

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF BOSTON

and

SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 888

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Case No. MUP-12-2332

Date Issued: January 26, 2015

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Ahsan K. Ali, Esq.	-	Representing the City of Boston
John Magner, Esq.	-	Representing the Service Employees International Union, Local 888

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the City of Boston (City) transferred bargaining
2 unit work from the Service Employees International Union, Local 888 (SEIU or the
3 Union) to non-unit employees in violation of Section 10(a)(5) and, derivatively, Section
4 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law). I find that the City
5 did not violate the Law in the manner alleged because the parties reached impasse over
6 the City's decision to transfer the work and the impacts of that decision on unit
7 members' terms and conditions of employment.

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1 FINDINGS OF FACT¹

2 SEIU is the exclusive bargaining representative for a unit of clerical and technical
3 personnel (clerical and technical unit), who are employed by the City,² including radio
4 technicians who work in the Police Department's Telecommunications Division. Radio
5 technicians maintain the Police Department's radio and video infrastructures. They also
6 service the Police Department's mobile computing devices and mobile computers as
7 well as the Police Department video systems. They work during the day, Monday
8 through Friday.

9 Prior to July 2012

10 Prior to July 2012, the Telecommunications Division oversaw a lighting truck that
11 the Police Department used to illuminate crime scenes. When a police officer in charge
12 of a crime scene (the officer in charge) determined that the lighting truck was needed to
13 illuminate a crime scene, the officer in charge would contact the Police Department's
14 Operations Division of which the emergency 911 call center³ was a part and request
15 that the lighting truck be sent out. The 911 call center would contact a supervisor in the
16 Telecommunications Division, who would arrange to have two employees travel to the
17 crime scene in the lighting truck. When the employees arrived, they positioned the
18 lights that were mounted on the truck, unloaded the portable lights from inside the truck,

¹ The Department's jurisdiction in this matter is uncontested.

² The City and SEIU were parties to collective bargaining agreements for the clerical and technical unit that, by their terms, covered the periods from January 1, 2010 through September 30, 2013 (2010-2013 Agreement) and from October 1, 2013 through September 13, 2016 (2013-2016 Agreement). The parties tentatively agreed to the two agreements on May 4, 2012.

³ The emergency 911 call center is open twenty-four hours per day, seven days per week.

1 placed the lights where directed by the officer in charge, and ran power cords to the
2 lighting truck to provide electricity to the lights. They also performed any other duties
3 that the officer in charge instructed them to do.⁴ Employees usually performed those
4 duties on an overtime basis⁵ because the Police Department typically called upon the
5 lighting truck to illuminate crime scenes at night.

6 Although radio technicians performed the majority of the lighting truck
7 assignments, they were not the only employees of the Telecommunications Division
8 who operated the lighting truck on an overtime basis.⁶ When the need for the lighting
9 truck arose, the Telecommunications Supervisor would review the overtime list and
10 determine which employees of the division had earned the lowest amount of overtime
11 (low staff principle).⁷ The supervisor then would offer the overtime opportunities to
12 those employees. If an employee declined the overtime opportunity, the supervisor
13 would then offer the overtime to another employee pursuant to the low staff principle.
14 Since 2001 and continuing, a patrol officer, who was assigned to the
15 Telecommunications Division and who was a member of the Boston Police Patrolman's

⁴ The lighting truck also contained saws, crowbars and other tools.

⁵ Employees earned a minimum of four hours overtime.

⁶ In the three years prior to 2012, the radio technicians as a group earned two hundred overtime hours per year performing lighting truck duties.

⁷ Besides lighting truck duties, radio technicians had other overtime opportunities, which included responding to equipment failures, updating equipment, and setting up and taking down metal barriers that the Police Department deploys for crowd control at large events. The radio technicians earned the following total amounts of overtime: 2,315.75 hours in 2008, 1,634.50 hours in 2009, 2,135.50 hours in 2010, 2,746.00 hours in 2011, 4,233.00 hours in 2012, and 3,213.00 hours in 2013.

1 Association (BPPA), also regularly operated the lighting truck on an overtime basis.⁸
2 Shawn Romanoski, the civilian director of the Telecommunications Division and a
3 member of the Salaried Employees of North America's (SENA) bargaining unit, has
4 operated the lighting truck on an overtime basis a few times. Finally, Ken Turner
5 (Turner), a police superior officer, the supervisor of the radio technicians and a member
6 of the Boston Police Superior Officers Federation (BPSOF)'s bargaining unit, operated
7 the lighting truck a few times during the period from 2001 and 2012 before he
8 transferred to the Internal Affairs Division.⁹

9 July 2012

10 On July 2, 2012, Stephen Sutliff (Sutliff), the Deputy Director of the Police
11 Department's Office of Labor Relations, sent a letter to Josh Levit (Levit),¹⁰ then SEIU's
12 business agent, stating in pertinent part:

13 The City of Boston is contemplating moving the lighting truck operation
14 from the Telecommunications Division to the Crime Scene Response
15 Team.¹¹
16

17 The lighting truck is typically called out by the Crime Scene Response
18 Team to light up an area where a crime has occurred and the scene
19 needs to be illuminated at night. SEIU employees working in the
20 Telecommunications Division are scheduled to work only the day shift and
21 the lighting truck is obviously needed only at night. The Crime Scene

⁸ The record does not identify the patrol officer.

⁹ The record does not contain specific dates when Turner operated the lighting truck.

¹⁰ Levit ceased his employment with the Union on or about that time.

¹¹ The Crime Scene Response Team also operated two other vehicles that had lighting capabilities, a box truck and a converted ambulance. The box truck had two sets of floodlights on the front and back that could be rotated as well as two cases of portable lights inside of the truck. The converted ambulance had portable lights and tripods inside of the vehicle as well as an inverter to power the portable lights. Neither the box truck nor the converted ambulance is the subject of the case before me.

1 Response Team is in operation for all three shifts. For this reason, the
2 Department intends to shift this function to the Crime Scene Response
3 Team no later than August 1, 2012.
4

5 The decision to move this operation from one unit to another will not result
6 in a layoff of any SEIU employees. It will result in some loss of overtime
7 by members of your unit as members of other bargaining units will perform
8 this function while they are on their regular shift.
9

10 Please contact Barbara Anderson at the Office of Labor Relations via
11 phone _____ or email _____ by July 13, 2012 if you would like to meet on
12 this issue.

13 On July 23, 2012, representatives of the City and the Union met to discuss the
14 transfer of the lighting truck as well as other unrelated issues. Sutliff¹² and Deputy
15 Superintendent of Information Technology John Daley (Deputy Daley),¹³ who oversees
16 the Telecommunications Division, represented the City, while William Storella (Storella),
17 Levit's successor as business agent, represented the Union.¹⁴ Because Stephen
18 Keenan (Keenan), the Union steward for the Telecommunications Division, was unable
19 to attend the meeting, the meeting was brief. The parties spent approximately twenty
20 minutes discussing the lighting truck assignment. The City contended that it was
21 inefficient to have the lighting truck staffed by employees who worked the day shift,
22 while the lighting truck typically was used at night. Because the Crime Scene Response
23 Team, whose employees are members of the BPPA and the Boston Police Detectives
24 Benevolent Society (BPDBS), operated on a twenty-four hour basis, it would not need to
25 bring employees in on an overtime basis to run the lighting truck. It would be an easier

¹² Sutliff was accompanied by an unidentified office assistant from the Police Department's Office of Labor Relations.

¹³ Deputy Daley became Superintendent of Information Technology in 2011 and decided to transfer the lighting truck duties several months prior to July 2, 2012.

¹⁴ Due to a miscommunication, Keenan was unable to attend that meeting.

1 process for the officer in charge to request the lighting truck, and the Crime Scene
2 Response Team could verify whether the lighting truck actually was needed. Also, the
3 City maintained that the lighting truck could report to crime scenes more quickly
4 because volunteers did not need to be solicited to perform the overtime assignment.¹⁵
5 SEIU listened to the City's concerns but presented no proposals at this first meeting.

6 On August 6, 2012, the parties met again concerning the lighting truck. Sutliff
7 and Deputy Daley represented the City, while Storella and Keenan represented the
8 Union. The City reiterated its claims of efficiency and cost saving as bases for
9 transferring the lighting truck duties to the Telecommunications Division. The Union
10 insisted that the duties were its bargaining unit work. The Union also inquired about
11 how the transfer would affect its members, including how much potential overtime would
12 be lost, and the City provided the Union with the information. The City proposed that
13 unit members take over the operation of a new command vehicle on an overtime basis
14 to make up for some of the overtime opportunities that unit members would lose as a
15 result of the lighting truck transfer. The Union held a caucus. When the Union returned
16 to the meeting, it rejected the City's proposal on the grounds that the overtime
17 opportunities for the command truck¹⁶ were not comparable to the overtime
18 opportunities for the lighting truck.

¹⁵ At hearing, Deputy Daley indicated that having the lighting truck respond more quickly to crime scenes could reduce the amount of time that police officers, who attend to crime scenes while evidence is being processed, were exposed to the elements and were away from their regular duties.

¹⁶ The Union contended that the command truck was used only once per year.

1 The Union presented no proposals or counterproposals at the meeting. When
2 the meeting ended, the Union informed the City that it would get back to it.¹⁷ The Union
3 wanted to discuss with its membership whether there were any other proposals that it
4 wanted to present to the City.

5 On August 7, 2012, Sutliff sent a letter to Storella that stated in pertinent part:

6 Thank you for meeting with the [Police] Department on July 23, 2012 and
7 August 6, 2012 about the relocation of the lighting truck.
8

9 The City informed the Union by letter dated July 2, 2012, that it was
10 thinking about relocating the truck from the Telecommunications Division to
11 the Crime Scene Response Team which is in operation 24 hours/day.
12

13 At the most recent meeting, the Department answered all of the questions
14 the Union posed. The Union requested a few days to discuss the
15 relocation, with the understanding that the City had already bumped its
16 plan from August 1 to August 13, 2012. At the meeting, the City also
17 offered to locate a new command center vehicle in the
18 Telecommunications Division to ameliorate the impact of this decision.
19

20 The Department is hoping to hear from the Union within the next few days.
21 In the meantime, if you have any questions you feel were not answered, I
22 ask that you email or fax them to me as soon as possible.
23

24 If you would like to meet to further discuss this issue, I am able to meet
25 anytime convenient to you in the next week. Please call Barbara Anderson
26 at 617-343-4544 and let her know what works.

27 Thereafter, Sutliff left a voice mail message for Storella stating that the City still had not
28 heard back from the Union and that it was waiting for a response.

29 On August 9, 2012 at 4:15 PM, Storella sent the following email message to
30 Sutliff:

31 Subject: Lighting Truck
32

¹⁷ The Union and the City also had some discussion at the end of the meeting about the reference in Sutliff's July 2, 2012 letter to no layoffs of unit members, a reference to which Keenan objected.

1 I am writing to inform you that the Union does not except [accept] your
2 proposal to take on the duties of the new command truck in exchange for
3 the lighting truck. We believe the lighting truck is our work and should
4 remain within the Unit. If you have any questions or concerns, please do
5 not hesitate to contact me.

6 At 5:05 PM on that same date, Sutliff sent an email reply that stated:

7 Just to be clear, the Department proposed the relocation of the lighting
8 truck on its own.¹⁸ That was a counter offer when the union expressed it
9 would lose approximately 200 hours of O/T per year. Did you have any
10 other questions or any counterproposals? I am available to meet this week
11 or next if you feel that would be productive. Thanks.

12 Also, on August 9, 2012 at 5:11, Storella responded in an email message that stated:

13
14 Let me get back to you on Monday but I believe telecommunications
15 strong[ly] believes it should remain their work. Thanks.
16

17 On August 14, 2012, Sutliff sent a letter to Storella that stated in pertinent part:

18 The City of Boston will move the lighting truck operation from the
19 Telecommunications Division to the Crime Scene Response Team on
20 August 18, 2012.
21

22 We met on two occasions to discuss this and the Union has merely
23 indicated that it did not agree with the Department's decision.
24

25 I now consider this issue to be closed.

26 On September 18, 2012,¹⁹ the City transferred the lighting truck from the

¹⁸ At hearing, Sutliff indicated that the reference in the email message to the lighting truck was erroneous and instead the reference should have been to the command vehicle.

¹⁹ The thirty-day delay between the August 18, 2012 date that Sutliff referenced in his August 14, 2012 letter and the actual date of the transfer was because the City ordered a new lighting truck for the Crime Scene Response Team to replace the lighting truck in dispute here. The new lighting truck did not go into service until September 18, 2012.

1 Telecommunications Division to the Crime Scene Response Team. After September
2 18, 2012, the radio technicians no longer performed any lighting truck duties.²⁰

Opinion

3 A public employer violates Section 10(a)(5) of the Law when it transfers work
4 performed by bargaining unit members to non-bargaining unit personnel without first
5 giving the exclusive representative of its bargaining unit members prior notice and an
6 opportunity to bargain to resolution or impasse. City of Cambridge, 23 MLC 28, 36,
7 MUP-9171 (June 28, 1996), aff'd sub nom., Cambridge Police Superior Officers
8 Association v. Labor Relations Commission, 47 Mass. App. Ct. 1108 (1999). To
9 establish that a public employer has violated the Law, an employee organization must
10 demonstrate that: 1) the employer transferred bargaining unit work to non-unit
11 personnel; 2) the transfer of unit work had an adverse impact on individual employees
12 or the bargaining unit itself; and 3) the employer failed to give the employee
13 organization prior notice and an opportunity to bargain to resolution or impasse over the
14 decision to transfer the work. Lowell School Committee, 28 MLC 29, 31, MUP-2074
15 (June 22, 2001); City of Gardner, 10 MLC 1218, 1219, MUP-4917 (September 14,
16 1983).

Alleged Transfer of Unit Work

17 To determine whether the City transferred bargaining unit work, I must first
18 determine whether as of July 2011 the lighting truck duties were the Union's exclusive
19 bargaining unit work or whether unit members shared the work with non-bargaining unit
20 employees. When bargaining unit members and non-unit employees share work, the
21

²⁰ From September 18, 2012 until the first date of hearing, the Crime Scene Response Team has utilized the lighting truck ten or twelve times.

1 Commonwealth Employment Relations Board (CERB) previously has determined that
2 the work will not be recognized as belonging exclusively to the bargaining unit. Higher
3 Education Coordinating Council, 23 MLC 90, 92, SUP-4090 (September 17, 1996); City
4 of Boston, 6 MLC 1117, 1125, MUP-2863 (June 4, 1979). Here, because SEIU
5 members as well as members of the BPPA, the BPSOF and SENA all performed
6 lighting truck duties, those duties constitute shared work.

7 In shared work cases, our analysis focuses on the pre-existing pattern of shared
8 work and the impact that any changes in that pattern may have on the allegedly
9 aggrieved party. See City of Boston, 26 MLC 144, 147, MUP-1085 (March 10, 2000),
10 aff'd sub nom.; City of Boston v. Labor Relations Commission, 58 Mass. App. Ct. 1102
11 (2003); Town of Natick, 11 MLC 1434, 1438, MUP-5319 (February 19, 1985). The
12 CERB previously has determined that an employer may not unilaterally alter a pre-
13 existing pattern of shared work. See City of Boston, 28 MLC 194, 195, MUP-2185
14 (January 4, 2002); City of Quincy, Quincy City Hospital, 15 MLC 1239, 1241, MUP-6490
15 (November 9, 1988); City of Boston, 6 MLC at 1125-1126. An employer is not obligated
16 to bargain over every incidental variation in job assignments between unit and non-unit
17 employees. Town of Saugus, 28 MLC 13, 17, MUP-2343, CAS-3388 (June 15, 2001);
18 City of Somerville, 23 MLC 256, 259, MUP-8160 (May 2, 1997). Rather, the employer is
19 only required to bargain if there a calculated displacement of unit work. Town of
20 Bridgewater, 23 MLC 103, 104, MUP-8650 (December 30, 1998). Accordingly, if unit
21 members had performed an ascertainable percentage of the work, a significant
22 reduction in the portion of the work performed by unit members with a corresponding
23 increase in the work performed by non-unit employees may demonstrate a calculated

1 displacement of unit work. Commonwealth of Massachusetts, 27 MLC 52, 56, SUP-
2 4091 (November 21, 2000); City of New Bedford, 15 MLC 1732, 1737, MUP-6488 (May
3 31, 1989). Upon review, the record reveals that the radio dispatchers performed the
4 majority of the lighting truck duties prior to July 2012. However, after the City assigned
5 those duties to the Crime Scene Response Team in September 2012, the radio
6 dispatchers no longer performed any of the lighting truck duties. Thus, the City's
7 transfer of the lighting truck duties of the Crime Scene Response Team resulted in a
8 calculated displacement of bargaining unit work that triggered the City's potential
9 bargaining obligation.

10 Alleged Adverse Impacts

11 An employer must bargain about a transfer of unit work, if the transfer results in
12 adverse impacts on individual employees or the bargaining unit as a whole. City of New
13 Bedford, 15 MLC at 1737. Here, the City argues that unit members were not adversely
14 impacted by the transfer because they had other opportunities to earn overtime and, in
15 fact, did so. The City points out that in 2013, which was the year after the transfer, unit
16 members earned the second highest amount of overtime that they had earned in the
17 prior six years. However, the fact that bargaining unit members had other opportunities
18 to earn overtime does not negate the fact that unit members were adversely impacted
19 by the loss of the opportunity to perform the work in the future and the loss of possible
20 future overtime earnings. See generally Town of Andover, 4 MLC 1086, 1087-88, MUP-
21 2358 (June 24, 1977) (transferring dispatching duties from firefighters to civilians and
22 the resulting loss of overtime had a detrimental impact on the bargaining unit).

Obligation to Bargain

1 I turn now to consider the City's affirmative defenses to the Union's claim that the
2 City failed to bargain to resolution or impasse over the decision to transfer the lighting
3 truck duties.

Managerial Prerogative

5 Section 6 of the Law requires public employers to negotiate in good faith with
6 respect to wages, hours, standards of productivity and performance, and any other
7 terms and conditions of employment. However, certain types of managerial decisions
8 that must, as a matter of policy, be reserved to the public employer's discretion, are
9 exempt from the expansively defined category of mandatory bargaining subjects. See
10 City of Worcester v. Labor Relations Comm'n, 438 Mass. 177, 180 (2002) (setting
11 priorities for the deployment of law enforcement resources is a matter of policy and
12 exempt from the scope of bargaining). In instances where a negotiation requirement
13 would unduly impinge on a public employer's freedom to perform its public functions,
14 Section 6 does not mandate bargaining over a decision directly affecting the
15 employment relationship. Local 346, Int'l Brotherhood of Police Officers v. Labor
16 Relations Comm'n, 391 Mass. 429, 437 (1984). See Boston v. Boston Police
17 Patrolmen's Ass'n, 403 Mass. 680, 684 (1989); Burlington v. Labor Relations Comm'n,
18 390 Mass. 157, 164 (183); Lynn v. Labor Relations Comm'n, 43 Mass. App. Ct. 172,
19 178-179 (1997). Here, the City argues that it had no obligation to bargain over the
20 decision to transfer the lighting truck duties because it had the inherent managerial right
21 to assign those duties to the Crime Scene Response Team.

1 To decide whether a subject properly falls within the scope of bargaining, the
2 CERB balances a public employer's legitimate interests in maintaining its managerial
3 prerogative to effectively govern against the impact on employees' terms and conditions
4 of employment. Town of Danvers, 3 MLC 1559, 1577, MUP-2292 and 2299 (April 6,
5 1977). In applying the balancing test, the CERB has framed the interests of the union
6 and the public employer by asking the following questions: First, is the predominant
7 effect of a decision directly upon the employment relationship with only limited or
8 speculative impact on core managerial policy? Or is the predominant effect upon the
9 level or types of governmental services with only a side effect upon employees? Boston
10 School Committee, 3 MLC 1603, 1607, MUP-2503, 2528 and 2541 (April 15, 1977).
11 The CERB applies the balancing test on a case by case basis, considering such factors
12 as whether the subject involves a core governmental decision and the degree to which
13 the subject has a direct impact or is far removed from employees' terms and conditions
14 of employment. See Id. at 1607.

15 Here, the City argues that the lighting truck is a law enforcement resource and
16 that the City made the change due to the inefficient and time-consuming nature of
17 offering SEIU unit members the opportunity to perform lighting truck duties on an
18 overtime basis. The City contends that the transfer of the lighting truck expedites the
19 arrival of the truck at crime scenes and reduces the time that police officers, who attend
20 to crime scenes while evidence is being processed, are exposed to the elements and
21 taken away from their regular duties. While the City's desire to expedite the time that
22 police officers spend attending crime scenes is laudable, it is not essential to the Police
23 Department's core missions of protecting public safety and crime solving, because the

1 City has not established on the record that the transfer of the lighting truck duties will
2 increase public safety or accelerate the solving of crimes.

3 The facts here are distinguishable from employer decisions concerning: the
4 allocation of resources among competing law enforcement priorities, (see City of
5 Worcester, 438 Mass. 177)), the public safety priorities for the deployment of police
6 officers (see City of Boston, 32 MLC 4, MUP-2749 and 01-2892 (June 24, 2005)), the
7 integrity of police officers (see Town of Ayer, 9 MLC 1376, MUP-4829 (October 26,
8 1982), aff'd sub nom., Local 346, Int'l Brotherhood of Police Officers, 391 Mass. 429)),
9 and the safety and security of a prison and the primary function of correctional officers
10 as the care and custody of inmates (see Suffolk County Sheriff's Department, 29 MLC
11 63, MUP-01-2979 (October 9, 2002)). All of those decisions are managerial
12 prerogatives and outside the scope of negotiations. The present case does not
13 implicate the intended role of the public employer (see City of Worcester, 438 Mass. at
14 180) or its fundamental operation (see Local 346, Int'l Brotherhood of Police Officers,
15 391 Mass. at 438-439), but instead is a dispute over which employees are going to
16 operate a piece of equipment. Evaluating the parties' interests under the balancing test,
17 I conclude that the decision to transfer the lighting truck duties had only a tangential
18 impact on law enforcement resources but had a direct impact on the terms and
19 conditions of employment of SEIU's unit members, who lost the opportunity to perform
20 certain duties and potential overtime earnings. Compare Town of Saugus, 29 MLC 208,
21 210-211, MUP-2621 (May 4, 2003) (decision to transfer the civilian automotive
22 mechanic's work in the police department to non-unit personnel was not exempt from
23 collective bargaining).

1 Additionally, the City contends that it had no obligation to bargain over the
2 decision to transfer the lighting truck duties because it was a level of services decision.
3 It is well established that a public employer may exercise its core managerial
4 prerogative concerning the nature and level of its services without first bargaining with
5 its employees' exclusive collective bargaining representative over that decision. Newton
6 School Committee v. Labor Relations Commission, 388 Mass. 557, 563 (1983).
7 However, the present case does not involve a level of services decision because the
8 City did not cease to have the lighting truck duties performed. Instead, the City
9 transferred all of those to duties to non-unit personnel who worked for the Crime Scene
10 Response Team. Finally, the City transferred the lighting truck duties, in part, to
11 eliminate overtime costs by having Crime Scene Response Team members perform
12 those duties as part of their regular work schedule. When a public employer continues
13 to have the same work performed but at a lower cost, the decision to transfer bargaining
14 unit work is not a level of services decision exempt from collective bargaining, but an
15 economically motivated decision particularly suitable to collective bargaining. City of Fall
16 River, 27 MLC 47, 51, MUP-1961 (November 21, 2000) (citing Commonwealth of
17 Massachusetts, 26 MLC 161, 163, SUP-3835 (March 13, 2000)) (transferring dispatch
18 duties from police officers to civilians). In City of Boston, 26 MLC at 144, the CERB
19 determined that the employer's decision to transfer some work of policing housing
20 complexes was not a level of services decision, but a bargainable decision about which
21 law enforcement personnel would perform the work at less cost to the employer.
22 Similarly, here the City has an obligation to bargain over this economically motivated
23 decision to transfer bargaining unit work. Id. at 148.

1 Impasse

2 As was discussed above, even though the City challenged its obligation to
3 bargain about the decision to transfer the lighting truck duties, the City also contends
4 that it negotiated to impasse about the decision and the impacts of the decision to
5 transfer those duties on unit members' terms and conditions of employment. Impasse
6 in negotiations occurs only when "both parties have negotiated in good faith on all
7 bargainable issues to the point where it is clear that further negotiations would be
8 fruitless because the parties are deadlocked." Town of Plymouth, 26 MLC 222, 223,
9 MUP-1465 (June 7, 2000); Commonwealth of Massachusetts, 25 MLC 201, 205, SUP-
10 4075 (June 4, 1999); see also School Committee of Newton, 338 Mass. at 574
11 (describing impasse as a question of fact that requires a consideration of the totality of
12 the circumstances to decide whether despite their good faith, the parties are simply
13 deadlocked). To determine whether impasse has been reached, we consider the
14 following factors: bargaining history, the good faith of the parties, the length of
15 negotiations, the importance of the issues to which there is disagreement, and the
16 contemporaneous understanding of the parties concerning the state of the negotiations.
17 Id. The ultimate test is whether there is likelihood of further movement by either side,
18 and whether they have exhausted all possibility of compromise. City of Boston, 28 MLC
19 175, 184, MUP-1087 (November 21, 2001). Here, the parties met on July 23, 2012 and
20 August 6, 2012 to discuss the proposed transfer. Upon review of the record, I conclude
21 that the parties had reached impasse on both the decision to transfer the duties and
22 impacts of that decision when City transferred the lighting truck duties to non-bargaining
23 unit personnel in the Crime Scene Response Team.

1 Although the parties met for only two bargaining sessions, there were no
2 outstanding proposals when the City transferred the lighting truck duties. See Id. at 185.
3 (no proposals or information requests were outstanding when the employer declared
4 that negotiations were at an end point). First, the Union made no proposals at the July
5 23, 2012 and August 6, 2012 bargaining sessions or in response to the City's August 7,
6 2012 letter and August 9, 2012 email message soliciting proposals from the Union. On
7 August 6, 2012 and August 9, 2012, the Union merely reiterated that the lighting truck
8 duties belonged to its bargaining unit. The Union did not respond to the City's concerns
9 about the efficiency and cost of having the radio technicians perform the lighting truck
10 duties or suggest alternative proposals that would have addressed those concerns,
11 including possible proposals about streamlining the procedure by which officers in
12 charge requested the services of the lighting truck unit members or developing an on-
13 call list of unit members available to perform lighting truck duties on specific dates.

14 Further, on August 6, 2012 and on August 9, 2012, the Union rejected the City's
15 proposal to have unit members take over duties involving the command truck vehicle on
16 an overtime basis to make up for some of the overtime opportunities that unit members
17 would lose when the City transferred the lighting truck. However, the Union offered no
18 counterproposal that would address its unit members' loss of overtime opportunities.
19 Also, besides failing to make proposals concerning the decision to transfer the work, the
20 Union failed to present proposals to address the impacts of the proposed transfer on
21 unit members' terms and conditions of employment. Finally, when the City informed the
22 Union in an August 14, 2012 letter that it considered the matter closed, the Union did
23 not challenge the City's assertion or request further bargaining. See Commonwealth of

The Union contends that it would have been fruitless for the Union to have made proposals because the City already had decided to transfer the duties before negotiations began. However, the firmness of the City's position on the transfer was never tested because the Union did not make any proposals or counterproposals. The Union also asserts that the City created artificial deadlines for the transfer that did not leave the parties with sufficient time to bargain. To the contrary, the City actually extended the proposed transfer date on two occasions while the parties negotiated. The City first extended the proposed transfer date from August 1, 2012 to August 13, 2012 and then extended the date from August 13, 2012 to August 18, 2012. The City ultimately transferred the lighting truck duties on September 18, 2012, and the Union filed its charge of prohibited practice on October 11, 2012.

Based on the record and for the reasons stated above, I conclude that the City did not violate the Law by transferring the lighting truck duties from SEIU's bargaining unit to non-unit employees because the parties negotiated to impasse over the transfer.

MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11, and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, the decision shall become final and binding on the parties.