

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF BOSTON

and

BOSTON POLICE DETECTIVES
BENEVOLENT SOCIETY

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Case No.: MUP-08-5370

Date issued:
November 21, 2011

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

Kerry Anderson, Esq.	-	Representing the City of Boston
Paul Hynes, Esq.	-	Representing the Boston Police Detectives Benevolent Society

HEARING OFFICER'S DECISION

Summary

The issue in this case is whether the City of Boston (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) because the Boston Police Department (Department) failed to bargain to resolution or impasse with the Boston Police Detectives Benevolent Society (Union) about the decision to remove take-home vehicles from specialized unit detectives and the impacts of that decision on unit members' terms and conditions of employment. For the reasons explained below, I find that the parties did bargain to resolution and agreed on July 18, 2008, that the Department would strictly adhere to Special Order 00-023 by

1 removing take-home vehicles from specialized unit detectives, but not district sergeant
2 detectives and higher-ranking district detectives. Therefore, I find that the City did not
3 violate the Law as alleged.

4 Statement of the Case

5 The Union filed a charge with the Division of Labor Relations (DLR)¹ on
6 December 23, 2008, alleging that the City had engaged in prohibited practices within
7 the meaning of Sections 10(a)(1) and 10(a)(5) of the Law. A DLR hearing officer
8 subsequently investigated the charge and issued a complaint of prohibited practice on
9 August 13, 2009. The City filed its answer to the complaint on September 9, 2009. On
10 January 28, 2010 the City filed motions in limine to preclude testimony of Captain
11 Detective Mark Hayes (Hayes) and retired Deputy Superintendent Marie Donahue
12 (Donahue). The Union filed its opposition to the City's motions on February 24, 2010. I
13 denied both of the City's motions on April 7, 2010.

14 I conducted a hearing on May 20, July 8 and July 20, 2010, at which both parties
15 had the opportunity to be heard, to examine witnesses and to introduce evidence. The
16 parties filed post-hearing briefs on October 8, 2010. Based on the record, which
17 includes witness testimony, my observation of the witnesses' demeanor, stipulations of
18 fact, and documentary exhibits, and in consideration of the parties' arguments, I make
19 the following findings of fact and render the following opinion.

20 Stipulations of Fact

- 21 1. The City is a public employer within the meaning of Section 1 of the
22 Law.

¹ Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the Department of Labor Relations.

2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for detectives and detective superior officers employed by the Respondent in its police department, including Detectives in the specialized units.
4. On August 1, 2000, the Department issued Special Order Number SO 00-023 "Department 'Take Home' Vehicle Policy."
5. Certain provisions of the policy referenced in Paragraph 4 were not strictly adhered to by the parties prior to March 2008.
6. The Deputy Director of the Office of Labor Relations for the Police Department, Stephen Sutliff sent the Union a letter dated March 11, 2008, concerning Special Order 00-023.
7. The Union responded to the Department's March 11, 2008 [letter] by letter dated March 13, 2008.
8. The parties met to negotiate over the subject of the Department's March 11, 2008 letter on the following dates: April 2, 2008; May 1, 2008; May 9, 2008; May 27, 2008; May 30, 2008; July 18, 2008.
9. On or about August 11, 2008, the City issued Special Order Number SO 08-026 entitled "Department 'Take Home' Vehicle Policy Amended and Re-Issued."

Findings of Fact

Pre-2008 - February 2008

On August 1, 2000, Boston Police Commissioner Paul F. Evans (Evans) issued Special Order 00-023 regarding Department take-home vehicles.² Special Order 00-023 included the following sections: 1) general considerations; 2) the criteria for unmarked take-home vehicle assignment to be considered commensurate with the needs and resources of the Department; 3) the take-home vehicle authorization

² During the hearing I granted the parties' joint request that I take administrative notice of the decisions in case number MUP-1087 that issued on November 6, 1997, December 29, 1998, and November 21, 2001, regarding take-home vehicles.

1 process; and 4) vehicle usage procedures. On-call responsibilities are listed as one of
2 the criteria for assignment considered commensurate with the needs and resources of
3 the Department. On-call employees are technically off-duty, but must respond to an
4 investigation if an incident occurs within the purview of their unit assignment.³ There is
5 no dispute that for an unidentified period prior to 2008, the Department routinely
6 assigned vehicles to district and specialized unit detectives on a 24-hour basis (take-
7 home vehicles) without strictly enforcing certain provisions of Special Order 00-023.⁴

8 Due to the economy, rising fuel costs, and vehicle deterioration, fleet costs
9 became an issue during the Department's preparation of the fiscal year 2009 budget. In
10 late February of 2008, Director of the Bureau of Administration and Technology Chris
11 Fox (Fox) (the Department's chief financial person), Dunford,⁵ Superintendent Bruce
12 Holloway (Holloway), and the Department's Office of Labor Relations Deputy Director
13 Stephen Sutliff (Sutliff) discussed measures to address financial constraints, including
14 revoking take-home privileges to counteract reduced new-vehicle purchases.

³ The record contains conflicting testimony on whether there is an unwritten agreement that bargaining unit employees with on-call schedules are entitled to take-home vehicles. Union President John Parlon (Parlon) testified that there is no contractual agreement to respond to on-call assignments, but rather a casual, unwritten agreement that could be construed as quid pro quo. Union Vice President Miller Thomas (Thomas) also testified that on-call assignments were quid pro quo for take-home vehicles. However, Superintendent-in-Chief Robert Dunford (Dunford) denied that the parties had any agreement that automatically entitled unit employees with on call-schedules to have take-home vehicles. I need not resolve this dispute. For the purposes of this decision, I rely on the stipulated fact that the Department did not strictly enforce Special Order 00-023 prior to March of 2008. The complaint contains no repudiation allegation.

⁴ There is conflicting testimony regarding the Internal Affairs Division's use of take-home vehicles as inducements. However, I need not resolve the issue because it is not a material fact.

⁵ Dunford testified that he became Superintendent-in-Chief in about February or March of 2008. As of the July 8, 2010 hearing date, Dunford had retired.

1 March 2008 - Notice and Demand to Bargain

2 By letter dated March 11, 2008, Sutliff informed Union President Parlon⁶ and
3 Union Vice Presidents Thomas and James Fong (Fong),⁷ about the Department's
4 proposal to commence strict adherence to Special Order 00-023 by removing take-
5 home vehicles from 62 district and specialized unit detectives as a means to deal with
6 financial pressure on Department resources. Sutliff stated in the March 11 letter:

7 The Department has reviewed take-home car assignments with the
8 intention of reducing the number of vehicles used for this purpose. The
9 decision to reduce the number of take-home cars is based on financial
10 pressure and the need to employ Department resources more efficiently.
11 It is the Department's position that strict adherence to Special Order 00-23
12 will accomplish this goal. The Department has determined the personnel
13 and positions affected by this review. I have attached a list of people in
14 the positions from whom the [D]epartment desires to remove cars.

15
16 Without limitation, the City does not waive the argument that the mere
17 reiteration of a previously existing policy, which was not strictly enforced,
18 may not constitute a unilateral change.

19
20 That being said, the Office of Labor Relations is available to discuss any
21 issues the Union may have with this reduction. Please contact this office
22 by March 20, 2008 if you would like to meet about this issue.

23
24 In an attachment, the Department listed 62 district and specialized unit detectives from
25 which it proposed removing take-home vehicles. Thomas and Fong responded by letter
26 dated March 13, 2008, informing Sutliff that the Union wished to discuss the matter at
27 the earliest date possible, before implementation of the policy.

⁶ Parlon testified that he left the Union in September of 2008, but remained employed at the Department. He retired in March of 2009.

⁷ At the hearing on May 20, 2010, Thomas was Union President and Fong was Union Vice President.

1 Overview of Negotiation Sessions

2 Between April 2 and July 18, 2008, the parties had six negotiation sessions about
3 the Department's March 11 proposal to strictly adhere to Special Order 00-023 by
4 removing take-home vehicles from 62 district and specialized unit detectives. The chief
5 negotiation spokesmen were Parlon and Sutliff. Thomas, Fong and Mike Galvin
6 (Galvin)⁸ also represented the Union. Fong did not miss any meetings but Thomas
7 missed the May 30 meeting. Sutliff alone represented the Department at all but the first
8 and last meetings. Attorney Samantha Doepken (Doepken) and Superintendent
9 Holloway accompanied Sutliff⁹ to the first meeting and Office of Labor Relations
10 Director/Deputy Superintendent Colm Lydon (Lydon)¹⁰ attended for a few minutes of the
11 last meeting. Sutliff reported to Dunford after every meeting. Dunford did not attend
12 meetings, however, he made final recommendations on negotiation decisions to the
13 Police Commissioner.

14 Sutliff testified that meetings generally ranged from about forty-five minutes to an
15 hour and fifteen minutes, except for the last meeting, which lasted ten minutes. There is
16 no evidence that the parties established ground rules at the outset of negotiations. Nor
17 is there evidence that the Union disclosed limitations on its negotiators requiring Union

⁸ Galvin did not testify at the hearing.

⁹ Office of Labor Relations legal assistant Kimberly Lenane (Lenane) also attended three meetings with Sutliff. Lenane's testimony was based on a prior review of her notes, which she did not bring to the hearing. I do not credit any of her testimony based on her inability to remember the dates of the meetings that she attended.

¹⁰ Lydon was the Director of Labor Relations from May 30, 2008 through May 30, 2009. After his appointment in May, he was out of the office attending various police executive trainings. At the July 20, 2008 hearing, Lydon was a lieutenant detective in the Domestic Violence Unit and a bargaining unit member.

1 Executive Board¹¹ approval prior to any agreement becoming effective.¹² In the course
2 of negotiations, Sutliff verbally informed the Union when his negotiation position
3 required approval and when he had prior authorization for proposals.

4 Fong described the take-home vehicle issue as one of "major importance."
5 Accordingly, at an unidentified point in time before May, the Union polled district
6 sergeant detectives' reaction to potentially losing take-home vehicles.¹³ The Union did
7 not poll specialized unit sergeant detectives. The poll results indicated that district
8 detectives intended to turn in pagers and refuse on-call assignments if the Department
9 removed take-home vehicles. According to Sutliff, the Union never mentioned the
10 internal poll during negotiations, but Parlon and Fong told him repeatedly, at all but the
11 last meeting, that the Department's proposal was a bad idea and that unit members

¹¹ The Union Executive Board is comprised of about 35 detectives and supervisors from all divisions. The Executive Board meets on the third Thursday of every month.

¹² Fong gave conflicting testimony about whether Union negotiators needed advanced approval from the Executive Board before making proposals. Initially, he stated that he did not need advanced approval, but then later testified that if the Department had accepted the Union's May 9 proposal the Executive Board could have rejected that agreement. Fong's testimony in this regard also conflicts with references by Parlon and Thomas to merely "updat[ing]" and "discuss[ing]" proposals with the Executive Board. Nevertheless, there is no evidence that the Union negotiating team informed the Department at any time that they were not authorized to conclude an agreement.

¹³ Thomas testified that the poll was "way before" the July 18 negotiation session, and that he knew the poll results during the May negotiation sessions.

1 would react by turning in their pagers and cell phones with their car keys and not
2 responding during off-duty hours.¹⁴

3 According to Parlon, the Union had no "direct [negotiation] strategy." Thomas
4 testified that the Union attempted to keep the discussion going throughout the process
5 in order not to reach impasse. There is no dispute that during the course of the
6 negotiations, the parties discussed vehicles assigned to non-essential 24-hour
7 personnel and units without on-call duties, including Auditing and Review, Evidence and
8 Supply, Technology and Communications.¹⁵ Fong testified that the parties discussed
9 pool cars on May 9, 2008, and at other unidentified negotiation sessions. The Union did
10 not raise the issue of monetary compensation during the negotiations, not even in
11 conjunction with their own written proposal to remove certain take-home vehicles.¹⁶
12 When asked to characterize negotiation progress, Thomas testified, "I thought we were
13 making headway. We were trading information. We were coming back with at times
14 differences in terms of how we could deal with some of the take-home car issues."
15 Fong also testified that the parties were making progress because of the "ongoing
16 dialogue, exchanging ideas." When asked to be more specific on cross-examination,

¹⁴ Parlon and Fong did not expressly deny making such remarks to Sutliff. Parlon testified that he did not "directly" say that to Sutliff. Fong denied that the Union's bargaining team threatened to withhold services, but could not recall whether the Union told the Department poll results at negotiation sessions. Although there is other conflicting testimony about whether Parlon's and Fong's remarks were threats, I need not make a finding on this point because it is not material to my decision.

¹⁵ Although Thomas testified that the Union was willing to make concessions on Audit and Review, he stated that he did not make a proposal that included those reductions.

¹⁶ Fong testified that the Union intended to make an economic proposal "at some point" but did not elaborate. He maintained that the Union had no opportunity to make an economic proposal prior to the Department's implementation. Thomas testified that the Union never made an economic proposal because "[w]e had not satisfied the whole issue with the cars."

1 Fong merely stated "[w]ell, we were talking, the fact that we had six meetings still going
2 on, the idea of pool cars." Events concerning each specific negotiation are set forth in
3 greater detail below.

4 April 2008

5 First Negotiation

6 The parties first met on April 2, 2008 to negotiate about the Department's March
7 11 proposal to strictly adhere to Special Order 00-023 by removing take-home vehicles
8 from 62 district and specialized detectives. During the meeting, Thomas raised two
9 issues with the list, questioning the inclusion of Lieutenant Detective John McDonough
10 (McDonough) and Homicide Unit Sergeant Detective Randy Halstead (Halstead).¹⁷
11 Thomas had been told that lieutenant detectives and homicide detectives were not
12 included in the Department's proposal. Although Thomas did not testify how he knew
13 that information, the Department's list did not include other homicide or lieutenant
14 detectives. There is no dispute that Sutliff immediately clarified the clerical errors.
15 Striking McDonough and Halstead from the list reduced the Department's proposal to
16 60 vehicles. At the first negotiation, the Union also asked about other bargaining units
17 and sworn and civilian employees with take-home privileges. The Union offered no
18 counterproposals.

19 Union's First Information Request

20 By letter dated April 3, 2008, Fong and Thomas made a written information
21 request for all sworn and civilian personnel authorized take-home vehicles within the

¹⁷ Thomas also told Sutliff at an unidentified point in time after receiving the March 11 list that Sergeant Detective Greg Gallagher (Gallagher) was no longer in the district listed. However, this is not a material fact because it is undisputed that the Department rectified all clerical errors on its March 11 list by the first or second negotiation session.

1 Department for the years 2007 and 2008. Sutliff acknowledged the Union's request by
2 letter dated April 7 and on April 10, 2008, provided the most recent list of sworn and
3 civilian personnel authorized take-home vehicles. Sutliff explicitly stated in his April 10,
4 2008, letter: "We believe this satisfies your request in its entirety. Please let me know if
5 you need any further information." In addition to providing the most recent take-home
6 vehicle list, Sutliff also further explained the correction regarding McDonough that the
7 parties discussed at the first negotiation session and acknowledged the Union's request
8 to postpone the next meeting from April 11 to May 1, 2008.

9 May 2008

10 Second through Fifth Negotiations

11 The parties met four times in May to negotiate about the Department's proposal
12 to strictly adhere to Special Order 00-023 by removing take-home vehicles from 60
13 district and specialized unit detectives. The record contains no evidence specifically
14 about the second negotiation on May 1, 2008. However, during the third negotiation on
15 May 9, 2008, the Union offered a counterproposal in the form of a written, signed
16 Memorandum of Agreement (MOA) stating:

17 This Memorandum of Agreement . . . is the product of collective
18 bargaining conducted pursuant to Ch. 150E of MA. G.L. and MUP 1087
19 (appeal dated December 29, 1998) for the purpose of reaching
20 agreement(s) to the so called "Take Home Car" issue.

21
22 Therefore in compliance with MA. G.L., the "society proposes the
23 following:

24
25 The Society agrees to "pool", (sic) that is to remove from personnel
26 assignment but to remain assigned to BIS/CID the following assigned
27 motor vehicles:

28
29 From

30 Office of the Chief

Presently Assigned:1

Return to Pool 1

1	Sexual Assault Unit	Presently Assigned:5	Return to Pool 2
2	Domestic Violence	Presently Assigned:4	Return to Pool 2
3	Ballistics Unit	Presently Assigned:2	Return to Pool 1
4	Drug Control	Presently Assigned:3	Return to Pool 1
5	Special Investigations	Presently Assigned:2	Return to Pool 1
6	Fire Investigation	Presently Assigned:1	Return to Pool 1
7	Evidence and Supply	Presently Assigned:1	Return to Pool 1
8			
9	Except where specifically amended by the provisions and conditions of the		
10	aforementioned Memorandum of Agreement, all terms and provisions and		
11	conditions of the Agreement are to remain in full force and are		
12	incorporated into these Memorandums (sic) of Agreement are effective		
13	upon execution by the Mayor, unless specifically stated otherwise.		

14 Parlon, Thomas and Fong signed the proposed MOA. The MOA incorporated no
15 economic compensation for the loss of the specifically identified take-home vehicles.

16 Sutliff informed the Union during the May 9, 2008, negotiation session that the
17 Union's proposal to remove only ten take-home vehicles was not even close to the cost
18 savings that the Department needed, but that he had an obligation to present it to the
19 administration. Later, Dunford informed Sutliff that the Union's proposal was
20 unacceptable. During the fourth negotiation session on May 27, 2008, Sutliff confirmed
21 the administration rejection of the Union's May 9 proposal. There is no evidence
22 regarding the fifth negotiation session on May 30, 2008.

1 June 2008

2 In mid-June, Parlon went to Dunford's office and the two had an unscheduled, off
3 the record conversation and agreed on a compromise regarding take-home vehicles.¹⁸
4 During the meeting, Parlon proposed a compromise whereby the Department would
5 leave take-home vehicles with district sergeant detectives, but remove them from
6 specialized unit detectives. Dunford agreed to Parlon's proposed compromise because
7 it met both the Department's operational need to reduce take-home vehicles and what
8 Dunford believed to be internal Union political concerns. In late June or July, Dunford
9 told Sutliff about his agreement with Parlon and gave Sutliff authority to confirm that
10 agreement at the negotiating table. Dunford did not tell Sutliff that his conversation with
11 Parlon had been off the record.

¹⁸ For the following reasons, and based on the demeanor of Parlon and Dunford, I do not credit Parlon's testimony that he and Dunford did not reach an agreement. When first asked whether he had a conversation with Dunford regarding take-home cars, Parlon testified "I've had a lot of conversations with the chief about a lot of different things. Certainly could have. Don't recall one in particular." When asked whether he had a conversation with Dunford in which they came to an agreement regarding detectives take-home cars Parlon answered, "No, we never came to an agreement." When subsequently asked to confirm that he did have a conversation about take-home cars with Dunford, Parlon testified that he could have, but he had "no specific memory" about that conversation. Parlon's testimony was evasive. In contrast, Dunford's testimony was frank and forthright and he provided detailed and consistent testimony about his off the record meeting and agreement with Parlon. Therefore, I do not credit Parlon's testimony on this point.

Other evidence supports finding an agreement between Parlon and Dunford on take-home vehicles. Parlon admitted that he had made verbal agreements with the Department in the past. There is no dispute that Parlon and Dunford reached an oral agreement on detectives' uniforms at an unidentified point in time. They confirmed that oral agreement at a meeting between party representatives before Dunford retired. Dunford also testified that he was involved in other oral agreements with the Union regarding disciplinary issues.

1 July 2008

2 Sixth Negotiation Session

3 The parties held the sixth and final negotiation session on July 18, 2008. Sutliff
4 testified that the meeting lasted about ten minutes. Parlon, Thomas, Fong and Galvin
5 represented the Union. Sutliff alone represented the Department for all but the last few
6 minutes of the meeting, when Lydon arrived.¹⁹ Prior to starting the July 18 meeting, the
7 parties discussed unrelated issues. Then, based on his conversation with Dunford,
8 Sutliff informed the Union that he had the authority to advance another proposal
9 whereby the Department would strictly adhere to Special Order 00-023 by removing
10 take-home vehicles from specialized unit detectives but not district sergeant detectives
11 and higher-ranking district detectives. Sutliff made that proposal in the context of the list
12 of 60 district and specialized unit detectives' vehicles that the parties had been
13 negotiating about at the preceding meetings. The offer cut the Department's proposed
14 list of vehicles to be removed from bargaining unit members by about half.

15 Sutliff testified that in response to his proposal, Parlon "stood up, told me he
16 thought it was a wonderful idea, he agreed with it, that we had a deal and we were all
17 set." Sutliff also testified that when Parlon said, "we have a deal" the two shook hands.
18 Sutliff stated that Parlon seemed to expect his proposal and asked whose idea it was, to
19 which Sutliff responded, "[i]t's not like I don't know that you and Chief Dunford talk."
20 There is no evidence that Parlon responded. The Union bargaining team did not ask
21 questions, indicate that they would take the proposal back to the Executive Board,

¹⁹ I do not credit any of Lydon's testimony regarding the July 18 negotiation session because he testified that he arrived late, the meeting was over in minutes, and he "didn't get the specifics of the entire conversation."

1 request a finalized take-home vehicle authorization list, demand additional information,²⁰
2 state that future proposals might be forthcoming, or request another meeting.²¹

3 Sutliff also agreed, at Parlon's request, not to put the agreement in writing.
4 According to Sutliff, when he asked Parlon whether he should write up the agreement,
5 Parlon stated, "[n]o that's not necessary; we have an agreement." Sutliff did not ask
6 Parlon whether he wanted a closeout letter as opposed to a memorandum of
7 agreement, explaining, "I didn't want to jeopardize what we had. He had political
8 concerns. And, you know, I trusted him."

9 In making the above-referenced findings regarding the July 18, 2008, negotiation
10 session, I am cognizant that Sutliff's testimony directly conflicted with the testimony of
11 Parlon, Thomas, and Fong. Sutliff explicitly testified that after he proposed strictly
12 adhering to the special order by removing take-home vehicles from specialized unit
13 detectives but not district sergeant detectives and higher-ranking district detectives,
14 Parlon said he agreed. In contrast, Parlon, Thomas and Fong denied that on July 18
15 Sutliff made that proposal and that the parties reached an agreement. The Union
16 negotiators further insisted that if the parties had reached an agreement, they would

²⁰ During his testimony on direct examination, Thomas claimed that after the last negotiation session, the Union was still seeking further information identifying the cars that were going to be taken and the units that would be impacted. However, there is no evidence that the Union made any specific verbal or written information requests other than those on April 3 and October 7, 2008.

²¹ Thomas admitted that he did not personally request another meeting with the Department after July 18. Fong also testified that he did not request another meeting after July 18. Parlon did not testify specifically about whether he requested another meeting after July 18, but testified that he did not contact Lydon between July 21 and September when he left the Union.

1 have brought it back to the Union's Executive Board.²² For the following reasons, as
2 well as the demeanor of Sutliff, Parlon, Thomas and Fong, I credit Sutliff's testimony.

3 Parlon denied on direct and cross-examination that the parties reached
4 agreement on the take-home car issue on July 18, 2008. However, Parlon failed to
5 remember any other critical facts about the July 18 meeting, including the substance of
6 the conversation. When asked on cross-examination whether Sutliff proposed on July
7 18 that district sergeant detectives keep take-home cars and specialized unit and lower-
8 ranking detectives lose the cars, Parlon testified: "I'm not sure what the conversation
9 was during that meeting. I'd be guessing. I know there was (sic) probably six meetings.
10 What the content of each meeting was, I can't be sure." Moreover, Parlon could not
11 remember how long the July 18 meeting lasted, or whether it was long or short.

12 Additionally, Parlon could not remember how detective supervisors came to be
13 removed from the Department's proposed list of detectives to lose take-home vehicle
14 privileges.²³ Although Parlon admitted that Sutliff "could certainly have" proposed at
15 one of the six negotiation sessions that district sergeant detectives keep take-home cars
16 and specialized unit detectives lose the cars, he could not recall any Department
17 proposals or Union concessions. When asked on cross-examination whether the

²² Parlon testified that if the Department made a proposal, he would have brought it back to the Executive Board and given them an update. Thomas testified that if the parties had reached an agreement they would have gone back to the Executive Board and discussed it with them so that they could transmit that information to the membership. Fong testified that if the parties had reached agreement, the normal protocol would have been to "have some type of letter stating what was agreed upon" to bring back to the Executive Board. However, I credit Sutliff's testimony that Parlon told him not to write up the agreement.

²³ When asked on direct examination how detective supervisors came to be removed from the Department's proposed list of detectives to lose take-home vehicle privileges, Parlon stated: "I don't have an independent memory of how it actually came about."

1 Department verbally modified its initial March proposal, Parlon first failed to answer the
2 question before stating "I don't have an independent memory if that's what happened. It
3 certainly could have." When asked again on cross-examination whether at any point
4 the Department represented to him that it was taking district sergeant detectives off the
5 list, Parlon refused to answer. When asked again, Parlon testified, "[y]eah, I think they
6 did." He did not elaborate. On re-direct Parlon was again asked how district
7 supervisors "were suddenly out of the mix." He ignored the question.

8 Finally, Parlon admitted that he might have accepted verbal proposals during
9 negotiations. When asked to confirm that the Union never agreed to the Department's
10 proposal to reduce 60 take-home cars to 30 cars, Parlon stated: "[t]hat's not what I said
11 at all. What I said was that there had been verbal discussions. There may have been
12 verbal proposals that were accepted or not accepted. That's how the process moves
13 forward. I didn't say that that (sic) did not; it certainly could have happened, absolutely."
14 I do not credit Parlon's testimony regarding the July 18 meeting on whether the parties
15 reached an agreement because of what appears to be a selective memory, evasiveness
16 and equivocations on key facts such as whether or not he made a verbal agreement.

17 Thomas also testified that he did not "hear" Sutliff make a proposal to Parlon at
18 the July 18, 2008, negotiation session and denied that he participated in an agreement.
19 He also stated that the parties generally shake hands when arriving and departing
20 meetings. However, Thomas explicitly testified, "I'm not sure exactly what we talked
21 about at [the July 18, 2008] meeting." Thomas testified on direct and cross-
22 examinations that the Department verbally pulled back "early on" from taking district
23 sergeant detectives' cars. Yet, on cross-examination, Thomas could not remember the

1 meeting that the Department pulled that issue off the table. Nor did he describe the
2 circumstances in which the Department pulled back on half of its initial proposal.
3 Therefore, I do not credit Thomas' conclusory testimony.

4 Fong's testimony was equally vague. He also denied on direct examination that
5 the parties reached an agreement on July 18, 2008. However, when asked on cross-
6 examination whether Sutliff made a proposal at the July 18 meeting, Fong testified,
7 "there were a number of proposals. I can't say that for a fact that that happened." Fong
8 also testified that he could not recall whether Parlon and Sutliff shook hands and
9 entered into a verbal agreement concerning take-home vehicles. In response to a
10 leading question on direct examination Fong testified that it was the Department's idea
11 to strike district supervisors off the list, but he failed to provide other details regarding
12 that assertion. Therefore, I do not credit Fong's unresponsive testimony.

13 The testimony of Parlon, Thomas, and Fong is not credible on a number of
14 factual disputes that arose during the course of the hearing. Collectively, their vague
15 testimony and poor recollections about key facts detracted from their believability. In
16 particular, they were evasive about the substance of the July 18 negotiation session and
17 inexplicably failed to identify the other meetings or circumstances where the Department
18 pulled district sergeant detectives off the proposed take-home vehicle removal list. In
19 so doing, they appeared to avoid lines of inquiry where the evidence may have
20 detracted from the Union's position. Their conclusory testimony that the Department,
21 while facing serious fiscal constraints, gratuitously gave up half of its initial proposal by
22 allowing district sergeant detectives to retain take-home vehicles without reaching
23 agreement on Union concessions, is unconvincing.

1 In contrast, Sutliff testified in a manner that was sincere, straightforward, and
2 consistent. In addition, Sutliff's testimony regarding his July 18 agreement with Parlon
3 is corroborated by Dunford's testimony about his earlier, off the record conversation and
4 agreement with Parlon. Therefore, I find that the Union agreed on July 18, 2008, that
5 the Department would strictly adhere to Special Order 00-023 by removing take-home
6 vehicles from specialized unit detectives but not district sergeant detectives and higher-
7 ranking district detectives.

8 The Department's July 21, 2008 Letter

9 Immediately following the July 18 meeting, Sutliff drafted, on Lydon's behalf, a
10 letter to the Union regarding the parties' agreement. Sutliff crafted the letter, dated July
11 21, 2008, in a way that he "believed accomplished our agreement and protected
12 [Parlon]" by not directly referencing the July 18 agreement. When asked on cross-
13 examination why he didn't somehow memorialize the July 18 agreement in the July 21
14 letter, Sutliff stated that he did not want "to betray the person across the table," but
15 accomplish what both wanted.²⁴ Thus, the Department informed the Union that
16 beginning August 1, 2008, it would gradually reevaluate Department vehicles to ensure
17 compliance with Special Order 00-023. Pursuant to the July 18 agreement, compliance
18 with Special Order 00-023 meant that the Department would remove take-home

²⁴ When asked on cross-examination whether Sutliff told him between July 18 and July 21 that the parties had reached an agreement and the terms of that agreement, Lydon did not directly answer the question, stating, "I don't know what the specifics of the agreement were." Lydon denied that anyone affirmed the agreement with him between July 18 and July 21. However, Lydon admitted on cross-examination that Sutliff told him about the agreement with Parlon, but Lydon could not remember when that occurred. There is no dispute that Dunford did not have a conversation with Lydon about the agreement between July 18 and July 21. I do not consider this to be a significant fact because Dunford and Sutliff had been in close communication throughout the negotiations as Lydon had other obligations during that period of time.

1 vehicles from specialized unit detectives, but not district sergeant detectives and higher-
2 ranking district detectives. The July 21 letter states in relevant part:

3 We met regarding the issue of Take Home Vehicles most recently on July
4 18, 2008. The parties had met on four²⁵ occasions prior to this last
5 meeting. The Union was informed that the Department would gradually
6 reevaluate all Departmental vehicles to ensure compliance with Special
7 Order 00-23, entitled "Department 'Take Home' Vehicle Policy" (attached).
8

9 As was explained the Department is attempting a better utilization of
10 existing resources. The collection of information about individual's use of
11 these vehicles has already begun. The Department's reevaluation of
12 whether vehicle usage meets the requirements of Special Order 00-23 will
13 commence August 1, 2008.
14

15 The City does not waive the argument that the mere reiteration of a
16 previously existing policy, which was not strictly enforced, may not
17 constitute a unilateral change.²⁶ Please notify the Office of Labor
18 Relations should you require an additional meeting about this matter.
19

20 The Union had no outstanding information requests and did not make any oral or written
21 information requests immediately after July 21, 2008.²⁷ Nor did the Union contact the
22 Department to request an additional meeting after receiving the July 21, 2008 letter.²⁸

²⁵ The reference to four previous meetings is a typographical error.

²⁶ Sutliff testified that this is boilerplate language from his March 11, 2008 letter.

²⁷ Thomas testified that after the Department sent the July 21 letter, Fong "was still sending additional information requests." Yet, aside from the April 3 and October 7, 2008 information requests, there is no evidence of Union information requests.

²⁸ When first asked whether the Union notified the Department after July 21 that it wanted another meeting, Thomas twice failed to answer the question before asserting, "I'm most positive that we did." However, when asked whether he personally requested another meeting after the July 18 meeting, Thomas admitted that he did not. Likewise, Fong testified that he did not respond to the July 21 letter. Parlon testified that he did not contact Lydon between July 21 and September when he left the Union.

1 August 2008

2 On August 11, 2008, Police Commissioner Edward F. Davis (Davis) re-issued
3 Special Order 00-023 as Special Order 08-026.²⁹ Special Order 08-026 was not
4 inconsistent with the parties July 18 agreement. It merely reiterated the same take-
5 home vehicle criteria, authorization process, and vehicle usage procedures that the
6 Department announced in 2000. Special Order 08-026 did not revoke any take-home
7 vehicles. Although there is evidence that Bureau of Administration and Technology
8 Director Fox developed a new request form to be used in the take-home vehicle
9 authorization process, the record does not contain information on exactly when the
10 Department first distributed that form to bargaining unit members.³⁰ The Union had no
11 outstanding information requests on August 11, 2008. The Union bargaining team did

²⁹ Thomas and Fong testified in response to leading questions on direct examination that the Department implemented a change by issuing Special Order 09-026 on August 11, 2008. However, it is undisputed that the special orders are the same.

³⁰ On September 19, 2008, Dunford denied a take-home vehicle authorization request form from a specialized unit detective, SORI UNIT/BIS Sergeant Detective Gladys Aquino-Gaines. Dunford subsequently denied other requests from specialized unit detectives on November 22, 25, December 1, 4, 5, 2008.

1 not contact the Department about Special Order 08-026 or distribution of the
2 authorization forms.³¹

3 September 2008

4 On an unidentified date in September, Parlon left his position as Union president.

5 On September 26, 2008, Dunford sent memoranda to bureau chiefs identifying

6 personnel without take-home vehicle privileges and requiring units to institute new

7 procedures for authorizing on-call personnel to take home pool vehicles. As a result,

8 personnel without take-home vehicle status would be able to take home pool cars while

9 on-call. Dunford stated that the revised take home car procedures would be effective

10 October 14, 2008. In addition to notifying bureau chiefs of the new on-call policy,

11 Dunford also provided lists of personnel without take-home vehicle privileges, vehicles

12 to be returned to fleet maintenance, and vehicles to remain as unit pool cars. There is

13 no evidence that Dunford's September 26, 2008, memoranda were inconsistent with the

14 parties July 18 agreement that the Department would strictly adhere to Special Order

15 00-023 by removing take-home vehicles from specialized unit detectives but not district

16 sergeant detectives and higher-ranking district detectives.

³¹ On August 29, 2008, Internal Affairs Division Commander, Captain Detective Mark Hayes (Hayes) submitted a report to Bureau of Professional Standards and Development Chief, Superintendent Kenneth Fong (K. Fong) concerning his recommendations and justification for Internal Affairs Division take-home vehicles. Dunford testified that he saw Hayes' report on August 29 but did not respond. Family Justice Division Captain Detective Genevieve M. King (King) submitted a similar report to Bureau of Investigative Services Deputy Superintendent Paul Fitzgerald on October 1, 2008. Neither Hayes nor King was a member of the Union negotiating team. There is no evidence that the Union negotiating team requested that they prepare the reports for negotiation purposes or notified Dunford and Sutliff that the reports had been prepared for negotiation purposes.

1 October 20082 The Union's Second Information Request

3 On October 7, 2008, Union Vice President Fong sent Lydon an information
4 request for all sworn and civilian personnel authorized take-home vehicles for the years
5 2007-2008. The October information request was the exact same letter that Fong and
6 Thomas had sent to Sutliff on April 3, 2008, with the exception of the word "all," which in
7 the October letter is bold, italicized and underlined. Thomas also testified that the
8 October information request reiterated an earlier request. However, after the
9 Department responded to the Union's April 3 information request on April 10, there is no
10 evidence that the Union ever informed the Department during negotiations that it
11 considered the response inadequate. Nor is there evidence of other verbal or written
12 information requests prior to October 7, 2008. By letter dated October 17, 2008, Sutliff
13 responded to Fong's October 7 request by explaining that the Department did not
14 maintain historical lists and providing a current personnel list of authorized take-home
15 vehicles.³² The Union did not request further negotiations on the take-home vehicle
16 issue or indicate that further proposals were forthcoming.³³

³² Fong testified on direct exam that until October, the Department never provided a final list of detectives that were going to lose cars. However, he acknowledged on cross-exam that he never requested a final list of detectives who were going to lose cars after the Department removed district sergeant detectives from the proposal. Notably, Parlon testified on redirect that the Department did send him a revised list that did not include district supervisors or detectives. He did not identify when that occurred.

³³ When asked whether the Union requested a meeting after receiving Sutliff's October letter, Thomas first refused to answer the question and then testified, "I think we did, but I'm not 100-percent sure. I'm most certain that we did." I do not credit this assertion.

1 December 2008

2 On December 23, 2008, the Union filed the charge in this case. Subsequently,
3 Sutliff asked Fong why the Union filed the charge. Fong told Sutliff that that the Union
4 "did not anticipate the wrath that they got from the specialty units."³⁴ At the start of
5 negotiations, the Union had polled district detectives, but not specialized unit detectives.
6 Sutliff testified that he also called Parlon and asked why the Union filed the charge
7 because Parlon had been the Union's chief spokesman and made the deal. It is
8 undisputed that Parlon told Sutliff that "he would talk to the guys and find out what was
9 going on" with the charge.³⁵ There is no further evidence on the matter.

10 OPINION

11 The primary issue in this case is whether the Department bargained to resolution
12 or impasse with the Union about its decision to remove take-home vehicles from
13 specialized unit detectives without giving the Union an opportunity to bargain to
14 resolution or impasse.³⁶ The Union argues that the parties did not reach an agreement
15 or impasse prior to the Department's August 11, 2008, issue of Special Order 08-026.
16 In contrast, the Department insists that it reached an oral agreement with the Union at

³⁴ Fong admitted on cross-exam that he had a conversation with Sutliff about the Union's charge, but he had no recollection about any part of the conversation. Therefore, I credit Sutliff's testimony.

³⁵ Parlon did not testify about the conversation.

³⁶ Although not alleged in the complaint, the Union maintains in a footnote of its post-hearing brief that the Department changed the on-call practice from a voluntary arrangement to an involuntary requirement on October 8, 2008. I am dismissing this allegation because the parties did not fully litigate the issue as the Union raised the allegation for the first time in its post hearing brief. See Town of Norwell, 18 MLC 1253, 1264 (1992) (stating that full litigation requires that the respondent be given notice that the subject is in issue and an opportunity to present evidence concerning facts material to the subject).

1 the last of six negotiations regarding the take-home vehicle issue on July 18, 2008.
2 Alternatively, the Department argues that the evidence warrants a finding that the
3 parties had reached impasse. Based on the evidence presented at the hearing,
4 including witness demeanor, I find that the parties did bargain to resolution and agreed
5 on July 18, 2008, that the Department would strictly adhere to Special Order 00-023 by
6 removing take-home vehicles from specialized unit detectives but not district sergeant
7 detectives and higher-ranking district detectives.

8 In determining whether a public employer and a union reached an agreement the
9 Commonwealth Employment Relations Board (Board) considers whether there has
10 been a meeting of the minds on the actual terms of the agreement. Town of Ipswich, 11
11 MLC 1403, 1410 (1985), aff'd sub nom., Town of Ipswich v. Labor Relations
12 Commission, 21 Mass. App. Ct. 1113 (1986). To achieve a meeting of the minds, the
13 parties must manifest an assent to the terms of the agreement. Suffolk County Sheriff's
14 Department, 30 MLC 1, 6 (2003). The Board has long recognized that a meeting of the
15 minds can occur without an agreement being reduced to writing or signed by either
16 party. Chief Justice for Administration and Management of the Trial Court, 35 MLC 171,
17 173 (2009) (stating that an oral agreement between a public employer and a union is
18 effective and enforceable under the Law if the agreement is otherwise valid) (citing
19 Service Employees International Union, Local 509 v. Labor Relations Commission, 410
20 Mass. 141, 145 (1991)).

21 If the evidence is insufficient to find an agreement concerning the issue in dispute
22 or if the parties hold differing, good faith interpretations of the terms at issue, the Board
23 will find no violation of the Law. Suffolk County Sheriff's Department, 30 MLC at 6. For

1 instance, in City of Boston, 26 MLC 215, 217 (2000), the Board held that, absent
2 evidence of specific words used by a party that caused the other party's representatives
3 to believe there was agreement, there is no meeting of the minds. In that case, the
4 Board found that the union had not met its burden of proving by a preponderance of the
5 credible evidence that the city agreed to provide a smoker's lounge in a particular area
6 because there was no evidence of the city representative's statements that caused the
7 union to believe he made an agreement. See also City of Marlborough, 9 MLC 1708,
8 1711 (1983) (finding insufficient evidence of a meeting of the minds where union
9 witnesses never specifically stated that employer representatives agreed to the union's
10 position).

11 In this case, Parlon's express, unconditional acceptance of Sutliff's unambiguous
12 July 18, 2008 proposal to strictly adhere to Special Order 00-023 by removing take-
13 home vehicles from specialized unit detectives but not district sergeant detectives and
14 higher-ranking district detectives, is sufficient to find agreement. The credible hearing
15 evidence establishes that Parlon not only stated that he agreed with Sutliff's proposal,
16 but told Sutliff that it was unnecessary to write it up because, "we have an agreement."³⁷
17 There is no evidence that Parlon conditioned acceptance of Sutliff's offer on either
18 approval from the Union Executive Board or further negotiations on other issues, such

³⁷ The Union argues that the parties had a practice, particularly with regard to significant issues, of reducing agreements to writing. Nevertheless, the credible evidence establishes that in this instance, Parlon told Sutliff not to put the agreement in writing.

1 as monetary compensation.³⁸ Nor did the Union articulate any other demands during
2 the July 18, 2008, negotiation session to indicate that the parties had not reached a full
3 and final agreement. Therefore, based on the credible hearing evidence, I conclude
4 that the parties achieved a meeting of the minds and mutually binding agreement as
5 Parlon's words and conduct, judged by a reasonable standard, were specific,
6 unambiguous, and without reference to further conditions. Thus, the Department acted
7 in accordance with the July 18 agreement when it adhered to Special Order 00-023,
8 reissued as Special Order 08-026, by removing take-home vehicles from specialized
9 unit detectives but not district sergeant detectives and higher-ranking district detectives.

10 The Union maintains that the Department's verbal agreement claims are
11 meritless and that the parties' behavior contradicts the presence of such an agreement.
12 I disagree. Beyond the credible evidence regarding Parlon's express, unconditional
13 acceptance of Sutliff's offer, other evidence supports a finding that the parties reached
14 an agreement and concluded negotiations on July 18, 2008, including: the unusually
15 short final negotiation session followed by an abrupt termination of meetings; the
16 absence of outstanding information requests; no indication of forthcoming Union
17 proposals; and the Union's acquiescence to the Department's actions after the final
18 negotiation session on July 18, 2008.

³⁸ The Union argues that it had a two-fold bargaining strategy, to bargain first about the number of take-home vehicles to be removed and second about compensation for lost vehicles. However, Parlon's testimony that the Union had no bargaining strategy belies this argument. Likewise, Thomas testified that the Union just tried to keep the discussion going in order not to reach impasse. Additionally, although the Union presented its May 9 proposal as a signed MOA, it did not incorporate a compensation provision for the ten identified vehicles to be removed and pooled.

1 First, after the unusually short negotiation session on July 18, 2008, the parties
2 abruptly ceased meeting. Although the five negotiations prior to July 18 ranged from 45
3 minutes to an hour and fifteen minutes, the last negotiation session was only ten
4 minutes long. I attribute the abbreviated negotiation session to the fact that Parlon and
5 Dunford previously agreed off the record on a compromise resolving the issue, leaving
6 party representatives to confirm that agreement on July 18. There is no evidence to
7 support the Union's assertions that it requested additional meetings after July 18 and
8 continued to request meetings as late as October. Parlon, Thomas, and Fong admitted
9 that they did not request any meetings after July 18, 2008.

10 Second, there is no evidence that the parties suspended negotiations in order to
11 obtain additional information or agreed to consider other information before resuming
12 negotiations. The Union contends that: 1) it awaited additional information after the July
13 18 meeting; 2) it was waiting for requested information on July 21; and 3) that it had
14 outstanding information requests on August 11, 2008. However, the record contains
15 only two information requests, April 3 and October 7, 2008, to which the Department
16 responded. The Union also complains that the Department failed to supply statistical
17 data addressing on-call response or frequency of various units, did no analysis or
18 reporting on take-home vehicles, failed to fully investigate and procure information on
19 take-home vehicle use, and never produced reports or shared information with the
20 Union. Nevertheless, there is no credible evidence in the record establishing that the
21 Union made any related verbal or written information requests.

22 Third, there is no evidence that the Union indicated additional proposals were
23 forthcoming. The Union argues that the Department implemented the change on

1 August 11, 2008, during the parties' ongoing discussions, before the parties discussed
2 the "impact and other details" of the Department's proposal. According to the Union, the
3 parties were making progress, but "many issues and details had yet to be discussed or
4 remained unresolved, many concessions remained to be offered." The Union insists
5 that it was prepared to make further concessions. However, a party's word and conduct
6 must be judged by a reasonable standard with no consideration of unexpressed
7 intentions. Pittsburgh-Des Moines Steel Company, 202 NLRB 880, 888 (1973). Here,
8 the Union failed to express its desire to further discuss the Department's proposal, did
9 not tell the Department that there were unresolved issues and details, and did not
10 indicate that further proposals would be forthcoming.

11 Fourth, the Union acquiesced to the Department's actions after the last
12 negotiation on July 18, 2008. The Union did not react to: the Department's July 21,
13 2008 letter; Dunford's re-issue of Special Order 00-023 as Special Order 08-026 on
14 August 11, 2008; distribution of the new form for take-home vehicle authorization; and
15 Dunford's September 19, 2008, denial of a specialized unit sergeant detective's request
16 for take-home vehicle authorization. Most significantly, the Union did not immediately
17 object to Dunford's September 26, 2008, memoranda on the basis that the parties had
18 no final agreement on the take-home vehicle issue.

19 The Union maintains that the July 21, 2008 letter indicates that the Department
20 had not yet ascertained the members and units to be affected by compliance with
21 Special Order 00-023. However, the evidence demonstrates that throughout
22 negotiations, the Department clearly identified the members and units that would be
23 affected by strict adherence to the special order. On March 11, the Department

1 provided the Union with a proposed list of affected bargaining unit personnel. The
2 Department clarified two clerical errors at the first negotiation session on April 2, 2008.
3 Based on that corrected list, the parties agreed on July 18 that the Department would
4 strictly adhere to Special Order 00-023 by removing take-home vehicles from
5 specialized unit detectives but not district sergeant detectives and higher-ranking district
6 detectives. In light of the July 18 agreement, the July 21 letter announced that the
7 Department would move forward with implementing strict adherence to the special order
8 on August 1, 2008.

9 The only communication from the Union to the Department after the July 18,
10 2008, negotiation session is Fong's October 7, 2008, information request. Fong's
11 October 7 letter requests the same information as he requested on April 4, 2008.
12 However, the Union never informed Sutliff at negotiations that his April 10 response to
13 the April 4 information request was inadequate. Thus, Fong's October 7, 2008,
14 information request appears to be little more than an afterthought in the wake of
15 Dunford's September 26, 2008, memoranda. The Union emphasizes that Sutliff
16 responded to its October 7 information request without mentioning an agreement.
17 However, I dismiss this argument in light of the credible evidence regarding Parlon's
18 request that Sutliff not put their agreement in writing. I also note that the Union's
19 October 7 information request did not object to the Department's implementation of
20 strict adherence to the special order or request further bargaining. For all of the
21 reasons stated above, the Union's course of conduct after July 18, 2008 reflects that it
22 had a mutual agreement that the Department would strictly adhere to Special Order 00-

1 023 by removing take-home vehicles from specialized unit detectives but not district
2 sergeant detectives and higher-ranking district detectives.

3 My finding that Parlon assented to Sutliff's proposal on July 18, 2008, is further
4 buttressed by Sutliff's reaction to the Union's filing of the unfair labor practice charge in
5 December of 2008. There is no dispute that Sutliff followed up with both Parlon and
6 Fong. Significantly, when Sutliff asked Parlon why the Union filed the charge, Parlon
7 did not deny that the parties had an agreement. He merely said he would talk to the
8 guys and find out what was going on with the charge. Additionally, Fong told Sutliff that
9 the Union had an unanticipated backlash from the specialty units, unit members that the
10 Union had not polled during negotiations.

11 For all of the reasons stated above, I conclude that the parties entered into an
12 unambiguous and enforceable agreement on July 18, 2008, that the Department would
13 strictly adhere to Special Order 00-023 by removing take-home vehicles from
14 specialized unit detectives but not district sergeant detectives and higher-ranking district
15 detectives. There is no evidence that the Department did not act in accordance with
16 that agreement. Therefore, I find that the Department's removal of take-home vehicles
17 from specialized unit detectives did not violate the Law.

18 CONCLUSION

19 For the foregoing reasons, I do not find that the City violated Section 10(5) and,
20 derivatively, Section 10(a)(1) of the Law as alleged.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS


KATHLEEN GOODBERLET, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.02(1)(j), to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.