

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF HAVERHILL

-and-

AFSCME COUNCIL 93, LOCAL 939

ARB-23-9771

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Timothy Zessin, Esq. - Representing City of Haverhill

Evan Berwald, Esq. - Representing AFSCME Council 93  
Local 939

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

**AWARD**

The City violated the collective bargaining agreement when it failed to negotiate to resolution or impasse over potential new rates of pay after the introduction of the Vactor 2000i truck. The City is ordered to negotiate with the Union to resolution or impasse over potential new pay rates associated with the operation of the Vactor 2000i truck.



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Timothy Hatfield, Esq.  
Arbitrator  
September 6, 2024

### **INTRODUCTION**

On December 21, 2022, the AFSCME Council 93, Local 939 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on July 21, 2023.

The parties filed briefs on November 10, 2023.

### **THE ISSUES**

The parties were unable to agree on a stipulated issue. The proposed issue before the arbitrator is:

#### **The Union proposed:**

- 1) Did the City put into use substantial new types of job duties and/or equipment as contemplated by Article XIV under the parties' collective bargaining agreement; and, if so,
- 2) Did the City bargain with the Union over those duties and/or equipment as required under Article XIV?
- 3) If the new duties and/or equipment are substantial and the City failed to bargain, what shall the remedy be?

#### **The City proposed:**

- 1) Did the City violate Article XIV of the parties' collective bargaining agreement as alleged in the Union's June 25, 2021 grievance?
- 2) If so, what shall be the remedy?

**Issue:**

As the parties were unable to agree on a stipulated issue, I find the appropriate issue to be:

Did the City violate Article XIV of the parties' collective bargaining agreement when it introduced the use of the Vactor 2000i truck and refused to bargain with the Union? If so, what shall the remedy be?

**RELEVANT CONTRACT LANGUAGE**

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

**ARTICLE XIV**  
**NEW EQUIPMENT RE-OPENING CLAUSE**

In the event the City puts into use any substantial new type of job or equipment for which rates of pay are not established by this Agreement, the rates for such jobs or equipment shall be negotiated by the parties hereto.

**FACTS**

The City of Haverhill (City) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The Union is the exclusive bargaining representative for all employees listed in the recognition clause of the collective bargaining agreement including Collections Operators.

The City's Department of Public Works (DPW) consists of seven divisions including the Wastewater Division (WWD). Robert Ward (Ward) is the DPW Director since 2022. Prior to 2022, Ward was the Deputy Director of the DPW. The

WWD is responsible for approximately 200 miles of the City's sewer lines. This involves keeping the lines flowing to the wastewater treatment plant and clearing out obstructions in the sewer lines that lead to the treatment facility.

Prior to 2021, since approximately 2003, if there were blockages in the sewer lines, Collections Operators used two different pieces of equipment in an attempt to clean out the obstruction. The first piece of equipment was the "clam truck" which is a clamshell bucket truck which was used to remove sewage and obstructions from sewers and manholes. The second piece of equipment was a "jet truck" which consisted of a flatbed truck with a high-pressure water hose that attempted to break up obstructions, if possible, and/or move the obstruction down the sewer line to a manhole where the clam truck could try to remove the obstruction. If this was unsuccessful, the City would resort to hiring an outside contractor who would clear the obstruction with a Vactor truck.

In 2019 and 2020, the City was spending a significant amount of money hiring outside contractors to use their Vactor truck to remove obstructions from the sewer lines. City officials began investigating the financial feasibility of purchasing their own Vactor truck and determined that such a purchase would provide long-term material savings and reduce the time needed to unclog and permanently remove debris from backed-up sewer lines. Ward testified that doing so would allow the City to stop using the jet truck which simply pushed debris further down the system and did not permanently remove it. Aware of the City's intention to purchase the Vactor truck, bargaining unit members went to Ward to discuss

bargaining under Article XIV. Ward's response was to wait until delivery of the truck to bargain.

In April 2021, a Vactor 2000i truck was delivered to the City's WWD treatment plant. Collections Operators received one day of training from the company's sales representative and then had to learn on-the-job how to operate the trucks many features. These features included a telescopic boom arm with high pressure pumps and lines, dry pressure pumps, air exchange systems, and debris containers. In addition to sewer cleaning functions, the Vactor 2000i is capable of basin cleaning and hydro-excavating.

Upon arrival of the Vactor truck, Collection Operators began performing new duties. These duties included hydro-excavating and removal of debris and sewerage with a high-pressure vacuum. Collection Operators were also tasked with assisting the Water Division with hydro-excavating around water lines, assisting private contractors hired by the City working around sewer and water lines, and transferring debris and sewerage collected by the Vactor truck.

After working with the Vactor truck for a period of time, the Union again approached Ward to request bargaining over appropriate wage rates for operating the Vactor truck. Ward responded that there was nothing to negotiate over as the new duties were not substantial.

The Union filed a grievance over the City's refusal to bargain. During the grievance process, the parties discussed possible settlement of the grievance, but these discussions did not result in an agreement. The City denied the grievance at all steps of the grievance procedure, resulting in the instant arbitration.

**POSITIONS OF THE PARTIES****THE UNION****The Plain Meaning of Substantial Establishes Article XIV's Obligation to Bargain**

The plain meaning of "substantial" under Article XIV of the collective bargaining agreement requires finding that the Vactor truck itself, and its job duties, are substantially new, triggering its bargaining obligations.

The Vactor truck has added between four to eight hours of additional work to Collections Operators. As part of its primary purpose, the Vactor truck has brought work never performed by Collections Operators, including hydro-excavating. The Vactor truck has also resulted in increased and vast additional inter-divisional work with the Water and Highway Divisions performing hydro-excavating. The Vactor truck is a piece of equipment the Wastewater Division never had and its job duties were something the City customarily had to pay third-party contractors to perform prior to 2021. Now the Vactor truck is brought out whenever Highway or Water Divisions needs to hydro-excavate around water and sewer lines under or near roadways. A practice of the City which has never before been in effect.

**Conclusion**

Article XIV of the collective bargaining agreement requires bargaining over rates of pay for implementation of substantially new job equipment and/or duties. In 2021, Collections Operators were given a Vactor truck and began hydro-excavating for not only Wastewater, but also Highway and Water Divisions as well. Despite repeated requests to bargain, the City refused to do so and any attempts to resolve this issue post grievance were merely settlement discussions and not

the required bargaining. Therefore, the City has violated its obligations under Article XIV and must be ordered to bargain with the Union.<sup>1</sup>

## **THE EMPLOYER<sup>2</sup>**

### New Equipment

The weight of the evidence submitted at the hearing established that the new Vactor truck purchased in 2021 merely replaced the City's jet truck, an outdated industrial sewer cleaning truck, and does not constitute a "substantial new type of equipment" for Collections Operators. The primary difference between the two trucks is that the new Vactor truck has a vacuum feature that allows operators to remove debris and soil from sewer lines and other work sites. Although operators testified that it took several months to learn all of the Vactor truck's features, that likely would have been the case for any piece of modern heavy equipment. It is not surprising to learn that the new truck, in addition to the vacuum, possessed several other modern technological features that operators were not familiar with. These features alone, however, do not trigger a bargaining obligation.

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<sup>1</sup> For the first time, the Union argued in its post-hearing brief that the City violated M.G.L. c. 150E, §10(a)(5). As this is an arbitration hearing to determine a potential violation of a collective bargaining agreement, and not an Unfair Labor Practice hearing to determine a violation of the Law, I decline to address this argument in this ruling.

<sup>2</sup> For the first time, the City argued in its post-hearing brief that the Union's grievance was procedurally non arbitrable. As procedural arbitrability was not one of the issues presented or argued during the hearing, and was first introduced in the post-hearing brief, I decline to rule on this issue.

The contract does not define the clause “substantial new type of ... equipment.” Nor did the Union present any evidence regarding how the clause had been previously interpreted. On this point, the City’s position is clear; the Vactor truck and the jet truck both belong to the same category of equipment – industrial sewer cleaning trucks. The primary function of both trucks is to clear blockages from sewer lines. While the Vactor truck is certainly more versatile than the jet truck, its primary purpose remains the cleaning of sewer lines. Accordingly, there is no merit to the Union’s assertion that the Vactor truck is a “new type of ... equipment.”

#### New Job Duties

The grievance contends that the City violated Article XIV by imposing several “substantial new type of job[s]” following the purchase of the Vactor truck. Specifically, the Union asserts that its members in collections have been required to perform:

1. Hydro excavation
2. Manhole cleaning using the vac-truck
3. Assisting other departments throughout the City using the vac-truck.

The bulk of the testimony presented related to the claim that collections employees were now being directed to assist other divisions within the DPW, such as Water and Highway Divisions. Although Day testified that the Vactor truck assisted other divisions one time per week, the Union did not provide any documentation establishing the frequency of this type of assistance. He further



testified that, prior to April 2021, the collections employees regularly assisted the Engineering Department.

Director Ward testified that since April 2021, the DPW has utilized the Vactor truck to assist other divisions. He emphasized that the primary responsibility for collections employees is maintenance and oversight of the City's sewer lines and system, but that, time permitting and barring an emergency, collections staff who are licensed to operate the Vactor truck are encouraged to provide assistance to other divisions.

The City has always fostered spirit of cooperation among the divisions and that cross-division use of the Vactor truck is simply another way for the City to make efficient use of its resources. It does not amount to a substantial change in the type of work being performed by collections employees.

#### Contractual Obligation Satisfied

The City continues to assert that it was under no obligation to negotiate new rates of pay following the purchase of the Vactor truck. The City nonetheless met with the Union in or around November 2022 to discuss the Union's demand. The City Solicitor testified that, at this meeting, the City offered to pay all collections employees a stipend in the amount of \$0.25 per hour, regardless of whether said employees were qualified to operate the Vactor truck. The City's offer was rejected by the Union, but the parties continued to negotiate until late December 2022 when the Union submitted the grievance to arbitration. The Union's argument that this meeting and subsequent email communications were "settlement negotiations", and thus not admissible is without merit.

Several Union witnesses testified that it was in fact the Union's practice not to request to bargain over the purported new equipment prior to filing a grievance, but instead provide notice through the filing of the grievance. Such a practice puts the City in an impossible position. But it is clear why the Union has adopted this practice; by skipping the first step and moving immediately to the grievance filing, the Union believes it gains leverage and can force the City to "settle." Such a practice, though, is obviously not in the spirit of good labor relations and should not be condoned. In this case, the arbitrator should credit the good faith negotiations that took place in November and December 2022, and find that the City satisfied its bargaining obligation under Article XIV.

#### Conclusion

Based on the foregoing, the evidence presented established that the City was not obligated to negotiate with the Union regarding additional compensation for the collections employees following the purchase of the Vactor truck, and, even assuming the City had such an obligation, it satisfied its contractual bargaining obligation. Because the Union is unable to establish that the City violated Article XIV of the collective bargaining agreement, the City requests the grievance be denied.

#### **OPINION**

The issue before me is: Did the City violate Article XIV of the parties' collective bargaining agreement when it introduced the use of the Vactor 2000i truck and refused to bargain with the Union? If so, what shall the remedy be?

For all the reasons stated below, the City violated the collective bargaining agreement when it failed to bargain to resolution or impasse over potential new rates of pay after the introduction of the Vactor 2000i truck.

Prior to the arrival of the Vactor truck, the City was only able to deal with obstructions in the sewer system by blasting the obstruction with a high powered jet of water in an attempt to either break up the obstruction or move it to a manhole or sewer location to facilitate its removal by using the clam truck bucket or manually by hand using five gallon buckets. If neither of these options were successful, the City hired a third party to bring in their Vactor truck. Upon the purchase of their own Vactor truck the City had more options available. It is these options that are at the center of this dispute.

While the City claims that sewer clearing is sewer clearing no matter the technology used, I disagree. The undeniable fact is that the Vactor truck, as expected, not only had newer technology than the old jet truck, but also employed new operations and methods for not only clearing obstructions, but also removing and transporting the obstructing materials. Some of these new operations involved operating a boom arm, and operating the vacuum system, neither of which existed prior to the purchase of the Vactor truck.

Additionally, the completely new function of hydro-excavating was never a function of the Collections Operators prior to the purchase of the Vactor truck. Not only were Collections Operators expected to perform hydro-excavating for their own division of the DPW, but they were also now being called upon to assist other

divisions of the DPW where hydro-excavating was beneficial to their operating needs.

Hydro-excavating and the multitude of new operations performed by the Vactor truck around sewer clearing, fall squarely into what Article XIV was intended to address. The Vactor truck was substantial new equipment whose use necessitated substantial new job duties. As such, the City was obligated, upon request of the Union, to engage in bargaining under Article XIV.

The City argues that even though it refused to bargain over the Vactor truck and its associated new duties, it satisfied its bargaining obligation when it engaged in grievance settlement discussions with the Union. I disagree. Grievance settlement discussions are settlement discussions used to facilitate a grievance to be withdrawn. Post refusal to bargain discussions, meant to settle a grievance, do not satisfy the bargaining obligation anticipated by Article XIV. The City has a duty, upon implementation of “any substantial new type of job or equipment”, to bargain with the Union upon request and the refusal to do so in this instance is a violation of the collective bargaining agreement.

**AWARD**

The City violated the collective bargaining agreement when it failed to negotiate to resolution or impasse over potential new rates of pay after the introduction of the Vactor 2000i truck. The City is ordered to negotiate with the Union to resolution or impasse over potential new pay rates associated with the operation of the Vactor 2000i truck.



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