

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

In the Matter of

CITY OF NEWTON

and

NEWTON FIREFIGHTERS ASSOCIATION,
I.A.F.F., LOCAL 863

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Case No.: MUP-12-2102

Date Issued: January 29, 2016

Board Members Participating:

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

Appearances:

Jeffrey A. Honig, Esq. - Representing the City of Newton
Paul T. Hynes, Esq. - Representing the Newton Firefighters
Association, I.A.F.F., Local 863

DECISION ON APPEAL OF HEARING OFFICER DECISION

SUMMARY

1 The City of Newton (City or Employer) and the Newton Firefighters Association,
2 I.A.F.F., Local 863 (Union) filed cross-appeals from a Hearing Officer decision holding
3 that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
4 Massachusetts General Laws, Chapter 150E (the Law) by failing to provide the Newton
5 Firefighters Association, I.A.F.F., Local 863 (Union) with prior notice and an opportunity
6 to bargain to resolution or impasse over the City's decision and the impacts of the

1 decision to order firefighters on probation (FFOPs) to attain Firefighter I and II (FFI/II)
2 certification as a condition of continued employment. For the reasons set forth below,
3 the CERB affirms the decision in its entirety.

4 The Union's cross-appeal, relating to one aspect of the City's waiver by contract
5 defense, is dismissed.

6 **FACTS**

7 The relevant facts of this case are not in dispute and are summarized briefly
8 below.¹ Further reference may be made to the Findings of Fact set out in the Hearing
9 Officer's decision, reported at 41 MLC 262 (March 16, 2015) and attached to the slip
10 opinion of this decision.

11 The Bargaining Unit and Collective Bargaining Agreement

12
13 The Union represents all uniformed members of the Fire Department, excluding
14 the Fire Chief and his administrative assistant. The Union's bargaining unit members
15 are subject to M.G.L. c. 31, the Civil Service statute. Effective September 1, 2009, the
16 Commonwealth of Massachusetts Human Resources Division delegated the Civil
17 Service appointment and promotional approval process to municipalities and the City is
18 a delegated community.

19 The parties' last fully integrated collective bargaining agreement was effective
20 from 2006-2009 (CBA). In 2011 and 2012, when the salient events in this case took

¹The City, however, claims that the Hearing Officer's findings are incomplete, and that she erred by failing to make findings regarding certain provisions of the "Firefighters Certification Handbook," a document published by the state's Human Resources Division. The City claims that these provisions demonstrate that it is permitted to establish firefighters' conditions of hire without first bargaining. There is well-established precedent for this principle, however, and the Hearing Officer correctly cited to it in support thereof. Boston School Committee, 3 MLC 1603, 1609-1609, MUP-2541 (April 15, 1977). She therefore committed no error by not referencing the Handbook.

1 place, the Union and the City were parties to memoranda of understanding (MOU) that,
2 except where modified, incorporated the terms of the CBA, including its Management
3 Rights Clause (Article VI) and Article 21.03D, "Academy Training." Article 21.03D
4 states in pertinent part:

5 Notwithstanding the twenty-four (24) hour tour schedule, scheduling of
6 employees for training at the Massachusetts Fire Academy may be
7 arranged for the employees involved in accordance with present practice.

8 Probationary Firefighters' Training and FFI/II Certification

9 FFOPs become City employees on the first day they attend training. Pursuant to
10 Section 61 of the Civil Service law, however, newly-hired full-time firefighters are not
11 considered tenured employees until they "actually perform the duties of such position on
12 a full-time basis for a probationary period of twelve months." M.G.L. c. 31, §61. At the
13 beginning of their twelve-month probationary periods, FFOPs attend either an in-house
14 training program or a training program offered at the Massachusetts Firefighting
15 Academy (MFA).²

16 The FFI/II certification exam tests basic firefighter competence. It consists of a
17 written exam and two practical exams testing fire skills and non-fire skills. A passing
18 grade on the exam affords students a FFI/II certification from the Massachusetts Fire
19 Training Council, an accredited agency of the National Board on Fire Service
20 Professional Qualifications. Entry-level firefighters who take the MFA training program
21 automatically take the FFI/II test after graduation. Firefighters who undergo recruit
22 training programs elsewhere must arrange to take the FFI/II exam through the MFA,
23 which administers the exam on a monthly basis. At the time the events in this case took

² The MFA, a division of the Massachusetts Department of Fire Services offers multi-week recruit training programs for entry-level career firefighters at its facilities in Stow.

1 place, firefighters who successfully completed MFA training could return to their
2 respective fire departments without passing the FFI/II certification exam. As of the date
3 of the Hearing Officer's decision, however, firefighters cannot graduate from the MFA
4 training program without passing the test.

5 The City uses the Civil Service Firefighter Task Survey Analysis Sheet (Task
6 Survey Analysis) as the job description for the position of firefighter. The Task Survey
7 Analysis for the firefighter position does not require academy training or FF I/II
8 certification.

9 Between 2003-2011, some, but not all, appointees to vacant firefighter positions
10 executed letters stating that they agreed to be FFI/II certified by the end of their one-
11 year probationary period. This requirement was not uniformly enforced.

12 Training FFI/II Certifications and the Class of 2011

13
14 Fire Chief Bruce Proia (Chief Proia) became Fire Chief in 2011. After his
15 appointment, he decided that ten new firefighters whom the City planned to hire (Class
16 of 2011) needed to be FFI/II certified by the end of their probationary period. Chief
17 Proia did not notify the Union of his decision, but he discussed FFI/II certification with
18 the candidates during the interview process. Before the Class of 2011 began their
19 employment with the City, Chief Proia sent each of them appointment letters. Although
20 the letters were not identical, they each indicated that the new firefighters were required
21 to become FFI/II certified by the end of their twelve-month probationary period. Chief
22 Proia required members of the Class of 2011 to sign the letters or be bypassed in the
23 hiring process. All members of the Class of 2011 signed the letters. There is no

1 dispute that Chief Proia did not copy the Union on the letters or offer to bargain before
2 sending them.

3 All members of the class of 2011 attended an eight-week City-run training
4 academy using the MFA books and syllabus. Instructors communicated with Chief
5 Proia about each member's progress during the training class. All members of the
6 Class of 2011 graduated from the City's training academy and the City paid for and
7 scheduled them to take the FFI/II certification exam in November 2011. Most, but not
8 all of them, passed it.

9 Around January and February 2012, the Union learned that the City had ordered
10 certain firefighters to report to the MFA to take portions of the certification exam either
11 while they were off duty, or, if they were on duty, to obtain a swap to enable them to do
12 so. In March 2012, the Union filed a grievance over these orders alleging that they
13 violated certain portions of the CBA. In the same month, at a labor-management
14 meeting, the Union learned for the first time that all of the members of the Class of 2011
15 had signed letters agreeing to obtain FFI/II certification by the end of their respective
16 probationary periods. In July 2012, the Union filed the instant unfair labor charge
17 alleging that the City violated the Law by failing to bargain over its decision to require
18 FFOPs to attain FFI/II certifications and the impacts of the decision on employees'
19 terms and conditions of employment.

20 By August 2012, all but three members of the Class of 2011 had obtained their
21 FFI/II certification. Chief Proia contemplated terminating those who had not, but
22 decided to offer to extend their probationary periods in lieu of termination to permit them
23 additional time to pass the exam. Chief Proia and the City's Director of Human

1 Resources Doris Hamilton (Hamilton) discussed the extension with the Union president,
2 but the Union president refused to negotiate over this issue because of the Union's
3 pending grievance and prohibited practice charge concerning related issues.

4 Chief Proia then met with the three firefighters who had not passed the
5 certification exam. On August 30, 2012, Chief Proia and Hamilton signed individual
6 employment agreements with all three firefighters that gave them an additional six
7 months to pass the certification exam. The City's agreement with one firefighter
8 identified only by his initials "A.H." stated, in relevant part:

9 WHEREAS, Firefighter [A.H.] was hired by the City on September 12,
10 2011;

11
12 WHEREAS Firefighter [A.H.'s] Civil Service probationary period is due to
13 expire on September 12, 2012;

14
15 WHEREAS, as a condition of hiring, Firefighter [A.H.] was required to
16 become [a] certified Firefighter 1 and 2 within one (1) year from his date of
17 hire;

18
19 WHEREAS, as the date hereof, Firefighter [A.H.] has not sufficiently met
20 the qualifications and standards expected of a City of Newton firefighter,
21 as set forth in the Civil Service Firefighter Task Survey Analysis ...

22
23 WHEREAS, in lieu of termination, the Parties wish to allow Firefighter
24 [A.H.] to continue his employment with the City for the purpose of meeting
25 the qualifications and standards expected of a City of Newton firefighter,
26 as evidenced by his becoming certified Firefighter 1 and 2.

27
28 NOW THEREFORE, in consideration of the mutual covenants and
29 promises herein contained, and intending to be legally bound hereby, the
30 Parties agree as follows:

31
32 Extension of Employment: Firefighter [A.H.'s] employment with the City
33 will be extended for a period of six (6) months to March 12, 2013 to allow
34 him sufficient time to meet the qualifications and standards expected of a
35 City of Newton firefighter as evidenced by his becoming certified
36 Firefighter 1 and 2 To the extent allowable by law, Firefighter [A.H.]
37 shall be deemed a probationary employee of the City during this six-month
38 extension of this employment.

1
2 Discipline: Firefighter [A.H.] hereby agrees and acknowledges that his
3 failure to meet the qualifications and standards expected of a City of
4 Newton firefighter during the six-month extension, as evidenced by the
5 failure to become certified Firefighter 1 and 2, shall constitute just cause
6 for discipline against him, up to and including his termination from
7 employment.

8 Ultimately, all members of the Class of 2011 achieved FF I/II certification. All
9 twenty-six firefighters that the City has hired since 2011 are FF I/II certified.

10 **OPINION³**

11 The issue before us is whether the Hearing Officer correctly concluded that the
12 City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it
13 required the Class of 2011 probationary firefighters to become FF I/II certified before the
14 end of their twelve-month probationary period without first giving the Union notice and
15 an opportunity to bargain over the decision, or the impacts of the decision to resolution
16 or impasse. On appeal, the City argues, as it did to the Hearing Officer, that it had the
17 right to act unilaterally because: 1) the certification requirement was a condition of hire
18 not subject to bargaining; 2) the Union waived its right to bargain by contract; and 3)
19 Sections 34 and 61 of M.G.L. c. 31 impose this requirement during the firefighters'
20 twelve-month probationary period, thus precluding bargaining over this issue.

21 We summarily affirm the Hearing Officer as to the first two points. Her analysis
22

³ The CERB's jurisdiction is not contested.

1 as to both of these issues is persuasive.⁴ In particular, we agree with the Hearing
2 Officer that the FFI/II certification requirement, which could only be completed after the
3 FFOPs were appointed, is a condition of continued employment, not a condition of hire.
4 The City of Haverhill decision that the Hearing Officer relied upon is persuasive on this
5 point. See 16 MLC 1077, 1082, MUP-7194 (July 6, 1989) *aff'd* 17 MLC 1215, 1216-17,
6 n. 6 (August 21, 1990) (once a job condition is imposed upon an employee, as opposed
7 to a job applicant, it becomes a condition of continued employment rather than a
8 condition of hire). Thus, as discussed below, unless the condition of continued
9 employment materially conflicts with the procedures or policies contained in a statute
10 not listed in Section 7(d) of the Law, it is subject to mandatory bargaining. School
11 Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 565-566 (1983)
12 (Newton School Committee).

13 Our analysis begins with a discussion of Section 7(d) of the Law, sometimes
14 referred to as the "Conflicts" statute. City of Somerville v. Commonwealth Employment
15 Relations Board, 470 Mass. 563, 572 (2015). Section 7(d) provides that the terms of a
16 collective bargaining agreement prevail over the contrary terms of the statutes expressly
17 enumerated in Section 7(d). Id. (citing Adams v. Boston, 461 Mass. 602, 607-608

⁴ The Union argues on appeal that the Hearing Officer should not have considered the City's arguments regarding Section 21.03D of the CBA because the City did not raise this provision as an affirmative defense to its duty to bargain in its Answer to the Complaint or at hearing. The Union therefore moves to strike the Hearing Officer's conclusion regarding Section 21.03D. We deny the Motion and dismiss the Union's appeal as to this point. Unlike the arbitration award that the City sought to submit after the close of the hearing, Section 21.03D was included in the CBA that the parties submitted as a joint exhibit and thus was part of the hearing record. Further, although the City did not make any specific arguments regarding this provision before or during the hearing, it did so in its post-hearing brief, and the Union does not claim that it sought and was denied the opportunity to respond to those arguments.

1 (2012)). Conversely, "statutes not specifically enumerated in § 7(d) will prevail over
2 contrary terms in collective bargaining agreements." Adams v. Boston, 461 Mass. at
3 608 (citing School Comm. of Natick v. Education Ass'n of Natick, 423 Mass. 34 , 39
4 (1996) (quoting National Ass'n of Gov't Employees v. Commonwealth, 419 Mass. 448,
5 452, cert. denied, 515 U.S. 1161 (1995)). General grants of legislative authority in
6 statutes not listed in Section 7(d) do not supersede the statutory bargaining obligation.
7 Newton School Committee, 388 Mass. at 566.

8 As to this point, the City argues that bargaining over this requirement would
9 directly and substantially conflict with Sections 34 and 61 of the Civil Service statute,
10 which address probationary periods for Civil Service employees and which, in Section
11 61, establishes a heightened twelve-month probationary period for police and
12 firefighters. We disagree and affirm the Hearing Officer's conclusion as to this point as
13 well.

14 There is no dispute that Chapter 31, the Civil Service statute, is not one of the
15 statutes listed in Section 7(d) of the Law as being superseded by the terms of a
16 collective bargaining agreement. Fall River v. Teamsters Union, Local 526, 27 Mass.
17 App. Ct. 649, 651(1999). To determine whether bargaining was required here,
18 therefore, we must determine whether bargaining over the certification requirement as a
19 condition of continued employment would materially conflict with the Civil Service
20 statute. Adams v. Boston, 461 Mass. at 608; City of Fall River v. AFSCME Council 93,
21 Local 3177, AFL-CIO, 61 Mass. App. Ct. 404, 411 (2004) (citing Dedham v. Labor
22 Relations Commission, 365 Mass. 392, 402 (1974)); Leominster v. International Board
23 of Police Officers, Local 338, 33 Mass App. Ct. 121, 125 (1992)). Conflicts between the

1 requirements of the Civil Service statute and the duty to bargain mandated by Chapter
2 150E have been found where a collective bargaining provision was found to violate
3 certain procedures outlined in the Civil Service statute. See, e.g., Massachusetts
4 Organization of State Engineers and Scientists v. Commissioner of Administration
5 (MOSES), 29 Mass. App. Ct. 916, 917-918 (1990) (four-year experience qualification
6 set by personnel administrator conflicts with six-year qualification set by appointing
7 authority). Such conflicts, notably, have also been found where a collective bargaining
8 right “directly and substantially conflicts” with a policy choice reflected in the Civil
9 Service statute. City of Fall River, 61 Mass. App. Ct. at 411 (citing Leominster, 33
10 Mass. App. Ct. at 127).

11 In determining that there was no conflict here that precluded decision bargaining,
12 the Hearing Officer first reviewed the language of Sections 34 and 61 to determine
13 whether the intent of the Legislature was apparent from the language itself. See
14 Adams, 461 Mass. at 609. Section 34 states, in pertinent part:

15 If the conduct or capacity of a person serving a probationary period or the
16 character or quality of the work performed by him is not satisfactory to the
17 appointing authority, he may, at any time after such person has served
18 thirty days and prior to the end of such probationary period, give such
19 person a written notice to that effect, stating in detail the particulars
20 wherein his conduct or capacity or the character or quality of his work is
21 not satisfactory, whereupon his service shall terminate. . . In default of
22 such notice, such person shall be deemed to be a tenured employee upon
23 the termination of such period.

24
25 Section 61 states:

26
27 Following his original appointment as a permanent full-time police officer
28 or fire fighter in a city, or in a town where the civil service law and rules are
29 applicable to such position, a person shall actually perform the duties of
30 such position on a full-time basis for a probationary period of twelve
31 months before he shall be considered a full-time tenured employee in
32 such position, except as otherwise provided by civil service rule. The

1 administrator, with the approval of the commission, may establish
2 procedures to ensure the evaluation by appointing authorities, prior to the
3 end of such probationary period, of the performance of persons appointed
4 as regular police officers or firefighters.

5 The Hearing Officer concluded that, unlike the statutes at issue in City of Somerville,
6 470 Mass. at 572-573 and City of Somerville, 451 Mass. 493, 498-499 (2008), Section
7 34 and 61 did not create a “specific, statutory mandate” that precluded the Employer
8 from bargaining over all of the FFOPs’ terms and conditions of employment, including
9 the FFI/II certification requirement at issue here. In so holding, the Hearing Officer,
10 comparing Leominster and Fall River, supra, held that bargaining over whether the
11 Employer could impose such a requirement as a condition of continued employment
12 would not interfere with Section 34’s policy of ensuring that an appointing authority has
13 “sufficient time to determine whether probationary firefighters have the necessary
14 courage, good judgment and ability to work under stress.” She further rejected the
15 City’s argument that this bargaining obligation would interfere with what she deemed the
16 Employer’s “unfettered discretion” to determine whether FFOPs should become full-time
17 employees. Rather, she found that because the City continued to have the right to
18 make tenure determinations, the City had incorrectly blended its right to decide whether
19 FFOPs should become tenured with its decision to unilaterally “impose a condition of
20 continued employment as a means and method of employee assessment that triggers
21 the statutory bargaining obligation.”

22 We agree with the Hearing Officer that the Civil Service statute does not control
23 all issues relating to FFOPs’ terms and conditions of employment. We first note that the
24 Civil Service statute does not explicitly require FFI/II certification as a condition of
25 becoming a tenured employee and, thus, unlike in the MOSES case cited above,

1 bargaining over this issue would not interfere with an *express* procedural statutory
2 mandate. See 29 Mass. App. at 918.

3 Nor are we persuaded by the City's arguments that bargaining over this issue
4 would substantially conflict with the policy concerns articulated in Section 34 and 61. In
5 Leominster, the Appeals Court explained that the heightened twelve-month probationary
6 period for police officers and firefighters set forth in Section 61 was to "ensure sufficient
7 time for a careful determination" of whether the qualities of "courage, good judgment,
8 and the ability to work under stress in the public interest and as part of an organization"
9 are present in sufficient degree." 33 Mass. App. Ct. at 127. The issue in Leominster
10 was whether a just cause provision in a collective bargaining agreement conflicted with
11 these statutory Civil Service probationary periods. The Court held that it did, opining
12 that "the need for a subjective judgment by an experienced person of what is
13 satisfactory performance is inconsistent with the need to establish serious misconduct."
14 Id.

15 In this case, however, we agree with the Hearing Officer that bargaining over
16 requiring firefighters to attain FFI/II certification would not interfere with what the
17 Hearing Officer aptly deemed the City's "unfettered discretion" to determine whether
18 FFOPs should become tenured employees. Unlike in Leominster, the City remains free
19 to terminate probationary employees for less than satisfactory performance. Compare
20 Lynn v. Labor Relations Commission, 43 Mass. App. Ct. 172, 182-183 (1997)(City had
21 no obligation to bargain over fire chief's decision to file an application for the
22 superannuation retirement of an employee who had been disabled from working as a

1 fire fighter for five years where the fire chief was granted the discretion to make that
2 filing so pursuant to a specific and narrow statutory mandate).

3 Rather, what is at issue here is whether the City is obligated to bargain before
4 requiring FFOPs to pass the FFI/II exam as a *means* of making this determination. It is
5 well established that even where an employer's decision is deemed non-delegable and
6 therefore not subject to mandatory bargaining, an employer remains obligated to
7 bargain over the means and methods of accomplishing that decision, unless that
8 obligation also conflicts with statutory requirements or policies. See *Newton School*
9 *Committee*, 388 Mass. at 563-564 (and cases cited therein). The distinction has been
10 recognized repeatedly by the courts, particularly in the context of school employees,
11 where the courts have consistently drawn distinctions between an employer's
12 nondelegable prerogative to make tenure decisions, on the one hand, and its ability to
13 bind itself to follow certain procedures in making that determination, on the other hand.
14 The latter has generally been held subject to mandatory bargaining. See, e.g., *Higher*
15 *Educ. Coordinating Council/Roxbury Community College v. Massachusetts Teachers*
16 *Ass'n/Mass. Community College Council*, 423 Mass. 23, 27-28 (1996). See also
17 *Massachusetts Bd. of Higher Educ./Holyoke Community College v. Massachusetts*
18 *Teachers Ass'n/Mass. Community College/National Educ. Ass 'n*, 79 Mass. App. Ct. 27,
19 32-34 (2011); *School Comm. of Holbrook v. Holbrook Educ. Ass 'n*, 395 Mass. 651, 655
20 (1985); *School Comm. of W. Bridgewater v. W. Bridgewater Teachers' Ass'n*, 372 Mass.
21 121, 124-125 (1977); *School Comm. of Danvers v. Tyman*, 372 Mass. 106, 113-114
22 (1977). In the absence of any conflicting statutory mandates, the same distinction
23 should apply here. *Newton School Committee*, 388 Mass. at 564-566 and n. 5.

1 chief's decision to require probationary firefighters to become FFI/II certified as a
2 condition of continuing employment.

3 In sum, Sections 31 and 64 plainly leave to the Appointing Authority the right to
4 make tenure determinations based on satisfactory performance. However, the
5 Legislature has given no indication that engaging in collective bargaining over the
6 decision to require FFI/II certification as a condition of continued employment and the
7 impacts of that decision on bargaining unit members' terms and conditions of
8 employment as a means of making that decision would directly and substantially conflict
9 with a policy choice inherent in these or other statutes.⁵

10 Because it is undisputed that the City did not give the Union notice and an
11 opportunity to bargain *before* implementing the requirement, we affirm the Hearing
12 Officer's decision that the City violated Section 10(a)(5) and, derivatively, Section
13 10(a)(1) of the Law when it failed to bargain over the decision to require FFOPs to
14 obtain FFI/II certification and the impacts of that decision on FFOPs' terms and
15 conditions of employment.⁶

16 CONCLUSION

17 For the foregoing reasons, the Hearing Officer's decision is affirmed.

⁵ There is evidence in the record that the impacts of the decision on FFOPs' terms and conditions of employment included, beyond the obvious impact on continued employment if the certification requirement was not met, wage and benefits issues, such as whether they would get paid when the certification exam was scheduled while they were off-duty, or having to obtain shift swaps if it was scheduled when they were on-duty.

⁶ Any claims that this bargaining obligation has since been fulfilled or otherwise resolved through the grievance-arbitration procedure may be addressed in a compliance proceeding.

ORDER

1
2
3 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the
4 City shall:

5
6 1. Cease and desist from:

7
8 a) Failing and refusing to bargain in good faith with the Union by
9 unilaterally requiring FFOPs, who were members of the Class of
10 2011, to become FF I/II certified by the end of their probationary
11 periods.

12
13 b) In any like or related manner, interfering with, restraining or
14 coercing its employees in any rights guaranteed under the Law.

15
16 2. Take the following action that will effectuate the purposes of the Law:

17
18 a) Restore the prior practice of not requiring FFOPs to become
19 FF I/II certified by the end of their probationary periods.⁷

20
21 b) Upon request, meet and bargain in good faith with the Union
22 over the imposition of a condition of continued employment
23 by requiring FFOPs, who were members of the Class of
24 2011, to become FF I/II certified by the end of their
25 probationary periods.

26
27 c) Post immediately in all conspicuous places where members
28 of the Union's bargaining unit usually congregate, or where
29 notices are usually posted, including electronically, if the City
30 customarily communicates with these unit members via
31 intranet or email and display for a period of thirty (30) days
32 thereafter, signed copies of the attached Notice to
33 Employees.

34
35 d) Notify the DLR in writing of steps taken to comply with this
36 decision within ten (10) days of receipt of this decision.
37

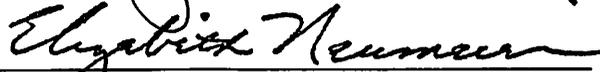
⁷ We are in agreement with the Hearing Officer that the restoration of the prior practice does not pertain to the MFA's requirement that FFOPs attain FF I/II certification in order to graduate from its training program, a requirement that was imposed after the events of this case.

1 **SO ORDERED.**

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



ELIZABETH NEUMEIER, CERB MEMBER



HARRIS FREEMAN, CERB MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE COMMONWEALTH
EMPLOYMENT RELATIONS BOARD

The Commonwealth Employment Relations Board (CERB) has held that the City of Newton (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by requiring firefighters on probation (FFOPs) to become Firefighter I and II (FF I/II) certified by the end of their probationary periods, without first giving the Newton Firefighters Association, I.A.F.F., Local 883 (Union) prior notice and an opportunity to bargain to resolution or impasse over the decision and the impacts of that decision on employees' terms and conditions of employment. The City posts this Notice to Employees in compliance with the CERB's Order.

Section 2 of M.G.L. Chapter 150E gives public employees the right 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 fail to bargain over the decision and the impacts of the decision on bargaining unit members' terms and conditions of employment requiring FFOPs who were members of the Class of 2011 to become FF I/II certified by the end of their probationary period.

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 to effectuate the purposes of the Law:

- Restore the prior practice of not requiring FFOPs to become FF I/II certified by the end of their probationary periods.
- Upon request, meet and bargain in good faith with the Union over the imposition of a condition of continued employment by requiring FFOPs, who were members of the Class of 2011, to become FF I/II certified by the end of their probationary periods.

City of Newton

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, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).