COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of	*	Case No.: MUP-13-2683
	*	
CITY OF CHELSEA	*	Date Issued: May 29, 2014
	*	
and	*	
	*	
CHELSEA FIREFIGHTERS, LOCAL 937, IAFF	*	
	*	

Board Members Participating:

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

Appearances:

Jaime Kenny, Esq. - Representing the City of Chelsea

Alfred Gordon O'Connell, Esq., - Representing Chelsea Firefighters, Local 937, IAFF

DECISION ON APPEAL OF HEARING OFFICER'S RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Summary

The City of Chelsea appeals from a ruling that it violated its obligation under Section 10(a)(5) of M.G.L. c. 150E (the Law) to support funding for the cost items in a Joint Labor-Management Committee (JLMC) arbitration award, when its City Manager failed to speak out in support of the award at a City Council meeting that voted on a resolution asking the parties to meet to negotiate a new agreement, but that did not include a funding order. For the reasons set forth below, the Commonwealth

Employment Relations Board (Board) affirms the Hearing Officer's ruling.[1]

Statement of the Case

Before turning to the facts and opinion, a brief summary of the procedural posture of this case is necessary to understand some of the City's arguments on appeal.

On March 29, 2013, the Department of Labor Relations (DLR) issued a complaint alleging that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law, when, on three occasions in February and March 2013, it failed to support funding for the cost items associated with a JLMC award. After the City filed its answer, it filed a motion to dismiss the complaint and the Chelsea Firefighters, Local 937, IAFF (Union) filed a motion to amend the complaint. The parties ultimately agreed to file cross-motions for summary judgment.[2] After the Union filed its motion for summary judgment, the City filed a cross-motion, along with motions to exclude certain facts and evidence that the Union relied on in its motion for summary judgment. The Union then filed a motion to strike some of the evidence the City relied upon in its cross-motion.

The Hearing Officer ruled on all the motions on November 6, 2013. She first granted both parties' motions to exclude certain facts and evidence.[3] She next determined that because there were no material facts in dispute, summary judgment was appropriate with respect to two of the complaint's allegations: 1) the request that City Manager Jay Ash (Ash) made to the City Council on February 25, 2013 to fund the

[1] The Hearing Officer's Ruling is published at 40 MLC 147 (November 6, 2013).

[2] The Union withdrew its motion to amend.

[3] Neither party appeals from these rulings.

JLMC award; and 2) Ash's conduct at the March 18, 2013 City Council meeting, when City Council debated and heard public comment on a resolution asking the parties to negotiate a new contract but did not fund the JLMC award [4] The Hearing Officer next addressed and rejected the City's argument that the dispute was moot because the JLMC award was funded on May 6, 2013.

As to the merits of the complaint, the Hearing Officer allowed both parties' summary judgment motions in part. She granted the City's cross-motion as to Ash's February 25, 2013 funding request. The Hearing Officer concluded that the statements made therein adequately supported the JLMC award. The Union does not appeal from this ruling. The Hearing Officer also granted the Union's cross-motion as to the March 18th meeting. She held that Ash's failure to speak up at that meeting to encourage the City Council to support the award rather than the resolution violated the City's obligation to take all steps necessary to obtain funding. The City filed a timely appeal of this ruling. The Union filed a response to the appeal.

Facts

On review, the City challenges one of the "Undisputed Facts" that formed the basis of the Hearing Officer's Ruling. These facts, which the Hearing Officer derived from the City's answer to the Complaint, the parties' motions, memoranda and supporting documents; and a DVD of the March 18th meeting, are reprinted verbatim

[4] The Hearing Officer declined to rule on the lawfulness of an alleged February 6, 2013 conversation because the parties disputed its substance. At the conclusion of the decision, the Hearing Officer instructed the parties to notify her within ten days of receipt of the decision whether they sought further litigation on this issue. She also notified the parties that the remaining portions of the complaint would be dismissed with prejudice if no party responded within ten days. Neither party sought further litigation on this issue.

(including the Hearing Officer's footnotes) in Appendix A. After a thorough review of the record below, we have decided to adopt these facts, without reiteration, except to address and reject the City's argument below.

Challenged Fact

The City challenges the second sentence of Paragraph 16 of the Undisputed Facts. Paragraph 16 states in its entirety:

> Ash was present at the meeting but did not make any statements. Nor did Ash submit a communication to the City Council expressing his support for the Award, as he often does to support various issues before the City Council.

The City argues that the first part of the second sentence is factually erroneous because, on February 25, 2013, Ash *did* submit a communication to the City Council in support of the award. The City also argues that the second part of this sentence is erroneous and not supported by the record.[5]

We reject the challenge for both procedural and substantive reasons. First, given the procedural posture of this case, we deem it waived. By filing motions for summary judgment, the parties sought to have this case decided on material, undisputed facts. To this end, both parties provided what they deemed to be undisputed facts in support of their respective motions. The sentence in Paragraph 16 that the City now challenges is virtually identical to Paragraph 14 of the enumerated "Statement of Material Facts"

[5] The City also challenges the finding on a third ground. It argues that in the Opinion section of her Ruling, the Hearing Officer erroneously concluded that the resolution was a "proxy" for the actual funding vote and, therefore, in Paragraph 16, erroneously failed to acknowledge any distinction between the non-binding resolution and the City Council's actual vote to fund. Although couched as a factual challenge, the City's argument, in essence, contests the Hearing Officer's legal conclusion that the resolution triggered the City's obligation to speak out in favor of the award a second time. This argument is therefore more appropriately addressed in the Opinion section, below.

that the Union submitted in its motion for summary judgment.[6] Although the City filed motions to strike certain facts in the Union's summary judgment motion, it did not file a motion to strike any of facts contained in Paragraph 14.[7] The Hearing Officer appropriately treated those facts as undisputed. The City's failure to contest these facts *before* the Hearing Officer issued her ruling precludes it from doing so now.

Even if we were to consider the City's arguments, they lack merit. First, although the second sentence of Paragraph 16 does not expressly reference the March 18th meeting, it is clear from reading the Undisputed Facts as a whole, particularly Paragraph 8, which describes Ash's February 25 funding request, and Paragraphs 13-15, which describe the March 18th meeting, that Paragraph 16's statement that Ash "did not submit a communication to the City Council in support of Award" refers only to Ash's

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[6] This paragraph states, verbatim:

> 14. On March 18, 2013, the City Council heard public comments regarding the resolution asking the parties to meet to negotiate a new agreement and voted to adopt it. [See Complaint at ¶12.]. Capistran spoke on behalf of the Union in opposition to the resolution. [See Capistran Affidavit, Attachment B, at ¶ 11]. Ash was present but did not speak. Id. Nor did Ash submit a communication to the City Council expressing his support for the award, [see Joint Exhibit 9, attached hereto as Exhibit I], as he often does to support various issues before the City Council. [*See,* e.g., Attachment H and Joint Exhibit 11, attached hereto as Attachment J.] (Brackets in original).

[7] The City sought to exclude evidence pertaining to a February 6, 2013 conversation between the Union President and the City Manager and evidence of an October 30 2012 email from the City Manager to the City Council regarding the JLMC award, which had not yet issued. As noted above, Hearing Officer granted the City's motions.

conduct at the March 18th meeting.[8]

The City's second challenge to Paragraph 16, which it characterizes as stating that "Ash 'Often' makes 'Statement' to Support Various Issues" [sic] is based on a flawed reading of this paragraph and ignores the evidence the Union provided in support of the fact. First, Paragraph 16 does not state that Ash often "makes statements" at City Council meetings Rather, it states that Ash did not "s*ubmit a communication* to the City Council, as he often does to support various issues before the City Council." (Emphasis supplied).

The City's claim that this fact is not supported by the record is equally unavailing. In support of this finding, the Union submitted minutes from the City Council's February 25, and May 6, 2013 meetings. See n. 6, supra. Both sets of minutes contain a separate section titled "Communications from City Manager." The February 25th minutes show that Ash submitted five communications to the City Council at that meeting, including his letter in support of the JLMC award.[9] The May 6th minutes show that Ash sent four separate communications to the Council that week. Based on these documents, we find that the facts as written are supported by the record evidence, and decline to disturb them.

Opinion[10]

As a threshold matter, we address the City's argument that the Hearing Officer

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[8] This conclusion is further supported by the fact that the Union cited the minutes of the March 18th City Council meeting as support for this finding. Those minutes show that Ash did not send any communications to the City Council regarding the resolution. See n. 6, supra.

[9] The other four communications concerned unrelated matters.

erred when she did not conclude that this matter was moot. In its motion for summary judgment, the City argued that the matter was moot because the controversy at issue ceased on May 6, 2013, when the City Council voted to fund the JLMC award. The Hearing Officer disagreed. Relying on well-established case law, the Hearing Officer held that, although the funding dispute ceased with the City's Council's vote, the issue was not moot for three reasons: 1) the City Council's vote was separate from the City Manager's conduct at issue in the complaint; 2) the City Manager took no steps to remedy his unlawful conduct; and 3) the matter was capable of repetition because the City Manager never acknowledged any wrongdoing. Compare Commonwealth of Massachusetts, 12 MLC 1590, SUP-2619, SUP-2638 (January 31, 1986) (dismissing complaint as moot where parties, by successfully completing bargaining, resolved the allegations that the Commonwealth had engaged in regressive bargaining and achieved stable and continuing labor relations) with Boston School Committee, 15 MLC 1541, 1546, MUP-6400 (1989) (Board declined to dismiss complaint as moot where employer's delay in submitting a wage offer was capable of repetition and employer did not admit that its conduct constituted a violation of the duty to bargain in good faith).

The City contests this conclusion on a number of grounds. It first argues that all of Ash's actions, including the February 25 request for funding, satisfied his statutory obligation to support the JLMC award and, therefore, the Hearing Officer's conclusion that the matter was not moot was based on a flawed premise. We reject this argument for the reasons set forth in the final section of this opinion.

The City next reiterates the argument that the City Council's vote resolved the

[10] The Board's jurisdiction is uncontested.

controversy. However, this argument continues to ignore distinctions drawn between matters that are resolved as a result of changed external circumstances, i.e., in this case, the City Council funding vote, and matters that are resolved through the parties' own actions, e.g., the subsequent negotiations that resolved the regressive bargaining cases cited above. Here, as the Hearing Officer acknowledged, even though the conflict giving rise to the unfair labor practice may have ceased, the cessation of the City's unlawful conduct cannot be attributed to the parties' conduct, especially given that Ash never corrected his actions or acknowledged wrongdoing. As the Board has stated, "changed circumstances that make a need for a complaint less urgent than when first issued do not automatically moot a complaint." Commonwealth of Massachusetts, 12 MLC at 1597 (citations omitted). We therefore affirm the Hearing Officer's conclusion that this matter is not moot and turn to the City's substantive arguments regarding the March 18th meeting.

The City claims that in determining that Ash's silence at the March 18 meeting violated his duty to support JLMC arbitration, the Hearing Officer made several critical errors. It first argues that she erred by treating the vote on the resolution as the equivalent of the actual funding vote. The City argues that members of the Council did not view the vote in this way and, thus, the Hearing Officer's conclusion that this vote triggered Ash's obligation to support the award was erroneous.

We disagree. Our analysis begins with the principle stated in City of Melrose, 28 MLC 53, 54-55, MUP-1010 (June 29, 2001), that Section 4A of Chapter 1078 of the Acts of 1973, as amended, requires an employer and the exclusive employee representative to support JLMC arbitration awards in the same way and to the same

extent that the employer and the exclusive representative are required to support any other decision or determination that they agree to pursuant to Chapter 150E. Under this rule, a public employer that fails to take all steps necessary to secure funding for the cost items of a collective bargaining agreement refuses to bargain in good faith in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Id. (citing Mendes v. City of Taunton, 366 Mass 109 (1975); Town of Belmont, 22 MLC 1636, 1639, MUP-9875, (April 1, 1996); City of Chelsea, 13 MLC 1144, 1149, MUP-6211 (September 22, 1986) (additional citations omitted).

Here, the Hearing Officer found that Ash's February 25th funding request satisfied the City's obligation to express support for the award. The Union does not appeal from this aspect of the decision and we find no basis to disturb it. A little over two weeks later, however, some of the City Councilors proposed a resolution to require the Union and the City Manager to meet to negotiate a collective bargaining agreement that was more "favorable" than the award and which, critically, did not include an order to fund it. The resolution came before the full City Council on March 18th. Several Councilors spoke for and against the resolution at the meeting, including Councilor Hatleberg, who said that it was "fair to see the vote on this resolution as something of a proxy for where things would come out on a vote." The facts state that the City Council heard public comment on the resolution and that the Union President spoke in opposition on behalf of the Union, but that Ash said nothing. The resolution passed.

Although the Hearing Officer found, based on Hatleberg's statements, that there was no doubt that a vote for the resolution was a vote against the JLMC award, she ultimately treated the resolution as an "intervening event" that "reduced the likelihood"

that the award would be funded, thereby requiring the City to "modify its approach and step up its efforts." She appropriately analogized the circumstances of this case to those in Worcester School Committee, 5 MLC 1080, 1083-1085, MUP-2260 (June 21, 1978). In that case, the school committee originally sought a supplemental appropriation to fund a contract, but, after learning that the Legislature was unlikely to consider its request, failed to pursue any additional sources of funding. Id. Noting that "what is reasonable at one point in time may become unreasonable or inadequate because of subsequent events," the Board held that once the school committee was informed that its request would not receive prompt attention, it was obligated to broaden its approach to the funding problem and, thus, the school committee's failure to seek alternative methods of funding violated Sections 10(a)(5) of the Law. Id. at 1085.

We affirm the Hearing Officer on similar grounds. The critical facts here, which the Hearing Officer recognized, are that the City Council proposed and heard public comment on a resolution asking parties to return to the bargaining table to negotiate terms more favorable to the City. This clearly signaled the City Council's dissatisfaction with the terms of the award and reduced the likelihood of funding, at least in the near future. It may have been the case, as the City argues, that not all City Council members viewed the vote as a tantamount to a vote for or against funding. However, as the Union points out, the Law draws no distinction between a vote not to fund an agreement and a non-binding resolution to return to the table without securing funding. Thus, regardless of the context in which the City Council's opposition was expressed, the March 18th meeting is properly treated as a "subsequent event" that triggered anew the City's obligation to express its support for the award. See Worcester School

Committee, supra. See also Town of Rockland, 16 MLC 1001, 1006, n. 11, MUP-6620 (June 1, 1989) (duty to seek funding for a contract encompasses an obligation to express support for the funding request, particularly in the face of any expressed opposition).

For the same reasons, we reject the City's argument that the Hearing Officer erred when, citing Town of Rockland, supra, she held that Ash's silence in the face of the debate over the resolution violated the Law because it could have been construed as support for the resolution. The City argues that this cannot be correct because the City Council already knew that Ash supported the JLMC award. The City also argues that the Hearing Officer ignored critical distinctions between the facts of this case and those in Town of Rockland. The Hearing Officer addressed both of these arguments at length in her decision, and we agree with her conclusion that Ash's prior, known statements in support of funding were not enough to satisfy the City's bargaining obligation in the face of the changed circumstances described above.

The fact that Rockland has a town meeting form of government, where the citizens are the funding body, but that the City of Chelsea has a City Manager form of government, where the City Council is the funding body, does not change this result. As the Union points out, Section 1 of the Law makes no such distinction, defining "legislative body" as the "City council . . . or any body which has the power of appropriation with respect to an employer . . . ." Under this definition, an employer's obligation to seek and actively support funding for an award applies equally to City Council and town meeting forms of government. Further, the fact that the citizens attending the town meeting in Rockland may not have been as knowledgeable about

the funding and other collective bargaining issues as the City Councilors were here does not change the core principle articulated in the cases cited above. An employer's obligation to seek funding for an agreement goes beyond the ministerial act of submitting a funding article to the legislature. Rather, it is required to take all necessary steps to fund it, including conveying clearly their unconditional support for the funding article in the face of opposition. Town of Rockland, 16 MLC at 1007 (citing Worcester School Committee, 5 MLC at 1083).

We briefly address the City's remaining argument that the City's Council's rules, Roberts Rules of Order, and parliamentary procedure, generally, prevented Ash from speaking during the resolution debate because only Council members are entitled to speak during debates and Ash was not a Council member. Based on these rules, the City claims the Hearing Officer's finding that Ash's silence during that debate instead of vocalizing his opposition is erroneous. We reject this argument and the documents presented in support of it as improperly presented for the first time on review. See Joseph R. Anderson and others v. Commonwealth Employment Relations Board, 73 Mass. App. Ct. 908, 909, n.7 (2009) (citing McCormick v. Labor Relations Commission, 412 Mass. 164, 170 (1992)) (noting Board's policy of not considering argument raised for first time on review and refusing to consider same argument raised on appeal).

Even if we were to consider this argument, it has no merit for several reasons. First, even assuming that the City is correct that Ash was technically prevented from speaking during the debate, the City has provided no support for its argument, and we find none, that the City Council's rules prevail over the City's statutory obligation to clearly express support for the award in the face of opposition. See generally National

Association of Government Employees, Local R1-162 v. Labor Relations Commission, 17 Mass. App. Ct. 542, 546 [1984] (pursuant to Section 7(d) of Law, all municipal ordinances, by-laws rules and regulations are explicitly superseded by bargaining agreements as to the important mandatory bargaining issues covered by Section 6).

Second, there is no dispute that the Council members heard public comment regarding the resolution at the meeting and that the Union president spoke on behalf of the Union in opposition to the resolution. Although the City claims that Roberts Rules of Order prevented Ash from debating the resolution because only Councilors can participate in debate under the cited rule, it neither provided a copy of the relevant rule, see, e.g., Savill v. Port Norfolk Yacht Club, Inc., 83 Mass. App. Ct. 1130 (2013), nor explained the procedural context in which the City Council heard public comment.

Finally, the City Council rule cited by the City does not expressly prohibit the City Manager from speaking at City Council meetings. Rather, it simply requires all communications from the City Manager to the City Council to first be deposited with the City Clerk and time stamped no later than 4:00 pm of the Thursday preceding a regular meeting.[11] Here, the evidence shows that Ash knew about the resolution as early as March 14, 2013,[12] but failed to submit any communication to the City Council in support

[11] According to the City, Rule 38 of the City Council's Rules states:

> All communications from the City Receiver or City Manager...must first be deposited with the City Clerk and time stamped. No such communication or petition time stamped later than 4:00 p.m. the Thursday preceding a regular meeting shall be presented to the City Council at that meeting unless unanimous consent of the Council shall have first been obtained for the same.

[12] The Board takes administrative notice of the fact that March 14, 2013 was a Thursday.

of the award in advance of the debate on the resolution, even after the Union President asked him if he had contacted the City Council regarding this matter. Thus, this rule, rather than excusing Ash's failure to speak up at the March 18th meeting, further demonstrates Ash's failure to take all steps necessary, including all necessary *preliminary* steps, to support funding for the award.

Under the decisions cited above, therefore, once Ash learned about the resolution, his failure to express and clearly convey to the City Council his renewed support for the JLMC award violated the City's obligation under the Law.

Conclusion

For the reasons stated above, we affirm the Hearing Officer's decision in its entirety. We therefore issue the following Order.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the City of Chelsea:

1. Cease and desist from;

   a) Failing to express and clearly convey support for a JLMC award in the face of expressed opposition to it; and

   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 action that will effectuate the purposes of the Law:

   a) Post immediately in all conspicuous places where members of Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the City customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.

b) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, BOARD MEMBER

HARRIS FREEMAN, BOARD MEMBER

APPEAL RIGHTS

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of M.G.L. c. 150E, § 11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L. c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision.** No Notice of Appeal need be filed with the Appeals Court.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board has determined that the City of Chelsea (City) violated Sections 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) when, at a March 18, 2013 City Council meeting, the City Manager failed to express and clearly convey his support of the cost items associated with an arbitration award that a Joint Labor-Management Committee (JLMC) arbitration panel issued on February 4, 2013 in an interest arbitration between the City and the Chelsea Firefighters Association, Local 937, I.A.F.F. (Union).

Section 2 of M.G.L. 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 express and clearly convey support for a JLMC award in the face of opposition to it, and

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

_____ _____

City of Chelsea 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, 1st Floor, Boston MA 02114 (Telephone: (617) 626-7132).

APPENDIX A

Undisputed Facts

1. The City is a public employer within the meaning of Section 1 of the Law.

2. The Union is an employee organization within the meaning of Section 1 of the Law.

3. The Union is the exclusive bargaining representative for firefighters employed by the City.

4. On February 4, 2013, an arbitration panel appointed by the Joint Labor-Management Committee (JLMC) to resolve a contract dispute between the parties issued its award in case number JLMC-11-35F.

5. On or about February 6, 2013, Union President Brian Capistran (Capistran) met with City Manager Jay Ash (Ash).[13] Ash expressed his desire to settle a fifth year of the collective bargaining agreement.

6. After the Award issued, on February 7, 2013, Ash notified the City Council by email that the Police Superior Officers' Association signed a contract and that the City had received the firefighters' arbitration Award. Ash's email states in its entirety:

   Police Superiors now have a signed contract, 2 past years at .5% and 1%, and these 3 years (this one and two more) at 2, 2, 2.75, and another .75 on the last day of the contract. Also, new personnel get lower vacation and educational $$.

   Fire arbitration is in. 2 past years at 3 and 2, and this year and next at 2.5 and 2.5%.

   I am costing out each of these and will be presenting to Council for votes to fund them. We owe retro for the two past years, which could be under $50K for police and over $1M for fire.

   As you know, Council can approve, disapprove or ask for changes.

7. On or about February 21, 2013, Capistran notified Ash that the Union would not discuss a "fifth year."

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[13] The Hearing Officer did not read the City's Motion in Limine to propose exclusion of the undisputed fact that Ash and Capistran met and had a conversation about extending the collective bargaining agreement for a fifth year.

8. On February 25, 2013, Ash submitted a request to the City Council to fund the cost items in the firefighters' Award stating:

> Attached is a copy of the arbitration decision regarding the collective bargaining agreement between the Chelsea Fire Union (IAFF Lo.937) and the City. Per State law, once a decision is reached, I am required to provide you with the filing necessary to fund the award. This communication and my support of the award are required and therefore consistent with State law. While the decision is binding on the City, it is subject to the jurisdiction's legislative body, in this case the City Council, voting approval of the funding necessary to support the retroactive wages and current increases required for compliance with the arbiters' decision.
>
> In summary, the award provides the following:
>
> FY'11 3% as of July 1, 2010
> FY'12 2% as of January 1, 2012
> FY'13 2.5% as of July 1, 2012
> FY'14 2.5% as of July 1, 2013
>
> In order to fund the award, I hereby request you to appropriate $989,622.25 from Free Cash. The amount represents retroactive payments dating back to July 1, 2010, and provides enough funding to support the contract for the remainder of this year. Additionally, in order to fund the contract through its entirety, it will be my intention to add $1,177,233 to the fire department salary line in FY'14 from either existing revenues or Free Cash. The combined potential of just over $2M is available from Free Cash to support the award.
>
> This communication and the matter was referred to the Sub-committee on Conference.

9. On February 25, 2013, Ash also submitted a request to the City Council to fund the Police Superior Officers' Association contract, in which he stated that he "support[s] the contract unconditionally" and that he wholeheartedly endorses the overall package..."

10. On March 11, 2013, the City Council held a sub-committee meeting to discuss the contract with the Union. The sub-committee members asked Ash what they could do if they did not agree with the arbitration Award. Ash responded that the City Council could vote to fund the Award, not fund it, or do something in between.[14]

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[14] Although the City denied this allegation in its answer to the Complaint, it advised the Hearing Officer in a July 26, 2013 email communication that it agreed with this factual allegation. The Hearing Officer did not include the City's proposed facts that expand on

11. On or about March 14, 2013, Ash notified Capistran by email that the City Council's agenda for its next meeting included the consideration of a Resolution asking the parties to meet to negotiate a new agreement and did not include a financial order to fund the contract.

12. On March 14, 2013, Capistran asked Ash if he had contacted the City Council regarding the items on the agenda referred to in paragraph 11. Ash replied that: "I have not given them a reply. I have not been asked to do so." Ash told Capistran later that day: "I was not asked for my opinion regarding the resolution and have not contributed to its filing. My actions have been and will continue to be consistent with the laws governing such an award."

13. On March 18, 2013, the Resolution came before the full City Council regarding the Award. The City Council heard public comments regarding the resolution and voted to adopt it. Ash did not make any statements at the March 18, 2013 meeting. Capistran spoke on behalf of the Union in opposition to the Resolution.

14. At the March 18, 2013 City Council meeting, Hatleberg publically stated, among other things, that "he was there to help us find a shorter, more fairer process...that serves the taxpayers of the City...", that he did not feel that he could support the funding of the Award, and that it was "fair to see the vote on this Resolution as something of a proxy for where things would come out on a vote, and rather than being placed in a position of voting down something that I don't find myself even wholly against....for me it does balance out to say that I do believe that we need a better deal for the City..." In his remarks, Hatleberg noted Ash's support of the Award by saying: "So we have the decision that has been made and that has been spoken about, that the City manager has been in support of, and I believe many of you are here in support of."

15. Following Ash's remarks at the March 18, 2013 City Council meeting, Murphy spoke against the Resolution, Robinson spoke in favor of the Resolution, and Frank stated that he would vote no on the Resolution, but that did not mean that he supported the arbitration fully.

16. Ash was present at the meeting but did not make any statements. Nor did Ash submit a communication to the City Council expressing his support for the Award, as he often does to support various issues before the City Council.

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the substance of Ash's statements at the March 11 meeting because the Union disputed the alleged statements.

17. On March 18, 2013, the City Council passed the Resolution to have the Union's representatives and the City Manager meet to negotiate a collective bargaining agreement more favorable than the arbitration decision.

18. On March 30, 2013, Ash was asked by Cunningham via email about the affordability of contract appropriations, including the fire Award. Ash responded in pertinent part as follows: "We've got 5 agreements, and while the[] sum total is more than anticipated in retro money owed to the unions, the overall impact over the length of the agreements looks very manageable."

19. On May 6, 2013, the City Council voted to fund the Award.