

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS  
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

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In the Matter of

CITY OF SPRINGFIELD

and

SPRINGFIELD ORGANIZATION OF LIBRARY  
EMPLOYEES

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Case No.: MUP-09-5623

Date Issued: May 29, 2015

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Board Members Participating:

Marjorie F. Wittner, Chair  
Elizabeth Neumeier, CERB Member  
Harris Freeman, CERB Member

Appearances:

Maurice M. Cahillane, Esq. - Representing the City of Springfield  
Marshall T. Moriarty, Esq. - Representing the Springfield Organization of  
Library Employees

**DECISION ON APPEAL OF HEARING OFFICER'S DECISION**

Summary

1 On July 18, 2014, a Department of Labor Relations Hearing Officer issued a  
2 decision in the above-captioned matter.<sup>1</sup> The complaint alleged that the City of  
3 Springfield (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. c.

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<sup>1</sup> The full text of the Hearing Officer's decision is attached to the slip opinion of this decision and reported at 41 MLC 9 (2014).

1 150E by: 1) unilaterally reducing the hours of work and benefits of a part-time senior  
2 clerk position (Senior Clerk); and 2) engaging in direct dealing by hiring two employees  
3 and recalling a third employee into 18.5 hour, non-benefited Senior Clerk positions. The  
4 Hearing Officer found that the City violated the Law by unilaterally reducing the hours of  
5 work and benefits of the part-time Senior Clerk position. He also found that the City had  
6 violated the Law by communicating directly with the employee recalled into the 18.5-  
7 hour title, but not by communicating directly with the new hires.

8 The City filed a timely notice of appeal of the Hearing Officer's decision to the  
9 Commonwealth Employment Relations Board (CERB) arguing, among other things, that  
10 the Hearing Officer erred by rejecting its affirmative contract waiver defense.

11 As elaborated below, we agree with the City on this point. We therefore reverse  
12 the decision and do not reach the other issues raised on appeal.<sup>2</sup>

### 13 Facts

14 The parties stipulated to certain facts and the Hearing Officer made additional  
15 findings, which are not in dispute.<sup>3</sup> We therefore adopt the stipulations and findings,  
16 and summarize them briefly below.

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<sup>2</sup> The City also challenged the Hearing Officer's legal conclusions that the Union did not waive its right to bargain by inaction and that the City had engaged in direct dealing. We need not reach this issue because we have found that the City had no obligation to bargain before hiring or recalling part-time Senior Clerks to work 18.5 hours per week without benefits. Procedurally, the City challenged the Hearing Officer's refusal to grant its post-hearing motion to re-open the record to submit certain documents from 1997 and his determination that the charge was timely filed. Given our dismissal of the complaint, there is also no need to reach this issue.

<sup>3</sup> Although the Union argued that the City's Supplementary Statement contained facts that were neither stipulated to nor agreed to or found by the Hearing Officer, it fails to identify those facts. We further find no basis for the Union's assertion that the City's

1 From June 30, 2004 to June 30, 2009, the City was under the control of the  
2 Springfield Finance Control Board (Control Board), which oversaw all financial and  
3 personnel decisions. The Control Board established a Personnel Review Committee  
4 (PRC), which reviewed all new position requests. During this period, the City/Control  
5 Board and the Union executed two collective bargaining agreements that were in effect  
6 from July 1, 2005 to June 30, 2008 (2005-2008 CBA) and July 1, 2008 to June 30, 2011  
7 (2008-2011 CBA).

8 The key events in this case began in early 2008, when the Library Director  
9 sought to fill a 20-hour part-time vacancy caused by the retirement of employee  
10 Jacqueline Newlin (Newlin). The PRC denied the request and told the Library Director  
11 that she could not fill another 20-hour position. This led the Library Director in April  
12 2008 to submit a new request to fill "a formerly 20-hr position at 18.5 hours in order to  
13 save benefits costs." The PRC approved this request as well as an identical request  
14 that the Library Director made to fill the vacancy caused by the departure of a second  
15 20-hour Senior Clerk, Althea Delevaux (Delevaux) at 18.5 hours. Both vacancies were  
16 filled with new hires, who worked 18.5 hours a week.

17 A third 20-hour senior clerk, Hope Gamble (Gamble) retired in 2009. The Library  
18 Business Manager made a request to fill Gamble's position as a 20-hour position, but  
19 the PRC advised her that it would not fill a 20-hour position but it would fill it at 18.5  
20 hours. The City then called Rose Talmont (Talmont), a former 20-hour Senior Clerk  
21 who was the most senior of a group of employees the City had laid off three months

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facts were inaccurate or went beyond the record because, again, the Union failed to identify those facts.

1 earlier. The City offered to recall Talmont to the 18.5-hour Senior Clerk position that the  
2 PRC had approved. Talmont originally declined the non-benefited position but accepted  
3 it the next day.

4 The 2008-2011 CBA contains the following provisions regarding part-time  
5 employees:

6 Article 28, Temporary and Part-Time Employees  
7

8 Section 1 - The City shall have the right to employ temporary and/or part-time  
9 employees subject to the restrictions imposed in this Article.

10 \*\*\*

11 Section 3 - Part-time employees are those who are regularly scheduled to work  
12 less than thirty (30) hours per week. Part-time employees are entitled to  
13 retirement or group insurance benefits but shall be entitled to all other benefits on  
14 a prorated basis. Part-time employees who work less than twenty (20) hours a  
15 week shall not be entitled to retirement or group insurance benefits.

16 The 2008-2011 CBA also states in pertinent part:

17 Article 4 Responsibilities of Management  
18

19 Section 1 - The City and the Union agree that the rights and  
20 responsibilities to operate and manage the business and the affairs of the  
21 Library Department are vested exclusively in the City subject to the  
22 specific restrictions in this Agreement. These rights and responsibilities  
23 include (by way of illustration) the right to determine, control and change  
24 work operations and practices, service quality inspections and standards,  
25 service and shift schedules, work and shift assignments, hours of work  
26 and distribution of overtime, the work week and the work day, the size and  
27 organization of the staff; to control, determine and change the manner and  
28 the extent to which the City's equipment, facilities and properties shall be  
29 operated, laid out, increased, discontinued temporarily or permanently in  
30 whole or in part, decreased or located and to introduce, operate and  
31 change new or improved methods, facilities, techniques and processes; to  
32 establish, expand, reduce, alter, combine, consolidate or abolish any  
33 department, operation or service; to select, test, train, supervise and  
34 evaluate ability and qualifications of employees; to upgrade, downgrade,  
35 change, transfer, leave unfilled or abolish particular job positions or  
36 classifications; to obtain from any source and to contract and subcontract  
37 for materials, services, supplies and equipment. . . . The provisions of this  
38 Agreement shall not limit or be construed to limit or restrict the inherent  
39 and common law right of the City and management to control, direct,

1 manage and make changes in the operations and the affairs of the Library  
2 Department....

3  
4 Article 8, Hours of Work and Overtime

5  
6 Section 1 - The normal work week for full time day shift employees shall  
7 consist of thirty-seven and one-half (37½) hours of work exclusive of lunch  
8 periods, but including breaks, within a calendar week beginning Sunday at  
9 12.01 a.m. and ending Saturday at 11:59 p.m. Part time employees shall  
10 be paid at an hourly rate based upon a forty (40) hours workweek.

11 \*\*\*  
12 Section 3 - Nothing in this Article shall be construed as a guarantee that  
13 any particular schedule or number of hours of work will be available.

14 Opinion<sup>4</sup>

15 The issue before us is whether the Hearing Officer correctly concluded that,  
16 despite the Union agreeing to certain provisions in the 2008-2011 CBA, it did not waive  
17 its right to bargain over the City's actions here. It is well-settled that to assert  
18 contractual waiver as an affirmative defense to a failure to bargain before changing  
19 employee wages, hours or working conditions, an employer has the burden of proving  
20 that the contract clearly, unequivocally and specifically authorizes its actions. City of  
21 Boston v. Labor Relations Commission, 48 Mass. App. Ct. 169, 174 (1999) (quoting  
22 Commonwealth of Massachusetts, 18 MLC 1403, 1405, SUP-3463 (April 30, 1992) and  
23 citing School Committee of Newton v. Labor Relations Commission, 388 Mass. 557,  
24 569 (1983) ("waiver must be shown clearly, unmistakably, and unequivocally").

25 The Hearing Officer found that the 2008-2011 CBA did not clearly and  
26 unambiguously give the City the unilateral right to "convert a pre-existing fully-benefited  
27 position into a position without health or retirement benefits by reducing the hours of  
28 work below the level at which the City is contractually required to provide those

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<sup>4</sup> The CERB's jurisdiction is not contested.

1 benefits.” The Hearing Officer further found that the City’s actions were a conversion of  
2 benefited positions into non-benefited positions, undertaken for the purpose of  
3 eliminating retirement and health insurance benefits and reducing costs. The Hearing  
4 Officer, citing Peabody School Committee, 28 MLC 19, MUP-2073 (June 21, 2001) and  
5 Commonwealth of Massachusetts, 18 MLC 1220, SUP-3426 (November 20, 1991),  
6 rejected the City’s contention that the Union had knowingly waived its right to bargain  
7 over this conversion of “positions with health insurance and retirement benefits to non-  
8 benefited positions through the reduction in hours” or the impacts of that decision.

9 On appeal, the City first argues that the Hearing Officer’s decision rests on the  
10 flawed premise that it changed *existing, benefited* 20-hour a week positions into 18.5-  
11 hour non-benefited positions by reducing the hours of work. The City contends that no  
12 changes to existing positions were made. Second, the City argues that the Union  
13 waived its right to bargain based on language in the 2008-2011 CBA that gave the City  
14 the right to hire persons into 18.5-hour positions.

15 The Hearing Officer found that the “contractual language clearly establishes the  
16 City’s right to employ employees in part-time positions – even positions working less  
17 than 20 hours per week -- and deny retirement and health insurance benefits to  
18 employees who work less than 20 hours per week.” We agree.<sup>5</sup> However, we also

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<sup>5</sup> We note that each of the 20-hour Senior Clerk positions was vacant at the time the PRC agreed to allow 18.5-hour Senior Clerk non-benefited positions to be filled. Nevertheless, regardless of whether the disputed action is viewed as converting “pre-existing” positions into positions without health insurance and retirement benefits by reducing work hours or as creating new positions, the essential question remains: did the Union waive its right to bargain over the decision and the impacts of the decision to hire Senior Clerks to work 18.5 hours per week, without benefits.

1 agree with the City's claim that the Union waived its right to bargain over its actions by  
2 agreeing to certain provisions of the CBA.

3 Pursuant to the management rights clause contained in Article 4, Section 1, the  
4 parties agreed that:

5 [T]he rights and responsibilities to operate and manage the business and  
6 the affairs of the Library Department are vested exclusively in the City  
7 subject to the specific restrictions in this Agreement. These rights and  
8 responsibilities include (by way of illustration) the right to determine,  
9 control and change . . . hours of work. . . ., the workweek and the work  
10 day, the size and organization of the staff; ... to upgrade, downgrade,  
11 change, transfer, leave unfilled or abolish particular job positions or  
12 classifications....

13  
14 Further, Article 28, Section 1 of the 2008-2011 CBA authorizes the City to employ part-  
15 time employees and Article 28, Section 3 denies retirement or group insurance benefits  
16 to employees who work less than 20 hours per week, although they are to receive other  
17 benefits on a prorated basis. This clear and specific language makes this case  
18 distinguishable from the decisions cited by the Hearing Officer and, as discussed below,  
19 demonstrates that the City has met its burden of proving that the contract clearly and  
20 unequivocally authorized its actions. City of Boston, 48 Mass. App. Ct. at 174.

21 The issue in Peabody School Committee was whether the union had waived by  
22 contract its right to bargain when, without giving the union prior notice or the opportunity  
23 to bargain, the School Committee included an unpaid block of downtime in what  
24 previously had been an eight-hour work day. 28 MLC at 20-21. Provisions in the CBA  
25 for certain other classes of employees specified that, except in emergencies, their  
26 schedules could not be changed without mutual agreement of the parties. Id. at 19-20.  
27 The CERB rejected the School Committee's argument that the absence of similar  
28 language for the transportation employees meant that the schedule change was

1 permitted. Id. at 20. The CERB held that the School Committee failed to carry its  
2 burden of demonstrating that the parties consciously considered the situation that has  
3 arisen and that the union knowingly waived its bargaining rights. Id. (citations omitted).

4 Here, the parties not only negotiated a provision for the hiring of part-time  
5 employees, but they also negotiated what benefits should attach to such positions.  
6 They also contemplated part-time employees being hired to work for fewer than 20  
7 hours per week and specified that lesser benefits would be available to those  
8 employees. Thus, unlike the CBA in Peabody School Committee where the CBA was  
9 silent as to the management action, here, the CBA made specific provisions for the  
10 action taken.

11 The CERB addressed the contract waiver issue again in Commonwealth of  
12 Massachusetts, 18 MLC 1220. In that case, in the wake of a state budget crisis, the  
13 Department of Mental Health (DMH) implemented a reduction in force that included a  
14 large-scale involuntary transfer of employees. Id. at 1221. The issue before the CERB  
15 was whether language in the management rights clause of the parties' CBA that granted  
16 the Commonwealth the right "to exercise complete control and discretion over its  
17 organization and technology including but not limited to the determination of...the  
18 appointment, promotion, assignment, direction and transfer of personnel," permitted the  
19 Commonwealth to make involuntary transfers without first satisfying its statutory  
20 bargaining obligation. Id. at 1224 and n. 4. Because the transfers had occurred in the  
21 context of a reduction in force, the CERB held that the employer had a duty to bargain  
22 over the method and means of reducing the size of the workforce and thus analyzed  
23 whether the contract language coupled with the parties' "zipper clause" constituted a

1 waiver of the union's right to bargain about this issue. Id. at 1225 (citing School  
2 Committee of Newton v. Labor Relations Commission, 388 Mass. at 562). The CERB  
3 held that it did not. Id. The CERB further held that even though the management rights  
4 clause granted the Commonwealth the right unilaterally to decide to transfer employees,  
5 it did not relieve the Commonwealth of its duty to bargain over the impacts of the  
6 transfers. Id. at 1225-1226.

7 We distinguish Commonwealth of Massachusetts based on the significant  
8 differences in the language of the DMH management rights clause and the Springfield  
9 management rights clause now before us. The DMH language permitted the  
10 Commonwealth to transfer personnel, but the management rights clause in this case is  
11 more specific, permitting the City to "upgrade, downgrade, change, transfer, leave  
12 unfilled or abolish particular job positions or classifications" and granting the City the  
13 right to "determine, control and change," "hours of work . . . the work week and the work  
14 day."

15 Further, in Commonwealth of Massachusetts, the parties had negotiated in  
16 Article 20 of their CBA a provision that permitted the employer to reduce the workforce  
17 by laying off non-civil service employees according to certain procedures, and described  
18 when further bargaining had to occur to develop acceptable bumping procedures. Id. at  
19 1225-1226, n. 7. The CERB noted that, had the Commonwealth implemented its  
20 reduction in workforce in that manner, this language, coupled with the "zipper" clause,  
21 would have been sufficient to relieve it of any further statutory duty to bargain about the  
22 decision to lay off non-civil service employees. Id.

1           Similarly, the CBA now before us shows that the parties fully negotiated for: 1)  
2 the City's right to upgrade, downgrade, change, transfer, leave unfilled or abolish  
3 particular job positions or classifications; 2) the hiring of part-time employees; 3) the  
4 benefits available to part-time employees; 4) the hiring of part-time employees for fewer  
5 than 20 hours per week; and 5) reduced benefits for part-time employees working fewer  
6 than 20 hours per week. In other words, these provisions not only establish that the  
7 Union did bargain over the City's right not to fill the 20-hour Senior Clerk positions and  
8 to create the 18.5-hour positions, they bargained over the impact of the creation of  
9 those positions, i.e., the compensation and benefits the 18.5-hour senior clerks should  
10 receive.

11           Other than arguing generally in its post-hearing brief that the change in hours  
12 had an adverse impact on bargaining unit members' compensation and benefits, the  
13 Union did not identify any other impacts over which the City should have bargained. We  
14 decline to speculate as to how terms and conditions of employment may have been  
15 impacted in ways other than those already covered in the current CBA. Further, the  
16 Union's main argument in response to the City's supplementary statement is that the  
17 City fails to identify errors of law or fact or other grounds that would warrant overturning  
18 the decision under the DLR Rules or under the Administrative Procedures Act, M.G.L. c.  
19 30A, §1. We disagree. As described above, the City challenged the Hearing Officer's  
20 legal conclusions as unsupported by the facts of the case. Those arguments meet the  
21 standards set forth in DLR Rule 13.15(5), 456 CMR 13.15(5), which requires a party  
22 claiming that the Hearing Officer has made errors of law to "identify the challenged

1 conclusions...and ...explain the basis upon which the party believes the conclusions to  
2 be erroneous." The City's supplementary statement satisfies these requirements.

3 Conclusion

4 For the above reasons, we find that the language of the contract does constitute  
5 a waiver of the Union's right to bargain over establishing and filling the three 18.5-hour  
6 senior clerk positions and their terms and conditions of employment. Accordingly, the  
7 Hearing Officer's decision is reversed and the Complaint is dismissed.

8 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS  
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

  
\_\_\_\_\_  
MARJORIE F. WITTNER, CHAIR

  
\_\_\_\_\_  
ELIZABETH NEUMEIER, CERB MEMBER

  
\_\_\_\_\_  
HARRIS FREEMAN, CERB MEMBER

**HEARING OFFICER DECISION**

**COMMONWEALTH OF MASSACHUSETTS  
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CITY OF SPRINGFIELD

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SPRINGFIELD ORGANIZATION OF LIBRARY \*  
EMPLOYEES \*

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Case No.: MUP-09-5623

Date Issued:  
July 18, 2014

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Hearing Officer:

Timothy Hatfield, Esq.

Appearances:

Maurice M. Cahillane, Esq. - Representing the City of Springfield

Marshall T. Moriarty, Esq. - Representing the Springfield Organization of  
Library Employees

**HEARING OFFICER'S DECISION**

**Summary**

1           The issues in this case are whether the City of Springfield (City) violated Section  
2 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the  
3 Law) when it: 1) unilaterally reduced the hours of work and benefits of the part-time  
4 senior clerk position; and/or 2) bypassed the Springfield Organization of Library  
5 Employees (SOLE or Union) when it hired Leslie Lewis (Lewis) and Marion Fontaine  
6 (Fontaine), and offered to recall Rose Talmont (Talmont) to employment into non-

1 (Fontaine), and offered to recall Rose Talmont (Talmont) to employment into non-  
2 benefitted,<sup>6</sup> 18.5 hour senior clerk positions. I find that the City violated the Law by  
3 unilaterally reducing the hours of work and benefits of the part-time senior clerk position  
4 and communicating directly with Talmont about recalling her to a non-benefitted 18.5  
5 hour senior clerk position. However, the City did not violate the Law by offering to hire  
6 Lewis and Fontaine into non-benefitted, 18.5 hour senior clerk positions.

#### 7 Statement of the Case

8 On September 17, 2009, the Union filed a charge of prohibited practice with the  
9 Department of Labor Relations (DLR) alleging that the City had engaged in prohibited  
10 practices within the meaning of Sections 10(a)(5) and 10(a)(1) of Massachusetts  
11 General Laws, Chapter 150E. The DLR investigated the charge on December 4, 2009,  
12 and issued a Complaint of Prohibited Practice on February 11, 2010. Count I of the  
13 two-count Complaint alleges that the City reduced the hours of work for the part-time  
14 senior clerk bargaining unit position without giving the Union prior notice and an  
15 opportunity to bargain over the decision and impact of that decision on employee terms  
16 and conditions of employment. Count II alleges that the City unlawfully bypassed the  
17 Union and dealt directly with bargaining unit members when it hired Fontaine and Lewis  
18 into no-benefit 18.5 hour senior clerk positions, and offered to recall Talmont into a no-

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<sup>6</sup> In this decision, I call the 18.5 hour positions “non-benefitted” because, as described in the Findings of Fact, the City referred to them as “part time no benefit positions” in its employment offers to Lewis, Fontaine, and Talmont. However, as discussed, infra, the credible evidence demonstrates that while these positions carried no retirement or health insurance benefits, the employees in these positions received prorated sick, vacation, and personal time, as well as certain paid holidays.

1 benefit 18.5 hour senior clerk position (18.5 hour positions). The City filed an answer to  
2 the Complaint on or about February 25, 2010.

3 I conducted a hearing on December 17, 2010, at which both parties had the  
4 opportunity to be heard, to examine witnesses and to introduce evidence. The parties  
5 filed post-hearing briefs on or about February 1, 2011.<sup>7</sup> Based on the record, which  
6 includes witness testimony, my observation of the witnesses' demeanor, stipulations of  
7 fact and documentary exhibits, and in consideration of the parties' arguments, I make  
8 the following findings of fact and render the following opinion.

9 Stipulations of Fact

- 10 1. The City is a public employer within the meaning of the Law.
- 11
- 12 2. The Union is an employee organization within the meaning of Section 1 of
- 13 the Law.
- 14

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<sup>7</sup> The City filed a Motion and supporting affidavit on February 7, 2011 to reopen the record to submit additional exhibits. I hereby deny the Motion. The exhibits that the City proffers are: 1) a letter dated July 11, 1997 to Anne Marie Griffin, who later became the Union's president, confirming her appointment to a non-benefitted, part-time, 12 hour clerk position; and 2) an August 4, 1997 internal vacancy posting for a 12 hour part-time clerk position at the Forest Park/16 Acres branch of the Library. According to the City, these exhibits show that in 1997, the City hired employees into part-time, non-benefitted positions.

Absent extraordinary reasons, the Commonwealth Employment Relations Board (Board) will not re-open a record. AFSCME, Council 93, 31 MLC 180, 181, MUPL-4257 (June 3, 2005). A party that seeks to re-open the record must demonstrate excusable ignorance of the evidence at the time of the hearing despite the exercise of reasonable diligence. Id. The City argues that the exhibits are relevant because they show the Union's knowledge of non-benefitted part-time positions that existed prior to the first collective bargaining agreement. However, the City offers no reason why, in the exercise of reasonable diligence, it could not have discovered documents from 1997 prior to the close of the record. I find no extraordinary reason to re-open the record, and thus I decline to do so.

- 1           3.     The Union is the exclusive bargaining representative for full-time and  
2           regular part-time clerical and administrative employees employed by the  
3           City in its Library Department.
- 4
- 5           4.     By letter dated September 30, 2008, the City hired Leslie Lewis to fill the  
6           part-time senior clerk position at 18.5 hours per week.
- 7
- 8           5.     By letter dated September 30, 2008, the City hired Marion Fontaine to fill  
9           the part-time senior clerk position at 18.5 hours per week.
- 10
- 11          6.     Prior to April 2009, the City employed Rose Talmont in the position of part-  
12          time senior clerk at 20 hours per week with benefits.
- 13
- 14          7.     In April of 2009, the City laid off Talmont from [the] position of part-time  
15          senior clerk at 20 hours per week with benefits.
- 16
- 17          8.     By letter dated July 15, 2009, the City offered to recall Talmont to the  
18          position of part-time senior clerk at 18.5 hours per week.
- 19
- 20

Findings of Fact

21    **Background**

22           Prior to July 1, 2003, the Springfield Library was part of the Springfield Library  
23    Museum Association, which oversaw the operation of the library system and four  
24    museums. On July 1, 2003, the Library became a City department. The Library is  
25    comprised of a Central Library and nine branches that are located throughout the City.

26           When the Springfield Library Museum Association governed the Library, the  
27    clerical employees were not represented by a union. On March 18, 2004, the former  
28    Labor Relations Commission<sup>8</sup> certified the Union as the exclusive bargaining

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<sup>8</sup> Pursuant to Chapter 145 of the Acts of 2007, the [DLR] "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board is the body within the DLR charged with deciding adjudicatory matters. References to the Board include the Commission.

1 representative of the employees in a clerical and administrative bargaining unit.<sup>9</sup> The  
2 bargaining unit includes the position title of senior clerk, and the City employed senior  
3 clerks in both full and part-time positions.<sup>10</sup> From around 1990 and continuing for  
4 approximately ten years, the Library employed 12 and 16 hour part-time clerks and  
5 librarians, and did not pay retirement and/or health insurance benefits to employees in  
6 those positions. However, from approximately 2003 until 2008, all part-time senior  
7 clerks worked in 20-hour per week, fully-benefitted positions.

8 From June 30, 2004 to June 30, 2009, the City was under the control of the  
9 Springfield<sup>±</sup> Finance <sup>±</sup> Control Board<sup>±</sup> (Control Board) which oversaw all financial and  
10 personnel decisions.<sup>11</sup> The Control Board had established a Personnel Review  
11 Committee (Committee) which reviewed all new position requests.

12 **The Collective Bargaining Agreements between the City and the Union**<sup>12</sup>

13 After the Union's certification, the City and the Union executed a Memorandum of  
14 Agreement, which provided in pertinent part as follows: "[t]he parties agree to utilize the  
15 Agreement between the City of Springfield and AFSCME Local #1596 (Professional  
16 Librarians) for the period of July 1, 2003 to June 30, 2004 as a basis for a new collective  
17 bargaining agreement subject to revisions regarding the recognition provisions and the

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<sup>9</sup> AFSCME, Council 93, AFL-CIO represents the librarian titles in a separate bargaining unit.

<sup>10</sup> The bargaining unit also includes principal clerks, groundskeepers, and senior acquisition clerks.

<sup>11</sup> I take administrative notice of the date that the Control Board assumed control of the City's financial affairs.

<sup>12</sup> The record contains no evidence regarding the negotiations that led to the 2008-2011 CBA.

1 below agreed upon amendments....” The City/Control Board and the Union  
2 subsequently executed collective bargaining agreements that were in effect by their  
3 terms from July 1, 2005 to June 30, 2008, (2005-2008 CBA) and July 1, 2008 to June  
4 30, 2011 (2008-2011 CBA).

5 The 2008-2011 CBA provides in pertinent part as follows:

6 **Article 4 Responsibilities of Management**

7 Section 1.

8 The City and the Union agree that the rights and responsibilities to operate and manage  
9 the business and the affairs of the Library Department are vested exclusively in the City  
10 subject to the specific restrictions in this Agreement. These rights and responsibilities  
11 include (by way of illustration) the right to determine, control and change work  
12 operations and practices, service quality inspections and standards, service and shift  
13 schedules, work and shift assignments, hours of work and distribution of overtime, the  
14 work week and the work day, the size and organization of the staff; to control, determine  
15 and change the manner and the extent to which the City’s equipment, facilities and  
16 properties shall be operated, laid out, increased, discontinued temporarily or  
17 permanently in whole or in part, decreased or located and to introduce, operate and  
18 change new or improved methods, facilities, techniques and processes; to establish,  
19 expand, reduce, alter, combine, consolidate or abolish any department, operation or  
20 service; to select, test, train, supervise and evaluate ability and qualifications of  
21 employees; to upgrade, downgrade, change, transfer, leave unfilled or abolish particular  
22 job positions or classifications; to obtain from any source and to contract and  
23 subcontract for materials, services, supplies and equipment....The provisions of this  
24 Agreement shall not limit or be construed to limit or restrict the inherent and common  
25 law right of the City and management to control, direct, manage and make changes in  
26 the operations and the affairs of the Library Department....

27

28 **Article 8, Hours of Work and Overtime**

29 Section 1.

30 The normal work week for full time day shift employees shall consist of thirty-seven and  
31 one-half (37½) hours of work exclusive of lunch periods, but including breaks, within a  
32 calendar week beginning Sunday at 12.01 a.m. and ending Saturday at 11:59 p.m. Part  
33 time employees shall be paid at an hourly rate based upon a forty (40) hours workweek.

34

35 \*\*\*

36 Section 3.

37 Nothing in this Article shall be construed as a guarantee that any particular schedule or  
38 number of hours of work will be available.

39

40 **Article 28 Temporary and Part-Time Employees**

41 Section 1.

1 The City shall have the right to employ temporary and/or part-time employees subject to  
2 the restriction imposed in this Article.

3  
4 Section 2.  
5 Full-time temporary employees are those who are appointed to positions which are  
6 expected to be vacant for, or in the existence for, a specific time period of (3) months or  
7 less, except in cases of medical, Union, or maternity leave replacement when it shall be  
8 for the duration of such leave. Full-time temporary employees will be eligible for holiday  
9 pay on the same basis as other employees, but are not eligible for vacations or paid  
10 leaves of absence set forth in this Agreement nor for the group insurance or retirement  
11 plans except as otherwise provided for by statute.

12  
13 Section 3.  
14 Part-time employees are those who are regularly scheduled to work less than thirty (30)  
15 hour per week. Part-time employees are entitled to retirement or group insurance  
16 benefits but shall be entitled to all other benefits on a prorated basis. Part-time  
17 employees who work less than twenty (20) hours a week shall not be entitled to  
18 retirement or group insurance benefits.

19  
20 **New Senior clerks**

21 In early January 2008, then Library Director Emily Bader (Bader) sought to fill a  
22 20-hour part-time senior clerk position vacated by the retirement of employee  
23 Jacqueline Newlin (Newlin) from her 20-hour senior clerk position. Pursuant to  
24 procedures that the Control Board had implemented at that time, Bader submitted a  
25 vacancy request for a 20-hour senior clerk to the City's Personnel Department, which  
26 sent it to the Control Board's Personnel Review Committee. The Personnel Review  
27 Committee denied Bader's request, and she was told that she could not get another 20-  
28 hour position filled. Consequently, Bader submitted a new request on April 9, 2008,  
29 which stated in pertinent part: "[t]his is a request to fill a formerly 20-hr position at 18.5  
30 hours in order to save benefit costs..." She subsequently submitted a second request to  
31 fill another 20-hour senior clerk position with an 18.5 hour position to replace employee  
32 Althea Deleveaux (Deleveaux). The second request contained the same explanation

1 for seeking an 18.5 non-benefitted position. Both requests were subsequently  
2 approved.

3 Generally, after the City hires an individual into a library position, the library  
4 sends an announcement to employees by mail or email to welcome the new hire. The  
5 announcement gives the new employee's name and work location, but it contains no  
6 details about their work hours or pay. Thereafter, the Union gives the new employee  
7 paperwork to complete regarding Union membership and dues. The Union then  
8 forwards the completed paperwork back to the City to facilitate the dues deduction from  
9 their paychecks. Each week, the City gives the Union treasurer a list of all of the Union  
10 members who are paying Union dues.<sup>13</sup>

11 **Leslie Lewis and Marion Fontaine**

12 The City posted the two new 18.5 hour positions on the City's website<sup>14</sup> but did  
13 not notify the Union that Newlin's and Deleveaux's 20-hour, benefitted senior clerk  
14 positions had become 18.5 hour non-benefitted positions. Then Union Secretary  
15 Christine Livingston (Livingston) did not see the postings when the City posted them,  
16 and there is no evidence that any Union officer did.<sup>15</sup> By letters dated September 30,  
17 2008, the City offered the two part-time senior clerk positions to Leslie Lewis (Lewis)  
18 and Marion Fontaine (Fontaine), describing both positions as "part time no benefit" 18.5

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<sup>13</sup> Although the Union has the right to ask the City annually for a list of Union members, the Union had not done so since 2009.

<sup>14</sup> There is no clear evidence that the vacancy announcements were also posted on the Library website or the Library bulletin boards.

<sup>15</sup> Livingston testified that she did not search the City's website for new position postings, in part, because she did not have a home computer. She also testified that the Union had no records of Lewis's and Fontaine's positions.

1 hour per week positions. Lewis and Fontaine accepted the positions and served the six-  
2 month probationary period for new hires. The City did not notify the Union that it had  
3 offered these positions to Lewis and Fontaine, and the Union understood at that time  
4 that senior clerks worked no less than 20 hours per week. Although the evidentiary  
5 record<sup>16</sup> does not establish when Lewis and Fontaine separated from employment at  
6 the Library, they were no longer employed by December 17, 2010, the date of the  
7 hearing.

8 **Rose Talmont**

9 Prior to April of 2009, the City employed Rose Talmont (Talmont) in a 20-hour,  
10 fully benefitted senior clerk position. In April of 2009, the City laid Talmont (and certain  
11 other employees) off, but Talmont retained contractual recall rights.

12 Employee Hope Gamble (Gamble) subsequently retired, and the Library  
13 processed a vacancy request to the Personnel Review Committee on July 2, 2009 to fill  
14 the opening created by Gamble's retirement. The Personnel Review Committee  
15 advised Library Business Manager Carol Leaders (Leaders) at the Committee meeting  
16 that it would not fill a 20-hour position, but would fill it at 18.5 hours per week. Leaders  
17 then called Talmont, the most senior in the group of employees who had been laid off,  
18 and offered to recall Talmont to a senior clerk position at 18.5 hours per week. Leaders  
19 explained that, because it was an 18.5 hour position, Talmont would not receive any  
20 retirement or health benefits, but would also not waive her contractual right to be  
21 recalled to another position. Talmont initially declined the position, but accepted it the

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<sup>16</sup> The Union suggested in its opening statement and brief that Lewis and Fontaine were laid off in or around April of 2009.

1 next day. The City communicated its offer in writing by letter dated July 15, 2009,  
2 describing the position as a “part time no benefit” position at 18.5 hours per week.

3 The City did not notify the Union that it planned to offer or had offered Talmont an  
4 18.5 hour position without benefits, and it did not post the position. However, the Union  
5 learned on or about July 17, 2009 that the City had recalled Talmont to a non-benefitted  
6 position when the Union Secretary spoke to Talmont about her return to work. When  
7 Livingston, who at this point was the Union’s president, learned of the reduction in hours  
8 and benefits, she directed the Union’s lawyers to file an unfair labor practice charge,  
9 which they did on September 17, 2009.

#### 10 **20 Hour vs. 18.5 hour positions**

11 Employees holding 18.5 positions receive holiday pay if they work on a holiday.  
12 They also receive prorated personal, sick, and vacation time.<sup>17</sup> However, they do not  
13 receive credit toward retirement or health insurance benefits. At the time that it created  
14 the 18.5 hour positions, the City estimated that the cost of health insurance and  
15 retirement benefits was approximately \$15,000 per position.

#### 16 Opinion

#### 17 Unilateral Change

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<sup>17</sup> Livingston testified that, based on her understanding of the contract, employees working 18.5 hour positions did not receive vacation, personal and sick leave. I credit the contrary testimony of Springfield City Library Director Molly Fogarty (Fogarty). Fogarty’s testimony was consistent with the 2008-2011 CBA, which provides in Article 28, Section 3 that: “[p]art-time employees are entitled to retirement or group insurance benefits, but shall be entitled to all other benefits on a prorated basis. Part-time employees who work less than twenty (20) hours a week shall not be entitled to retirement or group insurance benefits.”

1           A public employer violates Sections 10(a)(5) and 10(a)(1) of the Law when it  
2 unilaterally alters a condition of employment involving a mandatory subject of bargaining  
3 without first bargaining with the union to resolution or impasse. School Committee of  
4 Newton v. Labor Relations Commission, 388 Mass. 557 (1983). To establish a  
5 violation, a union must demonstrate that there was a pre-existing practice, that the  
6 employer unilaterally changed that practice, and that the change impacted a mandatory  
7 subject of bargaining. Boston School Committee, 3 MLC 1603, 1605, MUP-2503, MUP-  
8 2528, MUP-2541 (April 15, 1977). Here, the City does not dispute the reduction in  
9 hours and benefits or argue that those topics are not mandatory subjects of bargaining.  
10 See M.G.L. c.150E, Section 6, Holyoke School Committee, 12 MLC 1443, 1450, MUP-  
11 5124, (December 20, 1985) (hours of work); Wood's Hole, Martha's Vineyard and  
12 Nantucket Steamship Authority, 14 MLC 1518, 1534, UP-2496 (February 3, 1988)  
13 (retirement benefits), Town of Dennis, 28 MLC 297, 301, MUP-2634 (April 3,  
14 2002)(health insurance benefits). Instead, the City argues that the Union waived any  
15 bargaining rights that it had by contract and inaction.<sup>18</sup>

#### 16           **Waiver by Contract**

17           An employer asserting contractual waiver as an affirmative defense must show  
18 that the parties consciously considered the situation that has arisen, and that the union

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<sup>18</sup> The City argues that the exhibits at issue in the Motion to Reopen the Record are relevant to the Union's knowledge of no benefit part-time positions existing prior to the first collective bargaining agreement. However, the fact that the City maintained part-time non-benefitted positions prior to the Union's certification is not material because the existence of those positions does not alter the fact that in 2008, four years after the Union was certified, the City changed the long-standing practice of employing senior clerks in 20 hour benefitted positions.

1 knowingly waived its bargaining rights. Central Berkshire Regional School Committee,  
2 31 MLC 191, 202, MUP-01-3231, MUP-01-3232, MUP-01-3233 (June 8, 2005). A  
3 waiver will not be lightly inferred, City of New Bedford, 38 MLC 239, 248, MUP-09-5581,  
4 MUP-09-5599 (April 3, 2012)(appeal pending), and there must be a clear and  
5 unmistakable showing that a waiver occurred through the bargaining process or the  
6 specific language of the agreement. Id. If the language of the contract is ambiguous,  
7 the Board will review the parties' bargaining history to determine whether the union  
8 intended to waive its rights. Massachusetts Board of Regents, 15 MLC 1265, 1269,  
9 SUP-2959 (November 18, 1988).

10 The City argues that the language of the contract could not be more clear.  
11 Article 4, §1 gives the City control over service and shift schedules, work and shift  
12 assignments, hours of work, the work week, the size and organization of the staff, the  
13 right to make changes in operations, and the right to upgrade, downgrade or change job  
14 descriptions. Article 8, §3, which states that there is no guarantee that a number of  
15 hours of work will be available, and Article 28, which gives the City the right to employ  
16 part-time employees (Section 1) and provides for those who work less than 20 hours  
17 per week (Section 3) would be meaningless if the City could not unilaterally create 18.5  
18 hour positions. Therefore, its argument goes, the City has already bargained for and  
19 obtained the right to employ non-benefitted workers for an 18.5 hour week. I am not  
20 persuaded by the City's arguments.

21 The contractual language clearly establishes the City's right to employ  
22 employees in part-time positions – even positions working less than 20 hours per week  
23 – and deny retirement and health insurance benefits to employees who work less than

1 20 hours per week. However, the contractual language does not clearly and  
2 unambiguously give the City the unilateral right to do what it did here: convert a pre-  
3 existing fully benefitted position into a position without health insurance or retirement  
4 benefits by reducing the hours of work below the level at which the City is contractually  
5 required to provide health insurance and retirement benefits. This action differs  
6 materially from simply adjusting or reducing an employee's work hours, work day, or  
7 work schedule. Instead, it eliminates hours for the specific purpose of eliminating  
8 retirement and health insurance benefits and reducing costs. While this action may  
9 have comported with the Control Board's intended role and function, there is no  
10 evidence that the parties consciously considered this scenario at the bargaining table,  
11 and that the Union knowingly waived its right to bargain over the decision and the  
12 impact of the decision to convert positions with health insurance and retirement benefits  
13 to non-benefitted positions by the reduction of hours. Accord, City of Peabody, 28 MLC  
14 19, MUP-2073 (June 21, 2001) (contract did not expressly or by necessary implication  
15 allow the school committee to change employee work schedules by implementing an  
16 unpaid block of downtime); Commonwealth of Massachusetts, 18 MLC 1220, SUP-3426  
17 (November 20, 1991) (involuntary reassignments did not constitute mere transfer of  
18 employee from one work location to another, but rather, a method of implementing a  
19 reduction in force; and contractual language giving employer the right to transfer  
20 personnel did not establish a knowing, conscious, and unequivocal waiver of the union's  
21 right to bargain over the means and method of reducing the size of the workforce.) At  
22 best, the contract language is ambiguous with respect to the City's right to change a  
23 benefitted position to a non-benefitted position by reducing its work hours, and there is

1 no bargaining history that illuminates the parties' intent.<sup>19</sup> I am not persuaded that the  
2 Union's agreement to language regarding changes in work hours and schedules, no  
3 guaranteed minimum number of hours, and the employment of part-time employees  
4 necessarily shows that it waived its right to bargain over a decision to strip a position of  
5 health insurance and retirement benefits by reducing work hours. Accordingly, I find  
6 that the City did not meet its burden to show that the Union knowingly and unmistakably  
7 waived its bargaining rights.

### 8 **Waiver by Inaction**

9 A union waives its right to bargain by inaction if the union had: 1) actual  
10 knowledge or notice of the proposed action; 2) a reasonable opportunity to negotiate  
11 about the proposed action; and 3) unreasonably or inexplicably failed to bargain or  
12 request bargaining. Ashburnham-Westminster Regional School District, 29 MLC 191,  
13 194, MUP-01-3144 (April 9, 2003). Although the City does not argue that it gave the  
14 Union notice before reducing the hours and benefits of the part-time senior clerk  
15 position, and concedes in its opening statement that it cannot prove the Union's actual  
16 knowledge of the change, it nevertheless contends that the Union waived any  
17 bargaining rights that it may have had by failing to act when the City hired Lewis and  
18 Fontaine in 2008. According to the City, it did not conceal its decision to hire employees  
19 into the 18.5 hour positions, and the Union had access to information by which it could  
20 have learned of the change. Further, it was not the City's responsibility, it says, to  
21 anticipate that the Union would interpret the collective bargaining agreement to prohibit

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<sup>19</sup> The fact that the parties initially used a contract between AFSCME and the City as a basis for their initial MOA does not clearly and unmistakably show that the Union waived its bargaining rights over the change at issue.

1 the disputed actions and notify the Union that it is hiring someone on certain terms. I  
2 am not persuaded by these arguments either.

3 First, to satisfy the burden of proof for a waiver by inaction defense, an employer  
4 must show that it notified the union of a proposed change or that the union had actual  
5 knowledge of the change. Town of Milford, 15 MLC 1247, 1252, MUP-6670 (November  
6 9, 1988). Here, the City has not established either factor. The City did not notify the  
7 Union of the changed hours and benefits for the part-time senior clerk position and  
8 acknowledges that the Union had no actual knowledge of it. Although the City suggests  
9 that the Union had an ample opportunity to discover the new 18.5 hour positions from  
10 the Library practice of announcing new hires by email, providing the Union with an  
11 employee list, and posting new positions on the internet, its argument that the Union  
12 should have pieced the puzzle together and demanded bargaining does not satisfy its  
13 burden. A union is not required to demand bargaining when the only available  
14 information consists of rumors or speculation. City of Gardner, 10 MLC 1218, 1222,  
15 MUP-4917 (September 14, 1983). There is no evidence that the City actually posted  
16 Lewis's and Fontaine's positions on the Library website and bulletin boards, and even if  
17 it did, no evidence that Union officials saw the postings. Livingston did not search the  
18 City website, the Union had no records of Lewis's and Fontaine's new positions, and did  
19 not know at that time that any senior clerk was working less than 20 hours per week.  
20 Thus, the City's defense fails because there is no evidence that the City notified the  
21 Union that it was changing the hours and benefits of the part-time senior clerk position

22

1 or that the Union knew of the change.<sup>20</sup>

2           Finally, there is no merit to the City's contention that it had no duty to notify the  
3 Union of the changes to the part-time senior clerk position because it could not have  
4 anticipated the Union's response. As previously noted, there is no contractual provision  
5 that clearly and unambiguously allows the City to unilaterally convert a benefitted  
6 position to a non-benefitted position by reducing its hours. Moreover, eliminating health  
7 insurance and retirement benefits from a part-time position is a significant change that  
8 the Union would likely protest. Thus, I reject as baseless the City's argument that it  
9 had no duty to notify the Union of the change because the Union's reaction was wholly  
10 unexpected.

11 **Direct Dealing**<sup>21</sup>

12           The duty to bargain collectively with the employees' exclusive representative  
13 necessarily entails the duty to refrain from circumventing the union by dealing directly  
14 with bargaining unit members on mandatory subjects of bargaining. Town of Ludlow, 28

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<sup>20</sup> In the last sentence of its brief, the City also contended that the Union's charge was untimely. DLR Rule 15.03, 456 CMR 15.03 provides that: [e]xcept for good cause shown, no charge shall be entertained by the [DLR] based upon any prohibited practice occurring more than six months prior to the filing of a charge with the [DLR]." To be timely, a charge of prohibited practice must be filed with the DLR within six months from the date the violation became known or should have become known to the charging party, unless good cause is shown. Felton v. Labor Relations Commission, 33 Mass. App. Ct. 926 (1982). As discussed above, the evidence shows that the Union did not actually know of the hours and benefit changes to the part-time senior clerk position. Without receiving a new position posting or being told about the new hours and benefits, the differences between the Newlin/Deleveaux's 20 hour benefitted positions and Lewis/Fontaine's 18.5 hour non-benefitted positions were probably unnoticeable to the Union. Consequently, there is no reason that the Union should have known of the change. I therefore find that the charge was timely filed.

<sup>21</sup> The City's brief did not address the direct dealing allegations.

1 MLC 365, 367, MUP-2422 (May 17, 2002) (citing Service Employees International  
2 Union (SEIU), AFL-CIO, Local 509 v. Labor Relations Commission, 431 Mass. 710  
3 (2000)). Direct dealing is impermissible for at least two reasons. First, direct dealing  
4 violates the union's statutory right to speak exclusively for the employees who have  
5 elected it to serve as their sole representative. Suffolk County Sheriff's Department, 28  
6 MLC 253, 259, MUP-2840 (January 30, 2002) (citing SEIU, Local 509, 431 Mass. 710  
7 (2000)). Second, direct dealing undermines the employees' belief that the union actually  
8 possesses the power of exclusive representation to which the statute entitles it. Id.

9 In Frick, Vass, & Street Inc. and International Brotherhood of Painters, 270 NLRB  
10 459 (1984), the employer contacted two employees on layoff status and offered them a  
11 chance to return to work if they were willing to take a pay cut. Both employees  
12 accepted the offer and returned to work. The NLRB held that the employer engaged in  
13 unlawful direct dealing by discussing wage changes outside the union's presence. See  
14 also Hotel Bel-Air and Unite Here Local 11, 358 NLRB No. 152 (2012) (employer  
15 engaged in unlawful direct dealing with employees who were laid off and retained a  
16 reasonable expectation of recall from layoff). Here, Leaders knew that Talmont had  
17 recall rights from her former position when Leaders discussed the new 18.5 hour non-  
18 benefitted position with her. Hours of work and the benefits of health insurance and  
19 retirement are mandatory subjects of bargaining. Thus, the City could not bypass the  
20 Union and negotiate directly with Talmont directly over the reduced hours and benefits  
21 of the new position and the conditions under which she could return to work. See City of  
22 Lowell, 28 MLC 157, MUP-2478 (October 15, 2001) (employer unlawfully dealt directly

1 with employee over his return to work on a decreased schedule from an injured-on-duty  
2 leave).

3 I reach a contrary conclusion concerning the allegation that the City dealt directly  
4 with Lewis and Fontaine. Lewis and Fontaine were applicants for hire rather than  
5 employees when the City communicated its offer of employment to them on September  
6 30, 2008. They were not in the bargaining unit at that time, nor did the Union represent  
7 them. Consequently, the City did not violate the Law by extending offers of employment  
8 in the 18.5 hour positions to them. See generally, Boston School Committee, 3 MLC at  
9 1608 (the exclusive representative has no right under Section 5 to bargain on behalf of  
10 applicants for hire).

#### 11 Conclusion

12 The City violated Section 10(a)(5) and, derivatively 10(a)(1) of the Law by  
13 unilaterally reducing the hours and benefits of the part-time senior clerk position and by  
14 dealing directly with employee Rose Talmont about the conditions under which it would  
15 recall her to a part-time senior clerk position. However, the City did not unlawfully deal  
16 directly with Lewis and Fontaine when it offered them employment in 18.5 hour  
17 positions.

#### 18 Remedy

19 The Board has the discretion to fashion the most satisfactory remedy possible  
20 under the facts of each case. Town of Dedham, 21 MLC 1014, 1024 MUP-8091 (June  
21 15,1994). Generally, the Board fashions remedies for violations of the Law by  
22 attempting to place charging parties in the positions they would have been in but for the  
23 unfair labor practice. Natick School Committee, 11 MLC 1387, 1400, MUP-5157

1 (February 1, 1985). Here, the City's unlawful decision to reduce the hours and benefits  
2 of the part-time senior clerk positions caused Lewis, Fontaine, and Talmont to suffer a  
3 loss of wages, health insurance benefits, and retirement credit and benefits. Thus, the  
4 City is obligated to make them whole for their lost wages and benefits. See generally,  
5 City of Malden, 23 MLC 181, MUP-9312, MUP-9313, (February 20, 1997) (lost health  
6 insurance benefits); Wood's Hole, 14 MLC at 1534 (lost pension benefits), including  
7 payment of any costs that Lewis, Fontaine, and Talmont incurred to maintain health  
8 insurance while employed in the 18.5 hour positions, as well as reimbursement for any  
9 out of pocket medical expenses that would have been covered by the City's health  
10 insurance.

11 Additionally, the City must petition the Springfield Retirement Board to restore the  
12 affected employees' lost retirement credit, and pay all applicable City monetary  
13 contributions. If the Retirement Board is unable to restore the affected employees'  
14 retirement credit, the City must make them whole for the value of their lost retirement  
15 benefits. Wood's Hole, 14 MLC at 1534 (because the value of the lost retirement  
16 coverage can be quantified, the employer could compensate employees for their lost  
17 retirement benefits and to restore them to the same economic position they would have  
18 enjoyed but for the employer's unlawful conduct). This can occur in multiple ways,<sup>22</sup>

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<sup>22</sup> One option that may be available would be payment to employees of the full value of all pension benefits that would have been credited to them but for the City's action, plus payment to them of a sum equivalent to the value of future pension benefits which would have been earned by the affected employees; or institution of an equivalent pension or annuity benefit package that fully compensates employees for the value of all pension benefits that would have been credited to employees but for the City's

- 1 and I leave to the parties' agreement, or failing that, to a subsequent compliance  
2 proceeding, determination of the details of the compensation.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the City of Springfield shall:

1. Cease and desist from;
  - a) Unilaterally changing a 20 hour fully-benefitted position to an 18.5 hour position without health insurance or retirement benefits by reducing work hours below the contractual minimum for receipt of health insurance and retirement benefits;
  - b) Failing or refusing to bargain collectively in good faith with the Union about changing a 20 hour fully-benefitted position to a 18.5 hour position without health insurance or retirement benefits through a reduction in work hours;
  - c) Dealing directly with bargaining unit employees over mandatory subjects of bargaining;
  - d) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed under the Law.
  
2. Take the following action that will effectuate the purposes of the Law:
  - a) Restore the part-time senior clerk position to a 20 hours per week position with retirement and health insurance benefits;
  - b) Upon request, bargain in good faith with the Union to resolution or impasse about changing a fully-benefitted 20 hour position to an 18.5 hour position without health insurance or retirement benefits through a reduction in work hours;
  - c) Make Lewis, Fontaine, and Talmont whole for any wages and health insurance benefits lost as a result of the unlawful reduction in hours

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action, and which continues to provide to employees a monetary benefit equivalent to the value of the retirement benefits.

