COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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| In the Matter of the Arbitration Between:<br><br>NATICK HOUSING AUTHORITY<br><br>-and-<br><br>LABOERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 22 | ARB-24-10557 |

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Kier Wachterhauser, Esq. - Representing the Natick Housing Authority

Nelson Carneiro -Representing the Laborers International Union of North America, Local 22

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 Natick Housing Authority did not violate the collective bargaining agreement on February 27, 2024, when it used subcontracted painters, and the grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
January 5, 2026

## INTRODUCTION

On April 2, 2024, Laborers International Union of North America, Local 22 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the 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 November 7, 2024.

The parties filed briefs on January 24, 2025.

## THE ISSUE

The parties agreed upon the following issues:

Did the Natick Housing Authority violate the collective bargaining agreement on February 27, 2024, when it used subcontracted painters? If so, what shall be the remedy?

## RELEVANT CONTRACT LANGUAGE

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

### ARTICLE 3 – MANAGEMENT RIGHTS

**3.1** The Union recognizes that Management Rights rest solely and exclusively with the NHA. Subject to the statutory requirements of G.L. Chapter 150E to bargain, in good faith, changes in wages, hours, and working conditions with the Union, nothing in this Agreement shall be interpreted as diminishing the rights of the Authority except as may be specifically otherwise provided in this Agreement. The Authority reserves and retains the right to direct and supervise employees of the NHA, including the assignment of overtime; the right to hire, promote and demote employees to positions within the NHA; to discipline for just cause; to determine the mission of the NHA; to determine, plan and monitor the NHA's budget, its organization, the number of employees to

be utilized by the NHA, the technology and equipment of the NHA, and internal security practices; to lay off employees for lack of funds or other reorganization; to determine the types of operations, methods and procedures to be employed, and to discontinue procedures or operations, except as may otherwise be provided by this Agreement.

**ARTICLE 10 - STABILITY OF AGREEMENT**

**10.1** No agreement, understanding, alteration or variation of the terms or provisions of the Agreement herein contained shall bind the parties hereto unless made and executed in writing by the parties hereto.

**10.2** The failure of the Authority or the Union to insist, in any one or more incidents, upon performance of any of the terms or conditions of the Agreement shall not be considered as a waiver or relinquishment of the right of the Authority or of the Union to future performance of any such term or condition and the obligations of the Union and the Authority to such future performance shall continue in full force and effect.

**ARTICLE 14 – HOURS OF WORK AND OVERTIME (In Part)**

**14.6** No one outside the bargaining unit will perform work normally performed by those employees within the bargaining unit, unless all members of the bargaining unit have been offered overtime and the need for overtime coverage has not been fulfilled.

**14.7** The employer shall provide reasonable notice of overtime assignments when practical, except for emergencies.

**ARTICLE 29 – SUBCONTRACTING**

**29.1** The Authority retains the right to hire subcontractors to perform bargaining unit work on a temporary basis when necessary, so long as no bargaining unit members suffer a reduction of regular hours, exclusive of overtime, or are laid off as a result of such contracts.

## FACTS

The Natick Housing Authority (Housing Authority, NHA or Employer) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. Randy Waters (Waters or Executive Director is the NHA Executive Director. Finbar Doyle (Doyle) is a Maintenance Mechanic I

and a member of the bargaining unit. Maintenance mechanics provide general maintenance for housing units, including preparing vacant units for new occupancy, snow and debris removal, cleaning grounds maintenance, and minor repairs and replacement of appliances or equipment.

On average, the NHA receives between 3,500 and 4,000 work orders each year. Regular work orders are supposed to be addressed in 30 days, while emergency work orders should be completed in 24 hours. At the time of the hearing, the NHA had approximately 554 work orders on backlog for the fiscal year.

A vacancy occurs when a tenant no longer occupies a unit. The NHA is expected to have a vacant unit ready for a new tenant within 60 days of the vacancy. If the vacant unit is not ready within 60 days, the NHA is subject to escalating daily fines per vacancy.

For many years, the NHA has used subcontractors, including painters, for various tasks to supplement the work of the maintenance mechanics. On February 27, 2024, the NHA hired a subcontractor to paint a vacant unit. Prior to this instance, there is no evidence of the Union objecting to the NHA's use of subcontractors for painting or other assignments. No maintenance mechanics have been laid off, or had their regular hours reduced due to the use of subcontractors.

The Union filed a grievance concerning the use of the subcontractor on February 27, 2024. The grievance was denied at all steps by the NHA resulting in the instant arbitration.

## POSITIONS OF THE PARTIES

### THE UNION

The NHA violated Article 14 Hours of Work and Overtime when it offered painting work to private subcontractors prior to offering the work to members of the bargaining unit for overtime. Furthermore, the NHA violated Article 14 when it failed to notify bargaining unit members of the need for painting overtime when there was clearly a need for painting work to be done during non-working hours. Lastly, the NHA violated Article 29 when it became clear that the NHA's sustained an uninterrupted utilization of private subcontractors beyond any allowance under Article 29 which allows the NHA the right to utilize on a "temporary basis when necessary."

Article 14 Hours of Work and Overtime

This section is clear and it should be interpreted based on its plain meaning. The regular hours for bargaining unit members in the maintenance department at the time of the grievance were 8 a.m. to 4:30 p.m. On February 27, 2024, the NHA used a private painting contractor to perform painting work during both regular working and non-working hours. Painting is listed as one of the principal duties performed by maintenance technicians. On the day in question, no one in the bargaining unit was offered the opportunity to perform the painting work for overtime.

Article 29 Subcontracting

The NHA routinely uses private subcontractors to perform work normally performed by bargaining unit members. Included in this subcontracted work is painting which is a principal duty performed by maintenance mechanics. The NHA

routinely does not offer any off-shift overtime to bargaining unit members for any reason other than snow removal. This continual use of subcontractors has been ongoing since 2018.

Article 3 Management Rights

The Union is not disputing the rights of management under this provision, including the right to subcontract work, if needed. However, Article 3 does not give the NHA the right to exercise any action that is inconsistent with or otherwise provided for in the collective bargaining agreement. When the NHA subcontracted out bargaining unit work without affording anyone in the bargaining unit the opportunity to work overtime, it did so in direct violation of Article 14.

Article 10 Stability of Agreement

The NHA has asserted that the Union does not have sufficient grounds to grieve the use of subcontractors because utilizing subcontractors to perform bargaining unit work, before offering that work to bargaining unit members for overtime, in accordance with Article 14, is a long-standing practice which the Union never previously challenged. However, Article 10 clearly secures the right of either party to enforce any provision of the collective bargaining agreement, even in cases where a party has previously failed to either voluntarily or involuntarily enforce its terms.

Conclusion

The NHA does not dispute that it hired a private subcontracting painting company to perform work on February 27, 2024, and did not offer the painting work to bargaining unit members for overtime. The NHA also does not dispute that it

routinely uses subcontractors to perform bargaining unit work in lieu of offering overtime. The NHA claims that Article 3 of the collective bargaining agreement permits this action. The NHA believes that Article 3 gives it the right to violate all other provisions of the collective bargaining agreement. The Management Rights provision of the collective bargaining agreement exists primarily to secure the inherent rights of management. It is not intended as a catch all, free pass to violate the other provisions as it sees fit. If Management Rights trumps all else, what would that mean for the enforcement of any other article in the collective bargaining agreement?

Considering the evidence, testimony and facts provided, the Union submits that the NHA violated Articles 14 and 29 and requests that Arbitrator order the NHA to comply with the terms and conditions of the articles moving forward.

**THE EMPLOYER**

When contractual language is clear and unambiguous, arbitrators will enforce the plain meaning of such language.[1] The Union alleges that the NHA violated the collective bargaining agreement when it hired subcontractors to paint vacated units on February 27, 2024. The NHA, however, acted pursuant to its management rights and the express language of Article 29 at all times.

The collective bargaining agreement retains the management right to assign overtime, plan and monitor the budget and number of employees, and "to determine the types of operations, methods, and procedures to be employed." Moreover, in deciding how and when to hire subcontractors, assign work to

[1] Safeway Stores, 85 LA 472 (Tharp 1985).

bargaining unit members, or offer overtime, the NHA is determining the "operations, methods, and procedures" necessary in its judgment to ensure the timely, cost efficient, and necessary completion of repairs and turnover of units.

Pursuant to Article 29, "[t]he Authority retains the right to hire subcontractors to perform bargaining unit work on a temporary basis when necessary, so long as no bargaining unit members suffer a reduction of regular hours, exclusive of overtime, or are laid off as a result of such contracting." The plain language of this provision specifically allows for subcontractors to perform bargaining unit work under certain circumstances and excludes overtime from the definition of reduction of regular hours. Article 29 allows the use of subcontractors even if opportunities for overtime are thereby not available.

The Subcontractors Perform Temporary Work on an As Needed Basis

Contrary to the Union's argument that subcontracted work is not "temporary," the NHA does use subcontractors on a temporary and non-permanent basis only. The NHA uses subcontractors on specific and discrete projects only, as needed. While subcontractors may be used for a specific project, such as painting a vacant unit, they are not used on all painting projects. There is no permanent contract, and there is no guarantee of continued work for the subcontractors.

No Employees Suffered a Reduction of Regular Hours or Layoff

It is undisputed that at no time did any bargaining unit member suffer a reduction of regular hours or layoff due to the use of subcontractors. The use of subcontractors has not caused a decrease in the availability of tasks bargaining

unit members are required to complete. It is further undisputed that no bargaining unit member lost their job or suffered a layoff due to the NHA's use of subcontractors.

The Union's Interpretation of the Agreement Should Be Rejected

When presented with contract interpretation issues, arbitrators do not look at specific language in isolation. Rather, it is well settled that arbitrators must review the contract as a whole:

> Sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidenced by the entire document … The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole.[2]

Moreover, where two interpretations are possible, an arbitrator should reject the interpretation which would render other provisions meaningless or ineffective:

> It is axiomatic in construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not write into solemnly negotiated agreements words intended to have no effect.[3]

The Union reads Article 14.6 to require the NHA to offer overtime work to bargaining unit members before offering it to subcontractors; and in using a subcontractor on February 27, 2024, to paint a vacant unit without offering overtime first, contends the NHA violated the Agreement. The Union's argument must be rejected.

[2] See Elkouri and Elkouri, How Arbitration Works, § 9-35.
[3] *Id.* at § 9-36.

First, the Union misreads Article 14.6 on its face. Article 14.6 does not even address subcontracting. Instead, in the middle of a much larger article titled Hours of Work and Overtime, Article 14.6 states simply:

> No one outside the bargaining unit will perform work normally performed by those employees within the bargaining unit, unless all members of the bargaining unit have been offered overtime and the need for overtime coverage has not been fulfilled.

Clearly, when read in context of the entire article, Article 14.6 states the simple fact where overtime assignments are available (i.e. when the NHA decides to offer overtime), such overtime work must be offered to bargaining unit members first. There is no evidence that the painting work performed on February 27, 2024, by a subcontractor was overtime work, was performed off hours, or would have been available for overtime work.

Second, assuming *arguendo* there is some ambiguity in Article 14.6, the Union's interpretation must be rejected as it would render both the management rights clause and Article 29 meaningless. Nothing in the collective bargaining agreement requires the NHA to offer overtime. Yet this is what the Union seeks. It would require the NHA to offer overtime in every single instance where there is a need to convert a vacancy in a timely manner before asking a subcontractor to do the work. This interpretation would completely eradicate the NHA's reserved managerial right to choose whether or not to assign overtime; to determine the types of operations, methods and procedures to be employed, and to manage the budget of the Housing Authority. Moreover, it would vitiate the one express provision in the contract which actually does address subcontracting.

Conclusion

The Union has failed to prove that the NHA violated any provision of the collective bargaining agreement when a subcontractor painted a vacant unit on February 27, 2024. The Union's narrow interpretation of Article 14.6 would eradicate a longstanding and uncontested practice, would render meaningless multiple provisions of the collective bargaining agreement, and would impermissibly limit the management rights of the NHA. For these reasons, the NHA requests that the Arbitrator deny the Union's grievance.

## OPINION

The issue before me is:

Did the Natick Housing Authority violate the collective bargaining agreement on February 27, 2024, when it used subcontracted painters? If so, what shall be the remedy?

For all the reasons stated below, the Natick Housing Authority did not violate the collective bargaining agreement on February 27, 2024, when it used subcontracted painters, and the grievance is denied.

The use of subcontractors by the NHA to perform bargaining unit work is governed by Article 29.1. This article states:

> The Authority retains the right to hire subcontractors to perform bargaining unit work on a temporary basis when necessary, so long as no bargaining unit members suffer a reduction of regular hours, exclusive of overtime, or are laid off as a result of such contracts.

The language of this article, which was collectively bargained by the parties and has remained unchanged through numerous contract cycles, is clear and unambiguous. The NHA retains the right to use subcontractors to perform

bargaining unit work on an as needed temporary basis with two restrictions. First no bargaining unit member can be laid off due to the use of subcontractors, and second, no bargaining unit member's regular hours can be reduced due to the use of subcontractors. Finally, the parties further agreed to exclude overtime from the definition of regular hours.

Operating under the agreed upon restrictions, the NHA has, for an extended period of time, employed subcontractors to perform various bargaining unit duties. The use of subcontractors is for the specific job requested, and there is no expectation of continued employment beyond the task the subcontractor was hired to perform. The NHA uses these subcontractors to supplement the work of the maintenance mechanics and has not reduced any maintenance mechanics' hours nor laid off any maintenance mechanics due to the use of subcontractors.

The Union's argument that Article 14 (Hours of Work and Overtime) requires the NHA to offer, in this instance, painting work to bargaining unit members on overtime prior to hiring subcontractors is unconvincing. Nowhere in Article 14 is subcontracting mentioned. The Union is asking the arbitrator to read into the language concerning overtime a restriction to subcontracting beyond what is already required by Article 29. I decline to do so. As mentioned above, the parties' intent concerning subcontracting is clear and unambiguous, and should not be disturbed by another article of the contract that does not address the issue of subcontracting and would require an inappropriate inference by the arbitrator.

While bargaining unit members are unhappy about the manner in which the NHA currently assigns overtime, basically for snow removal only, the collective

bargaining agreement must be read as a whole and not as a series of independent unrelated articles. Article 3, the management rights article, bestows many employer rights to the NHA subject to the restriction of the other enumerated articles in the collective bargaining agreement. One of those rights centers on the NHA's ability to decide whether to offer overtime opportunities. If the NHA decides to offer overtime, Article 14 governs the manner in which it does so. Similarly, if the NHA decides to subcontract bargaining unit work, Article 29 governs the manner in which it does so.

In this instance, I find that the NHA abided by the restrictions of Article 29 in its use of a subcontractor. As such the NHA did not violate the collective bargaining agreement on February 27, 2024, when it used subcontracted painters, and the grievance is denied.

**AWARD**

The Natick Housing Authority did not violate the collective bargaining agreement on February 27, 2024, when it used subcontracted painters, and the grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
January 5, 2026