

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

\*\*\*\*\*

In the Matter of \*  
\*  
TOWN OF PLYMOUTH \*  
\*  
and \*  
\*  
PLYMOUTH POLICE BROTHERHOOD \*  
\*

Case No.: MUP-13-2833  
MUP-13-3114

Date Issued: February 5, 2015

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Hearing Officer:

Kerry Bonner, Esq.

Appearances:

David C. Jenkins, Esq.,  
Timothy D. Zessin, Esq.: Representing Town of Plymouth

William M. Straus, Esq.: Representing Plymouth Police Brotherhood

HEARING OFFICER'S DECISION

Summary

1 The issue is whether the Town of Plymouth (Town) violated Section 10(a)(5) and,  
2 derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law)  
3 by 1) failing to respond to the Plymouth Police Brotherhood's (Union or Brotherhood)  
4 information request; 2) failing to impact bargain over its reorganization of the Harbor  
5 Master and Environmental Management Departments; and 3) by transferring bargaining  
6 unit work to non-unit personnel. Based on the record and for the reasons explained  
7 below, I find that the Town violated the Law by failing to respond to the Union's  
8 information request in a timely manner. I dismiss the remaining allegations.

Statement of the Case

1           On May 17, 2013, the Union filed a charge of prohibited practice with the  
2 Department of Labor Relations (DLR), alleging that the Town had had engaged in  
3 prohibited practices within the meaning of Sections 10(a)(5) and 10(a)(1) of the Law.  
4 The DLR docketed the charge as MUP-13-2833. On September 11, 2013, the Union  
5 filed a second charge, also alleging that the Town violated Sections 10(a)(5) and  
6 10(a)(1) of the Law. The DLR docketed the charge as MUP-13-3114. A DLR  
7 Investigator held in-person investigations of the charges on June 21 and November 5,  
8 2013, and on July 31 and November 20, 2013, she issued two separate Complaints of  
9 Prohibited Practice and Partial Dismissal. The Union did not appeal either partial  
10 dismissal. The Town filed an answer to each complaint. The DLR subsequently  
11 consolidated the two complaints for hearing, which I held on August 5, 2014. The  
12 parties timely filed post-hearing briefs. Based on the record, which includes stipulated  
13 facts and documentary exhibits, and in consideration of the parties' arguments, I render  
14 the following opinion.

Stipulated Facts

- 15
- 16           1. The Town of Plymouth is a public employer within the meaning of Section 1 of  
17           the Law.
  - 18           2. The Plymouth Police Brotherhood is an employee organization within the  
19           meaning of Section 1 of the Law.
  - 20           3. The Plymouth Police Brotherhood is the exclusive collective bargaining  
21           representative for a bargaining unit of patrol officers employed by the Town of  
22           Plymouth.  
23  
24  
25

Opinion

1 **Factual Background**

2 Town Harbor Master

3           The Town Harbor Master's duties are set forth in M.G.L. c. 90B (Chapter 90B)  
4 and Plymouth City Code Chapter 81. Generally, the Harbor Master enforces boating  
5 laws by patrolling the Town waterways, which include the harbor, bay, and ponds. The  
6 Harbor Master also oversees harbor management, applications for mooring permits,  
7 and vessel storage. The Harbor Master has the authority to arrest individuals who  
8 commit violations of Chapter 90B which occur on the water, or originate on the water  
9 and progress to land.

10           The Harbor Master Department (Department) includes the Harbor Master, Chad  
11 Hunter (Hunter),<sup>1</sup> three full-time Assistant Harbor Masters,<sup>2</sup> and seasonal staff. The  
12 Director of the Department of Marine and Environmental Affairs (DMEA) has supervised  
13 the Harbor Master since approximately 2012, when the DMEA was created. Prior to  
14 this, the Assistant Town Manager supervised the Harbor Master. Department personnel  
15 wear a uniform. The Harbor Master and Assistant Harbor Masters all carry a firearm  
16 while on duty.

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<sup>1</sup> Hunter has been the Harbor Master since November 2009. From 2006 – 2009, he was a Town Assistant Harbor Master.

<sup>2</sup> Assistant Harbor Masters have the same legal authority as the Harbor Master.

1 Police Department

2           The Plymouth Police Department's (Police Department) sworn police officers are  
3 responsible for ensuring compliance with the motor vehicle laws of M.G.L. c. 90  
4 (Chapter 90), which includes bicycle laws, and issue citations for violations. The Police  
5 Department also includes a marine unit (Marine Unit), which Police Chief Botieri (Chief  
6 Botieri) created in approximately 2010. The Marine Unit currently maintains a boat, and  
7 its officers enforce compliance with Chapter 90B along with the Department. The  
8 Marine Unit also enforces the security zone at the nuclear power plant.

9 Information Request and Demand to Bargain

10           By letter dated October 25, 2012, the Union wrote the following to Town Counsel:

11           The Brotherhood has become aware of local media reports that the Town  
12 Manager and the Board of Selectmen participated in a meeting on  
13 October 16, 2012 reviewing the details of merging the Harbor Master  
14 office and the Environmental Management department to create a new  
15 Natural Resources Department.<sup>3</sup> Such a reorganization of personnel  
16 within the Town of Plymouth affect existing town personnel who currently  
17 have discrete harbor related duties that deal with law enforcement tasks  
18 and cause them to carry firearms. The Brotherhood believes that these  
19 changes to a new Natural Resources Department involve mandatory  
20 subjects of bargaining which affects its bargaining unit and work  
21 assignments, duties and finances of the Plymouth Police Department; as a  
22 result, please consider this a Demand for Decision Bargaining by the  
23 Brotherhood over this subject.<sup>4</sup>  
24

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<sup>3</sup> Although this and other correspondence refers to a contemplated Natural Resources Department, the evidence shows that the Town reorganized the Natural Resources and Harbor Master Departments into the DMEA (also referred to as the Marine and Environmental Affairs Department).

<sup>4</sup> The DLR dismissed the Union's allegation that the Town violated the Law by failing to bargain over its decision to reorganize.

1 To assist in our preparation for the bargaining required by law I would  
2 expect that the town, through you, will review and respond to the following  
3 questions. What law enforcement responsibilities are contemplated for  
4 the Natural Resources Department employees? Will they be expected to  
5 write citations, enforce town by-law violations, or enforce traffic statutes?  
6 Are armed harbor masters now going to be given assignments on the  
7 beaches and land areas of the Town of Plymouth? Will police powers be  
8 given to any of these employees? Are the financial resources of the Long  
9 Beach Sticker Revolving Fund (now used by the police department) going  
10 to be redirected to this new department? Will the new department  
11 employees have equipment, uniforms, patches or any public display  
12 suggesting they are "police?" Will the vehicles of the town used by the  
13 new department's employees have "police" plates from the  
14 Commonwealth?

15  
16 I appreciate the response to these questions and look forward to  
17 scheduling the bargaining which is required over this mandatory subject.  
18

19 By letter dated November 19, 2012, the Town responded as follows, in pertinent part:

20 The protecting, monitoring, and overseeing the harbor and the coastline  
21 as well as the many lakes and ponds in Plymouth, particularly those that  
22 are active, have been the exclusive duties of the Harbor Master staff. The  
23 reorganization of the departments will place these matters under the  
24 Marine and Environmental Affairs Department. Those duties are currently  
25 performed by members of OPEIU.<sup>5</sup>  
26

27 At the present time, the only water-related duties that are performed by  
28 members of the Brotherhood are assisting the Harbor Master with law  
29 enforcement emergencies when the Harbor Master calls for assistance or  
30 conducting patrol of the nuclear power plant.  
31

32 It is also clear that the decision whether or not to consolidate duties within  
33 the Marine and Environmental Affairs Department is a reserved  
34 management right and within Article XXVII of entitled Management Rights  
35 in the current Collective Bargaining Agreement between the Brotherhood  
36 and the Town.  
37

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<sup>5</sup> I take administrative notice that OPEIU is another Town bargaining unit.

1 The Town therefore has determined that there is no duty to bargain over  
2 the decision to effectuate this change.

3  
4 Having made this determination, there is no need to provide the  
5 information you have requested since there is no duty on the part of the  
6 Town to bargain over this decision.

7  
8 In the event that the Brotherhood should make a demand to bargain over  
9 the impact and implementation of its decision, we can readdress these  
10 issues. In general, it is expected, although these decisions have not yet  
11 been made final, that the current procedures attendant to the Harbor  
12 Master will continue forward into the Department of Natural Resources.  
13 The questions you posed on page 2 of the demand to bargain would all be  
14 answered by responding that the current practices are expected to  
15 continue into the new Department.

16  
17 By letter dated March 28, 2013, the Union responded, in relevant part:

18 I am writing again on behalf of the [Union] with regard to our bargaining  
19 and information request over the Town's implementation of changes  
20 affecting law enforcement responsibilities in [the] Town and the budget  
21 available for the police department as a result of changes to the so-called  
22 Natural Resource Department in Plymouth. (Emphasis in Original.)

23  
24 I received your response of November 19, 2012 where you conveyed the  
25 Town's decision to refuse bargaining and refuse to provide answers to my  
26 information request all as contained in my original letter of October 25,  
27 2012. (Emphasis in Original.) For reasons described below, I am writing  
28 to renew the Brotherhood's request for information and responses as  
29 described in the October 25, 2012 letter to you.

30  
31 Because we are preparing for our next bargaining session with the Town I  
32 wanted to renew the request in hopes that the Town will recognize its legal  
33 obligations in providing information to the [Union] as collective bargaining  
34 agent for the patrol officers in Plymouth (I also believe the Town is in error  
35 on the legal requirements regarding its refusal to bargain over the decision  
36 to merge the particular departments and do not waive our position on that  
37 aspect of the original demand letter).

38  
39 In reviewing your November letter to me, it appears that you adopted a  
40 narrow understanding of the request you received so that you interpreted  
41 the information request as if it only affects the Natural Resources

1 Department issue. As I made clear in the first paragraph of my original  
2 demand to you, the Brotherhood was writing as a part of the “pending  
3 collective bargaining process.” In addition, the very first sentence on page  
4 two of my letter indicated that our information request was made in order  
5 to assist our preparation for the “bargaining required by law;” clearly our  
6 overall bargaining (continuing with our next scheduled session on April 4,  
7 2013) encompasses the many issues reflected in the mutually exchanged  
8 proposals to date. As such, the requested information on budget  
9 resources, workload involving the issuance of citations, use of the Long  
10 Beach Sticker Revolving Fund by the Town for possible non-police  
11 department functions, indicia of police powers, assignment of “police”  
12 license plates to the new department employees, etc. are legally  
13 appropriate information requests designed to assist us in the ongoing  
14 collective bargaining negotiations. This information is clearly relevant and  
15 reasonably necessary to the Brotherhood meeting its responsibility to be  
16 able to bargain effectively on behalf of its unit members.

17  
18 I ask that you review the information requests again in light of their impact  
19 on the current negotiations and provide the information and responses  
20 which you are required to provide as soon as practicable.

21  
22 By letter dated June 19, 2013, the Town responded as follows:

23 ....You posed a series of questions to which the Town submits these  
24 responses. The Town does not believe that your request is a proper one  
25 under c. 150E. Without waiving the objection, the Town provides the  
26 following. You have asked:

27  
28 Request 1: What law enforcement responsibilities are contemplated for  
29 the Natural Resources Department employees?

30  
31 Response: It is contemplated that the Natural Resources employees will  
32 continue to perform their current duties. Copies of relevant job  
33 descriptions are attached.

34  
35 Request 2: Will they be expected to write citations, enforce town by-law  
36 violations, or enforce traffic statutes?

37  
38 Response: It is expected that employees will write citations and enforce  
39 Town by-law violations as they have in the past. The Town is not certain  
40 what you mean by “traffic statutes.” It is anticipated that the employees  
41 will perform the same duties as they have up to this date.

1           Request 3: Are armed harbor masters now going to be given assignments  
2 on the beaches and land areas of the Town of Plymouth?

3  
4           Response: In the past, the Harbor Masters have performed duties on the  
5 beaches and land areas of the Town. It is anticipated that they will  
6 continue to perform the duties they have been given in the past.  
7

8           Request 4: Will police powers be given to any of these employees?  
9

10          Response: Employees are given police powers by various statutes.  
11

12          Request 5: Are the financial resources of the Long Beach Sticker  
13 Revolving fund going to be redirected to this new department?  
14

15          Response: The manner in which you pose the question is argumentative.  
16 The financial resources of the Revolving Fund will be used as they have in  
17 the past.  
18

19          Request 6: Will the new department employees have equipment,  
20 uniforms, patches or any public display suggesting that they are “police?”  
21

22          Response: The Department will have the equipment and patches that  
23 they presently use. There is no display that they are the “police.”  
24

25          Request 7: Will the vehicles of the town used by the new department’s  
26 employees have “police” plates from the Commonwealth?  
27

28          Response: The vehicles that currently have police plates will continue to  
29 have police plates.

30          Successor Contract Negotiations

31                The Union and Town were parties to a collective bargaining agreement effective  
32 July 1, 2009 – June 30, 2012.<sup>6</sup> The parties began successor contract negotiations in  
33 July 2012, and the Union provided the Town with its initial contract proposal on July 16,  
34 2012. It provided an additional contract proposal on January 31, 2013. The parties met

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<sup>6</sup> The contract also contained an evergreen clause.

1 for negotiations approximately six – eight times between July 2012 and July 2013.  
2 During negotiations, the Union did not make any proposals regarding the Marine Unit or  
3 the above-described reorganization.

4 The 4<sup>th</sup> of July

5 The Town conducts a fireworks display from a barge in the harbor each July 4<sup>th</sup>  
6 that thousands of visitors attend. As a result, numerous law enforcement personnel are  
7 on duty, including the Police Department, county sheriff personnel, environmental  
8 police, and the Department. The Department typically has four – five boats out on the  
9 water, and is responsible for assisting with loading the fireworks onto the barge and  
10 keeping boaters away from the safety zone around the barge.

11 The harbor area includes a breakwall,<sup>7</sup> of about 1/3 – 1/2 mile in length, which  
12 separates the harbor from the ocean. Each July 4<sup>th</sup>, the Town closes the breakwall to  
13 the public at 6 PM. A sign on the breakwall provides, “Breakwall Closed at 6:00 PM  
14 July 4<sup>th</sup>; No Admittance, Police Enforced.” On July 4, 2013, Department personnel on  
15 the boats ordered people off the breakwall to prepare for the fireworks. Department  
16 personnel then radioed to the command post to confirm that the breakwall was clear.

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<sup>7</sup> The breakwall is also referred to as a “breakwater.”

1 The Department has similarly instructed people off the breakwall in connection with the  
2 July 4<sup>th</sup> fireworks since at least 2006.<sup>8</sup>

3 The *Mary Elizabeth*

4 On August 10, 2013, Tim Brady (Brady), the captain of a fishing vessel called the  
5 *Mary Elizabeth*, requested over the marine radio that “uniformed personnel” stand by to  
6 encourage good behavior from passengers as they disembarked from his vessel.<sup>9</sup>  
7 Department personnel subsequently stood by while passengers disembarked, and all  
8 passengers left the area without incident.<sup>10</sup> Since 2006, the Department has received  
9 requests such as this approximately four – five times per year.<sup>11</sup>

10 Motor Vehicle Accident

11 The Town maintains a parking lot adjacent to the boat ramp. Department  
12 personnel are assigned to perform duties at the boat ramp, including assisting people  
13 with buying an annual pass or paying the daily fee, ensuring that the lot is not at

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<sup>8</sup> Hunter testified credibly that the Department has cleared the breakwall in this way since 2006. Officer Dana Goodwin (Goodwin) testified that clearing the breakwall should be the responsibility of the Police Department, but did not dispute Hunter’s testimony or provide any examples of the Police Department clearing the breakwall.

<sup>9</sup> According to Goodwin, the Police Department would not hear a communication over the marine radio. Goodwin heard Brady’s request because he was listening to his personal marine radio at the time. Goodwin did not report the communication to police dispatch. He later checked the police log and determined that nobody had been arrested in connection with this incident.

<sup>10</sup> I have relied only on a Department Incident and Daily Log, which was entered into evidence as a joint exhibit, to ascertain what occurred with regard to the *Mary Elizabeth*. Neither the Town nor Union witnesses had firsthand knowledge of the events at issue.

<sup>11</sup> The Union did not provide any evidence of the police department receiving, or responding to, similar requests.

1 capacity, and directing people to open parking spaces. When there are occasional  
2 minor motor vehicle accidents in the parking lot, Department personnel will allow the  
3 parties to decide whether they want to involve the police or simply exchange the  
4 necessary information themselves.<sup>12</sup>

5 On August 10, 2013, there was a minor accident in the parking lot when the  
6 driver of a vehicle struck a parked trailer. Department personnel completed an Incident  
7 Report.<sup>13</sup> Initially, the owner of the trailer was not present, but did eventually arrive at  
8 the scene. Logan gathered information and radioed a request that the Police  
9 Department take a report as well. However, the individual whose trailer was struck was  
10 satisfied with the exchange of information with the driver and they both departed. The  
11 police arrived before Department personnel could cancel the request for assistance  
12 from the Police Department.

13 August 16, 2013 Incident

14 On August 16, 2013, Detective Charles Warnock (Warnock) had dinner with  
15 Chief Botieri and his family at The Office, a Plymouth restaurant. Outside of the

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<sup>12</sup> The Union did not offer any evidence to rebut Hunter's credible testimony about the parking lot procedures.

<sup>13</sup> An Incident Report, completed by Harbor Master Officer Andrew White (White) and Supervisor Patrick Logan (Logan) was entered as a joint exhibit. There were no hearing witnesses with firsthand knowledge of the incident. I therefore have relied only on the Incident Report.

1 restaurant at some point during the evening,<sup>14</sup> a vehicle's blue lights were activated, and  
2 the driver made "an aggressive turn," and stopped in a spot that impeded traffic.<sup>15</sup>  
3 Warnock went outside and saw that the vehicle belonged to the Department,<sup>16</sup> and that  
4 the vehicle's driver, who was wearing a Department uniform, was outside speaking  
5 sternly to three to four men. One of the men was standing with a bicycle. Warnock did  
6 not see whether the Department official told the men to stop, or whether they stopped  
7 themselves. Warnock then heard the Department official ask, "What the fuck are you  
8 doing?"<sup>17</sup> The exchange between the Department official and the men was brief.

9 Other than activate blue lights, which the police use to initiate a traffic stop,  
10 Warnock did not observe the Department official perform any of the functions that police  
11 typically perform when making a traffic stop, such as asking the individuals for

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<sup>14</sup> Warnock testified that the incident in question occurred at approximately 10 PM, while Chief Botieri testified that they were only at the restaurant until 9 PM. The exact time of the incident is not relevant to my analysis.

<sup>15</sup> Warnock witnessed the blue lights and the aggressive turn and stop from inside the restaurant. Chief Botieri also saw the vehicle with blue lights stopped for a minute to two, but he did not observe anything else or go outside with Warnock.

<sup>16</sup> The vehicle had Harbor Master insignia. Although Warnock did not know whether this vehicle had once belonged to the Police Department, he testified that his department usually transfers their vehicles to other agencies when they are no longer needed.

<sup>17</sup> Warnock testified that he "believed" that the bicycle was the subject matter of the exchange, but he did not explain what led to this belief. I therefore do not credit this point.

1 identification or calling in for information, such as a missing person or warrant check.<sup>18</sup>  
2 Warnock also did not perform any of these police functions when he went out to  
3 observe the incident, and did not file a police report on it.

#### 4 Analysis

##### 5 **Information Request**

6 The Union alleges that the Town violated Section 10(a)(5) of the Law by failing to  
7 provide the information the Union requested in its October 25, 2012 and March 28, 2013  
8 letters. If a public employer possesses information that is relevant and reasonably  
9 necessary to an employee organization in the performance of its duties as the exclusive  
10 collective bargaining representative, the employer is generally obligated to provide the  
11 information upon the employee organization's request. City of Boston, 32 MLC 1, MUP-  
12 1687 (June 23, 2005) (citing Higher Education Coordinating Council, 23 MLC 266, 268,  
13 SUP-4142 (June 6, 1997)). The employee organization's right to receive relevant  
14 information is derived from the statutory obligation to engage in good faith collective  
15 bargaining, including both grievance processing and contract administration. Id. The  
16 standard in determining whether the requested information is relevant is a liberal one,  
17 similar to the standard for determining relevance in civil litigation discovery proceedings.  
18 Sheriff's Office of Middlesex County, 30 MLC 91, MUP-2754 (December 31, 2003).

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<sup>18</sup> The DLR Investigator dismissed the Union's separate allegation that the Town transferred unit work when Department personnel drove a vehicle that misrepresented Department personnel as Police Department personnel, instead finding that the allegation was subsumed into other allegations within the Complaint.

1           The Town first argues that it responded to the Union's information request by its  
2 November 19, 2012 letter, as it accurately stated that, "[t]he questions you pose on  
3 page 2 of the demand to bargain would all be answered by responding that the current  
4 practices are expected to continue into the new Department." According to the Town,  
5 its June 19, 2013 supplemental response provided essentially the same information,  
6 although in a list format. I am not persuaded that the November 2012 letter was an  
7 "unambiguous" response as the phrase "the questions you pose...would all be  
8 answered" makes it unclear as to whether the Town is actually providing a complete  
9 and accurate response. In addition, in its November 2012 letter the Town states that it  
10 has "no duty to provide the information you have requested..." which also makes it  
11 unclear as to whether the response is complete. Further, although the June 2013 letter  
12 did not provide extensive additional information as compared to the November 2012  
13 letter, it did respond to each Union question separately, and with more detail. For these  
14 reasons, I reject the Town's argument that it provided a complete response in  
15 November 2012.

16           The Town next contends that the information requested by the Union was not  
17 relevant and reasonably necessary to the Union because the Town's reorganization  
18 plan never contemplated interfering with, or altering the duties of, the Marine Unit  
19 members or the relationship between the Marine Unit and the Department, nor did it  
20 contemplate stripping the Police Department of any of its jurisdiction or authority.  
21 However, the Town ignores the fact that this is exactly the type of information that the

1 Union requested, and that the Town initially refused to clearly provide. The Town's  
2 circular argument that because it did not contemplate any changes that would affect the  
3 Union, it did not have to actually inform the Union of this upon request must fail.

4 Moreover, I must also reject the Town's argument that the Union failed to explain  
5 how the reorganization could potentially affect unit members' wages, hours, or working  
6 conditions, and therefore has not met its burden of establishing that the requested  
7 information was relevant and reasonably necessary. Rather, in its October 25, 2012  
8 information request, the Union notes that "[s]uch a reorganization...affects existing town  
9 personnel who currently have discrete harbor related duties that deal with law  
10 enforcement tasks and cause them to carry firearms." The Union also established that  
11 the Marine Unit enforces Chapter 90B along with the Department. Therefore, it is  
12 reasonable for the Union to inquire into whether the Town's reorganization of the  
13 Department would have an impact upon its own members, especially those with  
14 overlapping authority, and request that the Town provide information to answer such  
15 questions. Indeed, the Union's questions all pertained to how the reorganization may  
16 affect the Police Department, e.g., "[w]hat law enforcement responsibilities are  
17 contemplated for the Natural Resources Department employees;" "[w]ill police powers  
18 be given to any of these employees?;" "[w]ill the new department employees have  
19 equipment, uniforms, patches or any public display suggesting that they are 'police?'"

20 Although the Union notes in its brief that "[i]t is an issue in this case whether [the  
21 Town's June 2013] letter even constitutes a sufficient response," it has offered no

1 argument as to why the letter was not sufficient. I therefore consider the Town's June  
2 2013 response to have been complete. However, the Town's June 2013 response did  
3 not satisfy its obligation to provide the requested information, as it was approximately  
4 eight months after the Union's first request, and three months after its second. The  
5 Town offered no evidence to explain the delay, other than the above arguments.  
6 Moreover, the Town did not provide this response until after the Union filed a prohibited  
7 practice charge. See, Higher Education Coordinating Council, 25 MLC 37, SUP-4225  
8 (August 24, 1998) (an employer's belated providing of information does not bring it into  
9 compliance with the Law).

10 For the reasons set forth above, I find that the Town violated Section 10(a)(5) of  
11 the Law by failing to timely respond to the Union's information request.

### 12 **Refusal to Bargain over Impacts of Reorganization**

13 The Union alleges that the Town violated the Law by refusing to bargain over the  
14 impacts of its reorganization of the Harbor Master and Natural Resources Departments.  
15 Even where an employer is not required to bargain over a core governmental decision,  
16 it may be required to bargain over the impacts of the decision on employees' terms and  
17 conditions of employment. City of Worcester v. Labor Relations Commission, 438  
18 Mass. 177 (2002) (citing City of Boston v. Boston Police Patrolmen's Ass'n, 403 Mass.  
19 680 (1989)). However, the Union must identify the actual impacts of the reorganization  
20 on the bargaining unit. See Chief Justice for Administration and Management of the  
21 Trial Court v. Commonwealth Employment Relations Board, 79 Mass. App. Ct. 374, 387

1 (2011) (cannot conjure up hypothetical detriments as a justification for purposeless  
2 impact bargaining).

3         The Union has indirectly identified the alleged transfer of bargaining unit work as  
4 the impact of the reorganization for which the Town was required to bargain. However,  
5 as detailed below, the Union has not established that the Town unlawfully transferred  
6 bargaining unit work. The Union has not identified any other impacts of the  
7 reorganization on unit members' terms and conditions of employment, and the Town's  
8 responses to the Union's information request show that it did not anticipate making any  
9 changes that would impact the Police Department. Therefore, where there were no  
10 actual impacts of the reorganization on the bargaining unit, I must dismiss this  
11 allegation.<sup>19</sup>

## 12 **Transfer of Bargaining Unit Work**

13         The Union alleges that Department personnel performed police duties on several  
14 occasions between July 4 and August 16, 2013, which together amount to an unlawful  
15 transfer of bargaining unit work. Section 10(a)(5) of the Law requires a public employer  
16 to give the exclusive collective bargaining representative prior notice and an opportunity  
17 to bargain before transferring bargaining unit work to non-bargaining unit  
18 personnel. City of Boston, 26 MLC 144, MUP-1085 (March 10, 2000); Town of  
19 Bridgewater, 25 MLC 103, 104, MUP-8650 (December 30, 1998). To establish that an

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<sup>19</sup> Although the Town makes various additional arguments relative to this allegation, including its contention that the Union never demanded impact bargaining, I need not address these arguments based on my holding.

1 employer unilaterally transferred bargaining unit work to non-unit personnel, the union  
2 must establish the following elements: 1) the employer transferred bargaining unit work  
3 to non-unit personnel; 2) the transfer of work had an adverse impact on either individual  
4 employees or on the bargaining unit itself; and 3) the employer did not provide the  
5 exclusive bargaining representative with prior notice and an opportunity to bargain over  
6 the decision to transfer the work. Id.

7       When work is shared by bargaining unit members and non-unit employees, the  
8 Commonwealth Employment Relations Board (Board) has determined that the work will  
9 not be recognized as exclusively bargaining unit work. Higher Education Coordinating  
10 Council, 23 MLC 90, 92, SUP-4090 (September 17, 1996). In these shared work cases,  
11 the employer is not obligated to bargain over every incidental variation in job  
12 assignments between unit and non-unit employees. Rather, bargaining must occur only  
13 if there is a calculated displacement of bargaining unit work. Id. Therefore, if unit  
14 employees traditionally have performed an ascertainable percentage of the work, a  
15 significant reduction in the portion of work performed by unit employees, coupled with a  
16 corresponding increase in the work performed by non-unit employees, may demonstrate  
17 a calculated displacement of unit work. Id.<sup>20</sup>

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<sup>20</sup> The Union makes numerous public safety arguments about why police officers should perform the work at issue. However, the question of which department is best qualified to perform the work is not before me. Rather, I only must determine whether there was an unlawful transfer of bargaining unit work.

1 **The 4<sup>th</sup> of July**

2           The Union has not established that the Town transferred unit members' work to  
3 non-unit members when Department personnel cleared people off the breakwall in  
4 preparation for the fireworks. Hunter credibly testified that the Department has similarly  
5 instructed people off the breakwall for the fireworks since 2006. Additionally, there is no  
6 credible evidence that this is unit work.<sup>21</sup>

7 **The *Mary Elizabeth***

8           The Union also has not established that the Town transferred bargaining unit  
9 work when Department personnel responded to a call from the *Mary Elizabeth*.<sup>22</sup>  
10 Hunter credibly testified that the Department receives such requests approximately four  
11 – five times per year. Alternatively, the Union did not provide any evidence of  
12 responding to such requests.

13 **Motor Vehicle Accident**

14           Again, the Union has not established that the Town transferred unit work in  
15 connection with the August 10, 2013 parking lot accident. It argues that letting the  
16 owners of the vehicles leave is unit work, but Hunter credibly testified that it is  
17 Department practice to allow individuals involved in an accident to decide whether or

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<sup>21</sup> Goodwin's testimony that it should be the bargaining unit's responsibility, and the breakwall sign indicating that no admittance after 6 PM is "police enforced," do not persuade me otherwise.

<sup>22</sup> The Union's speculation about what the Harbor Master would do if someone on the *Mary Elizabeth* had been intoxicated is completely irrelevant to this case.

1 not to file a police report, as was done here. The Union presented no evidence to rebut  
2 this testimony.

3 **August 16, 2013 Incident**

4 Here, there is also not sufficient credible evidence to establish that the Town  
5 transferred unit work on August 16, 2013. The facts show that a Department official  
6 activated his blue lights, made an aggressive turn, got out of the vehicle, and said  
7 “[w]hat the fuck are you doing?” to three to four men, one of whom was standing with a  
8 bicycle. Although the Union argues that the Department official was performing a traffic  
9 stop, which is police work, I am not persuaded. Although the police may activate blue  
10 lights to initiate a traffic stop, there is no evidence that this is why the Department official  
11 did so. Warnock did not see why the individuals stopped, or when they stopped, and  
12 only heard the Department official ask one question. Contrary to the Union’s argument,  
13 there is no evidence that the Department official “detained a civilian on a public way.”  
14 Further, according to Warnock, the Department official did not perform any of the  
15 functions that police typically perform when making a traffic stop, such as asking for  
16 identification. Accordingly, the Union’s allegation that this incident constituted a transfer  
17 of unit work must fail.

18 The Union attempts to connect the four above incidents by arguing that the  
19 “accumulation of these four matters over a six week period suggests ambivalence by  
20 the Town and its managers toward the issue of recognizing unit boundaries as to work  
21 assignments.” The flaw in this argument is that the Town did not transfer unit work on

1 any of the four occasions. Analyzing the four incidents together leads to the same  
2 conclusion, i.e., the Town did not transfer unit work to non-unit personnel.

3 Further, even if the Union had established that the work that Department  
4 personnel performed as described above was police work, it would be considered  
5 shared work, as Hunter credibly testified that the Harbor Master regularly performed  
6 such work in three of the four instances.<sup>23</sup> The Union has not entered any evidence, or  
7 made any arguments, that there was a calculated displacement of unit work. In  
8 addition, the Union has not offered any evidence that would establish that the alleged  
9 transfer had an adverse impact on unit members or the unit as a whole, which is a  
10 required element of a transfer of unit work violation. Instead, the Union only speculates  
11 about the negative consequences the alleged transfer of unit work could have on the  
12 public.<sup>24</sup>

13 For the above reasons, I find that the Town did not violate Section 10(a)(5) of the  
14 Law by transferring unit work to non-unit personnel.

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<sup>23</sup> There is no evidence that the events of August 16 are a regular Department function. However, as described above, there also is not sufficient evidence to establish that the Department official was performing police work on that evening. Therefore, there is no need to address this incident any further.

<sup>24</sup> For example, in its brief, the Union argues that, “[a]ny incident described here could have resulted in serious consequences depending upon a citizen response based upon confusion that the uniformed, badge wearing, gun possessing Harbormaster was a lawful police officer. For that reason it becomes all the more important for the Department to weight the cumulative impact of the Plymouth town manager’s allowance of the Harbormaster and his staff to effectively engage in a testing of their job assignment limits.”

Conclusion

Based on the record and for the reasons explained above, I find that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to respond to the Union's information request in a timely manner. I dismiss the remaining allegations.

Order

Based on the foregoing, IT IS HEREBY ORDERED THAT the Town shall:

1. Cease and desist from:

- a. Failing and refusing to bargain collectively in good faith with the Union by refusing to timely provide relevant and reasonably necessary information when requested by the Union;
- b. In any like or similar manner interfering with, restraining or coercing employees in the exercise of their rights protected under the Law.

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

- a. Sign and post immediately in conspicuous places employees usually congregate or where notices to employees are usually posted, including electronically, if the Town customarily communicates to its employees via intranet or email, and maintain for a period of thirty (30) consecutive days thereafter signed copies of the attached Notice to Employees.
- b. 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

  
KERRY BONNER, ESQ.

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 the ten days, this decision shall become final and binding on the parties.



**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 (DLR) has held that the Town of Plymouth (Town) violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to timely provide the Plymouth Police Brotherhood (Union) with information that is relevant and reasonably necessary for the performance of its duties as the exclusive collective bargaining representative.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; 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 Town assures its employees that:

- WE WILL NOT fail or refuse to bargain in good faith with the Union by failing to timely provide relevant and reasonably necessary information.
- 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 take the following affirmative action that will effectuate the purpose of the Law:
  - 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.

\_\_\_\_\_  
For the Town

\_\_\_\_\_  
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, 1<sup>st</sup> Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).