

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
CITY OF MALDEN * Case No.: MUP-13-3190
*
and * Date Issued:
*
AFSCME, COUNCIL 93 * March 5, 2015

Hearing Officer:

Nicholas Chalupa, Esq.

Appearances:

Albert Mason, Esq. - Representing the City of Malden

Philip Brown, Esq. - Representing AFSCME, Council 93

HEARING OFFICER'S DECISION

Summary

1 The issue in this case is whether the City of Malden (City) failed to bargain in
2 good faith by conducting two drug and alcohol tests during the third quarter of 2013
3 without giving the AFSCME, Council 93 (Union) an opportunity to bargain to resolution
4 or impasse about the decision or its impacts on employees' terms and conditions of
5 employment. Based upon the City's Waiver of Hearing pursuant to 456 CMR 15.08, in
6 which it admitted the allegations in the complaint, I conclude that the City violated
7 Section 10(a)(5), and, derivatively, Section 10(a)(1) of the Law.

8 Statement of the Case

9 On October 8, 2013, the Union filed a charge of prohibited practice with the
10 Department of Labor Relations (DLR) alleging that the City had engaged in prohibited

1 practices within the meaning of Section 10(a)(3), Section 10(a)(5), and derivatively,
2 10(a)(1) of the Law. A DLR investigator conducted an investigation on March 18, 2014.
3 On April 25, 2014, the investigator issued a complaint of prohibited practice and a
4 partial dismissal.¹ On April 30, 2014, the City filed an answer and Motion for
5 Reconsideration and Dismissal of the Complaint in which it denied certain allegations in
6 the complaint, including allegations that the City violated the Law. On May 2, 2014, the
7 DLR denied the City's Motion for Reconsideration. The DLR scheduled the case for a
8 hearing on March 10, 2015.

9 On February 18, 2015, the City filed a motion to waive the hearing, which I
10 subsequently allowed. By its motion, the City amended its answer and admitted all of
11 the allegations in the complaint. Because the City admitted to the allegations in the
12 complaint, there was no need for a hearing. The allegations of the complaint now
13 admitted as true constitute the facts and legal conclusions upon which I base my order,
14 and they are as follows:

- 15 1. The City is a public employer within the meaning of Section 1 of the Law.
- 16 2. The Union is an employee organization within the meaning of Section 1 of
17 the Law.
- 18 3. The Union is the exclusive bargaining representative for a unit that
19 includes working foremen, laborers, craftsmen and motor equipment
20 operators employed by the City.
- 21 4. Prior to 2013, the City conducted four drug and alcohol tests a year for
22 bargaining unit employees, one during each quarter of the year.
- 23 5. On or about July 17 and September 19, 2013, the City conducted two drug
24 and alcohol tests during the third quarter.
- 25
- 26
- 27
- 28
- 29

¹ The investigator dismissed the Union's allegation that the City violated section 10(a)(3) of the Law.

1 To establish a unilateral change violation, the charging party must show that: 1)
 2 the employer altered an existing practice or instituted a new one; 2) the change affected
 3 a mandatory subject of bargaining; and 3) the change was established without prior
 4 notice or an opportunity to bargain. City of Boston, 20 MLC 1603, 1607, MUP-7976
 5 (1994); Commonwealth of Massachusetts, 20 MLC 1545, 1552, SUP-3460 (May 13,
 6 1994). Drug and alcohol testing is a mandatory subject of bargaining. Town of
 7 Plymouth, 26 MLC 220, 223, MUP-1465 (June 7, 2000).

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

11 ORDER

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

- 13
- 14 1. Cease and desist from:
- 15
- 16
- 17 a. Conducting more than one drug and alcohol test in one quarter without
- 18 first giving the Union notice and an opportunity to bargain to resolution
- 19 or impasse over the decision and its impacts.
- 20
- 21 b. Failing or refusing to bargain collectively and in good faith with the
- 22 Union over the schedule of drug and alcohol testing.
- 23
- 24 c. In any like manner, interfering with, restraining and coercing its
- 25 employees in any right guaranteed under the Law.
- 26
- 27 2. Take the following action that will effectuate the purposes of the Law.
- 28
- 29 a. Restore the prior practice of limiting drug and alcohol testing of unit
- 30 employees to once per quarter.
- 31
- 32 b. Upon request, bargain with the Union over the decision to perform drug
- 33 and alcohol testing of unit employees more than once per quarter, and
- 34 the impacts of that decision.
- 35

- 1 c. Sign and post immediately in conspicuous places employees usually
2 congregate or where notices to employees are usually posted,
3 including electronically, if the City customarily communicates to its
4 employees via intranet or email, and maintain for a period of thirty (30)
5 consecutive days thereafter signed copies of the attached Notice to
6 Employees.
- 7
- 8 c. Notify the DLR within ten (10) days after the date of service of this
9 decision and order of the steps taken to comply with its terms.

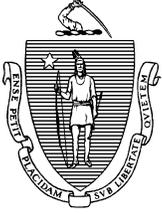
SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NICHOLAS CHALUPA
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, the decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

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

A hearing officer of the Massachusetts Department of Labor Relations has held that the City of Malden (City) has violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain in good faith by unilaterally altering the schedule of drug and alcohol testing without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision and its impacts. The hearing officer also held that the Town violated Section 10(a)(1) of the Law when it interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 2 of the Law.

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

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

WE WILL NOT unilaterally alter the schedule of drug and alcohol testing of unit members without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision and its impacts.

WE WILL NOT fail or refuse to bargain collectively and in good faith with the Union over the issue of drug and alcohol testing of unit members.

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

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

Restore the practice of limiting the frequency of drug and alcohol testing of unit employees to once per quarter.

Upon request, bargain with the Union in good faith to resolution or impasse over the decision to perform drug and alcohol testing of unit employees more than once per quarter, and the impacts of that decision.

City of Malden

Date

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

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