15. In the event it becomes necessary for the Department to eliminate an employee's AWS including those employee's grandfathered in under #4, the employer will provide the employee at least 10 working days prior written notice, except in cases of emergencies involving the protection of the property of the Commonwealth or involving the health and safety of those persons whose care and/or custody have been entrusted to the Commonwealth. In emergency situations management shall, at the Union's request, provide the reason(s) for the elimination of the AWS.

* * * * * *

In the Matter of CITY OF GLOUCESTER

and

GLOUCESTER POLICE PATROLMEN'S ASSOCIATION

Case No. MUP-2180

28.	***Relationship Between c. 150E and Other Statutes Not Enforced by Commission***
54.55	***past practices***
65.9	***other interference with union***
67.162	***preemption by other legislation***
67.8	***unilateral change by employer***
82.12	***other affirmative action***
82.3	***status quo ante***

March 1, 2000
Robert C. Dumont, Chairman
Helen A. Moreschi, Commissioner
Mark A. Preble, Commissioner

Suzanne Egan, Esq.	*City of Gloucester*
Amy Laura Davidson, Esq.	*Gloucester Police Patrolmen's Association*

DECISION[1]

Statement of the Case

The Gloucester Police Patrolmen's Association (Union) filed a charge with the Labor Relations Commission (Commission) on July 23, 1998, alleging that the City of Gloucester (City) had engaged in prohibited practices within the meaning of Section 10 (a) (5) and, derivatively, 10 (a) (1) of Massachusetts General Laws, Chapter 150E (the Law). The Commission investigated the charge and issued a complaint of prohibited practice on March 18, 1999, alleging that the City had violated Sections 10 (a) (5) and, derivatively, 10 (a) (1) of the Law by unilaterally changing the method of accruing and distributing compensatory time without providing the Union with notice or an opportunity to bargain to resolution or impasse. The City filed an answer to the complaint on April 2, 1999. The parties agreed to file stipulations of fact in lieu of an evidentiary hearing. Both parties filed post-hearing briefs.

Stipulations of the Parties[2]

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

2. The Union is an employee organization within the meaning of Section 1 of the Law.

3. The Union represents all police officers employed by the City, including police officers enrolled in the Police Academy (the Academy).

4. For many years prior to February 1998, officers employed by the City and attending the Academy (student officers) were credited with compensatory time for hours and days worked outside a regular police officer's schedule during the period in which they were enrolled in the Academy.

5. Student officers were assigned to a five day on and two day off schedule, in contrast to the four day on and two day off schedule of permanent officers. To compensate student officers for the extra workdays, the City had a practice of crediting them with compensatory days for each extra day that they worked outside the four and two schedule. The compensatory days accrued until a student officer graduated from the Academy.

6. In addition, student officers were required to work in excess of an eight-hour day. Prior to February 1998, student officers were credited with compensatory time to compensate them for the extra hours they worked beyond an eight-hour day.

7. Student officers were not permitted to use their accrued compensatory time until after graduation. After graduation, officers were permitted to use the compensatory time they accrued at the Academy once they were assigned to regular police positions in the City.

8. On December 27, 1997, officers who completed the Academy filed a request for compensatory time for the days and hours they attended the Academy in excess of a regular patrol officer schedule.

9. On February 2, 1998, Police Chief Marr (Marr) notified the patrol officers who requested compensatory time that the City would not credit them with any compensatory time.

10. Since February 1998, the City has refused to permit police officers to use the compensatory time they accrued during the period in which they were enrolled in the Academy.

11. In addition, since February of 1998, the City has refused to credit student officers with any compensatory time for the hours and days that they worked in excess of the regular patrol officer work schedule.

1. Pursuant to 456 CMR 13.02 (2), the Commission designated this case as one in which the Commission will issue a decision in the first instance.

2. The parties have not contested the Commission's jurisdiction over this matter.

12. The City took the action referred to in paragraphs 9, 10, and 11, above, without prior notice to or negotiation with the Union.

13. On February 20, 1998, counsel for the Union sent a letter to the Director of Personnel for the City protesting the elimination of accrued compensatory time that officers earned while attending the Academy.

14. Since February 20, 1998, the City has failed and refused to restore its practice of crediting officers with compensatory time for the hours and days they worked beyond a patrol officer schedule during the period that they were enrolled at the Academy.

Opinion

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first affording its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. *Commonwealth of Massachusetts* v. *Labor Relations Commission*, 404 Mass. 124, 127 (1989); *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 572 (1983); *City of Boston*, 16 MLC 1429, 1434 (1989). The obligation to bargain extends to working conditions established through past practice as well as to working conditions contained in a collective bargaining agreement. *City of Everett*, 19 MLC 1304 (1992). Paid leave, including compensatory time, is a mandatory subject of bargaining. *Bristol County*, 23 MLC 114, 116 (1996).

Here, the record reflects that: 1) the City credited student officers with compensatory time for hours and days worked outside a regular police officer's schedule for many years prior to February 1998; 2) the City has refused to credit police officers with any compensatory time for hours and days worked in excess of a regular officer's schedule since February 1998; and 3) the City took this action without providing the Union with prior notice and an opportunity to bargain. Although the Union established the requisite elements of a unilateral change claim, the City argues that it did not have an obligation to bargain with the Union about the change. The City reasons that, because student officers are exempt from the provisions of any collective bargaining agreement pursuant to M.G.L. c. 41, § 96B (the statute), they are exempt from the provisions of c. 150E as well. Here, officers were not entitled to use their accrued compensatory time until after they had graduated from the Academy and received assignments to regular police positions in the City. Therefore, we find that, at the time the officers sought to use the compensatory time, they were permanent City employees and no longer student officers covered by the statute. Moreover, even if they were covered by the statute, it did not exempt student officers from the provisions of the Law. A statute must be afforded its plain meaning when it is clear and unambiguous. *M.W.R.A.*, 13 MLC 1137, 1141 (1986), *citing Bronstein* v. *Prudential Ins. Co.*, 390 Mass. 701, 704 (1984). When ambiguities are present, the Commission must interpret the statute according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment and the main object to be accomplished. *Id. citing Telesetsky* v. *Wight*, 395 Mass. 868, 873 (1985). Here, the statute provided, in pertinent part:

> The provisions of chapter thirty-one and any collective bargaining agreement notwithstanding, any person so attending [the Academy] shall be deemed to be a student officer and shall be exempted from the provisions of chapter thirty-one and any collective bargaining agreement for that period during which he [or she] is assigned to [the Academy], provided that such person shall be paid the regular wages provided for the position to which he [or she] was appointed and such reasonable expenses as may be determined by the appointing authority and be subject to the provisions of chapter one hundred and fifty-two.

The Legislature's choice of wording here is significant. The statute exempts student officers "from the provisions of . . . any collective bargaining agreement" rather than from the provisions of M.G.L. c. 150E. In contrast, the Legislature explicitly: 1) exempted student officers from the provisions of M.G.L. c. 31, the civil service law; and 2) subjected student officers to the provisions of M.G.L. c. 152, the workers compensation statute. We infer from this language that the Legislature did not intend to deprive student officers of the Law's protection in its entirety. For example, the student officers may still assert rights under Section 10 (a) (1), Section 10 (a) (3), Section 10 (a) (4), portions of Section 10 (a) (5), and Section 10 (b) (1), as we will discuss in more detail. Nevertheless, the City offers numerous arguments against this interpretation of the statute. We will address each argument proffered by the City.

The City first argues that that statute permits the appointing authority to determine the student officers' regular wages and reasonable expenses without bargaining. The City concludes that this language absolves it of the obligation to bargain with the Union. However, this statutory language does not indicate a clear legislative intent to negate or modify the City's obligation to bargain with the Union over the decision to cease crediting student officers with compensatory time and the impacts of that decision on bargaining unit members' terms and conditions of employment. *See*, *City of Cambridge*, 23 MLC 28, 37 n.54 (1996), *citing Town of Lexington*, 22 MLC 1676 (1996). Thus, the City's argument is unpersuasive.

The City next points out that the statute exempts student officers from the provisions of any collective bargaining agreement. The City argues that, without the right to bargain collectively, c. 150E is meaningless. Consequently, the City reasons that the legislature did not need to include an express exemption in the statute. However, the Law protects other rights in addition to the right to bargain collectively. For example, employees have the right to be free from conduct that interferes with the free exercise of their rights pursuant to Section 10 (a) (1) of the Law. Similarly, employees have the right not to be discriminated against for engaging in concerted, protected activity under Section 10 (a) (3) and for participating in Commission proceedings under Section 10 (a) (4). Likewise, bargaining unit members have the right to be represented by a union in a non-discriminatory manner pursuant to Section 10 (b) (1) of the Law. Further, employees have the right to expect that the employer will not deviate from the practices established by

custom pursuant to Section 10 (a) (5). All of these rights exist separately from the right to enter into a collective bargaining agreement. Therefore, although student officers are exempt from the provisions of any collective bargaining agreement, we find that they can still exercise other rights under the Law that do not conflict with the statute. *See*, *Dedham* v. *Labor Relations Commission*, 365 Mass. 392, 402 (1974) (statutes must be construed together to form a "harmonious whole").

In a related argument, the City asserts that, if the Law explicitly addressed the bargaining rights of the student officers, the Commission could require the City to negotiate with the Union over the decision to stop crediting student officers with compensatory time. However, the Law is not narrowly tailored to address the bargaining rights of discrete classes of public employees. Rather, the Law's coverage extends to all individuals employed by a public employer except those specifically excluded by Section 1. *City of Fitchburg*, 2 MLC 1123 (1975). Accordingly, student officers are entitled to coverage under the Law because they do not fall within the explicit exceptions listed in Section 1. Moreover, prior Commission cases extend the Law's coverage to students. *See*, *e.g.*, *City of Quincy*, 3 MLC 1517 (1977); *City of Cambridge*, 2 MLC 1450 (1976). Consequently, the City's argument lacks legal merit.

The City attempts to distinguish the obligation to maintain the status quo with student officers from those employees whose collective bargaining agreement has expired. The City contends that employers must bargain about past practices with unit members whose contracts have expired because there was a collective bargaining agreement in the past and there is the possibility of a collective bargaining agreement in the future. The City contrasts this situation with the student officers, who have no possibility of ever being covered by a collective bargaining agreement, and concludes that there is no obligation to maintain the status quo. However, Commission case law clearly states that the employer's obligation to maintain the status quo applies to long-standing customs and practices as well as to contractual provisions. *City of Boston*, 3 MLC 1450 (1977); *City of Everett*, 2 MLC 1471 (1976). There is no distinction between employees whose contract has expired and those employees who may never have a contract. Accordingly, the City's argument must fail.

The City further contends that it acted pursuant to a specific, narrow statutory mandate, and that any bargaining would defeat a declared legislative purpose. The City cites *Lynn* v. *Labor Relations Commission*, 43 Mass. App. Ct. 172 (1997), in support of its argument. However, unlike the *Lynn* case, the statute here does not give the City the express authority to stop crediting student officers with compensatory time. It merely exempts student officers from the provisions of any collective bargaining agreement. Further, the record demonstrates that the parties had a long-standing practice of crediting student officers with compensatory time for hours and days worked outside of a regular police officer's schedule, whereas the record in the *Lynn* case did support a finding that the respondent had departed from past practice. Hence, the Appeals Court's holding is not dispositive of the issues here.

The City also mentions that student officers are exempted from the terms of any collective bargaining agreement for a limited period of time. However, the City fails to explain why this issue is relevant to the issue before us.

Conclusion

For the above reasons, we conclude that the City violated Sections 10 (a) (5) and, derivatively, 10 (a) (1) of the Law by unilaterally changing the parties' past practice regarding compensatory time for student officers.

Order

WHEREFORE, based on the foregoing, it is hereby ordered that the City of Gloucester shall:

1. Cease and desist from:

   a. Failing and refusing to bargain collectively in good faith with the Union by unilaterally changing the past practice related to compensatory time for student officers.

   b. In any similar manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

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

   a. Immediately restore the parties' past practice regarding compensatory time for student officers.

   b. Upon request, bargain in good faith with the Union over compensatory time for student officers.

   c. Make the affected student officers whole for all compensatory time lost, plus interest on any sums owing at the rate specified in M.G.L. c. 231, Section 6B compounded quarterly from February 2, 1998.

   d. Sign and post immediately in conspicuous places where employees usually congregate or where notices to employees are usually posted and maintain for a period of thirty (30) days thereafter copies of the Notice to Employees.

   e. Notify the Commission within ten (10) days after the date of service of this decision and order of the steps taken to comply with its terms.

SO ORDERED.

* * * * * *