
In the Matter of TOWN OF SHREWSBURY

and

INTERNATIONAL BROTHERHOOD OF POLICE
OFFICERS, LOCAL 426

Case No. MUP-1704

54.583 *work rules and regulations*
67.8 *unilateral change by employer*
92.51 *appeals to full commission*

June 29, 2001

Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner

T. Philip Leader, Esq. *Representing the Town of Shrewsbury*
Richard Sullivan, Esq. *Representing the International
Brotherhood of Police Officers,
Local 426*

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Hearing Officer Diane M. Drapeau issued a decision in this case on July 22, 1998, in which she dismissed the allegation by Local 426, International Brotherhood of Police Officers (Union) that the Town of Shrewsbury (Town) had unilaterally changed its locker policy at the Town's Police Department, in violation of Sections 10(a)(5) and (1) of the Law.¹ The Union appealed the Hearing Officer's decision and filed a supplementary statement on August 12, 1998. The Town did not file a supplementary statement. Upon our review of the Hearing Officer's decision, the record and the supplementary statement on appeal, we reverse the decision of the Hearing Officer, for the reasons set forth below.

Statement of Facts²

We adopt the Hearing Officer's findings of fact, pursuant to Rule 13.15(5), 456 CMR 13.15(5), and summarize them below, with one noted exception.

Prior to November 1996, the Town's Police Department maintained several lockers at the police station, for police officers to use if they chose to do so. Police officers who used a locker were issued a key, and Police Chief Robert McGinley retained a duplicate of the key. If police officers desired, they could also get their own lock for the lockers, with only the individual officer having access to the second lock. The Town allowed police officers to keep reading material, civilian clothes, food and weapons in their lockers, but not evidence or police reports. If weapons were kept in a locker, the Chief expected the officer to lock the locker. Chief McGinley periodically checked unlocked lockers and confiscated any weapons he found in them. On one occasion prior to 1996, Chief McGinley entered a locked locker belonging to a sergeant, who was under criminal investigation at the time.

Chief McGinley issued the following memorandum, dated November 14, 1996:

As part of the renovation project at the police station, we now have locker rooms and shower/restroom facilities for both male and female employees. There is an adequate supply of lockers for any employee who may desire one.

The lockers are the property of the Town of Shrewsbury. There will be a combination lock supplied for each locker with a grand master key to override the combination lock. This grand master key will be kept in the Chief's office. These locks are the only locks authorized for use on the lockers.

All lockers will be subject to random inspection by the Chief of Police or his designee. Items to be stored in the lockers shall be limited to department-issued clothing, weapons and equipment - i.e., citation and parking ticket books, etc. No evidence and/or reports are allowed to be stored in the lockers.

Officers who carry personal weapons to and from work may store such weapons in a locker as long as the weapon has been approved by the department. Personal clothing worn by officers to and from work may also be stored in the lockers. No food items are to be kept (sic) in the lockers.

Any officer who desires a locker should advise their shift supervisor who will contact Lt. Hurley for locker assignments.

Sometime prior to December 4, 1996, the Union's president received a copy of the Chief's November 14 memorandum. On December 4th, the Union protested the Chief's locker policy and requested that Chief McGinley rescind the memorandum and return to the status quo ante.

Since November 1996, Chief McGinley and his successor, Chief Wayne Sampson, have issued combination locks to officers desiring a locker, and a sergeant retains a master key to the locks, as well as the combinations. Chief Sampson continues to make periodic checks of unlocked lockers, as Chief McGinley did, but does not intend to inspect locked lockers, except in emergency situations.³

1. The full text of the hearing officer's decision is reported at 25 MLC 12 (1998).

2. The Commission's jurisdiction in this matter is uncontested.

3. [See next page.]

Opinion

The issue in this case is whether the Police Department's policy concerning the new lockers installed as part of a renovation project at the police station constituted a unilateral change in working conditions. On appeal, the Union challenges the Hearing Officer's conclusion that there was no change in the Police Department's locker policy and thus no violation of the Law. We disagree with the Hearing Officer's conclusion and hold that the Town violated the Law, for the reasons set forth below.

The plain language of Chief McGinley's November 14, 1996 memorandum establishes a change in the locker policy at issue in three respects: (1) only locks supplied by the Department may be used on the lockers; (2) all lockers will be subject to random inspection; and (3) items to be stored in the lockers shall be limited to department-issued items, approved personal weapons, and personal clothing worn to and from work, and, specifically, no food items may be kept in the lockers. Each of these three items constitutes a change in the Police Department's past practice concerning its locker policy. The evidence established that, previously, officers could supply their own locks for the lockers, for which they did not have to provide a key or combination to the Department, there was no practice of randomly inspecting locked lockers, and officers could keep personal items, including reading materials, personal clothing and food, in their police lockers.⁴

Despite the plain language of the November 14, 1996 memorandum, the Town argued at hearing, and the current Chief of Police testified, that the memorandum did not mean what it appears to state, but, rather, that there would be no random inspection of locked lockers, and police officers could still keep personal belongings in their lockers after all, except for stale food. However, there is no evidence in the record that either the current or former Chief of Police ever rescinded the November 14, 1996 memorandum, after they learned of the officers' purported misunderstanding of the meaning of the memorandum. In the absence of a rescission, we cannot rely on the Chief's testimony that the memorandum does not mean what it so clearly states. Clarity in communications is an essential requirement for stable labor relations, and we cannot endorse the confusion engendered by the Town's strained interpretation, of the offending memorandum.

The Commission has consistently held that certain amenities provided by an employer at the workplace amount to benefits on which employees may rely as conditions of employment and which constitute mandatory subjects of bargaining. *See, e.g., Commonwealth of Massachusetts*, 27 MLC 11 (2000) (free parking); *City of Boston*, 15 MLC 1209 (H. O. 1988), *aff'd* 16 MLC 1086 (1989)

3. The Union objected to the Hearing Officer's finding that officers are still allowed to keep the same items in their lockers as previously permitted. Although the Hearing Officer's finding is supported by evidence in the record, in the form of Chief Sampson's testimony, we decline to adopt this finding of fact. As discussed in more detail, *infra*, we find the change in practice to be defined by the unrescinded November 14, 1996 memorandum, and therefore do not rely on the Chief's testimony.

4. The Town also offered evidence concerning a Police Department regulation that the Department reserved the right to inspect lockers periodically. Regardless of

(choice and amount of food available to correction officers); *Everett Housing Authority*, 9 MLC 1263 (1982) (gas allotment policy); *City of Boston*, 9 MLC 1021 (1982) (library hours). Similarly, we determine that providing lockers to police officers and the manner in which they may be used is a benefit amounting to a condition of employment that constitutes a mandatory subject of bargaining. Therefore, the Town violated the Law when it unilaterally altered its locker policy, without providing the Union with prior notice and an opportunity to bargain. *See, e.g., Commonwealth of Massachusetts*, 20 MLC 1545, 1552 (1994) and cases cited therein.

Conclusion

For the foregoing reasons, the Commission reverses the decision of the Hearing Officer and concludes that the Town violated Sections 10(a)(5) and (1) of the Law.⁵

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town of Shrewsbury shall:

1. Cease and desist from:

- a. Failing to bargain in good faith with the Union by unilaterally changing the Police Department's locker use policy;
- b. In any like manner, interfering with, restraining or coercing any employees in the exercise of their rights guaranteed under the Law.

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

- a. Immediately restore the status quo ante by rescinding the November 14, 1996 memorandum issued by Chief McGinley and restoring the practice that was in place immediately before that memorandum issued;
- b. Upon request, bargain in good faith to resolution or impasse with the Union over the Police Department's locker use policy;
- c. Post the attached [not published] Notice to Employees in conspicuous places where employees represented by the Union usually congregate, or where notices to employees are usually posted, and leave the same posted for a period of thirty (30) days; and
- d. Notify the Commission, in writing, within thirty (30) days of receipt of this Decision and Order of the steps taken to comply herewith.

SO ORDERED.

* * * * *

this regulation, however, the evidence established that the Town's past practice did not include random inspection of locked lockers, which the Town does not dispute.

5. We decline to include in our remedy the Union's requested compensation to officers at the rate of \$1.00 per day for the inconvenience of having to use their cars as lockers during the term of the Town's alleged violation of the Law. Compensation for inconvenience is not a concept encompassed within the Commission's traditional make whole remedy, and even if it were, it is unsupported by sufficient evidence in the record.