



1 faith with the American Federation of State, County and Municipal Employees, Council  
2 93, Local 3967 (Local 3967 or Union) by: (1) repudiating Article X of the parties'  
3 collective bargaining agreement (Agreement)<sup>1</sup> and requiring unit members to work 8.5  
4 hour shifts with an unpaid 30 minute meal break, effective August 4, 2012; and, (2) by  
5 increasing unit members' work hours without first providing the Union with notice and an  
6 opportunity to bargain to resolution or impasse over the decision and the impacts of the  
7 decision. I conclude that the Department failed to bargain in good faith by repudiating  
8 Article X of the parties' Agreement and requiring unit members to work 8.5 hour shifts  
9 on August 4, 2012, and by increasing unit members' work hours without first providing  
10 the Union with notice and an opportunity to bargain to resolution or impasse over the  
11 decision and the impacts of the decision in violation of Section 10(a)(5) of the Law.

#### 12 STATEMENT OF THE CASE

13 On October 18, 2012, Local 3967 filed a Charge of Prohibited Practice (Charge)  
14 with the Department of Labor Relations (DLR), alleging that the Department had  
15 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by engaging in  
16 bad faith bargaining when it unilaterally increased bargaining unit members' work shifts  
17 and implemented an unpaid 30 minute meal break. The Union filed an Amended  
18 Charge on November 11, 2012, alleging that the Department also repudiated the terms  
19 of the parties' Agreement by implementing an 8.5 hour work shift. After investigating  
20 the Charge, a duly-designated DLR investigator issued a Complaint of Prohibited  
21 Practice (Complaint) on April 26, 2013, alleging that the Employer violated the Law by

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<sup>1</sup> The Complaint alleged a violation of the parties' 2012-2014 Agreement, which "did not alter the terms of the [the] 2009-2012" Agreement. However, neither party submitted into evidence a copy of the 2012-2014 Agreement.

1 repudiating the parties' Agreement and engaging in bad faith bargaining. The  
2 Department filed its Answer on May 16, 2013.

3 I conducted a hearing on January 31 and February 3, 2014,<sup>2</sup> at which both  
4 parties had an opportunity to be heard, to examine witnesses and to introduce  
5 evidence. On April 14, 2014, the parties filed their post-hearing briefs. Also on April 14,  
6 2014, Local 3967 filed a Motion to Reopen the Record (Motion). On May 2, 2014, the  
7 Department filed its Opposition to the Motion.<sup>3</sup> By Ruling on June 3, 2014, I denied the  
8 Motion.<sup>4</sup> On September 4, 2014, the Union filed a Second Motion to Reopen the  
9 Record (Second Motion) but the Department did not file an opposition. I denied the  
10 Second Motion on September 10, 2014.<sup>5</sup> Based on the record, which includes witness  
11 testimony and documentary exhibits, and in consideration of the parties' arguments, I  
12 make the following findings of fact and render the following opinion.

13 ADMISSIONS OF FACT

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<sup>2</sup> At the hearing on February 3, 2014, approximately 48 minutes of testimony was missing from the official audio-digital record due to an interruption in the network connection. In lieu of relitigating that portion of the hearing, on or about February 18, 2014, the parties agreed to include a typed version of my handwritten notes from that 48-minute segment as part of the official record.

<sup>3</sup> By e-mail on April 18, 2014, the Department confirmed that Attorney Abate was on vacation when the Union filed its Motion and requested an extension to respond to the Motion, which I granted on that same day.

<sup>4</sup> In its first Motion, the Union sought to introduce evidence of an affidavit from an Assistant Attorney General "or an affidavit of Union counsel on a telephone call with [that Assistant Attorney General] to the effect that the Attorney General's Office, which has administrative oversight or responsibility of G.L. c. 149, section 100, holds it not to apply to employees of the Suffolk County House of Correction." I denied the Motion on grounds that the Union did not meet its burden of showing that it was excusably ignorant of any evidence that it sought to introduce after the record closed.

<sup>5</sup> In its Second Motion, the Union clarified that it never possessed an affidavit from the Assistant Attorney General and never alleged (in its first Motion) that it possessed one.

- 1           1. The Department is a public employer within the meaning of Section 1 of the
- 2           Law.
- 3
- 4           2. The Union is an employee organization within the meaning of Section 1 of the
- 5           Law.
- 6
- 7           3. The Union is the exclusive bargaining representative for all Correction
- 8           Officers working in the title of Captain at the Suffolk County House of
- 9           Correction [(HOC)].
- 10
- 11          4. The Union and the Employer were parties to an agreement extending the
- 12          terms of the parties' collective bargaining agreement, which was in effect from
- 13          July 1, 2009 through June 30, 2012 (2009-2012 Agreement), from July 1,
- 14          2012 through June 30, 2014 (2012-2014 Agreement).
- 15
- 16          5. Article X, Hours of Work, Section 1 of the 2009-2012 Agreement states, in
- 17          pertinent part:

The regular workweek shall consist of five (5) eight-hour days  
between any Saturday and the following Friday, inclusive.

STIPULATION OF FACT

- 1. Captain Timothy Fistori (Fistori) had passed away prior to the hearing.

FINDINGS OF FACT

**Background**

The Department operates the Suffolk County Jail (Jail) and the HOC on a 24-hour basis. The Jail and the HOC employ the captains, lieutenants, jail officers (JO) and correction officers (CO) in Locals 419, 3643 and 3967. The Jail is located at 200 Nashua Street in Boston and employs captains and lieutenants who are represented by Locals 3967 and 3643. The HOC employs COs and captains who are represented by Local 419 and Local 3967. Prior to December of 1991, the HOC was located at Deer Island in Boston Harbor and relocated in December of 1991 to South Bay in Boston. At some point between 1995 and 1998, the HOC relocated again to 20 Bradston Street in Boston.

1           The Department's highest chain of command begins with the Superintendent.  
2           Second in command is the Assistant Superintendent who is followed by the Deputy  
3           Superintendent. Captains are under the immediate command of the Deputy  
4           Superintendent who also supervises the descending order of lieutenants, sergeants,  
5           corporals and line officers. On any given shift, the Department will schedule a primary  
6           Shift Commander (SC) (and sometimes an assistant SC) who is in charge of  
7           supervising the captains and other subordinates. The Department assigns only  
8           captains as the primary and/or assistant SC and schedules only one primary SC per  
9           shift while sometimes scheduling one or no assistant SC on a given shift.

#### 10   **General Laws Chapter 149, Section 100**

11   G.L. c. 149, §100 pertains to hours of work and statutory meal breaks, stating in full:

12

13           No person shall be required to work for more than six hours during a  
14           calendar day without an interval of at least thirty minutes for a meal. Any  
15           employer, superintendent, overseer or agent who violates this section  
16           shall be punished by a fine of not less than three hundred nor more than  
17           six hundred dollars.

18

#### 19   **The Collective Bargaining Agreements**

20

21           Between 1991 and 1993, HOC captains did not have union representation and  
22           the Department treated them as at-will employees. In December of 1993, the DLR  
23           certified Local 3967 as the exclusive bargaining representatives for HOC captains and  
24           entered into an agreement with the Department, effective from July 1, 1993 to June 30,  
25           1995 (1993-1995 Agreement). Article X, Section 1 of the 1993-1995 Agreement  
26           pertained to Hours of Work and Overtime and stated, in full, "The regular workweek  
27           shall consist of five (5) eight-hour days between any Wednesday and the following  
28           Tuesday, inclusive."

1           The parties entered into a successor agreement, effective from July 1, 1995 to  
2 June 30, 1998 (1995-1998 Agreement), which kept unchanged the 8 hour/5-day work  
3 week language from Article X, Section 1 from the 1993-1995 Agreement. At some point  
4 in 2000, the Department's HOC and Jail merged into one location. Between 2000 and  
5 2008, Locals 3643<sup>6</sup> and 3967 negotiated joint collective bargaining agreements, the first  
6 of which was effective from July 1, 2000 through June 30, 2003 (2000-2003 Joint  
7 Agreement).<sup>7</sup> Article X, Section 1 of the Joint Agreement continued to recognize the 8  
8 hour/5-day work week.

9           The parties entered into a successor joint agreement, effective from July 1, 2005  
10 through June 30, 2008 (2005-2008 Joint Agreement),<sup>8</sup> keeping Article X, Section 1  
11 unchanged from their 2000-2003 Joint Agreement. On July 1, 2008, Local 3967  
12 entered into an independent successor agreement with the Department, effective

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<sup>6</sup> Local 3643 is the exclusive bargaining representative for all JOs employed at the Jail. The Department entered into an agreement with Local 3643 that was effective from July 1, 1994 through June 30, 1995 (1994-1995 Agreement). Article X, Section 1 of that Agreement stated, in full, "The regular workweek shall consist of five (5) eight-hour days between any Wednesday and the following Tuesday, inclusive." The parties entered into a successor agreement effective from July 1, 1995 through June 30, 1998, keeping the 8 hour day/five-day work week language in Article X, Section 1 from the 1994-1995 Agreement. The parties entered into another successor agreement effective from July 1, 1998 through June 30, 2000, keeping the 8hour/five-day work week but changing Article X, Section 1 to include the following language: "The regular workweek shall consist of five (5) eight-hour days between any Wednesday and the following Tuesday, inclusive. The parties agree that the definition and/or composition of the workweek shall be a subject of continuing negotiations."

<sup>7</sup> The Department recognized both Locals as the exclusive representative for all employees of the Jail and/or HOC in the compensation grades JO-4, JO-5 and CO-5.

<sup>8</sup> The parties did not provide evidence of their bargaining history between 2003 and 2005.

1 through June 30, 2009 (2008-2009 Agreement),<sup>9</sup> which slightly modified Article X,  
2 Section 1 and stated in full:

3 The regular workweek shall consist of five (5) eight-hour days between  
4 any Wednesday and the following Tuesday, inclusive. *The parties agree*  
5 *that the definition and/or composition of the workweek shall be a subject of*  
6 *continuing negotiations.”* (Emphasis added.)  
7

8 In 2009, Local 3967 negotiated a successor independent agreement with the  
9 Department, effective from July 1, 2009 to June 30, 2012 (2009-2012 Agreement),<sup>10</sup>  
10 keeping Article X, Section 1 unchanged from the previous 2008-2009 Agreement.  
11 Article XXIV pertained to Duration and stated, in part:

12 Section 1. Except as otherwise provided herein, this Agreement shall take  
13 effect as of the date of execution and shall continue in force up to and  
14 including midnight on June 30, 2012 [sic], but in no event thereafter.  
15

#### 16 **The Work Shifts<sup>11</sup>**

17 Prior to 1991, the Department regularly scheduled captains to work the following  
18 8 hour shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00  
19 a.m. However, on or about December 14, 1991, and continuously for eight years, the  
20 Department required that captains work the following 8.5 hour, overlapping shifts:<sup>12</sup> 6:45

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<sup>9</sup> Per this Agreement, the Department recognized Local 3967 as the exclusive bargaining representative for all HOC captains, including COs in compensation grade CO-5.

<sup>10</sup> Per this Agreement, the parties agreed to voluntarily accrete Registered Nurses into the bargaining unit at the compensation grade of CO-4.

<sup>11</sup> Neither party submitted documentary evidence (e.g., time sheets, time cards, payroll records, etc.) to support its positions on the actual hours worked by employees between 1991 and 2012. Instead, all evidence concerning that issue stems from witness testimony.

<sup>12</sup> These shifts are called overlapping, 8.5 hours shifts because they begin approximately 15 minutes before the first hour and end approximately 15 minutes after the eighth hour, which overlaps with the shifts of incoming and outgoing captains.

1 a.m. – 3:15 p.m.; 2:45 p.m. – 11:15 p.m.; and 10:45 p.m. – 7:15 a.m. The purpose of  
2 the shift change was to allow SCs an extra 15 minutes to conduct roll-call and ensure  
3 adequate coverage before relieving a non-SC captain. The Department does not allow  
4 captains to end their shifts until they are properly relieved by the SC; however, most  
5 SCs regularly relieve non-SC captains at the top of the hour.

6 Beginning in or about 1999, the Department permitted SCs to work 8 hour shifts  
7 that began one hour earlier than the standard shift times: i.e., 6:00 a.m. – 2:00 p.m.;  
8 2:00 p.m. – 10:00 p.m.; and 10:00 p.m. – 6:00 a.m. The 45 minute early start time  
9 allowed the outgoing SC to brief the incoming SC on important issues and to prepare for  
10 the upcoming shift (e.g., conducting roll call, determining vacancies and assigning  
11 overtime). During that time, the Department did not change the start/end times for non-  
12 SC captains, keeping them scheduled to work an 8.5 hour shift.

### 13 **The Meal Breaks**

14 The Department permits captains to take one, unpaid 30-minute meal break  
15 during each regularly-scheduled shift; however, there are no scheduled break periods  
16 and no designated meal areas. At all times during their regularly scheduled shift, the  
17 Department considers all captains to be “on-duty” even during their meal breaks, and  
18 they are required to carry, operate, and monitor their radios throughout their entire shift,  
19 including their meal breaks.

20 Since 1993, Local 3967’s captains have generally eaten their lunches “on the fly”  
21 or whenever they find time, and sometimes they are unable to take a meal break.  
22 When non-SC captains take their meal breaks, they sometimes eat at their desks or in

1 the facility cafeteria and sometimes they go outside to purchase food items from the  
2 canteen truck. When SCs take their meal breaks, they sometimes eat in the SC office.

3         The Department may interrupt (and has interrupted) captains' meal breaks when  
4 there is a work-related request or emergency. Captains who respond to a work-related  
5 request during their meal break, and who miss all or part of their meal break by working  
6 beyond their regularly-scheduled shift, could request overtime to compensate for their  
7 missed meal break. However, prior to 2013, any captain who tried to request overtime  
8 for a missed meal break would experience an immediate "push-back" from management  
9 due to the Department's dislike of being "nicked and dimed."<sup>13</sup> As a result, no captain  
10 has requested overtime when their lunch breaks were interrupted by work-related  
11 requests since 1993.

## 12 **The 1995 Dispute**

13         In or about early 1995, Local 3967 complained to the Department about a  
14 change to unit members' hours of work and schedules that occurred in 1991. By letter

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<sup>13</sup> The parties presented conflicting witness testimony on this issue. Superintendent Horgan testified that during his tenure (1987-2013) the Department generally frowned on any attempted overtime requests made by captains for missed meal breaks and would "push-back" whenever possible against such requests. Superintendent Smith testified that once she became Superintendent in 2013 the Department stopped pushing-back against any overtime requests made by captains for missed meal breaks. The Union testified that between 1993-2013, unit members never made requests for overtime due to missed meal break minutes, which the Department did not rebut. Based on Superintendent Horgan's 36-year seniority with the Department and his longer familiarity with the practice of requesting overtime for missed meal breaks, I credit his testimony that prior to 2013, the Department would generally "push-back" against captains for trying to request such overtime. However, because Superintendent Horgan was no longer employed by the Department in 2013, I credit Superintendent Smith's testimony that once she became Superintendent, she changed the practice by not discouraging captains' requests for overtime due to missed meal breaks.

1 dated March 22, 1995, the Department replied to the Union's complaint, stating, in  
2 pertinent part:

3 As I understand your complaint, you are protesting the change in the  
4 scheduled work hours of captains that took place in December 1991. Up  
5 until the execution of the first collective bargaining agreement between  
6 Suffolk County and AFSCME, Local 3967, on December 12, 1994,  
7 captains were "at will" management employees whose terms and  
8 conditions of employment the Sheriff was free to unilaterally revise at his  
9 discretion.

10  
11 As you know, 1991 brought major changes to the House of Correction. On  
12 July 10, 1991, the Legislature transferred control of the institution from the  
13 former City of Boston Penal Institutions Department to the Sheriff. With  
14 that transfer came a responsibility to ensure that all House of Correction  
15 employees were not only qualified to meet the high standards of their new  
16 employer, but were also trained and ready to effectuate the transfer of  
17 over 800 inmates to the new prison no later than January 1, 1992.

18  
19 One of the necessary consequences of the time-sensitive move to the  
20 new and different facility was a revision in the work schedule. Due to the  
21 virtual doubling in the number of employees, as well as an increase in the  
22 inmate population, the shift schedules of all uniformed employees were  
23 expanded to eight-and-one-half, which included a one-half hour unpaid  
24 meal break. The Sheriff had no obligation to bargain this change with his  
25 "at will" management employees, which included the captains.

26  
27 Furthermore, the schedule revision was necessary to bring the institution  
28 into compliance with applicable state law. M.G.L. c. 149, §100, requires a  
29 thirty-minute [unpaid] lunch break; the eight-hour work day for uniformed  
30 employees prior to that date did not include adequate time for a meal  
31 break. Subsequent to the schedule change, some captains, like all other  
32 management officials, were permitted one-hour unpaid meal breaks.

33  
34 The captains ultimately petitioned the [DLR] and formed a bargaining unit  
35 on December 27, 1993, and executed their first collective bargaining  
36 agreement on December 12, 1994. Nothing in that agreement, including  
37 Article X (Hours of Work and Overtime), changed this practice; the  
38 captains continued to be paid for an eight-hour day, with a half-hour or  
39 one-hour unpaid meal break.

40  
41 Finally, you had knowledge of this practice and the scheduled hours of  
42 work, both before and after the formation of Local 3967; as a member of  
43 the negotiation committee, you also had ample opportunity to address this  
44 issue prior to the execution of the collective bargaining agreement. Local

1 3967 therefore had notice and an opportunity to bargain over this issue,  
2 yet failed to do so.

3

4 Accordingly, there is no statutory basis for your demand.

5

6 **The 1997 Dispute**

7 On or about May 8, 1997, the parties met to discuss the hours of work for Local  
8 3967 unit members. By letter dated May 21, 1997, the Department contacted Local  
9 3967 to clarify its position on hours of work and shift schedules, which stated, in  
10 pertinent part:

11 Three issues were discussed during the course of the May 8, 1997  
12 meeting, although the discourse on each was somewhat intertwined. The  
13 first of these issues is that the Union believes that, in addition to the  
14 amount of the Local 419 settlement, its members are entitled to thirty  
15 minutes of overtime pay because they are working hours in addition to  
16 those required by the contract from June 21, 1995 to present. This had  
17 been a long standing dispute between the parties. I refer you to a letter  
18 from the Department's General Counsel to you dated March 22,  
19 1995...which stated the Department's position on this matter. I note that  
20 subsequent to receipt of this letter the parties negotiated yet another  
21 collective bargaining agreement. At that time the Union did not negotiate  
22 any change in the language relative to hours of work. Having explored  
23 this issue subsequent to our meeting, I have been unable to find any  
24 support for your position. I will therefore recommend to the Sheriff that the  
25 Department make no monetary payments to your membership based on  
26 this claim.

27

28 A second topic of discussion during the meeting involves the shift  
29 commanders, and the additional hours worked to prepare for their  
30 respective shifts. The Department does not agree that the shift  
31 commanders have been ordered to or are required to report to work one  
32 hour (or any amount of time) prior to the start of their shifts, as the union  
33 had represented during the meeting of May 8, 1997. The Department is  
34 willing, however, to sit down with the Union and reach a mutually  
35 agreeable schedule which would afford the shift commanders a  
36 reasonable amount of time to prepare for their shifts. I will therefore also  
37 recommend that the Department not make any monetary payments to  
38 compensate your members for time they were neither required nor  
39 expected to work.

40

1 Finally, we discussed the so called roll call issue. As we indicated during  
2 the meeting on May 8, 1997, the Department has agreed to utilize the  
3 same formula for Local 3967 as was done with Local 419.  
4

5 I propose that we execute an agreement which will accomplish the  
6 following: (1) provide compensation for your membership based upon the  
7 formula utilized for Local 419 to settle the outstanding claims; (2)  
8 acknowledge the existing hours of work for members of Local 3967; and  
9 (3) agree upon a staggered shift for shift commanders to afford them the  
10 time they believe is necessary to prepare for their respective shifts.  
11

12 Please find enclosed a draft of an agreement which I believe  
13 accomplishes all of the above. I hope that this letter clarifies the  
14 Department's position on this matter, and look forward to your timely  
15 response to this proposal.  
16

17 By letter dated October 1, 1997, the Department replied to an earlier request for  
18 information from Local 3967, affirming that captains' 8.5 hour work shifts began/ended  
19 at 15 minutes before and after the hour. That reply stated, in pertinent part:

20 This letter is in response to your request that the Sheriff's Department  
21 inform you in writing of the specific hours of work for your membership. I  
22 am somewhat surprised by this request, as it is my understanding that you  
23 do not dispute that you have been working the same hours since  
24 December of 1991, approximately two years before you petitioned the  
25 [DLR] and formed a bargaining unit. I also thought that I clarified the  
26 Department's position on this matter in my letter to you dated May 21,  
27 1997. In any event, the hours of work for all members of Local 3967 are  
28 as follows:  
29

30 5:45 a.m. to 2:15 p.m. (1/2 hour unpaid lunch)<sup>14</sup>  
31 6:45 a.m. to 3:15 p.m. (1/2 hour unpaid lunch)  
32 2:45 p.m. to 11:15 p.m. (1/2/ hour unpaid lunch)  
33 10:45 p.m. to 7:15 a.m. (1/2/ hour unpaid lunch)  
34

35 Your claim that these hours are somehow inconsistent with the language  
36 in the current collective bargaining agreement (the regular worksheet shall  
37 consist of five eight-hour days) is simply untrue. As I stated above, your  
38 membership has been working these hours since December 1991. When

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<sup>14</sup> The parties did not clarify the difference between this shift and the next shift designated from 6:45 a.m. to 3:15 p.m.

1 you executed your first collective bargaining agreement in December of  
2 1994, you had been working these hours for approximately three years.

3  
4 The language regarding eight hour days clearly described your existing  
5 hours at that time, in which you worked for eight hours and had a one-half  
6 hour unpaid lunch built into the middle of each shift. Even if there was  
7 some doubt concerning your hours after your first collective bargaining  
8 agreement, and I do not believe there was any, all doubt was eliminated  
9 when you entered into your current contract. On March 22, 1995, the  
10 Department's General Counsel wrote you a letter reaffirming the  
11 Department's position on your hours of work. I quote the last paragraph of  
12 that letter: "Finally, you had knowledge of this practice and the scheduled  
13 hours of work, both before and after the formation of Local 3967; as a  
14 member of the negotiating committee, you also had ample opportunity to  
15 address this issue prior to the execution of the collective bargaining  
16 agreement. Local 3967 therefore had notice and an opportunity to bargain  
17 over this issue, yet failed to do so."

18  
19 Subsequent to receipt of the above letter, the Department and Local 3967  
20 entered into the current collective bargaining agreement. The contractual  
21 language in Article X Section 1 regarding hours of work remains  
22 unchanged from the prior contract – "The regular workweek shall consist  
23 of five (5) eight-hour days between any Wednesday and the following  
24 Tuesday, inclusive." Given your receipt of the letter from the General  
25 Counsel only months before signing the current contract, and given that  
26 you had been working the same hours for so many years, I fail to see any  
27 merit in your assertion that the contractual language does not describe  
28 your existing schedule, as stated on page one of this letter.

29  
30 I would also like to point out that Local 3967 is not the only union with the  
31 above language regarding their hours of work. Specifically, the contracts  
32 for Locals 3, 1134 and 3643 all contain identical language.<sup>15</sup>

33  
34 You had also mentioned during our recent meeting that you would like to  
35 discuss a change in the contractual language with respect to the  
36 grievance procedure, to reflect the fact that the City of Boston Office of  
37 Labor Relations is no longer involved in the process. I am more than  
38 happy to engage in such a discussion, and to modify the contract to reflect  
39 the current practice between the parties.

40  
41 On October 27, 1997, the parties entered into a settlement agreement, covering  
42 the period of December 14, 1999 through June 20, 2005, and agreeing that the

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<sup>15</sup> The parties did not provide additional information about Locals 3 and 1134.

1 Department would pay unit members 20 minutes of overtime for each eight-hour shift  
2 actually worked; roll call pay of \$2.50 per day actually worked; and interest at the rate of  
3 12% per annum, compounded annually for the accrued amount at that time.

#### 4 **The Grievance, the Arbitration and the DLR proceedings**

##### 5 **1. The Grievance**

6 On or about December 11, 1997, Union staff representative James Breslin  
7 (Breslin) filed a class action grievance, alleging a violation of Article X of the 1995-1998  
8 Local 3967 Agreement and seeking compensation for 30 minutes of unpaid overtime for  
9 each shift worked since June 20, 1995. On December 17, 1997, the Department denied  
10 the grievance. On January 28, 1998, the Department denied the grievance again at  
11 Step 2, stating, in pertinent part:

12 The [D]epartment argued that...the Captains have been working a shift  
13 schedule encompassing eight hours of paid work and a half-hour...unpaid  
14 lunch since December 1991, and that the execution of the local's first CBA  
15 in December 1994, and its successor agreement in November 1995, have  
16 in no way altered their previous hours of work.

17  
18 ...Captains are currently reporting for work on shifts that start and finish  
19 more than eight hours apart, and they have been doing so since before  
20 the execution of the CBA. ...[I]f the Captains were required by the  
21 [D]epartment to actually work during this entire 8.5 hour period, they would  
22 be entitled to overtime compensation for the one-half hour in question  
23 each shift, and did not contest the [D]epartment's contention at hearing  
24 that the 8.5 hour shift of each Captain encompasses 8 hours of work and  
25 one half-hour of [an] unpaid meal break.

26  
27 ...[T]he [U]nion is arguing that its members are only required...to work 8  
28 consecutive hours, and that the [D]epartment's requiring their presence  
29 beyond the expiration of the eighth consecutive hour, even if it is for a  
30 meal break the law requires it...must be done at [D]epartment expense.  
31 The [U]nion's argument is flawed. [Article X, Section 1] specifies a regular  
32 work week of five eight-hour days, but in no way specifies that the eight  
33 hours each day be consecutive....Furthermore, the [D]epartment is  
34 obligated to offer a meal break each shift. G.L. c. 149, §100, prohibits  
35 employers from requiring employees to work for longer than six hours

1 without a thirty-minute meal break. This was one of the reasons the  
2 [D]epartment instituted the "expanded" shift hours for all uniformed  
3 employees in 1991.  
4

## 5 **2. The Arbitration**

6

7 On January 14, 1999, an arbitrator denied the Union's December 11, 1997  
8 grievance. While the arbitrator disagreed with the Department's argument that the  
9 Union's claim was statutory and not contractual, he ultimately found that the grievance  
10 was not arbitrable based on timeliness. Even if the grievance was arbitrable, the  
11 arbitrator decided that the Department did not violate Article X, Section 1 by requiring  
12 unit members to work 8.5 hour shifts<sup>16</sup> with an unpaid 30 minute meal break because by  
13 the time the Department had recognized Local 3967 as the captains' exclusive  
14 bargaining representative in 1993: (1) unit members had been working overlapping 8.5  
15 hour shifts for two years; (2) neither party ever proposed shift changes during contract  
16 negotiations; (3) and both parties had agreed to adopt the same standard shift language  
17 from the contracts of Locals 419 and 3643. The arbitrator finally suggested that the  
18 parties should deal with the issue of "shifts or special compensation" at the bargaining  
19 table.

## 20 **3. The DLR and CERB Decisions**

21

22 In 2008, the Department notified the Union that it had mistakenly overpaid unit  
23 members 8 hours of successive-shift overtime due to their overlapping shifts when they  
24 were only entitled to 7.5 hours of overtime. Soon after, the Department corrected its

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<sup>16</sup> By affidavits submitted by Captains Brown and Gary Bolles (Bolles) on March 26, 1999, the Union acknowledged that beginning on or about December 14, 1991, the Department had changed the unit members' shift schedules from 8 hours to 8.5 hour shifts with an unpaid, 30-minute meal break.

1 mistake and began paying unit members 7.5 hours of overtime for successive shift  
2 assignments (i.e., two consecutive shifts in one 24-hour period where the first shift is  
3 regularly scheduled work and the second shift is unscheduled overtime). Locals 419,  
4 3643 and 3967 filed two joint charges of prohibited practice<sup>17</sup> with the DLR, alleging that  
5 the Department unlawfully changed the number of overtime hours that it had paid to  
6 employees who worked two successive shifts.

7         After finding that all unit members from the three Locals worked 8.5 hour shifts,  
8 the hearing officer dismissed the charges on May 20, 2009, holding that the Department  
9 was not obligated to bargain over the decision to correct overtime payments for  
10 successive shifts because the Law did not require the Employer to bargain over its  
11 decision to conform its payment practices to the dictates of the Commonwealth's  
12 Finance Law. The hearing officer also held that the Department did not have to bargain  
13 over the impacts of the decision to reduce the number of overtime hours paid to  
14 employees who worked successive shifts because the overtime performed was  
15 "unscheduled" and thus not a mandatory subject of bargaining.

16         The Locals appealed the dismissal, contending that the hearing officer failed to  
17 differentiate between the three Locals and failed to decide whether the Employer was  
18 obligated to bargain over the issue of payment of wages. The Commonwealth  
19 Employment Relations Board (Board) found that the hearing officer satisfactorily  
20 differentiated between the Locals, and that the parties had fully litigated the proper issue  
21 of whether there was a change in employees' entitlement to overtime pay during a time  
22 when they were receiving regular pay. Because the issue of payment of wages was not

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<sup>17</sup> SUP-09-5493 and SUP-09-5496.

1 alleged in the complaint and because that issue was improper, the Board affirmed the  
2 dismissal.

### 3 **The 2010 Shift Changes**

4 At some point in January of 2010, the Department assigned captains Fistori,  
5 Flynn and Guthro to work the 10:45 p.m. to 7:15 a.m. shift.<sup>18</sup> On that day, Captains  
6 Fistori and Guthro started their shift at 10:00 p.m. and, after being properly relieved,  
7 ended their shift at 6:00 a.m. Certain Local 419 employees complained to Assistant  
8 Deputy Superintendent Dave Agnew (Agnew) that the captains had left their shifts  
9 earlier than the standard 7:15 a.m. clock-out time. Agnew confronted the captains,  
10 asking them about their start and stop times for that shift, to which they reported starting  
11 at 10:00 p.m. and stopping at 6:00 a.m. Prior to this incident, the Department had  
12 stopped monitoring employee start/stop times "years ago."<sup>19</sup>

13 By e-mail on February 8, 2010, Agnew formally notified Fistori that he would be  
14 assigned to the following 8.5 hour shift times: 6:45 a.m. to 3:15 p.m.; 2:45 p.m. to 11:15  
15 p.m.; and 10:45 p.m. to 7:15 a.m.<sup>20</sup> By letter dated February 11, 2010, Fistori replied to

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<sup>18</sup> The record unclear about whether the Department assigned Fistori, Flynn or Guthro to the primary and/or assistant SC positions on that shift. The record is also unclear about whether the Department scheduled Flynn to work a 10:45 p.m. – 7:15 a.m. shift or a 10:00 p.m. – 6:00 a.m. shift.

<sup>19</sup> Superintendent Horgan testified to this fact, and the Union did not rebut his testimony.

<sup>20</sup> Deputy Superintendent Vincent Morrison (Morrison) also issued a letter on February 8, 2010, changing Captain Frank Taylor's (Taylor) days off and confirming his shift as 2:45 p.m. – 11:15 p.m. Morrison issued 13 additional shift-confirmation letters to captains between August 31, 2010 and October 18, 2011. The record is not clear about whether Morrison's letters also stemmed from the same January 2010 incident as Agnew's February 8, 2011 letter to Fistori.

1 Agnew's e-mail, stating, in part, "I will report for duty at 10:45 p.m. and leave at 6:45<sup>21</sup>  
2 a.m. as you have directed. Unless of course I am responsible as the shift commander,  
3 at which time I will report for duty 1 hour early for shift assignment."

4 Based on the January 2010 incidents, the Union requested to meet with the  
5 Department to discuss the new shift schedules for its unit members. On February 11,  
6 2010, Captains Sullivan, Richard Brown (Brown) and Todd Flynn (Flynn) met with  
7 Superintendent Horgan, Agnew and Deputy Superintendent Morrison. At that meeting,  
8 Agnew proposed that all Local 3967 members (i.e., SCs and non-SC captains) work the  
9 same number of hours at the same shift schedules as Local 419.<sup>22</sup> Superintendent  
10 Horgan opposed Agnew's proposal and, instead, granted Local 3967's request,  
11 permitting non-SC captains to have the same hours of work and shift schedules as the  
12 primary SC. This meant that Superintendent Horgan would now schedule all captains  
13 to work the following 8 hour shifts with an unpaid 30 minute meal break: 6:00 a.m. to  
14 2:00 p.m.; 2:00 p.m. to 10:00 p.m.; and 10:00 p.m. to 6:00 a.m.

### 15 **The 2012 Shift Changes**

16 By letter dated July 12, 2012, Deputy Superintendent Yolanda Smith (Smith)  
17 notified Captain Fistori that effective July 22, 2012, he would be assigned as the  
18 Assistant SC on an 8.5 hour shift starting at 1:45 p.m. and ending at 10:15 p.m.

19 At some point prior to July 20, 2012, the Department also decided to change the  
20 captains' 8 hour shift schedules by eliminating the one-hour early start/stop time for

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<sup>21</sup> The record is unclear about whether Agnew actually ordered Fistori to work a 10:45 p.m. – 6:45 a.m. shift or intended from him to work a 10:45 p.m. – 7:15 a.m. shift.

<sup>22</sup> Since at least 1991, the Department assigned Local 419 unit members to work the following overlapping, 8.5 hour shifts: 6:45 a.m. – 3:15 p.m.; 2:45 p.m. – 11:15 p.m.; and 10:45 p.m. – 7:15 a.m.

1 non-SC captains. The Department implemented that change by memorandum dated  
2 July 20, 2012, in which Superintendent Horgan and Assistant Superintendent Smith  
3 notified all captains that effective August 4, 2012, primary SC and non-SC captains  
4 would be assigned to new 8.5 hour shifts with an unpaid, 30-minute meal break:

5 Based on a review of operational needs and the Captains filling overtime  
6 slots for lower ranks, please be advised that the scheduled shifts for  
7 Captains will be listed below effective August 4, 2012:

8  
9 Captains Serving as Primary Shift Commander for the Shift:

10 Day Shift: 5:45 AM to 2:15 PM

11 Evening Shift: 1:45 PM to 10:15 PM

12 Night Shift: 9:45 PM to 6:15 AM

13

14 Captains Not Serving as Primary Shift Commander for the Shift:

15 Day Shift: 6:45 AM to 3:15 PM

16 Evening Shift: 2:45 PM to 11:15 PM

17 Night Shift: 10:45 PM to 7:15 AM

18

19 These shift schedules reflect a required 30 minute unpaid meal break. If  
20 you have any questions, please do not hesitate to contact us.

21

22

### OPINION

#### 23 **Unilateral Change**

24 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law  
25 when it unilaterally changes an existing condition of employment or implements a new  
26 condition of employment involving a mandatory subject of bargaining without first giving  
27 its employees' exclusive bargaining representative notice and an opportunity to bargain  
28 to resolution or impasse over the decision or its impacts. Commonwealth of  
29 Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School  
30 Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983);  
31 Commonwealth of Massachusetts, 30 MLC 63, 64, SUP-4784 (Oct. 9, 2003). To  
32 establish a violation, the union must show that: (1) the employer changed an existing

1 practice or instituted a new one; (2) the change had an impact on a mandatory subject  
2 of bargaining; and, (3) the change was implemented without prior notice to the union  
3 and an opportunity to bargain to resolution or impasse. Commonwealth of  
4 Massachusetts, 30 MLC at 64; Town of Shrewsbury, 28 MLC 44, 45, MUP-1704 (June  
5 29, 2001); Commonwealth of Massachusetts, 27 MLC 11, 13, SUP-4378 (Aug. 24,  
6 2000).

7 Hours of work and shift schedules are mandatory subjects of bargaining. Suffolk  
8 County House of Correction, 22 MLC 1001, 1005, MUP-8820 (March 18, 1994)<sup>23</sup>; City  
9 of Boston, 10 MLC 1189, 1193-95, MUP-4931 (Sept. 2, 1983); Town of Natick, 2 MLC  
10 1086, MUP-2098 and MUP-2102 (Aug. 26, 1975).

#### 11 **Past practice**

12 To determine whether a binding past practice exists, the Board "analyzes the  
13 combination of facts upon which the alleged practice is predicated, including whether  
14 the practice has occurred with regularity over a sufficient period of time so that it is  
15 reasonable to expect that the practice will continue." Commonwealth of Massachusetts  
16 30 MLC at 85. While the Board "inquires whether employees in the unit have a  
17 reasonable expectation that the practice in question will continue," City of Westfield, 22  
18 MLC 1394, 1404, MUP-9697 (H.O. Jan. 10, 1996), aff'd, 25 MLC 163 (April 20, 1999),

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<sup>23</sup> In its post-hearing brief, the Department requested that I take administrative notice of the Board's decision in this case, along with the Board's subsequent February 5, 1997 Clarification of Prior Order between the HOC and Local 419. While I find the Board's 1994 Suffolk County House of Correction decision relevant to my ruling, I deny the Department's request to take administrative notice of that decision or the Board's subsequent Clarification of Prior Order because the matter does not involve Local 3967, neither party offered those documents into evidence and neither litigated the merits at the hearing. See generally Town of Norwell, 18 MLC 1263, 1264, MUP-6962 (Jan. 22, 1992).

1 the Board also considers whether the practice is “unequivocal” and is “known and is  
2 accepted by both parties.” Town of Dedham and Dedham School Committee, 5 MLC  
3 1836, 1839, MUP-3002 (Nov. 14, 1978).

4 The parties have been locked in a protracted 20-year dispute over whether the  
5 Department acted lawfully in 1991 by changing captains’ shift schedules from 8 hours to  
6 8.5 hours with an unpaid, 30 minute break, and maintaining that change through 2012  
7 when it changed the start/stop times of the captains’ work shifts. Local 3967  
8 acknowledges that HOC captains were unrepresented in 1991 and that the Department  
9 was not obligated to bargain with the Union at the time of the change. However, it  
10 generally contends that beginning in 1993 to present, the Department has continued to  
11 violate Article X, Section 1 of the parties’ five successive collective bargaining  
12 agreements, which expressly states that the captains’ regular work shifts will be 8 hours  
13 a day, 5 days a week. Further, the Union asserts that from 1993 to present, many  
14 captains have been unable to take their full unpaid 30-minute meal break and have  
15 refrained from requesting overtime for any missed meal minutes due to the  
16 Department’s admitted “push-back” to dissuade employees from “nickel-and-diming” the  
17 Department. Consequently, the Union argues that since August 4, 2012, the  
18 Department has unlawfully forced captains to work 8.5 hour shifts without providing  
19 them with statutorily mandated meal breaks in violation of Article X, Section 1 of the  
20 Agreements.

21 For the 17 years between 1993 and 2010, Local 3967 and the Department  
22 permitted the non-SC captains to deviate from their contractually-prescribed 8 hour  
23 work shifts by actually working 8.5 hour shifts (i.e., 6:45 a.m. to 3:15 p.m.; 2:45 p.m. to

1 11:15 p.m.; and 10:45 p.m. to 7:15 a.m.). That scheduling deviation ended on February  
2 11, 2010 when Superintendent Horgan ordered non-SC captains to work the same 8  
3 hour shifts as the primary SC (i.e., 10:00 p.m. to 6:00 a.m.; 6:00 a.m. to 2:00 p.m.; and  
4 2:00 p.m. to 10:00 p.m.). Compare City of Boston, 10 MLC at 1193-95 (union failed to  
5 show that the actual hours worked constituted a change in past practice due to the  
6 parties' widespread practice of deviating from contractually-prescribed hours of work).

7         However, since February 11, 2010, the Department maintained an established  
8 practice of scheduling captains to work 8 hour shifts with an unpaid, 30 minute meal  
9 break. After meeting with the Union on or about February 11, 2010, Superintendent  
10 Horgan approved assigning non-SC captains to the same shift schedule as the primary  
11 SC, 10:00 p.m. to 6:00 a.m.; 6:00 a.m. to 2:00 p.m.; and 2:00 p.m. to 10:00 p.m. That  
12 practice occurred with regularity for over two years because the Department regularly  
13 scheduled all captains to shifts that began and ended not only at the top of the hour, but  
14 also one hour earlier than the standard 11:00 p.m. – 7:00 a.m., 7:00 a.m. – 3:00 p.m.,  
15 and 3:00 p.m. – 11:00 p.m. shifts. The captains (SC and non-SC) reasonably expected  
16 this practice to continue based on Superintendent Horgan's assurances to Captains  
17 Sullivan, Brown and Flynn at the February 11, 2010 meeting, and based on the  
18 Department's uninterrupted scheduling of those work shifts through August of 2012.  
19 See Commonwealth of Massachusetts, 30 MLC at 85. The practice was unequivocal  
20 because Superintendent Horgan approved the new schedules over Assistant Deputy  
21 Superintendent Agnew's vocal opposition and, the practice was known and accepted by  
22 both parties because both agreed to the new schedules at the February 11, 2010

1 meeting and neither complained about the practice while it was utilized continuously by  
2 the captains through 2012. Town of Dedham, 5 MLC at 1839.

3         The Department argues that there was never a past practice of scheduling  
4 captains to work 8 hour shifts because all shifts since 1991 have been 8.5 hours in  
5 length, which was confirmed by the arbitrator in 1999 and the Board in 2008. I agree  
6 that between 1999 and 2008, the Department scheduled captains to work five-day, 8.5  
7 hour shifts with an unpaid, 30 minute meal break. However, I disagree that the  
8 Department scheduled captains to work 8.5 hour shifts beginning on February 11, 2010  
9 because Superintendent Horgan agreed that they would work the following 8 hour  
10 shifts: 10:00 p.m. – 6:00 a.m.; 6:00 a.m. – 2:00 p.m., and 2:00 p.m. – 10:00 p.m. The  
11 Department contends that the February 2010 changes did not affect the actual number  
12 of hours worked by captains but only changed the start and stop times of the shifts.  
13 Again I disagree. The record shows that prior to February 11, 2010, the Department  
14 scheduled non-SC captains to work 8.5 hour shifts that started and stopped 15 minutes  
15 before and after the hour. On February 11, 2010, the Department scheduled all  
16 captains (non-SCs and SCs) to work 8 hour shifts that began and ended at the top of  
17 the hour.

18         While the Department concedes that the parties never bargained over  
19 Superintendent Horgan's decision to change unit members' shift times in August of  
20 2012, it maintains that the change neither increased nor decreased the captains' hours  
21 of work, which continued to total 8.5 hours with an unpaid, 30 minute meal break. It also  
22 argues that even if some captains were unable to take their unpaid, 30 minute meal  
23 breaks, Superintendent Smith permitted them to submit overtime requests for that

1 missed time beginning in February of 2013. Based on the evidence, I find that the  
2 Department changed its two-year practice of scheduling captains (primary SC and non-  
3 SC) to work 8 hour shifts between 2010 and 2012, by increasing their hours of work by  
4 30 minutes and requiring them to work 8.5 hour shifts with an unpaid, 30-minute meal  
5 break beginning August 4, 2012. I also find that this change impacted mandatory  
6 subjects of bargaining, namely hours of work and shift schedules. Suffolk County  
7 House of Correction, 22 MLC at 1005; City of Boston, 10 MLC at 1193-95.

### 8 **Managerial Prerogative**

9 The Department does not dispute that it changed the captains' work shift  
10 start/stop times in August of 2012, nor does it dispute that it did not provide the Union  
11 with notice and an opportunity to bargain prior implementing the change. Instead, the  
12 Department argues that it had the managerial prerogative to make the change without  
13 bargaining with the Union.

14 Section 6 of the Law requires public employers and unions that represent their  
15 employees to meet at reasonable times to negotiate in good faith regarding wages,  
16 hours, standards of productivity and performance, and any other terms and conditions  
17 of employment. To determine whether a matter is beyond the scope of statutory  
18 bargaining, the Board balances the interests of employees in bargaining over a  
19 particular subject against the interest of the public employer in maintaining its  
20 managerial prerogatives, and considers factors like: the degree to which the topic has a  
21 direct impact on terms and conditions of employment; whether the issue concerns a  
22 core governmental decision; or whether it is far removed from terms and conditions of  
23 employment. Commonwealth of Massachusetts, 25 MLC 201, 205, SUP-4075 (June 4,

1 1999) (citing Town of Danvers, 3 MLC 1559, MUP-2292 and MUP-2299 (April 6, 1977)).

2 The Department argues that Superintendent Horgan had the managerial  
3 prerogative to reassign captains from work shifts that started and stopped one hour  
4 early (at the top of the hour) to work shifts that started and stopped 15 minutes before  
5 and after the hour. However, nothing in the record shows that Superintendent Horgan  
6 was exercising his exclusive managerial prerogative to determine “where to deploy  
7 public services” when he rescheduled captains from the 8 hour shift to the 8.5 hour shift  
8 in August of 2012. City of Worcester v. Labor Relations Commission, 438 Mass. 177,  
9 184 (2002). Nor does the record show that Superintendent Horgan’s decision stemmed  
10 from the requirements of G.L. c. 49, § 100 or any other statute. Contrast City of Lynn v.  
11 Labor Relations Commission, 43 Mass. App. Ct. 172 (1997) (fire chief acted pursuant to  
12 a specific statutory mandate when he filed an application with the retirement board for  
13 the superannuation retirement of a disabled firefighter, exempting the city from its  
14 Section 6 bargaining duties).<sup>24</sup>

15 After balancing the captains’ interests of working 8 hour shifts pursuant to the  
16 past practice against the Department’s interest of assigning captains to 8.5 hour shifts, I  
17 find that the Department has not established its affirmative defense because the  
18 Employer is unable to show that the change stemmed from a core governmental  
19 decision. Commonwealth of Massachusetts, 25 MLC at 205; Town of Danvers, 3 MLC  
20 at 1571-72. Instead, the record shows that: (1) the parties agreed to an 8 hour shift

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<sup>24</sup> The Department does not specifically rely on the Management Rights provision in Article V, Section 1 of the parties’ 2009-2012 Agreement. Even if it were to do so, I would reach the same conclusion. The Board holds that broadly framed management rights clauses like the one at issue here are too vague to show a contractual waiver. Newton School Committee, 5 MLC 1016, 1024 (1978), aff’d sub nom., School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983).

1 schedule at the February 11, 2010 meeting and, also pursuant to Article X, Section 1 of  
2 the 2009-2012 Agreement; (2) the Department changed the established practice of  
3 scheduling captains to 8 hours shifts in August of 2012 when it scheduled all captains to  
4 work 8.5 hour shifts with an unpaid, 30-minute meal break; (3) hours of work and shift  
5 schedules are mandatory subjects of bargaining; and, (4) the Department failed to  
6 provide the Union with notice and an opportunity to bargain to resolution or impasse  
7 prior to implementing the change.

### 8 **Repudiation**

9       The statutory obligation to bargain in good faith includes the duty to comply with  
10 the terms of a collectively bargained agreement. Commonwealth of Massachusetts, 26  
11 MLC 165, 168, SUP-3972 (March 13, 2000), (citing City of Quincy, 17 MLC 1603, MUP-  
12 6710 (March 20, 1991)); Massachusetts Board of Regents of Higher Education, 10 MLC  
13 1196, SUP-2673 (Sept. 8, 1983). A public employer's deliberate refusal to abide by an  
14 unambiguous collectively bargained agreement constitutes a repudiation of that  
15 agreement in violation of the Law. Commonwealth of Massachusetts, 36 MLC 65, 68,  
16 SUP-05-5191 (Oct. 23, 2009); Town of Falmouth, 20 MLC 1555, MUP-8114 (May 16,  
17 1994), aff'd sub nom., Town of Falmouth v. Labor Relations Comm'n, 42 Mass. App. Ct.  
18 1113 (1997). If the evidence is insufficient to find an agreement or if the parties hold  
19 differing good faith interpretations of the language at issue, the Board will conclude that  
20 no repudiation has occurred. Commonwealth of Massachusetts, 18 MLC 1161, 1163-  
21 66, SUP-3356 and MUP-3439 (Oct. 16, 1991).

22       Although the parties 2009-2012 Agreement expired on June 30, 2012, the  
23 Department admitted in its Answer that the parties had extended that Agreement via the

1 2012-2014 Agreement, effective from July 1, 2012 until June 30, 2014. Further, Article  
2 X, Section 1 clearly and ambiguously stated that the captain's regular workweek shall  
3 consist of five, eight-hour days. Boston School Committee, 22 MLC 1365, 1376, MUP-  
4 8125 (Jan. 9, 1996) (citing City of Worcester, 2 MLC 1283, 1285, MUP-2260 (Jan. 8,  
5 1976)) (Board gives effect to the clear meaning of the bargained-for language and does  
6 not inquire into the parties' intent where the words of the agreement are unambiguous).  
7 The Department maintains that when Superintendent Horgan agreed in 2010 to permit  
8 all captains to work 10:00 p.m. – 6:00a.m.; 6:00 a.m. – 2:00 p.m.; and 2:00 p.m. to  
9 10:00 p.m., those schedule changes only affected the start and end times of their shifts,  
10 not the actual length which stayed at 8.5 hours. However, the evidence shows that  
11 Horgan's February 2010 shift changes actually brought the Department in compliance  
12 with Article, Section 1 because those shifts amounted to 8 total hours while Horgan's  
13 August 2012 shift changes increased those work hours by 30 minutes. Based on this  
14 evidence, I find that the Department engaged in an unlawful repudiation when it  
15 changed unit members' hours of work by 30 minutes in August of 2012 in violation of  
16 Section 10(a)(5) of the Law.

### 17 CONCLUSION

18 The Department failed to bargain in good faith with the Union when it increased  
19 unit members' hours of work on August 4, 2012 without first providing the Union with an  
20 opportunity to bargain to resolution or impasse over that decision and the impacts of the  
21 decision. The Department also repudiated Article X, Section 1 of the parties' 2009-2012  
22 Agreement by requiring unit members to work 8.5 hour shifts on August 4, 2012.

### 23 ORDER

1       WHEREFORE, based on the foregoing, it is hereby ordered that the Suffolk County  
2 Sheriff's Department shall:

3       1. Cease and desist from:

4           a.     Unilaterally requiring captains to work 8.5 hour shifts with an unpaid, 30-  
5                 minute meal break;

6           b.     Failing or refusing to bargain collectively in good faith with AFSCME, Local  
7                 3967 by repudiating Article X, Section 1 of the parties' 2009-2012  
8                 Agreement;

9           c.     In any like manner, interfere with, restrain and coerce any employees in  
10                the exercise of their rights guaranteed under the Law.

11       2. Take the following affirmative action that will effectuate the purposes of the Law:

12           a.     Restore the pre-August 4, 2012, 8 hour shift schedule;

13           b.     Upon demand, bargain with Local 3967 in good faith to resolution or  
14                 impasse before changing the captains' 8 hour work shifts.

15           c.     Sign and post immediately in conspicuous places where employees  
16                 usually congregate or where notices to employees are usually posted and  
17                 maintain for a period of thirty (30) days thereafter copies of the attached  
18                 Notice to Employees.

19           e.     Notify the DLR within thirty (30) days after the date of service of this  
20                 decision and order of the steps taken to comply with its terms.

21       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. Chapter 150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.