In the Matter of CITY OF NEW BEDFORD

and

AFSCME, COUNCIL 93

Case No. MUP-09-5582

54.31	*Impact of management rights decisions*
54.5111	*layoff*
54.589	*bargaining unit work*
67.15	*union waiver of bargaining rights*
67.8	*unilateral change by employer*
82.112	*mitigation*
82.13	*reinstatement*
82.51	*impact of remedies on other statutes —civil service*
92.56	*proper issues on appeal*

November 15, 2012
Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Jane Medeiros Friedman, Esq. *Representing the City of New Bedford*
Joseph L. DeLorey, Esq. *Representing AFSCME, Council 93*

DECISION ON APPEAL

SUMMARY

On March 21, 2012, a Department of Labor Relations (DLR) Hearing Officer issued a decision [39 MLC 205] concluding that the City of New Bedford (New Bedford) violated Section 10(a)(5), and, derivatively, Section 10(a)(1) of MGL c. 150E (the Law) by unlawfully failing to bargain over 1) the implementation of a layoff of a bargaining unit member without bargaining with AFSCME, Council 93 (Union or AFSCME) over the impacts of its decision to achieve a reduction in force by layoffs; and 2) unlawfully transferring the work formerly performed by the temporary Clerk Typist in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of MGL c. 150E (the Law). She dismissed that portion of the complaint alleging that the City unlawfully failed to bargain over its decision to lay off employees. The Hearing Officer ordered a full status quo remedy, including reinstatement of the laid off temporary Clerk Typist and a make-whole remedy.

The City filed a timely notice of appeal to the Commonwealth Employment Relations Board (Board) pursuant to Section 11 of the Law, 456 CMR 13.02 (1)(j) and 456 CMR 13.15.[1] The City filed a supplementary statement on April 30, 2012 contesting the Hearing Officer's legal conclusions and remedy. The Union filed a response to the City's supplementary statement on May 18, 2012. After reviewing the hearing record and the parties' arguments on review, the Board affirms the Hearing Officer's decision but modifies her remedy for the reasons set forth below.

1. The Union did not seek review of this dismissal.

Findings of Fact [2]

The City did not challenge any of the Hearing Officer's findings.[3] We therefore adopt them as summarized below.

The Union is the exclusive bargaining representative of all non-professional City employees, including clerical and blue-collar employees. The Union and City are parties to a collective bargaining agreement effective July 1, 2006 through June 30, 2009 (Agreement). Article XXV, the Agreement's Management Rights clause provides in relevant part:

> Except as otherwise provided in this Agreement, the City retains all right [sic] of management, including the right to direct employees, to hire, classify, promote, train, transfer, assign and retain employees and to suspend, demote, discharge or take other disciplinary action against employees for just cause; to relieve employees from duty because of lack of work, lack of funds, or causes beyond the City's control; to provide uniforms and equipment when required, to determine organization and budget, to maintain the efficiency of the operations entrusted to the City and to determine the methods, technology, means and personnel by which such operations are to be conducted, including contracting and subcontracting; similarly, to take whatever action may be necessary regardless of prior commitments to carry out the responsibilities of the City in an emergency or any unforeseen combination of circumstances which calls for immediate action. The City and its management officials have the right to make reasonable rules and regulations pertaining to employees consistent with this Agreement. The City agrees, however, pursuant to the above, that whenever it wishes to transfer an employee from a position identified under Unit C of said plan, it will notify the Union at least thirty (30) days before such a transfer is planned to take place.

Jeanine Walker (Walker) was employed by the City in the position of temporary Clerk Typist for the New Bedford Police Department (Department) from December 7, 1998 through February 13, 2009, when she was laid off due to a lack of funds resulting from Section 9C cuts.[4] On January 29, 2009, Mayor Scott Lang sent a letter to all City unions explaining that the State had reduced New Bedford's local aid by $2,789,923 for the remaining 21 weeks of the fiscal year and that the City needed to implement cost-savings measures to address these cuts and avoid "hundreds of layoffs." The letter detailed the Mayor's proposed cost-saving measures, but it did not provide any details about these layoffs or identify any employees who would be laid off if the City's unions did not accept the Mayor's proposals. The Union did not accept any of Mayor Lang's proposals or offer any counterproposals. At some point one to three days prior to Walker's layoff, Mayor Lang and the City's personnel director, Angela Natho (Natho) met with the Union and notified it of upcoming layoffs.[5] At or very shortly after this meeting, the City provided the Union with two letters regarding the layoffs. One identified the individuals to be laid off by title, department and civil service status. The other identified the employees by name. Walker was named on the second letter. The City sent Walker a letter on February 13, 2009 informing her of her layoff. Joint Exhibit 2 reflects that, in addition to laying Walker off, the City also laid off three other AFSCME members in the Police Department - one provisional clerk typist and two permanent clerk typists.

Walker's Duties

The City first created the temporary Clerk Typist position in the Third District Court in the mid-1990's to assist the Court Liaison Officers with clerical duties. Before then, police officers, who are members of a different bargaining unit, performed court liaison work, including clerical duties. Before 2007, there were two Court Liaison Officers assigned to the Third District Court. From 2007, when one of the Court Liaison Officers took a leave of absence, until Walker's layoff, only one uniformed officer served as a Court Liaison Officer in the Third District Court.

Walker shared many of her court liaison duties with the Court Liaison officers. She spent approximately 65-70% of her time notifying officers of court appearances; cancelling and confirming court appearances; and notifying the evidence officer that certain evidence should be available on the date of a trial or hearing. Court Liaison officers performed these duties only when Walker was not available. Both Walker and Court Liaison officers printed certain reports for hearings. Walker was responsible for receiving and mailing information regarding which would officers would be unavailable for court due to vacations or officer training. One morning a week for two to three hours, Walker was also responsible for printing driver histories for use at citations hearings for the week. Court Liaison officers never performed this duty.

After Walker was laid off, Court Liaison officers performed all of the clerical duties Walker had formerly performed. None of the work Walker performed remained in AFSCME's bargaining unit. The Hearing Officer found, and the City does not dispute, that it assigned Walker's former court liaison duties to Court Liaison officers in the Third District Court without first giving the Union notice and an opportunity to bargain.

Opinion[6]

Walker's Layoff

The Hearing Officer concluded that the City failed to give the Union notice and an opportunity to bargain over the impacts of its decision to lay off Walker.[7] The City contends this conclusion was erroneous for two reasons. Neither has any merit.

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2. The parties stipulated to a small portion of the record. We incorporate those stipulations into our summary.

3. The City did, however, challenge the conclusions she drew from her findings. The Board addresses the City's arguments in its opinion.

4. MGL c. 29, §9C.

5. There was conflicting testimony over whether Natho offered to bargain over the layoffs' impacts. The Hearing Officer did not resolve this testimony because she found that the layoffs were presented as a *fait accompli*.

6. The Board's jurisdiction is not contested.

7. The Union does not appeal from the Hearing Officer's conclusion that the City did not have to bargain over its decision to lay Walker off based on language in the management rights clause granting the City the right to "relieve employees from duty because of ...lack of funds."

The City first argues, as it did to the Hearing Officer, that the Mayor's January 29, 2009 letter proposing alternatives to layoffs constitutes adequate notice of Walker's February 13, 2009 layoff. Thus, it claims that the Union waived by inaction its right to bargain over this issue when the Union failed to respond to this letter. We summarily affirm the Hearing Officer's conclusion that the January 29 letter did not provide the Union with sufficient notice for it to formulate an appropriate response for the reasons set forth in her decision. *See Boston School Committee*, 4 MLC 1912, 1915 (1978). We similarly affirm the Hearing Officer's conclusion that the City presented the Union with a *fait accompli* in February 2009 when the City identified the employees to be laid off only a few days before the layoffs occurred. Thus, we agree that the Union was not required to make a demand to bargain over the layoff's impacts upon learning which employees would be laid off. *See generally Town of Hudson*, 25 MLC 143, 148 (1999) (Board does not apply doctrine of waiver by inaction when union is presented with a *fait accompli*).

The City's second argument, raised for the first time on appeal, centers on Walker's temporary civil service status. Citing to Paragraph 15 of the Commonwealth's Personnel Administration rules,[8] and noting it laid off two permanent Police Department clerical employees at the same time it laid off Walker, the City argues that there was nothing for the Union to bargain about regarding the impacts of the layoff with regard to Walker because of her temporary, untenured status under Chapter 31, the civil service laws.

Because the City raises this argument for the first time on appeal, it is not properly before us.[9] *Joseph R. Anderson and others* v. *Commonwealth Employment Relations Board*, 73 Mass. App. Ct. 908, 909, n.7 (2009) (declining to consider claims made by plaintiffs for first time on appeal). In any event, even assuming without deciding that the order of layoffs was dictated by civil service law, that does not mean that the City had no impact bargaining obligation. The Board has found there to be impact bargaining obligations even where the contract between the parties and/or civil service law determined the order of layoff. *See, e.g., City of Quincy*, 7 MLC 1585, (H.O. 1980) *aff'd* 8 MLC 1217 (1981). Since the Union was not given the opportunity to identify the potential impacts of the layoff, including such matters as severance pay, maintenance of insurance benefits, etc., there is no basis to conclude that the Union would not have raised viable impacts issues had it been given the chance. *Town of Burlington*, 10 MLC 1387, 1388-1389 and n. 2 (1984).

Transfer of Bargaining Unit Work.

The City raises three arguments challenging the Hearing Officer's conclusion that it unlawfully transferred Walker's clerical court liaison duties to the Court Liaison officers. The City does not contest the Hearing Officer's findings that Walker performed at least one Court Liaison duty exclusively and that she shared others with non-bargaining Court Liaison officers. It nevertheless claims that because Court Liaison officers performed these shared duties before, during and after Walker's tenure and because the City only hired Walker as a temporary, non-permanent clerk typist, the Hearing Officer incorrectly characterized the work Walker performed as bargaining unit work. However, as the City recognizes in its supplementary statement, even in cases where work is not exclusively performed by bargaining unit members, the Law requires an employer to bargain before transferring the shared work out of the unit if the evidence shows that there has been a calculated displacement of the bargaining unit's preexisting share of that work. *See, e.g., City of Quincy/Quincy City Hospital*, 15 MLC 1239 (1988). We have reviewed the Hearing Officer's shared work/calculated displacement analysis and find no error. Moreover, since there is no dispute that Walker was a member of AFSCME's bargaining unit whom the City hired to assist Court Liaison officers and who performed these duties for over ten years, her civil service status has no bearing on the Board's analysis of whether the work at issue was either exclusive or shared bargaining unit work.

The City next reiterates its argument that the Union failed to demand bargaining over the transfer of work and therefore waived its right to do so. We summarily affirm the Hearing Officer's rejection of this argument for the reasons stated in the decision.

The City finally argues that the Union waived by contract its right to bargain over the transfer of work. The City relies on that portion of the management rights clause granting the City the right to "maintain the efficiency of the operation entrusted to the City and to determine the methods, technology, means and personnel by which such operations are to be conducted, including contracting and subcontracting..." However, the City raises this argument for the first time on appeal and does not reference any parts of the record pertaining to this section of the management rights clause.[10] We therefore will not consider whether, by granting the City the right to contract and sub-contract, the Union knowingly waived its right to bargain over the transfer of work from one City bargaining unit to another as is at issue in this case. *See, e.g., Town of Andover*, 28 MLC 264,270 (2002) (Board will not infer a union's waiver of its statutory right to bargain without a clear and unmistakable showing that a waiver occurred).

For all the foregoing reasons, we affirm the Hearing Officer's conclusion that the City violated the Law by failing to bargain over the impacts of its decision to layoff Walker and its decision and the impacts of its decision to transfer bargaining unit work outside of the unit. We therefore turn to the City's arguments regarding remedy.

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8. The City attached these rules to its supplementary statement. They were not part of the hearing record.

9. The City's only argument made to the Hearing Officer in its post hearing brief regarding its impact bargaining obligation was that the Union had waived its right to bargain by inaction.

10. The City's post-hearing brief argued only that the Union had waived by inaction its right to bargain over the transfer. It raised no contract waiver issues.

Remedy - Transfer of Bargaining Unit Work

To remedy the City's failure to bargain over its decision to transfer bargaining unit work, the Hearing Officer ordered the City to restore the *status quo ante* until it fulfilled its bargaining obligation. This included ordering the City to immediately offer to reinstate Walker to her former position and to restore the temporary Clerk Typist position and the duties that were transferred to non-bargaining unit employees to the bargaining unit, pending completion of bargaining. The Hearing Officer also ordered the City to make Walker whole for any loss of wages and benefits suffered as a result of the City's unlawful actions.

With respect to a separate remedy for the City's failure to impact bargain, the Hearing Officer noted that, in cases where an employer's bargaining obligation is limited to the impacts of a managerial decision to lay off certain employees whose layoff is inevitable, the Board typically imposes a prospective economic remedy, which requires employers to make the affected employees whole only for the period that impact bargaining takes place and does not order reinstatement. *See Town of Wakefield v Labor Relations Commission*, 45 Mass. App. Ct. 630 (1998) (court affirmed hearing officer's remedy in *Town of Wakefield*, 20 MLC 1279 (1993), which did not include reinstatement or full back pay when employer failed to impact bargain over inevitable decision). However, she expressly indicated she did not need to decide whether Walker's layoff was inevitable because her decision was not limited to the issue of the City's failure to engage in impact bargaining.

On appeal, the City did not argue that the remedy should be limited to a prospective, economic remedy. Instead, citing MGL c. 31, §§39 and 41, the City claims that the reinstatement order ignores the fact that Walker, as a temporary employee, has no legal right to be reinstated. The City argues that reinstatement would improperly force it to ignore its legal obligations under MGL c. 31 and the Commonwealth's Human Resource Division Personnel Administration Rules, which the City claims require it to first offer any vacant Clerk Typist position in the Police Department to permanent civil service employees who appear on the reinstatement list. The Union counters that the City improperly raises these issues and introduces new documents in support of its argument for the first time on appeal and argues that the Board, therefore, should not consider them.

We agree with the Union that the City's arguments and documents it submitted regarding the interplay between the Hearing Officer's reinstatement order and Walker's civil service status are improperly raised for the first time on appeal. We therefore do not consider them. *City of Quincy*, 8 MLC at 1219 (materials sent after record closed may not be considered).

Nevertheless, when considering the remedy in this case, we cannot ignore that this case arises in the context of the City's decision to lay off numerous employees for lack of funds. These layoffs included most, if not all, of the clerical employees in the Police Department including two permanent civil service employees and two provisional/temporary employees, including Walker, whom the parties stipulated was a temporary Clerk Typist who was laid off from her position due to the lack of funds resulting from 9C cuts. Although the record does not reflect precisely when the Court Liaison officers began performing all the duties Walker formerly performed,[11] the transfer necessarily occurred after Walker's layoff. Given the Police Department's multiple layoffs among employees of different civil service and seniority status, it is not clear whether Walker or another bargaining unit member would be performing court liaison duties had the City complied with its obligation to bargain to resolution or impasse before transferring Walker's work outside the bargaining unit. We agree that an order to restore the *status quo ante*, including an order to restore the work to the bargaining unit and a make-whole remedy for those employees who suffered economic loss as a result of the City's decision to transfer this work is appropriate. However, we decline to specifically order the City to reinstate Walker and to make her whole because it is not clear, on this record, that she would have been the bargaining unit employee retained to perform this work. Accordingly, we have modified the Hearing Officer's order by deleting Section 2(a). We retain that portion of Section 2(c) ordering Walker's position and the duties she formerly performed restored to the bargaining unit. We modify Section 2(d) to order the City to make whole *any* bargaining unit member who suffered economic losses as a result of the City's failure to bargain over its decision to transfer bargaining unit work outside of the bargaining unit. We emphasize that this Order does not preclude Walker's reinstatement or a backpay award to her; rather it reflects our inability to determine whether Walker is the bargaining unit employee entitled to full reinstatement and backpay in order to restore the *status quo ante* as it would have existed prior to the City's unlawful transfer of work. Any uncertainty over which bargaining unit members are entitled to be reinstated and/or who suffered economic losses can be resolved by the parties themselves, or through a compliance proceeding.

Remedy - Failure to Impact Bargain

We next address the remedial issues associated with the impact bargaining count in light of our modification of the Hearing Officer's remedy on the transfer of bargaining unit work. As noted above, having awarded Walker a full reinstatement and back pay remedy for the unlawful transfer of bargaining unit work, the Hearing Officer did not have to reach the issue of whether Walker's layoff was inevitable and, accordingly, declined to consider whether Walker was entitled to be compensated *only* for the period of the parties' impact bargaining obligation. *See Town of Wakefield*, 45 Mass. App. Ct. 630 (1998). We too decline to reach the issue of inevitability, but for a different reason: we are unable to make an inevitability determination on the record before us.

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11. The record reflects only that the Union learned that Court Liaison officers were performing Walker's duties in May 2009, approximately two months after Walker's layoff.

That said, because our remedy for the transfer of bargaining unit work does not necessarily result in an award to Walker, we are obliged to separately address the remedy for our affirmance of the Hearing Officer's finding that the City failed to bargain over the impacts of its decision to layoff Walker. This holding requires, at a minimum, that Walker be made whole for the period of bargaining that has been ordered as a remedy for the City's failure to impact bargain regarding Walker's layoff. The City made all of its arguments concerning remedy and Walker's civil service status after the record closed despite the fact that it could and should have anticipated that reinstatement and restoration of the position and its duties would be part of any remedial order issued in this case. We therefore will not consider them now. But even if we were to consider the City's arguments that civil service law required Walker to be laid off first and prevented her reinstatement to her former position, this would not change the fact that Walker is, at a minimum, entitled to be made whole for the period of bargaining that is being ordered to address the impacts associated with her layoff. In this regard, Section 2(d) of our Order is intended to make clear that this remedy is not to be considered in isolation and is not intended to compensate Walker twice for any monies she may be entitled to under the transfer of bargaining unit work remedy described above.

We easily dispose of the City's remaining remedy arguments. The City argues that the order to rehire a temporary clerk typist intrudes upon the City's inherent non-delegable prerogative to determine level of services as well as its right under the management rights clause to "determine organization and budget." Both these arguments are improperly raised for the first time on appeal. In any event, we disagree that the City's decision to transfer bargaining unit work outside of the unit was a level of services decision excluded from mandatory bargaining. To be outside the scope of bargaining, a decision must "involve matters which determine the level of public services to be delivered by the public body rather than the means by which the services shall be delivered." *Town of Dennis*, 12 MLC 1027, 1030, n. 4 (1985). Here, because Walker's former duties were absorbed by existing City personnel, there is no question that the services Walker formerly performed continued to be performed, but at a lower cost. When a public employer continues to have the same work performed but at a lower cost, the decision to transfer bargaining unit work to non-unit personnel is not a "level of services decision exempt from collective bargaining, but an economically motivated decision particularly suitable to collective bargaining." *City of Fall River*, 27 MLC 47, 51 (2000)(citing *Commonwealth of Massachusetts*, 26 MLC 161, 163 (2000)) (City had duty to bargain before transferring fire dispatch duties to civilian dispatcher); *Accord City of Boston*, 26 MLC 144, 148 (2000) *aff'd sub nom. City of Boston* v. *Labor Relations Commission*, 58 Mass. App. Ct. 1102 *further rev. den.* 440 Mass. 1106 (2003).

The City also argues that, as a matter of public safety, it has the right to determine that it needed a police officer more than a temporary clerk typist. However, the City failed provide any evidence that it would not have been able to maintain its existing level of police services had it not transferred Walker's work into the police unit. Moreover, there is no evidence that the work at issue affected the public safety. Rather, the City's decision simply turned on which employees would perform court liaison duties at less cost. *Compare Town of Saugus*, 29 MLC 208 (2003) (Town required to bargain over non-level of services decision to transfer police mechanic work to a civilian employee) to *City of Boston*, 32 MLC 4, 12 (2005)(City not required to bargain over decision to transfer riot control work from one uniformed police unit to another because decision implicated inherent managerial prerogative to set public safety priorities for the deployment of police officers).).

Nor is the City entitled to rely on the management rights clause to avoid remedial backpay or reinstatement obligations under Chapter 150E. Having found that the City violated its duty to bargain over its decision to transfer bargaining unit work outside of the unit, the Board, as part of its broad discretion to remedy unfair labor practices under Section 11 of the Law, has the right to order the work restored to the unit and to order an appropriate economic remedy. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 580 (1983).

The City finally argues that the Hearing Officer's remedy imposes a windfall because it does not take into account unemployment insurance payments and other mitigation issues. The Board agrees that employees have a duty to mitigate backpay liability by seeking appropriate interim employment. *See Commonwealth of Massachusetts*, 36 MLC 65, 69 (2009) (citing *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass at 580)). Moreover, the Board has the discretion to deduct unemployment insurance benefits from backpay awards in circumstances where the failure to make such deductions would make the affected employee "more than whole." *School Committee of Newton*, 388 Mass at 581-582. Nevertheless, the Board generally places the burden of proof on the employer with respect to mitigation issues. *Id.* at 580-581. Although the City improperly attached certain unemployment documents to its supplementary statement on appeal, the hearing record contains no information regarding the issues it raised on appeal We will therefore not consider them now. Once again, to the extent that the parties cannot reach agreement on mitigation or other remedy issues, they are appropriately raised in a compliance proceeding.

ORDER

WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City of New Bedford shall:

1. Cease and desist from:

   a. Failing to bargain collectively in good faith to resolution or impasse with the Union about the impacts of the decision to reduce the City's work force by laying off a temporary clerk typist;

   b. Failing to bargain collectively in good faith with the Union over the decision to transfer bargaining unit work to non-unit personnel and the impacts of the decision;

   c. In any like or similar manner, interfere with, restrain, or coerce any 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. Within five (5) days from the date of receipt of this decision, offer to bargain in good faith with the Union to resolution or impasse over:

i. The impacts of the decision to reduce the City's work force by means of a layoff upon wages, hours and conditions of employment;

ii. The decision to transfer the temporary Clerk Typist duties to non-bargaining unit employees, and the impacts of that decision upon wages, hours and conditions of employment;

b. Restore to the bargaining unit the position and the duties of the position formerly performed by Walker that were transferred to non-bargaining unit employees until the earliest of the following conditions are met:.

i. The Union and the City reach agreement over the decision to transfer the temporary Clerk Typist duties to non-unit personnel and its impacts; or

ii. Good faith bargaining results in bona fide impasse;

c. Make any employee or employees whole for any losses suffered as a result of the City's decision to transfer bargaining unit work outside of the bargaining unit, plus interest on any sums owed at the rate specified in G.L. c. 231, Section 6I from February 13, 2009 until the earliest of the following conditions are met:

i. The Union and the City reach agreement over the decision and impacts of the decision to transfer the temporary Clerk Typist duties to non-unit personnel and the impacts of the decision to reduce the City's work force by means of a layoff; or

ii. Good faith bargaining results in a bona fide impasse;

d. To the extent the following monetary remedy is not duplicative of any monies that may be awarded to Jeanine Walker under Section 2(c), above, beginning five days from the date of this decision, Jeanine Walker is to receive the wages and benefits to which she was entitled on her last day of employment with the City until the earliest of any of the following conditions are met:

i. The Union and the City reach agreement over the impacts of the City's decision to achieve a reduction in force by laying off Jeanine Walker; or

ii. Good faith bargaining results in a bona fide impasse;

e. Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate and where notices to these employees are usually posted, including but not limited to the City's internal email system, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and

f. Notify the DLR within thirty (30) days of receipt of this Decision and Order of the steps taken to comply with it.

SO ORDERED.

NOTICE TO EMPLOYEES

The Commonwealth Employment Relations Board (CERB) has determined that the City of New Bedford (City) has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: 1) failing to bargain over the impacts of the decision to reduce the City's work force by laying off a temporary Clerk Typist and 2) failing to bargain over the decision and the impacts of its decision to transfer bargaining unit work to non-unit personnel. The City posts this Notice to Employees in compliance with the CERB's order.

Section 2 of MGL Chapter 150E gives public employees the following rights:

to engage in self-organization; to form, join or assist any union;

to bargain collectively through representatives of their own choosing;

to act together for the purpose of collective bargaining or other mutual aid or protection; and

to refrain from all of the above.

WE WILL NOT fail to bargain in good faith by failing to bargain to agreement or impasse about the impacts of the decision to reduce the City's work force by layoffs.

WE WILL NOT unlawfully transfer bargaining unit work to non-bargaining unit personnel.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce employees in the exercise of their rights protected by the Law.

WE WILL take the following affirmative action to effectuate the purposes of the Law:

- Within five (5) days from the receipt of the CERB's decision in Case MUP-09-5582, offer to bargain in good faith with the Union to resolution or impasse over: 1) the impacts of the decision to reduce the City's work force by means of a layoff of a temporary Clerk Typist and 2) the decision to transfer the temporary Clerk Typist duties to non-bargaining unit employees, and the impacts of that decision.
- Restore to the bargaining unit the position and the duties of the position formerly performed by Jeannine Walker that were transferred to non-bargaining unit employees until we fulfill our bargaining obligations.
- Make any employee or employees whole for any losses suffered as a result of the City's decision to transfer bargaining unit work outside of the bargaining unit, plus interest on any sums owed at the rate specified in G.L. c. 231, Section 6I from February 13, 2009 until we satisfy our bargaining obligation.
- Commencing five (5) days from the receipt of the CERB's decision, and, to the extent the following monetary remedy is not duplicative of any monies that may be awarded to Jeanine Walker in the preceding paragraph, we will pay Jeanine Walker the wages and benefits to which she was entitled on her last day of employment with the City until we satisfy our impact bargaining obligation.

[signed]
City of New Bedford

Date

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 Department of Labor Relations, 19 Staniford Street, Boston MA 02114 (Telephone: (617) 626-7132).

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