012 posting to Union President
30 Joseph B. Martin (Martin) and to all clerical staff; however, the Committee never
31 provided the Union with a copy of the job description. Pursuant to the posting, the
32 Committee invited bargaining unit members to make their initial bids on any open
33 position listed in the posting by February 6, 2012. At its annual meeting later that
34 month, the Committee also held a second round of bidding for all positions left open
35 after the first round of bidding. During that process, the Committee permits otherwise

1 non-qualified employees to bid on the open positions subject to Committee approval.

2 Pursuant to the posting, Angie Johnson (Johnson) submitted a written bid for a
3 Permanent Full-Time Clerk Stenographer position. At the annual meeting, the
4 Committee informed her that it had approved her bid for that position. The Committee
5 then commenced its second round of bidding and asked whether anyone wanted to bid
6 on the open computer operator position at the Personnel/Data Center. Johnson raised
7 her hand and made an oral bid on a second position because the computer officer
8 salary was higher than the clerk-stenographer salary. At the time of her second bid,
9 Johnson knew that the computer operator position was itinerant and that she would
10 work primarily in the Personnel Office but would also work "closely" with the Data
11 Center based on the posting and the job description. Both Union President Martin and
12 Union Representative Judy Casey (Casey) were present at the annual meeting and
13 neither objected to Johnson's bid on the computer operator position.

14 By letter dated February 15, 2012, Director of Human Resources Barbara Rafuse
15 (Rafuse) notified Johnson that the Committee had approved her bid for the computer
16 operator position in the Personnel/Data Center, stating in pertinent part, "As a result of
17 the clerical bid meeting held on Tuesday, February 7, 2012, you were awarded the
18 position of provisional computer operator in the Human Resources
19 Department...effective February 21, 2012."

20 From February of 2012 to August of 2013, the Committee assigned Johnson to
21 work primarily in the Personnel Office where Rafuse was her direct supervisor. During

1 this time, Rafuse directed Johnson to walk across the street and work at the Data
2 Center on approximately 10 occasions. While there, Johnson performed various
3 computer work, such as preparing reports for Commonwealth personnel, inputting staff
4 data for the Department of Elementary and Secondary Education (DESE). Sometime in
5 August of 2013, the Personnel Office moved to 100 Bennett Street, which is a 20 minute
6 walk from the Data Center. Since the move, Johnson has never gone to the Data
7 Center.

8 OPINION

9 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law
10 when it unilaterally changes an existing condition of employment or implements a new
11 condition of employment involving a mandatory subject of bargaining without first giving
12 its employees' exclusive bargaining representative notice and an opportunity to bargain
13 to resolution or impasse over the decision or its impacts. Commonwealth of
14 Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School
15 Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983);
16 Commonwealth of Massachusetts, 30 MLC 63, 64, SUP-4784 (Oct. 9, 2003). To
17 establish a violation, the union must show that: (1) the employer changed an existing
18 practice or instituted a new one; (2) the change had an impact on a mandatory subject
19 of bargaining; and, (3) the change was implemented without prior notice to the union
20 and an opportunity to bargain to resolution or impasse. Commonwealth of
21 Massachusetts, 30 MLC at 64; Town of Shrewsbury, 28 MLC 44, 45, MUP-1704 (June

1 29, 2001); Commonwealth of Massachusetts, 27 MLC 11, 13, SUP-4378 (Aug. 24,
2 2000).

3 The Committee argues that it never changed the work location for the computer
4 operator in the Personnel/Data Center in January of 2012 because it was a new
5 position, and, therefore, could not be a change. However, the first element of proving a
6 10(a)(5) violation requires the Charging Party to show that the employer changed an
7 existing practice *or* instituted a new one. Commonwealth of Massachusetts, 30 MLC
8 63, 64, SUP-4784 (Oct. 9, 2003). Here, I find that the Committee instituted a new
9 practice when it required the newly-hired computer operator to work in both the
10 Personnel Office and the Data Center. Although the Committee employs itinerant
11 employees in the working foreman technology and principal clerk stenographer
12 positions, the evidence shows that after 2009, there were no itinerant computer
13 operators because they all worked at one stationary location in the Payroll,
14 Transportation or SPED offices.

15 Although the Committee disputes that work location is a mandatory subject of
16 bargaining, it provided no case law to support that position. Instead, the National Labor
17 Relations Board (NLRB) specifically holds that work location is a mandatory subject of
18 bargaining. See Comar, Inc., 349 NLRB 342, 357-358 (2007); see also Holly Farms
19 Corp., 311 NLRB 273, 279 fn. 25 (1993). Nothing in the record here shows that the
20 Committee provided the Union with notice of the change to the computer operator's
21 work location between the Personnel Office and the Data Center prior to posting that

1 position on January 26, 2012. While Markos and Barry both worked as itinerant
2 computer operators at the Personnel Office and Data Center at separate times between
3 2005 and 2009, it is undisputed that the Committee abolished that position after Barry's
4 departure in 2009. When the Committee posted a vacancy announcement for a new
5 computer operator located position in the Personnel/Data Center in January of 2012,
6 there is no evidence that it provided the Union with an opportunity to bargain over the
7 new dual work assignment prior to filling the position in February of 2012.

8 The Committee contends that it was not obligated to bargain over the dual
9 worksite because the Union had notice of the new position on January 26, 2012 when it
10 posted the vacancy announcement and again in early February of 2012, when it held
11 the annual meeting at which Johnson bid on the position, but failed to object to the
12 position at that point. Even though the Board has found notice to be sufficient to evoke
13 a union response in cases where the employer stated it was merely considering certain
14 actions, without specifying a date or deadline, Commonwealth of Massachusetts, 28
15 MLC 36, SUP-4345 (June 29, 2001) (citing Town of Hudson, 25 MLC 143, 148, MUP-
16 1714 (April 1, 1999); Boston School Committee, 4 MLC 1912, 1915, MUP-2611 (April
17 27, 1978); Scituate School Committee, 9 MLC 1010, 1012, MUP-4563 (May 27, 1982)),
18 it is undisputed that the Union filed a timely charge with the DLR protesting that change;
19 thereby preserving its bargaining rights over the issue. See 456 CMR 15.03; see also
20 Town of East Bridgewater and East Bridgewater School Committee, 38 MLC 164, MUP-
21 07D-5095 and MUP-07D-5115 (Jan. 13, 2012).

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CONCLUSION

Based on the record, and for the reasons stated, I conclude that the Committee has failed to bargain in good faith by changing the work location for the position of Computer Operator without first providing the Union with notice and an opportunity to bargain to resolution or impasse about the decision and the impacts of the decision on employees' terms and condition of employment in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Committee shall:

1. Cease and desist from:
 - a. Failing or refusing to bargain collectively in good faith with the Union before changing the Computer Operator's work location.
 - b. In any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.
2. Take the following affirmative action that will effectuate the purpose of the Law
 - a. Restore the practice of assigning Computer Operators to a stationary work location.
 - b. Upon request, bargain with the Union, in good faith to resolution or impasse before implementing any changes to the computer operator's work location.
 - c. Sign and post immediately in conspicuous places employees usually congregate or where notices to employees are usually posted, including electronically, if the Employer customarily communicates to its employees via intranet or e-mail, and maintain for a period of thirty (30) consecutive days thereafter signed copies of the attached Notice to Employees;
 - d. Notify the DLR within thirty (30) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KENDRAH DAVIS, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.02(1)(j), 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 the ten days, this decision shall become final and binding on the parties.



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 Lynn School Committee (Committee) violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by unilaterally changing the Computer Operator's work location without first providing the American Federation of State, County and Municipal Employees, Council 93 (Union) with notice and an opportunity to bargain to resolution or impasse about the decision and the impacts of the decision.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The Committee assures its employees that:

WE WILL NOT refuse to bargain collectively in good faith with the Union to resolution or impasse before changing the Computer Operator's work location.

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

WE WILL restore the practice of assigning the Computer Operator to a stationary work location.

WE WILL, upon request, bargain with the Union, in good faith to resolution or impasse before implementing any changes to the Computer Operator's work location.

For the Committee

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).