In the Matter of CITY OF BOSTON

and

BOSTON POLICE PATROLMEN'S ASSOCIATION

Case No. MUP-1758

28.	***Relationship Between c. 150E and Other Statutes Not Enforced by Commission***
52.37	***bargaining during life of contract on new issues***
54.232	***police paid details***
54.31	***impact of management rights decisions***
54.7	***permissive subjects***
91.6	***deferral to prior arbitration award***

August 2, 2004
Allan W. Drachman, Chairman
Helen A. Moreschi, Commissioner
Hugh L. Reilly, Commissioner

William Murphy, Esq.	*Representing the City of Boston*
Amy Laura Davidson, Esq.	*Representing the Boston Police Patrolmen's Association*

DECISION[1]

STATEMENT OF THE CASE

On February 5, 1997, the Boston Police Patrolmen's Association (the Association) filed a charge of prohibited practice with the Labor Relations Commission (the Commission) alleging that the City of Boston (the City) had violated Sections 10(a)(5) and (1) of Massachusetts General Law c. 150E (the Law). On September 12, 1997, following an investigation, the Commission issued a complaint of prohibited practice alleging that the City had violated Sections 10(a)(5) and (1) of the Law by unilaterally changing the paid detail distribution method of members of the bargaining unit represented by the Association.[2]

On December 9, 1999, the City filed a motion to defer the matter to arbitration. On December 10, 1999, the Association filed an opposition to that motion. In a ruling dated March 9, 2000, the Commission denied the City's motion.

On December 14, 1999, Mark A. Preble, Esq., a duly-designated Commission hearing officer (Hearing Officer), conducted a hearing at which the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties filed briefs on or about July 14, 2000.

On September 10, 2002, the Hearing Officer issued Recommended Findings of Fact. Pursuant to 456 CMR 13.02(2), the Association filed challenges to the Recommended Findings on October 24, 2002. After reviewing those challenges and the record, we adopt the Hearing Officer's Recommended Findings of Fact, as modified where noted, and summarize the relevant portions below.

FINDINGS OF FACT[3]

The City, acting through its chief executive officer, is a public employer within the meaning of Section 1 of the Law. The Association is an employee organization within the meaning of Section 1 of the Law and is the exclusive representative of all full-time police patrol officers in the City.

A. The Paid Detail System

A paid detail is a voluntary assignment, where police officers work additional hours at the request of a vendor, like a contractor, a supermarket, or a night club. Although some details are requested on an *ad hoc* basis, there are standing requests for others. Paid details vary in the type of assignments such as a bank, supermarket, and a night club or traffic detail. They also vary in length of time, ranging from four hours to eight hours and constitute a significant part of a Boston police officer's overall compensation.[4] In any given day, there may be as many as two hundred police officers working paid details in the City. In addition to providing individual officers with additional income, a paid detail system provides a visible deterrence to crime and provides for increased public safety.

Police officers who work paid details are not paid at the overtime rate for such work. Rather, police officers that work paid details are paid at a specific detail rate that varies only between an "inside" and an "outside" rate.[5] At the time of the hearing, the detail rates were lower than the overtime rate.

On July 1, 1968, then-Police Commissioner Edmund McNamara issued a special order concerning paid details. That special order stated, in part:

> In connection with the assignment of Paid Details, no priority should be given to any particular detail. Details should be assigned in the order in which they are received and shall be distributed fairly and equitably among all personnel.

The uncontroverted testimony of the witnesses in this matter establishes that McNamara's order reflects the practice that existed for many years prior to 1996.[6] For the most part, the process of assigning paid details is the same both before and after the alleged change. Police officers are matched with available detail assignments through the use of several lists.[7] As details are requested, a

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

2. Although the Commission's original complaint alleged that the City had "privatized" paid details, following a Motion to Amend Complaint filed by the Association, the Commission issued an Amended complaint alleging that the City had "prioritized" the details.

3. The Commission's jurisdiction is uncontested and the Commission finds that it has jurisdiction.

4. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly.

5. The distinction depends upon whether the officer requesting the details is located "inside" or "outside" the facility.

6., 7. [See next page.]

detail clerk enters the information onto a Main Paid Details List for the day on which the detail is requested (Main List). The Main List includes information about the detail, including the vendor, the time of the detail, and other descriptive information, like a specific address or to whom the officer is to report. The Main List also has spaces to indicate the name of the officer who is originally assigned and the name of the officer who is ultimately assigned to each detail. The requested detail assignments on the Main List are sorted so the assignments with the greatest number of hours appear at the top of the list.

Each area also maintains an Alternate Detail List (Alternate List) that contains the number of paid detail hours each officer either had worked or refused during the current calendar year.[8] The Alternate List is recalculated and re-sorted each calendar day so the officers with the least number of paid detail hours worked or refused are at the top of the next day's list. Using the two lists, a detail clerk matches the details on the Main List with the officers on the Alternate List by assigning the officer with the least number of detail hours worked or refused to the detail with the greatest number of hours. The Main List is then posted a few days in advance to give the assigned officers an opportunity to indicate whether they accept or reject the assignment. In practice, most detail assignments are filled from the Alternate List. [9]

On the day before the scheduled details, the detail clerk determines which of the scheduled detail assignments remain unfilled and, using the Alternate List, attempts to fill those assignments. The detail clerk then records whether an officer accepts or rejects the detail, recalculates and re-sorts the Alternate List, and the process begins again for the next day. If a detail assignment remains unfilled after the Alternate List is exhausted, the detail is referred to the central Paid Detail Section and is offered to police officers in other areas. The Police Commissioner may also decide to fill an unfilled detail through mandatory overtime. When the Police Commissioner decides to fill an unfilled paid detail by converting it to overtime, the Police Department can recoup the money it incurs in overtime costs by billing the vendor the overtime rate that the department pays its officers.[10]

Prior to 1996, when a detail officer contacted an officer on the Alternate List, the detail clerk described each of the unfilled detail assignments. The officer could then select among any of those available details. For example, if the detail with the greatest number of hours (and therefore at the top of the Main List) was unfilled, the officer could pass over that detail and accept a detail with fewer hours that was personally preferable.[11] The officer would not be charged a refusal unless he or she refused all available detail assignments. Prior to September 1996 there was no requirement that any particular detail on the Alternate List be accepted before another one was offered. The procedure of assigning paid details on the basis of voluntary choice of any of the assignments on the Alternate Detail List existed for many years prior to 1996. No priority was given to any particular detail prior to 1996.[12]

On March 29, 1991, then-Police Commissioner Francis Roache issued "Rule Number 325, Paid Details." That rule provides a comprehensive policy concerning paid details, including sections covering authorized vendors, methods of payment, assignments, time and record keeping, fitness for duty, supervision, and use of Police Department equipment while on a paid detail. Section 1, entitled "General Considerations," states:

> Police Officers are first and foremost employees of the Boston Police Department. The fact that a private business is providing compensation to the City of Boston for the services of the officer shall have no relevance in the performance of his official duties. Officers have the primary responsibilities of enforcing the laws of the Commonwealth, City Ordinances and protecting the safety of the public.

B. The Parties' Agreements Concerning Paid Details

The City and the Association were parties to a collective bargaining agreement covering the period July 1, 1973 through June 30, 1975. The terms of that agreement have been extended and modified by a series of memoranda of agreement and an Arbitrator's Award issued by Arbitrator Arvid Andersen pursuant to Chapter 589 of the Acts of 1987. Arbitrator Andersen's award covers the period July 1, 1993 through June 30, 1996. As discussed more fully below, the events that led to the charge in this matter occurred, in part, while the parties were negotiating over the terms of a collective bargaining agreement to succeed the period covered by Arbitrator Andersen's award.

Article XII of the parties' 1973-1975 collective bargaining agreement, as modified by a memorandum of agreement signed by the parties on November 4, 1982, states, in part:

> The following procedure will be adhered to in the assignment and recording of all paying police details:
>
> . . .
>
> (b) All assignments to paying police details shall be made in accordance with the existing procedure. Employees shall be given the maximum possible advance notice of paying police detail assign-

---

6. The Association requested this additional finding, which is supported by the record.

7. Each of five areas in the City maintains its own detail lists.

8. Because the Alternate List reports detail opportunities, there is no distinction between working and refusing a paid detail. Officers who refuse a detail opportunity are not charged if the refusal is due to a work-related scheduling conflict, like a previously scheduled tour of duty or if they are scheduled to appear in court. However, if an officer is offered the opportunity to work a detail and s/he chooses not to, the officer is charged for the hours of the detail. Thus, if an officer is assigned to work an eight-hour detail and declines, s/he is charged with eight hours. (The Commission has added this finding at the request of the Association. It is supported by the record and clarifies the parties' practice.)

9. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly.

10. The Association requested this additional finding, which we have included, as it is supported by the record.

11. For example, some officers prefer to work inside, while others choose not to work detail assignments where liquor is served. Still others have family or other obligations that affect their ability to work at certain times.

12. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly.

ments. Any employee who refuses a paying detail shall not be removed from the detail list, but any such refusal shall be recorded for the purposes of detail assignment as a detail actually worked under the heading "detail refused" (DR) with the detail hours thereof noted, in determining the equitable and fair distribution of details to such employees.

(c) The recording and posting of paid details shall be done in accordance with the existing procedure. Details shall be posted on detail distribution forms acceptable to the parties hereto, which forms shall set forth the employee's name, details worked, name of person, firm, corporation or entity serviced, number of hours worked, and compensation received per detail, detail refusals, and applicable dates.[13]

Arbitrator Andersen's Award states, in part, at paragraph 9:

That the contract shall include the following language on Paid Details: "The parties agree to discuss the issue of details, including the centralization of the detail system during the life of this agreement."[14]

During the arbitration hearing that led to Arbitrator Andersen's Award, the City sought to centralize the paid detail distribution procedure and to transfer the work associated with the distribution of paid details to non-sworn, civilian police personnel. The City never advanced any proposals to the arbitrator to prioritize paid details. [15]

In its brief to the Arbitrator, the City argued, in part, that:

The City's bargaining history also indicates that the City has consistently made attempts to address some of the inequities in the detail system, including a review of the issue of centralization. The City has consistently maintained that to unilaterally centralize only one out of the four groups involved in the system is unrealistic and non-productive. Nonetheless, the City proposes to address the paid detail issues, including centralization, during the course of this contract period. The following proposal has been accepted by the Detective Superiors and awarded in the Federation Arbitration: "The parties agree to discuss the issue of details, including centralization of the detail system, during the life of this agreement." This same language has also been part of the Detectives' tentative agreements. The language allows the [Police] Department the ability to work with all [four of the City's police bargaining units] to design a better distribution system, while allowing both parties to address mutual concerns.

The Association essentially agreed with the City, stating "[a]n appropriate resolution [to the paid detail dispute] would be to introduce the language from the Detectives Superiors' contract and from the Superiors' arbitration award which provides for discussion of details during the life of the contract." Those arguments were presented as part of an agreement that the parties had reached providing that they would each propose language that provided for a discussion of details during the life of the contract.

Section 4 of Article XVI of the parties' collective bargaining agreement states:

Excepted as improved herein, all benefits specified in the published rules and regulations, general and special orders in force on the effective date of this Agreement shall be continued in force for the duration of this Agreement.[16]

C. The Dispute

Pursuant to the various agreements and Arbitrator Andersen's Award, during 1995, the City met with representatives from the Association as well as the Boston Police Superior Officers Federation, the Boston Police Detectives Benevolent Society, and the Boston Police Detectives Benevolent Society Superior Officers' Unit to discuss the paid detail system. Specifically, the parties discussed centralization and computerization, as well as other matters like proper safety equipment. The discussions were informal—all of the participating unions indicated that the meetings were not intended to be bargaining sessions. During that same time, City Labor Attorney Michael Reagan (Reagan) was assigned to bargain over whatever changes the City might propose as a result of the meetings.

On or about November 9, 1995, Association Attorney Joseph Sandulli (Sandulli) contacted the City's Acting Deputy Director of Labor Relations James Canavan (Canavan)[17] to discuss bargaining for a collective bargaining agreement to succeed the period covered by Arbitrator Andersen's Award. Sandulli followed up that conversation with a letter, suggesting that the City and the Association meet to discuss certain procedural matters and recognizing that, due to the recent death of the City's Director of Labor Relations, the City may have some difficulty in re-establishing its bargaining team. Commencing bargaining in the fall prior to the expiration of the agreement on the following June 30th would have

---

13. Prior to the November 1981 memorandum of agreement, Article XII of the parties' agreement stated, in part:

(b) All assignments to paying police details shall be made by an officer of rank (a superior officer) designated by and responsible to the commanding officer, for the equitable and fair distribution of such details. All paying police details will be distributed to employees fairly and equitably as to number of details and compensation therefor, and averaged on a monthly basis for the purposes of this subparagraph unless otherwise agreed upon by the parties. Employees shall be given the maximum possible advance notice of paying detail assignments. Any employee who refuses a paying detail shall not be removed from the detail list, but any such refusal shall be recorded for the purposes of detail assignment as a detail actually worked under the heading "detail refusal (D.R.)"with the detail hours thereof noted, in determining the equitable and fair distribution of details to such employee.

(c) Such officer of rank shall record all assigned paying details and shall post such assignments to the bulletin board daily for the attention of all employees. Details shall be posted on detail distribution forms acceptable to the parties hereto, which forms shall set forth the employee's name, details worked, name of person, firm, corporation, or entity served, number of hours worked, and compensation received per detail, detail refusals, and applicable dates.

14. Arbitrator Andersen's Award also states, in part, at paragraph 8:

The parties agree to meet and negotiate over the impact, if any, of national health care reform should legislation pass during the life of this Agreement.

15. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly.

16. We have supplemented the hearing officer's Recommended Findings of Fact to include this section of the Agreement.

17. Although in his letter Sandulli referred to Canavan as the acting supervisor of labor relations, his actual title at the time was acting deputy director of labor relations.

been a departure from the parties' practice. However, Sandulli pointed out that he was aware that it took the parties about five years to negotiate their present contract[18] and, therefore, indicated that he wanted to establish a format for resolving the successor collective bargaining agreement in a shorter time frame. Those particular negotiations also marked the first time that Sandulli had negotiated a collective bargaining agreement with the City in approximately twenty years and the first time that he had negotiated a collective bargaining agreement for the Association. Therefore, because he: 1) wanted to begin the process while the City was still in the budget-making process; and 2) believed that his predecessor had been criticized for the delay in the prior agreement, Sandulli wanted to begin the process in the fall of 1995.

Sandulli followed up his letter with a conversation with Canavan on November 20, 1999. During that conversation, Canavan informed Sandulli that the City had designated Reagan as the City's chief negotiator. Canavan also informed Sandulli that the City had planned to finalize its bargaining team by the first week in December and the parties could thereafter set up their first bargaining session. Canavan did not raise a problem with starting the negotiation process at that time and, in fact, communicated enthusiasm for getting the process going.

In early January 1996, Sandulli contacted Reagan to discuss beginning successor collective bargaining. Reagan informed Sandulli that the City had decided to wait until a new Director of Labor Relations was appointed. Sandulli followed up the conversation in a letter to Reagan dated January 16, 1996 in which Sandulli requested that Reagan provide Sandulli with a status update in a month.

In the meantime, Police Commissioner Paul Evans (Commissioner Evans) had formulated a comprehensive proposal to change certain aspects of the paid detail system, including adding a system of prioritization.[19] In a letter dated January 16, 1996 to then-Association President Richard Bradley (Bradley), Canavan explained the proposal and offered to bargain with the Association. Canavan's letter also stated, in part:

> Please be further advised that Attorney Michael Reagan has been assigned from this Office to conduct these interim negotiations.

On January 25, 1996, Reagan scheduled a bargaining session relative to the paid detail proposal. That session was to occur on February 26, 1996. Reagan confirmed the schedule in a letter to Bradley dated January 25, 1996. Sandulli responded to Reagan's January 25, 1996 letter in a letter dated January 30, 1996. In that letter, Sandulli stated the Association's position that any bargaining over paid details should not be conducted separately from the negotiations over the new agreement. Sandulli also reminded Reagan that the Association had been requesting the commencement of negotiations since the previous November. Finally, Sandulli informed Reagan that, "[t]here will be no negotiations on February 26, 1996 unless you are willing to begin bargaining of the entire new contract." In a letter to Sandulli dated February 9, 1996, Reagan explained the City's position:

> I am in receipt of your letter dated January 30, 1996 indicating that the Boston Police Patrolmen's Association will not be attending the scheduled negotiation session on February 26, 1996 regarding paid details. Moreover, your letter issues the City an ultimatum relative to bargaining which is not necessarily within your authority to dictate.
>
> As you are aware, the Arbitrator's decision required the parties to "discuss the issue of details, including the issue of centralization of the detail system, during the life of this agreement." According to this plain language, there is no limitation as to the scope of these discussions. As such, the issue of paid details remains open during the life of the agreement which expires on June 30, 1996. As you are undoubtedly aware, open issues during the life of the agreement are handled on an interim basis.
>
> In this vein, over the past several months, the Department has met with representatives from all of the police unions including the Association in order to discuss various issues and possible changes to the paid detail system and solicited input from them. Subsequent to these meetings, the Department considered all of the concerns and ideas expressed by the parties and put together a proposal that was then sent to the Association, as well as the other police unions, on January 16, 199[6]. The City's January 16th letter constituted notice of its proposed changes, and afforded the Association the opportunity to bargain over the proposal. Both the Detectives Benevolent Society and the Association indicated their willingness to meet and bargain over the issue. It now appears from your letter, however, that the Association inexplicably no longer wishes to discuss the issue of paid details as required under the Arbitrator's award. Instead, the Association has insisted that it will only discuss the matter as part of successor negotiations. This position is a clear violation of M.G.L. c. 150E as well as the collective bargaining agreement.
>
> Please be advised that the City fully intends to exercise its contractual right to move forward on this issue. It is the City's position that your continued refusal to engage in interim bargaining shall be deemed a waiver of your right to bargain over the proposed changes. This letter serves as a second invitation for the Association to meet and discuss any and all of its concerns relative to the City's paid details proposal. The February 26, 1996 meeting is still scheduled as the City will also be meeting with the Detectives Benevolent Society on that date. If you wish to take part in this bargaining, please notify this Office.
>
> Moreover, it is the City's position that it is not obligated to begin successor negotiations at any specific time. To this end, the City intends to first resolve the interim paid details issue prior to beginning successor talks. The City is willing to take any and all necessary steps, to include all-day bargaining, in order to ensure that the paid detail issues are resolved as expeditiously as possible under M.G.L. c.150E. Thank you for your time and attention to this matter.

The parties did not meet on February 26, 1996.

In a letter to Bradley dated March 14, 1996, Reagan expressed the City's disappointment with the Association's decision not to attend the February 26, 1996 bargaining session and indicated that the City would consider a continuing refusal to meet as a waiver of

18. Although Sandulli referred to a "contract," the parties were operating under the terms of Arbitrator Andersen's Award.

19. Commissioner Evans's proposal also covered detail assignments, centralization, the use of civilians, and payment.

the Association's right to negotiate over "changes that do not involve changes in current provisions of the collective bargaining agreement." Reagan again invited the Association to meet and to discuss any and all of its concerns relative to the City's paid detail proposal. In subsequent correspondence, Reagan and Sandulli continued to disagree over the parties' respective rights and obligations concerning the City's proposal to change the paid detail system.

In a letter dated June 10, 1996, Commissioner Evans notified Bradley that the City intended to implement its proposal on August 1, 1996 and again invited the Association to contact the City's Office of Labor Relations if the Association wished to bargain prior to the planned implementation date. Reagan and Sandulli again exchanged correspondence concerning the parties' respective rights and obligations.

Sandulli responded to that letter on June 14, 1996, stating in pertinent part:

> Dear Commissioner:
>
> The Boston Police Patrolmen's Association has received your letter dated June 10, 1996, in which you advise of your contemplated implementation of changes to the Paid Detail System. As I have informed the City on many prior occasions, the BPPA believes that your proposed changes violate the current collective bargaining agreement. The contract states that "All assignments to paying police details shall be made in accordance with the existing procedure." Obviously, your proposed changes would not be in accord with the existing procedure. The BPPA will take all necessary legal action to protect its rights at the appropriate time.
>
> In the meanwhile, I would remind the City that the appropriate forum for addressing changes in the detail system is at the collective bargaining table. I was informed by Virginia Tisei on June 6 that the City would shortly be offering the BPPA some dates for bargaining. As of today, June 14, I have not yet heard from the City. I request again that the City promptly commence bargaining for a new contract. In the context of that bargaining, the BPPA will address all appropriate bargaining subjects, including your proposed changes in the details system.[20]

In the meantime, however, the parties scheduled meetings for July 25 and 31, 1996 to begin successor collective bargaining agreement negotiations. At the July 25, 1996 meeting, the Association demanded to bargain over the City's proposed changes in the paid details system. The City refused and there were additional discussions about the parties' respective bargaining rights and obligations. However, the City informed the Association that the changes in the paid detail system were not to be implemented on August 1, 1996 as originally scheduled, and that the City would inform the Association of the new implementation date.

The parties did not meet as scheduled on July 31, 1996, but met on August 21, 1996. At that meeting, the Association presented its initial proposals. There were no proposals concerning paid details from either party and the parties did not discuss the matter.

In a letter dated August 30, 1996, Office of Labor Relations Director Virginia Tisei (Tisei) informed Bradley that, on or about September 16, 1996, the City planned to implement that portion of its paid detail proposal concerning the prioritization of details.[21] On September 4, 1996, Sandulli responded to Tisei's August 30, 1996 letter, again stating the Association's position and suggesting that the parties talk about the matter at their next bargaining session, which was scheduled for September 10, 1996.

At the bargaining session on September 10, 1996, the Association again demanded to bargain over the details issue. The Association made specific proposals, including paying a higher rate for priority details and suggesting that priority details be handled through mandatory overtime. The City declined to bargain over the prioritization of paid details in contract negotiations. However, it did advance a proposal to increase the time period for payment of details, and another proposal concerning the hours an officer could work in a week, which included tours of duty, court time, overtime, and paid details. [22] The City never offered any reason why it insisted that prioritization of details had to be bargained separately from the main contract. The only stated reason was that the Commissioner wanted it. [23]

On September 23, 1996, Commissioner Evans issued Special Order Number 96-45, entitled "Prioritization of Paid Details; New Rule 325, Paid Details." That order, which largely continues in force to this date, states, in part:

> Purpose:
>
> To institute a set of procedures to prioritize the assignment of paid details in order to maximize public safety. In order to accomplish this goal, all details will be assigned using the Low Man, High Priority Principle. No lower level priority details will be assigned until all higher priority details have been filled. This Special Order rescinds and replaces all previously issued Orders, Memorandums or Directives involving the assignment of Paid Details. The attached new Rule 325 Paid details, rescinds and replaces Rule 325, Paid Details, issued May 29, 1991...[24]
>
> Presently, officers are assigned details on an Area-wide basis. If any details are unfilled, officers on the alternate list are offered a choice of details and can select the one they wish to perform. As a result, some details having a major impact on public safety may go unfilled while those which have less of an impact on public safety are being selected and performed.
>
> The prioritization of details by District/Area Commanders, or their designees, will enable the Department to assign officers to details

---

20. The Association requested that the Commission supplement the findings by adding the contents of this letter, which was a joint exhibit. We find the fact to be supported by the record and have supplemented the findings accordingly.

21. Tisei indicated that the City planned to implement its entire proposal and that the prioritization portion of the proposal was the first phase.

22. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly. The Association also requested a finding that the City advanced a proposal to limit the number of hours an officer could work on details, but the finding, as set forth above, more accurately reflects the content of that proposal.

23. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly.

24. We have supplemented the findings to include this additional excerpt from Special Order 96-45.

which have a greater impact on public safety, which is the primary function of the paid detail system. For the purpose of prioritizing details, the District/Area Commanders of A, B, C, D and E shall jointly establish detail priorities within their Area.

In order to achieve this goal, all details will be classified into one of three priority levels (#1, #2, and #3), with priority level #1 being the highest priority. All paid details will be prioritized by the District/Area Commanders, or their designees, according to hierarchical guidelines which shall address public safety, traffic congestion and other concerns in a manner consistent with the following sample guidelines:

Priority Level	Type of Detail
Level #1	Crowd Control Events (e.g. sporting events, concerts, Festivals, etc.);
	Major traffic arteries (e.g. construction details, utilities company details, etc.)
Level #2	Commercial Establishments (e.g. banks, supermarkets, etc.)
	Secondary street details (e.g. Construction and utility details);
Level #3	Other construction details that have less impact on traffic (e.g. sidewalks, dead end street, etc.); and
	Licensed premises and all other details.

District/Area Commanders shall best address their needs and accommodate any changes directed/authorized by the Chief, B.F.S.[25] or the Police Commissioner.

D. The Paid Detail System After 1996

Much of the paid detail system that existed prior to 1996 continues to exist following the issuance of Special Order Number 96-45. However, the implementation of the prioritization system affected the manner in which unfilled details from the Main List are filled. Where prior to 1996 officers who appeared at the top of the Alternative List (the "low men" or "low officers") could choose among *any* of the unfilled details, Special Order Number 96-45 requires those officers to choose among only the available details categorized as Level #1 details until those details are filled (and then among those available details categorized as Level #2, etc.). Lower priority details remain unfilled until all higher priority details are filled. Moreover, officers whose family schedules do not coincide with the Level #1 or Level #2 details are deprived of the opportunity to perform any detail and will be charged with a refusal, moving them from low man status. Thus, a low officer may be offered fewer hours of paid details as a result of the prioritization of paid details. For example, under prioritization, if a four-hour detail is designated to Level #1 and an eight-hour detail is designated Level #2, the low officer is only offered the unfilled four-hour detail. Officers have also lost the option of choosing the length and types of details that they work. One officer testified that he does not perform details where liquor is served for personal reasons. Another officer does not like to work at the Pine Street Shelter detail because he is concerned about exposure to disease. Prior to September 1996, officers had the option of choosing any open detail that suited them. Now, if they do not accept the priority #1 or priority #2 details, they forego any details.

Prioritization has also adversely affected the filling of paid details. There have been occasions when whole series of details have remained unfilled because priority #1 details were not filled. Moreover, priority #1 details have remained unfilled on occasion even after going through the paid detail section, despite the fact that they were designated top public safety concerns.[26]

For example, shortly after the City implemented Special Order Number 96-45, there was a marijuana festival on the Boston Common. The festival required several paid details, which had been designated as priority #1 details. The details were offered to the officers at the top of the Alternate List in accordance with the usual practice, but many of those officers declined the detail. However, instead of being permitted to choose from other available unfilled details,[27] the officers were charged with a refusal (which changed their position on the Alternate List). Because the details remained unfilled, the event was covered by officers on regular tours of duty.[28]

Finally, although Special Order Number 96-45 contains sample guidelines for assigning priority levels to details, in practice those guidelines are not uniformly followed. For example, one facility is a commercial establishment in Area D. Like other retail assignment establishments, that detail assignment is essentially to perform security functions to prevent shoplifting. The location has not historically been a public safety concern. However, although commercial establishments are listed as Level #2 priorities in the sample guidelines, that particular facility has been designated as a Level #1 priority.[29]

OPINION

A public employer violates Sections 10(a)(5) and (1) of the Law when it unilaterally changes wages, hours, or other terms and conditions of employment without first bargaining to resolution or impasse with the employees' exclusive bargaining representative. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983); *Town of Arlington*, 21 MLC 1125 (1994). To establish a unilateral change violation, a charging party must show that: 1) the respondent has changed an existing practice or instituted a new one; 2) the change affected employee wages, hours, or working conditions and thus implicated a mandatory subject of bargaining; and 3) the change was implemented without prior notice or an opportunity to bargain. *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*, 20 MLC 1603, 1607 (1994).

---

25. The title "Chief, B.F.S." is not defined.

26. The Association requested that the Commission make this finding. We find the fact to be supported by the record and have supplemented the findings accordingly.

27. In addition to the details assigned to the marijuana festival, there were details requested by various commercial establishments and construction sites.

28. Prior to 1996, unfilled details at the marijuana festival were filled through the use of mandatory overtime.

29. The designation was apparently due to a concern that the detail was not being filled by District 4 officers. As a Level #2 priority, that detail was often filled through the Paid Detail Section. The owner of the facility apparently complained and indicated that, if the detail could not be filled by District 4 officers, he would cancel the detail.

There is no dispute that with the advent of paid detail prioritization, the City effectively altered the manner in the City filled paid details. There is also no dispute that the City implemented its plan to prioritize details in September 1996 without first having bargained with the Association over the decision to prioritize paid details, how to implement that decision or the impacts of that decision on terms and conditions of employment. The City asserts that it was only obligated to bargain over the *impact* of its decision to prioritize details during the mid-term bargaining, and that the Association waived its right to bargain over this issue when it insisted on bargaining over this issue during successor contract negotiations. For the reasons set forth below, we agree with the City that its decision to prioritize paid details was not a mandatory subject of bargaining, but reject the remainder of the City's claims.

The Commission and courts have consistently recognized that an employer does not have to bargain over matters that would interfere with a public employer's responsibility to perform its public functions even if that decision has some impact on employee terms and conditions of employment. *City of Worcester* v. *Labor Relations Commission*, 434 Mass. 177, 184 (2002) *citing Local 346, International Brotherhood of Police Officers* v. *Labor Relations Commission*, 391 Mass. 429 (1983), *Boston* v. *Boston Police Patrolmen's Association*, 403 Mass. 680, 684 (1989), *Town of Burlington* v. *Labor Relations Commission*, 390 Mass. 157, 164 (1983). *See also Town of Dennis*, 12 MLC 1027, 1030-31(1985) *citing Local 346, International Brotherhood of Police Officers* v. *Labor Relations Commission, supra.*

In deciding which matters are outside the scope of mandatory bargaining, the Commission has applied a test that attempts to balance the interest of the public employer in maintaining its managerial prerogatives against the interest of employees in bargaining over terms and conditions of employment. *Id.* at 1571. While the test must be done on a case by case basis, the Commission has traditionally taken into account such factors as whether the topic has a direct impact on terms and condition of employment, whether the issue involves a core governmental decision or whether it is far removed from terms and condition of employment. *Town of Danvers*, 3 MLC 1559, 1577 (1977). Applying this balancing test in *Town of Dennis, supra*, the Commission concluded that, despite a probable impact on wages, the Town's decision to discontinue providing private police details at liquor service establishments was the kind of level of services decision that lies within the exclusive prerogative of management and, as such, was not a mandatory subject of bargaining. *Town of Dennis*, 12 MLC at 1031. *See also City of Westfield*, 12 MLC 1038 (1985)(same).

We apply the same balancing test to the City's prioritization of paid details. Here, the decision to prioritize paid details directly implicates the City's ability to set its law enforcement priorities and as such, was not a mandatory subject of bargaining. *See City of Worcester* v. *Labor Relations Commission*, 423 Mass. at 184, *Town of Dennis, supra. See also City of Worcester*, 4 MLC 1378 (1977)(creation of new extra-duty details for the protection of the public is not a mandatory subject of bargaining). Our conclusion is further supported by the fact that in this case, the Police Commissioner was acting pursuant to the authority vested in him under Sections 10 and 11 of Chapter 322 of the Special Acts of 1962. Cases decided under that statute have held that considerations of public safety and a disciplined police force require managerial control over matters such as staffing levels and assignment. [30] *See, e.g., Boston* v. *Boston Police Patrolmen's Association, Inc.* 41 Mass. App. Ct. 269, 272 (1996) *citing Boston* v. *Boston Police Superior Officers Federation*, 29 Mass. App. Ct. 907, 908-909 (1990)(decision to convert a paid detail to mandatory overtime non-delegable core managerial prerogative as to which arbitrator was without authority to render decision); *Boston* v. *Boston Police Patrolmen's Association, Inc.*, 403 Mass. 680, 684 (1989)(decision to assign one officer rather than two to a marked patrol vehicle was a non-delegable management prerogative). [31]

However, as the City concedes, a public employer's ability to act unilaterally regarding certain subjects or decisions does not relieve that employer of all attendant bargaining obligations. Rather, in cases where an employer is excused from the obligation to bargain over a core governmental decision, that employer may still be required to bargain with the union representing its employees over the manner in which to implement the decision, as well as the impacts of the decision on mandatory subjects of bargaining, before it implements that decision. *See City of Worcester* v. *Labor Relations Commission* 434 Mass. 177 (2002); *School Committee of Newton, See also* Burlington v. *Labor Relations Commission*, 390 Mass. 157, 164-167 (1983)(town had prerogative to reassign duties formerly held by police prosecutors to town counsel, but was required to bargain over impact where transfer had effect of loss of bonus pay and cost two officers loss of pay); *Town of Dennis, supra*, 12 MLC at 1031-1032 (Town had duty to bargain over impacts of eliminating paid liquor store detail).

The City claims it satisfied its impact bargaining obligation by offering to bargain with the Association over these paid detail issues during mid-term negotiations and the Association waived its right to bargain by insisting on bargaining during the parties' successor contract negotiations. We disagree.

---

30. We are mindful that Chapter 9 of the Acts of 1998 amended Section 7(d) of the Law to include "the regulations of...a police commissioner or other head of a police or public safety department of a municipality..." among those laws over which conflicting terms of a collective bargaining agreement would prevail. Even assuming without deciding that the amendment had retroactive effect, we do not construe section 7(d) as purporting to displace the general authority vested in the police commissioner by Chapter 322 to decide to prioritize the paid detail system, where in his judgment, the public safety so required. Cf. *Town of Andover* v. *Andover Police Patrolmen's Union*, 45 Mass. App. Ct. 167, 168 (1998)(grievance over mandatory assignment of overtime based on safety considerations not arbitrable despite fact that M.G.L. c. 41, §97A is statute enumerated in section 7(d); court did not construe section 7(d) as displacing core managerial prerogatives to make assignments based on safety considerations).

31. We need not decide whether, in light of Chapter 322, the City's decision to prioritize details was a prohibited and not merely a permissive subject of bargaining because, as discussed in more detail, *infra*, the City was required to exhaust its impact bargaining obligation prior to implementing its prioritization plan and the City could not lawfully insist on doing so during mid-term negotiations.

The Law does not prohibit either party from proposing to bargain over terms and conditions of employment separate from successor contract negotiations. *City of Boston*, 28 MLC 276, 278 (2002) *citing Town of Westborough*, 25 MLC 81, 88 (1997). However, either party's insistence on bargaining over terms and conditions of employment apart from on-going successor contract negotiations constitutes a refusal to bargain in good faith, precluding a finding of impasse. *City of Boston*, 28 MLC at 276,278 (2002) *citing City of Leominster*, 23 MLC 62, 65-66 (1996). Where conditions of employment are established by contract, an employer may request to reopen bargaining concerning such contract provisions during the term of a contract, and engage in "mid-term" bargaining, but may not insist upon doing so. *Town of Brookline*, 20 MLC 1570, 1592 (1994), *citing Town of Randolph*, 8 MLC 2044, 2051 (1982) and *City of Salem*, 5 MLC 1433, 1437 (1978).

The City asserts that because the parties' collective bargaining agreement does not mention the issue of prioritization, the City cannot have contractually waived its rights to bargain over the issue during mid-term bargaining. The Association, on the other hand, argues that the method for assigning paid details was a matter covered by the parties' collective bargaining agreement, as specifically found in Article XII, sections (b) and (c), and Article XVI, Section 4.

We agree with the Association. Section (b) of Article XII states, "[a]ll assignments to paying police details shall be made in accordance with the existing procedure." Section (c) states that, "[t]he recording and posting of paid details shall be done in accordance with the existing procedure." Article XVI, Section 4 (set forth above) is a past practice provision relating to all special orders in force on the effective date of the parties' agreement. Thus, the provisions, individually and, certainly, together with Article XII contemplate that the existing procedure for assigning and filling details will continue during the life of the parties' agreement. Because the City insisted on bargaining over those very issues during the life of the agreement and moreover implemented the changes in procedure before the parties had negotiated to resolution or impasse, the City violated the Law. *Town of Brookline*, 20 MLC at 1592-1595.

In so holding, we reject the City's argument that because the Police Commissioner maintains the managerial authority to deploy and assign officers pursuant to St. 1962, Chapter 322, and because Chapter 322 cannot be contravened by the collective bargaining process, the City had the absolute right to demand impact bargaining over the Police Commissioner's non-delegable decision mid-term. Although, as discussed above, Chapter 322 may have authorized the Police Commissioner to prioritize details without first bargaining with the Association, we do not construe Chapter 322 as the type of narrow statutory mandate controlling *all* aspects of the paid details system, thereby precluding bargaining over the means and methods of implementing that decision and the impacts of that decision. *Compare Lynn* v. *Labor Relations Commission*, 43 Mass. App. Ct. at 182-183 (no obligation to engage in collective bargaining as to specific matters controlled in detail by statute not enumerated by M.G.L. c. 150E, §7(d)). *Cf. Police Department of Boston* v. *John Fedorchuck*, 48 Mass. App. Ct. 543, 547 (2000)(power of police commissioner to make personnel decisions under Chapter 322 is not untrammeled and must be harmonized with provisions of M.G.L. c. 7, §4H, imposing a just cause standard on the decision to transfer detectives). Accordingly, under the principles enunciated in *Town of Brookline, supra*, the City could not insist upon bargaining about the means of implementing its plan to prioritize details and the impacts of that decision during the life of the contract.

We also reject the City's argument that the parties were obligated to bargain over the impacts of prioritization apart from successor negotiations pursuant to Arbitrator Andersen's June 3, 1994 award, which stated that "[t]he parties agree to discuss the of details, including the centralization of the detail system during the life of the agreement." However, that sentence does not alter the language of Article XII, which specifically provides that the assignments to paid details would be made in accordance with the parties' "existing procedure." Moreover, the award only required the parties to "discuss" issue of details. Where the Arbitrator expressly used the term "negotiate" elsewhere in the Award, [32] we decline to construe the parties' agreement to "discuss the issue of details" as requiring actual negotiations during the term of the agreement.

Even if we were to conclude that the language of Article XII did not cover the parties' method of offering and filling paid details, we nevertheless conclude that the City violated the Law by insisting on bargaining over this issue apart from successor negotiations. In *Town of Brookline, supra*, the Commission held that even if a particular matter were not covered by the parties' agreement, an employer may not refuse to bargain by insisting on mid-term bargaining during the time in which the parties had historically engaged in bargaining for a successor collective bargaining agreement. *Id.* at 1596, n.20; *City of Leominster*, 23 MLC 62, 66 (1996); *Town of Westborough*, 25 MLC 81, 88 (1997). The City argues that *Town of Brookline* is inapplicable to the instant matter because when the City made its prioritized details proposal, the parties were neither engaged in, nor scheduled to begin bargaining over the terms of a successor collective bargaining agreement.

However, the record shows that although the Association requested to begin the process for engaging in successor negotiations in the fall prior to the expiration or the parties' agreement, which was earlier than when the parties had historically engaged in successor negotiations, the City did not initially object to that request. In January 1996, however, the City suddenly declared that it would wait to engage in successor negotiations until it appointed a new director of labor relations. Approximately two weeks after this announcement, the City sent its proposal concerning paid detail prioritization to the Association and offered to bargain over the new paid detail system during "interim negotiations."[33] Thus, even if parties had not actually begun successor negotiations, the City had assented to begin negotiations at an earlier time. Further, based on the timing of the City's pronouncement that it would postpone successor negotiations until a new labor relations director was

32. See footnote 14 supra.

33. [See next page.]

appointed, and the City's sudden invitation to bargain the issue of prioritization during interim negotiations, the City's actions appear to be an end-run around the requirement to negotiate the impacts of prioritization at impending main table negotiations.[34] Accordingly, we find that the City could not lawfully insist during that period that the parties bargain over changing the allocation of paid details apart from successor negotiations.

We note also that the parties met on July 25, 1996. Although they had been scheduled to begin successor contract negotiations on that date, no initial contract proposals were presented that day. At that meeting, the Association demanded to bargain over the City's proposed changes in the paid detail system, which the City refused to do. The City could have taken that opportunity to commence bargaining, making an appropriate statement that by doing so it was not waiving its right to insist on separate bargaining. However, the City made no effort to do so. Refusing to meet and bargain on demand over mandatory subjects of bargaining is a separate violation of Section 10(a)(5) of the Law. *See Lowell School Committee*, 26 MLC 111(2000).

Having found that the City unlawfully demanded that the Association bargain over the impacts of prioritization apart from successor negotiations, we reject the City's contention that the Association waived its right to bargain over this issue. The affirmative defense of waiver by inaction must be supported by evidence of actual knowledge of the proposed change, a reasonable opportunity to negotiate over the change, and an unreasonable or unexplained failure of the union to bargain or request bargaining. *Commonwealth of Massachusetts*, 8 MLC 1894 (1982). In this case, for all of the foregoing reasons, the Association's refusal to engage in mid-term negotiations was neither unreasonable nor unexplained. *See Town of South Hadley*, 27 MLC 161, 163 (2001)(union did not waive its right to bargain where it promptly protested change and insisted on bargaining the topic as part of successor contract negotiations that were about to begin and Town was equally insistent that negotiations proceed separate from successor contract negotiations).

CONCLUSION

For the foregoing reasons, we conclude that the City violated Sections 10(a)(5), and, derivatively, Section 10(a)(1) of the Law when it prioritized paid details by level of public safety without first bargaining with the Association over the means and methods of implementing that decision and the impacts of its decision to resolution or impasse. The City also violated the Law when it refused to bargain with the Association over the means and methods and impacts of implementing its decision in July 1996.

Remedy

When a party refuses to bargain, the usual remedy includes an order to bargain and to return the parties to the positions they would have been in if the violation had not occurred. *Town of Dennis*, 12 MLC 1027, 1033 (1985). If the bargaining obligation involves only the impacts of a decision to alter a mandatory subject of bargaining, but not the decision itself, a bargaining order restoring the economic equivalent of the *status quo ante* for a period of time sufficient to permit good faith bargaining to take place is appropriate. *Lowell School Committee*, 26 MLC 111 (2000) *citing City of Malden*, 20 MLC 1400, 1406 (1994). This remedy is particularly appropriate where the effects of an employer's managerial decision are certain and impact bargaining cannot substantially change but only ameliorate those effects. *See Newton School Committee*, 8 MLC 1538, *aff'd sub nom. School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 577 (1983), *citing Transmarine Navigation Corp.*, 170 NLRB 389, 67 LRRM 1419 (1968).

The appropriate remedy here, which is both retroactive and prospective, attempts to balance the right of management to carry out its lawful decision and the right of the employee organization to have meaningful input on impact issues while some aspects of the *status quo* are maintained. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. at 577. In this case, the effects of the City's managerial decision to prioritize paid details would necessarily have resulted in fewer details being offered to a low officer on any given day and impact bargaining could therefore only have ameliorated, and not substantially changed, those effects. We therefore do not order the City to cease prioritizing details. Nor do we order the City to make officers whole retroactively for any losses they may have incurred solely as a result of the fact that the City's decision to prioritize details necessarily resulted in fewer available details to some officers.

However, in this case, the City did more than merely implement its decision to prioritize details. It unilaterally imposed a method for doing so, which included charging low officers who refused to work a Level # 1 or Level # 2 prioritized detail with a refusal. Under the City's implementation plan, those officers lost their "low man" status on the Alternate List, further reducing the likelihood that they would be offered the opportunity to work subsequent paid details. This impact did *not* inevitably result from the City's decision to prioritize details.

Retroactive Remedy

Therefore, to fully restore the *status quo*, we order the City to cease and desist from unilaterally charging officers who refuse to work a Level # 1 or Level # 2 detail with a refusal and to, upon request, bargain in good faith with the Association over the means and method of implementing its decision to prioritize paid details and the impacts on bargaining members' terms and conditions of employment. We also order the City to make employees whole for all losses that they incurred as a result of being charged with a refusal

---

33. Although the Association argues that the parties were actually engaged in successor negotiations when the City made its paid detail proposal, the record reflects that the City made its initial proposal on January 16, 1996, and that the parties did not actually begin negotiations until July 1996. Therefore, we do not find that the parties were actually engaged in successor negotiations when the City advanced the prioritization proposal, but only that the parties had agreed to begin successor negotiations at a point in advance of the time they historically engaged in successor negotiations.

34. Further, the City has failed to establish that circumstances required bargaining over the prioritization of details apart from the successor negotiations. See *City of Leominster*, 23 MLC 62, 65-66 (1996).

for refusing to work a Level # 1 or Level # 2 detail after September 23, 1996.

Prospective Remedy

For the reasons set forth above, we order the City to make employees whole, prospectively, under the procedure in effect prior to September 23, 1996, for the losses they suffered as a result of the City's decision to prioritize, i.e. fewer available details, beginning as of the date the Association requests to bargain and continuing until the City has fulfilled its bargaining obligation. *Town of Dennis*, 12 MLC at 1033, *citing Town of Burlington*, 10 MLC 1387 (1984).

ORDER

WHEREFORE, on the basis of the foregoing, IT IS HEREBY ORDERED that the City of Boston:

1. Cease and desist from:

a) Unilaterally charging officers who refuse to work a Level # 1 or Level #2 detail with a refusal;

b) Failing and refusing to bargain in good faith with the Boston Police Patrolmen's Association over the means and methods of implementing its decision to prioritize details by level of public safety and the impacts of that decision on mandatory subjects of bargaining.

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

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

a) Upon request of the Association, bargain collectively in good faith over the means and methods of implementing the City's decision to prioritize details by level of public safety and the impacts of that decision on mandatory subjects of bargaining.

b) Make whole affected employees for losses they suffered as a result of being charged with a refusal for refusing to accept a prioritized detail after September 23, 1996, plus interest on any sums owed pursuant to M.G.L. c.321, §6I compounded quarterly.

c) Beginning on the day the Association requests to bargain, pay to the employees affected by the City's decision to prioritize paid details an amount equivalent to the average additional compensation they formerly received for working paid details prior to September 23, 1996, less any amounts they actually received for working private paid details, plus interest on any sums owed pursuant to M.G.L. c.321, §6I compounded quarterly, until one of the following occurs:

1) Resolution of bargaining by the parties;

2) Failure of the Association to request bargaining within fifteen (15) days of the receipt of this decision;

3) Failure of the Association to bargain in good faith; or,

4) Good faith impasse between the parties.

d) Post in all conspicuous places where employees usually congregate and where notices to employees are usually posted, and maintain for a period of thirty (30) days thereafter, copies of the attached Notice to Employees; and

e) Notify the Commission in writing of the steps taken to comply with this Decision within thirty (30) days after receipt of the Decision.

SO ORDERED.

NOTICE TO EMPLOYEES

The Massachusetts Labor Relations Commission (the Commission) has decided that the City of Boston (City) has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law), by prioritizing paid details by level of public safety without first bargaining with the Boston Police Patrolmen's Association (the Association) over the means and methods of implementing that decision, and the impacts of that decision on mandatory subjects of bargaining, to resolution or impasse. The Commission has also decided that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law, by refusing to bargain with the Association over the means and methods and impacts of implementing its decision in July 1996.

WE WILL NOT unilaterally charge patrol officers who refuse to work a Level # 1 or Level # 2 detail with a refusal.

WE WILL NOT fail and refuse to bargain in good faith with the Association over the means and methods of implementing our decision to prioritize details by level of public safety and the impacts of that decision on mandatory subjects of bargaining.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL, upon request of the Association, bargain collectively in good faith with the Association over the means and methods of implementing our decision to prioritize details by level of public safety and the impacts of that decision on mandatory subjects of bargaining.

WE WILL make whole employees for losses they suffered as a result of being charged with a refusal for refusing to accept a Level # 1 or Level # 2 details after September 23, 1996, plus interest on any sums owed pursuant to M.G.L. c.231, §6I compounded quarterly.

WE WILL, beginning on the day the Association requests to bargain, pay to the employees affected by the City's decision to prioritize paid details an amount equivalent to the average additional compensation they formerly received for working paid details prior to September 23, 1996, less any amount they actually received for working private paid details, plus interest on any sums owed pursuant to M.G.L. c.231, §6I compounded quarterly, until one of the following occurs:

· Resolution of bargaining by the parties;

· Failure of the Association to request bargaining within fifteen (15) days of the receipt of this decision;

· Failure of the Association to bargain in good faith;

· Good faith impasse between the parties.

[signed]
CITY OF BOSTON

* * * * * *