

In the Matter of CITY OF CAMBRIDGE  
and  
CAMBRIDGE POLICE PATROL OFFICERS  
ASSOCIATION

Case No. MUP-04-4229

67.64	<i>refusal to sign contract</i>
67.68	<i>refusal to implement contract</i>
68.21	<i>refusal to implement grievance settlement</i>
82.111	<i>interest</i>
91.13	<i>mootness</i>

March 5, 2009

Marjorie F. Wittner, Chair  
Elizabeth Neumeier, Board Member

Kevin P. Feeley, Jr., Esq.     *Representing the City of  
Cambridge*

Olinda R. Marshall, Esq.     *Representing the Cambridge  
Police Patrol Officers Association*

### DECISION<sup>1</sup>

#### Statement of the Case

The Cambridge Police Patrol Officers Association (Association) filed a charge with the former Labor Relations Commission (Commission) on August 26, 2004 alleging that the City of Cambridge (City) had engaged in prohibited practices within the meaning of Sections 10(a)(5) and (1) of MGL c. 150E (the Law). Following an investigation, the Commission issued a complaint of prohibited practice on November 18, 2005, alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to execute and implement the terms of a settlement agreement that resolved the Association's grievance regarding a five-day suspension of Patrol Officer James Voutirista (Voutirista). The City filed an answer to the complaint on March 3, 2006.

The Commission assigned this matter to Ann Moriarty, a duly-designated Hearing Officer (Hearing Officer). On August 8, 2007, the Association and the City jointly filed stipulated facts in lieu of an evidentiary hearing. Prior to filing the stipulated facts and exhibits, both parties had filed briefs. The Board received the Association's brief on March 19, 2007 and the City's brief on May 24, 2007.<sup>2</sup>

The Hearing Officer issued Recommended Findings of Fact summarizing the parties' exhibits on January 30 2009. On February 23, 2009, the Board received the City's request for an additional factual finding pursuant to 456 CMR 13.02(2).<sup>3</sup> Therefore, we adopt them in their entirety and summarize the relevant portions below.

#### Stipulated Facts and Exhibits

Now come the parties that acknowledge that this statement of Stipulated Facts and Exhibits, the Charge of Prohibited Practice, the Commission's Complaint and the Respondent's Answer in relation to this matter shall constitute the entire record of this case and hereby waive their right to a hearing.

For the sole purpose of resolving the matter in dispute, the parties hereby stipulate to the following facts:

1. The City of Cambridge ("the City") is a public employer within the meaning of Section 1 of the Law.
2. The Association is an employee organization within the meaning of Section 1 of the Law.
3. The Association is the exclusive collective bargaining representative for the patrol officers in the City's Police Department ("the Department"). The most recent collective bargaining agreement between the Association and the City had an effective date from July 1, 2003 through June 30, 2006. (Exhibit 1, attached.)
4. On or about September 26, 2002, the Department suspended Patrol Officer James Voutirista ("Voutirista"), a member of the bargaining unit described in paragraph 3, above, for five days.
5. The Association grieved the suspension referred to in paragraph 4, above, and the grievance was scheduled for arbitration on May 19, 2004.
6. On or about May 19, 2004, the Association and the City negotiated a handwritten settlement agreement ("the Agreement") that resolved the grievance referred to in paragraph 5, above. (Exhibit 2, attached.) The parties did not sign the handwritten document on May 19, 2004 because the parties decided at that time to have the Association's counsel input the document into a word processed document, transmit the computer printout to counsel for the City, and that the parties would then sign the typed document.
7. On or about May 20, 2004, the Association sent a typed copy of the Agreement referred to in paragraph 6, above, to the City so the City could execute the Agreement and implement its terms. (Exhibit 3, attached.)

1. Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's (Commission) regulations, this case was designated as one in which the Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the Division agency charged with deciding adjudicatory matters. References to the Board include the Commission.

2. The City's brief is postmarked March 19, 2007.

3. Because the Board has decided to deny the request for an additional factual finding for the reasons set forth in n. 4. supra, the Board does not need to rule on the timeliness of the City's request.

8. On or about June 9, 2004, the Association requested that the City respond to its correspondence referred to in paragraph 7, above, which had been sent to the City on or about May 20, 2004. (Exhibit 4, attached.)

9. On or about August 4, 2004, the Association again requested that the City respond to its May 20, 2004 correspondence referred to in paragraph 7, above. (Exhibit 5, attached.)

10. On or about August 13, 2004, the Association again requested that the City respond to its May 2004 correspondence and execute the terms of the agreement. (Exhibit 6, attached.)

11. The City failed to execute the Agreement, implement its terms or respond in writing to the Association's correspondence referred to in paragraphs 7, 8, 9 and 10, above, prior to the filing of the Association's charge of prohibited practices with the Commission in relation to this matter on August 26, 2004.

12. On or about September 30, 2004, the City and the Association executed a typed version of the Agreement prepared by the City. (Exhibit 7, attached.)

13. The City and the Association each complied with the terms of the executed Agreement.<sup>4</sup>

By entering into these Stipulated Facts and Exhibits, the parties reserve the right to raise all legal arguments and defenses relative to this matter. If there is a conflict of fact between this statement of Stipulated Facts and Exhibits and the findings contained in the Commission's Complaint or within the Respondent's Answer, such conflict shall be resolved in favor of this Statement of Stipulated Facts and Exhibits. To the extent the Respondent's Answer was untimely filed, the parties acknowledge that such Answer shall be considered timely.

#### Findings of Fact

The following facts are based on the stipulated exhibits.

#### *Handwritten Settlement Agreement*

The handwritten settlement agreement (Handwritten Agreement) states, in relevant part, as follows:<sup>5</sup>

1. The CPPOA [Association] shall withdraw the above-referenced matter from arbitration AAA Case No. 11 390 03274 02, with prejudice to re-filing said grievance in any forum.
2. The City shall, within 14 days of the full execution of this settlement agreement pay Mr. James Voutirista, the grievant, for two and one half days pay that he lost when the City implemented the subject five (5) day suspension.
3. The City shall be permitted, subject to objections relating to relevance, to introduce said 5-day suspension dated September 26, 2002 at the arbitration hearing in AAA Case No. 11 390 03275 02, another 5 day suspension of Mr. Voutirista issued in November 2002 that is being challenged by the CPPOA [Association] in such

4. The City requested that the substance of Stipulation 13 also be included in the Hearing Officer's Recommended Findings of Fact. That request is denied as duplicative, because Stipulation 13 is already part of the stipulated record before the Board.

case, provided that if the subject 5 day suspension dated September 26, 2002 has been or is introduced into evidence in AAA Case No. 11 390 03275 02, then the parties, without reference to this settlement agreement will submit a written stipulation into the record stating: "*The parties stipulate both that the 5 day suspension dated September 26, 2002 shall be considered only for purpose of showing the background events leading to the subject 5 day suspension of November 2002 and not for purposes of showing progressive discipline or any other purpose.*" Once the arbitration in AAA Case No. 11 390 03275 02 is finally disposed, the City shall purge its records, including Mr. Voutirista's personnel record, of the subject September 26, 2002 5-day suspension document.

4. This settlement agreement shall not establish a precedent regarding the meaning of the parties' collective bargaining agreement with respect to any personnel action the City may take in the future. Accordingly, except for purposes of enforcing this agreement, or as otherwise permitted to the limited extent referenced in paragraph four[,] evidence of this settlement agreement, the events giving rise to the grievance, the subject grievance procedure, and the implementation of the terms and conditions herein (e.g., withdrawal of grievance, payment to grievant) shall not be admissible in any future proceeding between the City and the Association involving other members of the bargaining unit. Nor shall this withdrawal be deemed to enlarge or diminish the rights and obligations of the City and the CPPOA [Association] under Mass. G.L. c. 150E or any other law of the Commonwealth of Massachusetts.

The portion of paragraph 3, above, of the Handwritten Agreement, which is placed in quotations and underlined in the original, is also encapsulated by a heavy line surrounding the text in the original. An arrow directing the reader to that block of text includes a note stating "don't use this—*see attached*" (emphasis in original text of the Handwritten Agreement). The next page of the Handwritten Agreement contains the following text, also in quotations:

"The parties stipulate both that the 5 day suspension dated September 26, 2002 shall be considered only for the purpose of showing the background events leading to the subject 5 day suspension of November 2002 and for no other purpose, and that the September 26, 2002 5 day suspension was not used or relied on by the City for the purpose of progressive discipline in the November 2002 5 day suspension."

The Handwritten Agreement is not signed or initialed by either party, nor does it have any signature lines for the Association or the City.

#### *Association Prepared - Typed Agreement*

On or about May 20, 2004, counsel for the Association, Jack J. Canzoneri (Attorney Canzoneri), sent a typed copy of the Agreement (Typed Agreement) and a letter, to counsel for the City, Kevin P. Feeley, Jr. (Attorney Feeley).<sup>6</sup>

The Association's letter dated May 20, 2004, which accompanied the Typed Agreement, in relevant part, states:

Enclosed please find a typed draft of the handwritten settlement agreement of May 19, 2004 in the above-referenced matter. I also

5. The Handwritten Agreement is identified as Exhibit 2 in the stipulated facts.  
6. The Typed Agreement and the Association's May 20, 2004 cover letter are identified jointly as Exhibit 3 in the stipulated facts.

enclose a copy of the handwritten draft for your information, and note that I have made a few non-substantive changes. Please review the document carefully and advise me if it is satisfactory. If so, I will have [Association] President Killon sign two (2) originals and provide them to Mr. Gardner to sign and date. The City may retain one original and the CPPOA the other. In addition, enclosed is a draft of the stipulation that I will enter at the other Voutirista case, as referenced in the settlement agreement and I ask you to pass that on to Attorney Collins so that there is no confusion.

At the top of the first page of the Typed Agreement, just above the caption are the words: **DRAFT May 20, 2004** (emphasis in the original). The text of paragraphs 1, 2, and 4 of the Typed Agreement that the Association provided to the City is substantively the same as the text of the corresponding paragraphs in the Handwritten Agreement.<sup>7</sup> The text of paragraph 3 of the Typed Agreement differs from paragraph 3 of the Handwritten Agreement and states as follows:

3. The subject 5 day suspension dated September 26, 2002 was entered into evidence as Joint Exhibit 9 in another arbitration hearing in AAA Case No: 11 390 03275 02. That case relates to the CPPOA's challenge to another 5 day suspension issued to Mr. Voutirista by notice dated November 22, 2002. The parties agree that at the next day of hearing in said AAA Case No: 11 390 03275 02 they shall submit a written stipulation into the record, without referring to this settlement agreement, stating:

"The parties stipulate that the 5 day suspension dated September 26, 2002 (Joint Exhibit 9) shall be considered only for the purpose of showing the background events leading to the subject 5 day suspension issued by notice dated November 22, 2002 and for no other purpose, and that the September 26, 2002 5 day suspension was not used or relied upon by the City for the purpose of progressive discipline in issuing the 5 day suspension notice dated November 22, 2002."

Once the arbitration in AAA Case No: 11 390 03275 02 is finally disposed, the City shall purge its records, including Mr. Voutirista's personnel record, of the subject September 26, 2002, 5 day suspension document.

The Typed Agreement has signature lines for Association President Steve Killon and the City's personnel director, Michael P. Gardner. Neither signature line of the Typed Agreement was signed.

On or about June 9, 2004, Attorney Canzoneri sent a letter dated June 9, 2004 to Attorney Feeley.<sup>8</sup>

The Association's June 9, 2004 letter, in relevant part, states:

By the letter of May 20, 2004 I forwarded a typed version of the handwritten settlement agreement reached between the Cambridge Police Patrol Officers Association and the City of May 19, 2004. I still have not heard back from you and respectfully ask that you do so immediately.

On or about August 4, 2004, Attorney Canzoneri sent a letter dated August 4, 2004 to Attorney Feeley.<sup>9</sup> The Association's August 4, 2004 letter, in relevant part, states:

By letter of May 20, 2004 I forwarded a typed version of the handwritten settlement agreement reached between the Cambridge Police Patrol Officers Association and the City on May 19, 2004. By letter of June 9, 2004 I reiterated that request and respectfully requested that you respond to the May 20<sup>th</sup> correspondence immediately. As of this date, nearly three months from my initial correspondence[,] I still have not heard back from you. In the meantime I have also received a voice mail from Mr. Voutirista complaining that he still has not received his backpay check. Please respond immediately to the May 20<sup>th</sup> correspondence. The Cambridge Police Patrol Officers Association views the City's delay in responding, failure to execute the settlement agreement and [sic] as a prohibited practice and breach of contract. By this letter we reserve all rights under law and contract to enforce our settlement agreement and right to a response without unreasonable delay.

On or about August 13, 2004, Attorney Canzoneri sent a letter dated August 13, 2004 to Attorney Feeley.<sup>10</sup>

The Association's August 13, 2004 letter, in relevant part, states:

I have received no response from you to my letter dated August 4, 2004 in the above referenced matter. Please be advised if by next Friday August 20, 2004 the City does not pay Mr. Voutirista his backpay as specified in our settlement agreement and the City fails to communicate with me as a follow-up to my correspondence of May 2004 to ensure execution of the settlement agreement that I sent to you, I will file a prohibited practice charge against the City.

*City Prepared - Executed Agreement*

On or about September 30, 2004, the City and the Association executed a typed version of the Agreement (Executed Agreement) that had been prepared by the City.<sup>11</sup> The text in paragraphs 1, 2, and 4 of the Executed Agreement is substantively the same as the text in the corresponding paragraphs in both the Handwritten Agreement and the Typed Agreement. The text of paragraph 3 of the Executed Agreement is identical to the text of paragraph 3 of the Handwritten Agreement, as modified in the original, and provides:

3. The City shall be permitted, subject to objections relating to relevance, to introduce said 5-day suspension dated September 26, 2002 at the arbitration hearing in AAA Case No. 11 390 03275 02, another 5-day suspension of Mr. Voutirista issued in November 2002 that is being challenged by the CPPOA in such case, provided that if the subject 5-day suspension dated September 26, 2002 has been or is introduced into evidence in AAA Case No. 11 390 03275 02, then the parties, without reference to this settlement agreement will submit a written stipulation into the record stating: "The parties stipulate both that the 5-day suspension dated September 26, 2002 shall be considered only for the purpose of showing the background events leading to the subject 5 day suspension of November 2002, and for no other purpose, and that the September 26, 2002 5-day sus-

7. The Association made certain grammatical revisions to the Handwritten Agreement that are reflected in the Typed Agreement. The grammatical revisions do not substantively change the terms of the settlement agreement.

8. The Association's June 9, 2004 letter is identified as Exhibit 4 in the stipulated facts.

9. The Association's August 4, 2004 letter is identified as Exhibit 5 in the stipulated facts.

10. The Association's August 13, 2004 letter is identified as Exhibit 6 in the stipulated facts.

11. The Executed Agreement is identified as Exhibit 7 in the stipulated facts.

pension was not used or relied on by the City for the purpose of progressive discipline in the November 2002 5-day suspension.” Once the arbitration in AAA Case No. 11 390 03275 02 is finally disposed, the City shall purge its records, including Mr. Voutirista’s personnel records, of the subject September 26, 2002 5-day suspension document.

#### Opinion

##### *Execution of the Agreement*

It is well settled that the failure of a party to execute an agreement embodying the terms of a settlement agreement constitutes a refusal to bargain in good faith and amounts to a violation of Sections 10(a)(5) and (1) of the Law. *City of Boston*, 8 MLC 1113, 1115 (1981); *Belmont School Committee*, 4 MLC 1189, 1193 (H.O. 1977), *aff’d*, 4 MLC 1707 (1978). Moreover, an oral agreement between an employer and a union can be effective and enforceable under the Law. *Service Employees International Union, Local 509*, 410 Mass. 141, 145 (1991). The Board has long recognized that “a meeting of the minds can occur without anything having been reduced to writing or having been signed by either party.” *Town of Ipswich*, 11 MLC 1403, 1410 (1985) (citing *Turner Falls Fire District*, 4 MLC 1658, 1661 (1977)).

Here, we must determine the intent of the parties to effectuate the terms of the settlement agreement reached on May 19, 2004 regarding Voutirista’s suspension grievance. On that date, the parties handwrote the terms of the settlement agreement but did not sign that document. It is undisputed that the parties decided to have the Association’s attorney input the handwritten document into a word processed document and transmit the typed version of the settlement agreement to the City’s attorney, so the parties could sign the typed document.

The City argues that it is disingenuous for the Association to claim that the City failed to execute an agreement, when the Association never did so. The City points out that: 1) the Typed Agreement did not mirror the Handwritten Agreement; and 2) the Association had not signed the Typed Agreement that it sent to the City on May 20, 2004. With respect to the City’s first argument, the City fails to articulate how the Typed Agreement differs in substance from the Handwritten Agreement. Rather, the City merely asserts that “the language in paragraph 3 in the typed version is clearly different than the language in paragraph 3 of the handwritten version and could be interpreted by an independent party to import different obligations upon the parties than had been originally agreed to.” We are not persuaded by the City’s argument on this point and find the terms of both versions of the settlement agreement to be substantively the same.

Concerning the City’s second argument, the fact that the Association had not signed the Typed Agreement does not undermine the legitimacy of the parties’ oral agreement that was reduced to writing in the Handwritten Agreement. Additionally, there is no dispute that, on May 19, 2004, the parties agreed that Attorney Canzoneri would transmit the typed version of the settlement

agreement to Attorney Feeley, and that the parties would then sign the typed document. The following day, in accordance with the parties’ agreement, Attorney Canzoneri sent the Typed Agreement to the City. Attorney Canzoneri articulated in his accompanying May 20, 2004 letter to Attorney Feeley that he “made a few non-substantive changes” and would have the Association’s president sign the settlement agreement if it was satisfactory to the City. The City, however, failed to respond in any way to the Association’s correspondence until the Association filed a charge of prohibited practice with the Commission. Moreover, the City has failed to explain or to justify its inaction.<sup>12</sup> The Association was “forced to seek recourse to this Board in order to compel the City to do what the Law explicitly mandates: sign a written agreement.” See *City of Boston*, 8 MLC at 1116 (Commission found violations of Sections 10(a)(5) and (1) where the city had delayed executing fully-negotiated collective bargaining agreements for periods ranging from two months to three and one-half months). Accordingly, we find that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unreasonably delaying the execution of the settlement agreement.

##### *Mootness*

The City argues that, because the parties ultimately executed a settlement agreement and the City has complied with its terms, the case is moot and should be dismissed. However, the Board recognizes an exception to the mootness doctrine where “there is possibility that the challenged conduct will recur in substantially the same form, especially if the asserted violator contends [it] was properly engaged in the conduct.” *City of Boston*, 7 MLC 1707, 1709 (1980).

Based on the undisputed facts in this case, even though the parties executed a settlement agreement on September 30, 2004, we decline to deem this case moot. There is a public interest in determining the legality of challenged practices that have been subsequently settled. *Id.* at 1708. Where a violation of the Law has occurred, the imposition of a continuing obligation on the respondent to conform its conduct to the Law is the best means of diminishing the likelihood that the prohibited conduct will recur in the future. *Id.* The City also failed to offer any plausible explanation for its failure to communicate in any manner with the Association regarding the settlement agreement until after the Association had filed a charge of prohibited practice. Moreover, as discussed above, the City’s inexplicable delay in executing the settlement agreement resulted in a financial loss for Voutirista. Therefore, we reject the City’s mootness defense.

##### Conclusion

For the foregoing reasons, we find that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it refused to bargain in good faith by failing to execute and to implement the terms of the settlement agreement until after the Association had filed a charge of prohibited practice against the City.

12. The City contends that, during the relevant summer months, counsel for the City was largely out of the office as the result of a family illness. However, the City

never notified the Association of this fact or corresponded with the Association in any manner prior to the Association filing a prohibited practice charge.

Remedy

Because of the City's delay in executing the settlement agreement, Voutirista was forced to wait over four months to be compensated for two and one half days of lost pay. Although Voutirista eventually received the two and one half days of lost pay to which he was entitled, the Association correctly notes that an interest award is appropriate where the employer's unlawful conduct causes a delay in the employee's receipt of economic benefits. *City of Boston*, 17 MLC 1711 (1991); see also *Worcester County Sheriff's Department*, 28 MLC 1, 7 (2001) (citing *City of Boston*, 17 MLC 1711 (1991)). Accordingly, our order here, among other things, requires the City to pay interest to Voutirista at the rate specified in MGL c. 231, § 6I on the money that the City unlawfully withheld, when it failed to timely execute the parties' settlement agreement. Specifically, the City must pay the specified interest on Voutirista's two and one half days of lost pay for each day from May 20, 2004 until the day that Voutirista received payment from the City for the two and one half days of lost pay.

Order

WHEREFORE, based on the foregoing. IT IS HEREBY ORDERED that the City shall:

1. Cease and desist from:

- a. Refusing to bargain collectively in good faith with the Association by failing to execute and to implement the terms of settlement agreements concerning the grievances of bargaining unit members.
- b. In any like or related 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. Make whole bargaining unit member James Voutirista, who suffered an economic loss as the result of the City's unlawful action, by paying Voutirista interest, at the rate specified in MGL c. 231, § 6I, on two and one half days of lost pay for each day from May 20, 2004 until the day that Voutirista received payment from the City for the two and one half days of lost pay following the parties' execution of the settlement agreement dated September 30, 2004.
- b. Execute and implement the terms of settlement agreements concerning the grievances of bargaining unit members.
- c. Post in conspicuous places where employees represented by the Association usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
- d. Notify the Board within ten (10) days of receipt of this decision and order of the steps taken to comply with this order.

SO ORDERED.

THE COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF LABOR RELATIONS

BEFORE THE COMMONWEALTH EMPLOYMENT  
RELATIONS BOARD

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH  
EMPLOYMENT RELATIONS BOARD OF THE DIVISION OF  
LABOR RELATIONS AN AGENCY OF THE  
COMMONWEALTH OF MASSACHUSETTS

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE  
DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Division of Labor Relations, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: 617-626-7132).

The Commonwealth Employment Relations Board has determined that the City of Cambridge (City) has violated Sections 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when it refused to bargain in good faith with the Cambridge Police Patrol Officers Association (Association) by failing to execute and implement the terms of a settlement agreement regarding the suspension of bargaining unit member James Voutirista until after the Association had filed a charge of prohibited practice against the City.

The City posts this Notice to Employees in compliance with the Commonwealth Employment Relations Board's Order.

WE WILL NOT refuse to bargain collectively in good faith with the Association by failing to execute and to implement the terms of settlement agreements concerning the grievances of bargaining unit members.

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

WE WILL make whole bargaining unit member James Voutirista, who suffered an economic loss as the result of the City's unlawful action, by paying Voutirista interest, at the rate specified in MGL c. 231, § 6I, on two and one half days of lost pay for each day from May 20, 2004 until the day that Voutirista received payment from the City for the two and one half days of lost pay following the parties' execution of the settlement agreement dated September 30, 2004.

WE WILL execute and implement the terms of settlement agreements concerning the grievances of bargaining unit members.

[signed]  
City of Cambridge Date

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