

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *

CITY OF LAWRENCE *

and *

MASSACHUSETTS NURSES *

ASSOCIATION *

Case No.: MUP-14-3666

Date Issued: June 10, 2016

Hearing Officer:

Zachary T. See, Esq.

Appearances:

Robert D. Hillman, Esq. – Representing City of Lawrence

Olinda R. Marshall, Esq. – Representing Massachusetts
Nurses Association

HEARING OFFICER’S DECISION AND ORDER

SUMMARY

1 The issues in this matter are whether the City of Lawrence (City) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter
3 150E (the Law) by implementing a dress code and changing the City’s parking policy for
4 City employees without first giving the Massachusetts Nurses Association (Association)
5 prior notice and opportunity to bargain to resolution or impasse about the decision to
6 change the City’s parking policy and implement a dress code and the impact of those
7 decisions on employees’ terms and conditions of employment. Based on the record and
8 for the reasons explained below, I conclude that the City did fail to bargain in good faith

1 with the Association by implementing a dress code and changing the City's parking policy
 2 for City employees without providing the Association notice and an opportunity to bargain
 3 over the changes and thus, did violate Section 10(a)(5) and, derivatively, Section 10(a)(1)
 4 of the Law in the manner alleged.

5 STATEMENT OF THE CASE
 6

7 On April 29, 2014, the Association filed a Charge of Prohibited Practice (Charge)
 8 with the Department of Labor Relations (DLR) alleging that the City violated Section
 9 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Following an investigation, a duly-
 10 designated DLR Investigator issued a Complaint of Prohibited Practice (Complaint) on
 11 November 7, 2014, alleging that the City had failed to bargain in good faith with the
 12 Association by implementing a dress code and changing the City's parking policy for City
 13 employees without first giving the Union notice and an opportunity to bargain to resolution
 14 or impasse over the decision to implement a dress code and change the parking policy
 15 and the impacts of those decisions. On or around November 26, 2014, the City filed its
 16 Answer. On or around March 15, 2016, the parties jointly submitted stipulated facts and
 17 exhibits with the DLR in lieu of an evidentiary hearing. On May 6, 2016, the City and the
 18 Union filed legal briefs regarding the issues.

19 STIPULATIONS OF FACT AND EXHIBITS
 20

- 21 1. The City is a public employer within the meaning of Section 1 of G. L. c. 150E ("the
 22 Law").
- 23 2. The Association is an employee organization within the meaning of Section 1 of
 24 the Law.
- 25 3. The Association is the exclusive bargaining representative for public health nurses
 26 employed by the City.
 27
 28
 29

1 4. The Association and the City have been parties to a series of collective bargaining
2 agreements, the latest of which expired on June 30, 2010 (CBA).
3

4 5. On January 15, 2014, City Mayor Daniel Rivera issued a letter to all City
5 employees. Mayor Rivera's January 15, 2014 letter provided as follows:
6

7 All City Employees,
8

9 The City of Lawrence strives to offer its citizens a professional
10 atmosphere to conduct business. Please keep in mind that
11 local business people, along with tax news, visit the City Hall
12 and other municipal public buildings, and the first impressions
13 are lasting impressions.
14

15 The preferred dress is office attire. All males working in an
16 office environment, regardless of the department, are required
17 to wear a tie. Jeans, sweat suits and pajamas are not
18 appropriate style of dress for any employee. However, in the
19 event that staff is scheduled to perform duties, which would
20 damage professional clothing, jeans are acceptable if staff
21 changes back to office attire at the completion of task. Your
22 supervisor of the personnel department can provide you with
23 a comprehension [sic] of safety standards.
24

25 Certainly, no T-shirts, shorts, beach type footwear or clothing
26 that falls below "business casual" attire should or will be
27 allowed. All of us should produce pride in the work place, and
28 pride in the City of Lawrence. A professional appearance goes
29 hand-in-hand with that vision.
30

31 The Mayor can declare certain days as "dress down days." On
32 these days, jeans and other more casual clothing, although
33 never clothing potentially offensive to others, are allowed but
34 only when approved by Mayor Rivera. Yes, inappropriate
35 slacks or pants include jeans, sweatpants, exercise pants,
36 Bermuda shorts, short shorts, bib overalls, leggings, and any
37 spandex or other form-fitting pants such as people wear for
38 biking.
39

40 This administration also understands that several occupations
41 listed in the class vacation structure of the charter, as well as
42 Collective-Bargaining Units or Federal and State Laws, call for
43 specific work clothing gear, such as Police Officers,
44 Undercover Law Enforcement Officials, Fire Fighters,
45 Carpenters, and many positions in the Department of Public

1 Works. Some of these are allowed to wear jeans or clothing
2 as specified in the Collective Bargaining Agreement that goes
3 hand-in-hand with the work being performed. The Department
4 Head will be the person who will provide further guidance on
5 these employment practices.
6

7 No dress code can cover all contingencies so employees must
8 amount of judgment [sic] in their choice of clothing to wear to
9 work. If you experience uncertainty about acceptable,
10 professional business casual attire for work, please ask the
11 Personnel Department prior to wearing such clothing.
12

- 13 6. Prior to January 15, 2014, the City had not adopted a formal dress code applicable
14 to members of the Association.
15
- 16 7. T. Edmund Burke, Esq., works as an Associate Director for the Association.
17 Burke's job duties include contract administration for the Association's bargaining
18 unit in Lawrence.
19
- 20 8. On January 17, 2014, Burke sent a letter to Mayor Rivera regarding the dress
21 code. Burke's January 17, 2014 letter provided the following:
22

23 Dear Mayor Rivera:

24
25 Congratulations on your recent election. We look forward to
26 working with your administration in improving the Public
27 Health issues confronting the people of Lawrence.
28

29 Recently you issued a letter regarding the establishment of a
30 dress code. While this subject is not at issue with the Public
31 Health Nursing Department, it is a mandatory subject of
32 bargaining and any change must be bargained by the mutual
33 parties. In this regard we look forward to full negotiations for
34 the Public Health Nurses.
35

- 36 9. The City did not respond to Burke's January 17, 2014 letter to Mayor Rivera.
37
- 38 10. Following the issuance of Mayor Rivera's January 15, 2014 letter, nurse Brian
39 Zahn, a bargaining unit member, expressed concerns to the City regarding the
40 safety requirement that he wear a tie at work.
41
- 42 11. The City has not relieved Zahn of the requirement to wear a tie at work or any
43 other specific dress code requirement set forth in Mayor Rivera's January 15, 2014
44 letter regarding the City's dress code policy. The City has permitted Zahn to not
45 wear a tie at work and has not disciplined him for his failure to wear a tie.
46
12. Article VII, Section b of the CBA provides as follows:

1 The City will provide a parking sticker for the nurse's car to
2 enable the nurse(s) to park in the area of City Hall during the
3 course of their duties. To be used on days the nurse(s) must
4 travel in the field, otherwise parking in the garage.
5

6 13. Prior to January 15, 2014, the City provided Public Health Nurses with parking
7 placards enabling them to use parking spaces in the area of City Hall at no cost
8 on days when the Public Health Nurses must travel in the field.
9

10 14. On January 15, 2014, Mayor Rivera issued a memorandum to all City employees
11 regarding employee parking. Mayor Rivera's January 15, 2014 letter regarding
12 employee parking provided the following:
13

14 City employees are highly encouraged to park at the Buckley
15 Municipal Garage at a reduced rate. For more information on
16 obtaining a parking pass for the Buckley Municipal Garage,
17 please contact . . . Employees are expected *not* to park in
18 parking spaces and utilize municipal garage or surfaced lots
19 at your own expense.
20

21 If you are utilizing your vehicle or a City owned vehicle to
22 conduct official business you will not park in metered spaces
23 for a duration of more than 15 minutes. The exception to this
24 mandate is fire and police vehicles. If applicable, discontinue
25 from using City placards.
26

27 15. The City's January 15, 2014 parking policy applied to the Association nurse in the
28 bargaining unit. Subsequent to the Association filing its prohibited practice charge
29 in this matter, the City reinstated a placard system for certain City employees,
30 including the Association bargaining unit nurse.
31

32 16. The City did not provide the Association with notice or an opportunity to bargain
33 over the decision to eliminate Public Health Nurses' use of parking placards or the
34 impacts of that decision prior to January 15, 2014.
35

36 17. On April 29, 2014, the Association filed the prohibited practices charge with the
37 DLR that is the subject of this case.
38

39 DECISION
40

41 The City violated the Law when it unilaterally implemented a dress code and
42 changed a parking policy without providing the Association with notice and an opportunity

1 to bargain to resolution or impasse over the decisions and impacts of the decisions on
2 employee terms and conditions of employment.

3 **Dress Codes**

4 A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law
5 when it unilaterally changes an existing condition of employment or implements a new
6 condition of employment involving a mandatory subject of bargaining without first giving
7 its employees' exclusive bargaining representative notice and an opportunity to bargain
8 to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations
9 Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations
10 Commission, 388 Mass. 557 (1983). The Commonwealth Employment Relations Board
11 (CERB) has held that grooming standards are a mandatory subject of bargaining. Town
12 of Dracut, 7 MLC 1342, MUP-3699 (September 30, 1980) (town unilaterally implemented
13 standards restricting police officer hair length, beards, and mustaches in violation of the
14 Law.) The CERB has also found that the Law requires employers to give unions notice
15 and an opportunity to bargain before implementing a dress code that governs wearing
16 pins and other accoutrements on uniforms. Sheriff of Worcester County, 27 MLC 103,
17 106, MUP-1910 (January 11, 2001) (Sheriff altered practice of allowing bargaining unit
18 members to wear various pins on their uniforms, including union insignia pins.) The
19 National Labor Relations Board (NLRB) has held that the implementation of a dress code
20 is a mandatory subject of bargaining and that a change in dress code without giving the
21 union an opportunity to bargain violates Section 8(a)(5) of the National Labor Relations
22 Act. Transportation Enterprises, Inc. 240 NLRB 551, 560 (February 5, 1979). See also St.
23 Luke's Hospital, 314 NLRB 434, 440 (1994); Public Service Company of New Mexico,

1 337 NLRB No. 31 (2001) (appropriate wearing apparel at the workplace is a mandatory
2 bargaining subject). The significance of appearance in the workplace underscores the
3 value of dress codes as a mandatory subject of bargaining. See generally, Karl E. Klare,
4 Power/Dressing: Regulation of Employee Appearance, 26 New Eng. L. Rev. 1395, 1426,
5 1447 (Summer 1992) (noting dress codes as a mandatory subject of bargaining and
6 discussing the collectively bargained dress code as an approach to appearance
7 regulation that enhances autonomy, welfare, and fairness regarding appearance
8 practices in the workplace.)

9 Here, the City required employees to dress in “office attire,” while carving out
10 exceptions for staff scheduled to perform duties that would damage professional clothing.
11 The Mayor’s January 15, 2014 letter to employees prohibited jeans, shorts, T-shirts and
12 specifically required male employees working in an office environment to wear a tie as
13 the City “strives to offer its citizens a professional atmosphere to conduct business.” The
14 City had not previously adopted a formal dress code applicable to any bargaining unit
15 members of the Association. There is no dispute that the City has permitted an
16 Association bargaining unit member to not wear a tie at work and has not disciplined him
17 for his failure to wear a tie, yet the City has not absolved the bargaining unit member from
18 the requirements of the dress code, nor provided the Association with notice and an
19 opportunity to bargain over a dress code prior to implementation.

20 The CERB and the NLRB hold that dress codes are a mandatory subject of
21 bargaining, thus prior to implementing a dress code an employer is required to provide
22 the Association notice and an opportunity to bargain to resolution or impasse. See Sheriff
23 of Worcester County, 27 MLC at 106; Public Service Company of New Mexico, 337 NLRB

1 No. 31. The City failed to comply with the Law in this instance. While the City argues that
2 other states do not require bargaining over the adoption of a dress code that requires only
3 modest changes in the standard of dress in a professional workplace,¹ Chapter 150E
4 requires employers to provide notice and an opportunity to bargain over changes to a
5 condition of employment concerning employee appearance and dress in the workplace.
6 Town of Dracut, 7 MLC 1342; Sheriff of Worcester County, 27 MLC at 106. Because
7 appearance and dress codes in the workplace have a direct impact on employment
8 conditions that matter to employees, they constitute mandatory subjects of bargaining.
9 Here, there is no dispute that the City unilaterally implemented a dress code on January
10 15, 2014. For the above reasons, I find that the City violated the Law by implementing a
11 dress code without providing the Association prior notice and an opportunity to bargain to
12 resolution or impasse over the decision and impacts of the decision on employee terms
13 and conditions of employment.

14 **Parking Policies**

15 Section 6 of the Law provides, in relevant part, “[t]hat the employer and the
16 exclusive bargaining representative shall . . . negotiate in good faith with respect to wages,
17 hours, standards of productivity and performance, and any other terms and conditions of
18 employment.” An employer’s failure to bargain in good faith constitutes a prohibited
19 practice under Section 10(a)(5) of the Law. The CERB has consistently held that inherent
20 in the duty to bargain is the obligation of the employer to refrain from changing established
21 terms and conditions of employment without first bargaining with the exclusive

¹ See, e.g., PSSU, Local 68, SEIU-CIO v. PLRD, 763 A.2d 560 (Pa. Cmwlth, 2000),
American Train Dispatchers v. Burlington Northern R.R., 855 F. Supp. 168 (N.D. Tx,
1994).

1 representative. Town of North Andover, 1 MLC 1103, 1106, MUP-529 (September 3,
2 1974); City of Boston, 3 MLC 1450, 1457, MUP-2646 (February 4, 1977); Boston School
3 Committee, 4 MLC 1912, 1915, MUP-2611 (April 27, 1978). The CERB has specifically
4 determined that free employee parking is a mandatory subject of bargaining.
5 Commonwealth of Massachusetts, 27 MLC 11, 13, SUP-4378 (August 24, 2000);
6 Commonwealth of Massachusetts, 9 MLC 1634, 1638, SUP-2513 (February 9, 1983).

7 Article VII, Section b of the parties' CBA states that: "[t]he City will provide a parking
8 sticker for the nurse's car to enable the nurse(s) to park in the area of City Hall during the
9 course of their duties. To be used on days the nurse(s) must travel in the field, otherwise
10 parking in the garage." Prior to January 15, 2014, the City provided the nurses with
11 parking placards enabling them to use parking spaces in the area of City Hall at no cost
12 on days when the nurses must travel in the field. On January 15, 2014, the City's Mayor
13 eliminated the nurses' use of parking placards without providing the Association with prior
14 notice or an opportunity to bargain to resolution or impasse over the decision to eliminate
15 the parking placards and the impacts of that decision on employee terms and conditions
16 of employment. While the parties do not dispute that the City reinstated a placard system
17 for certain City employees, including the Union bargaining unit, subsequent to the Union
18 filing its Charge in this matter, the City failed to provide the Union with notice or an
19 opportunity to bargain over the decision to eliminate the use of parking placards or the
20 impacts of that decision prior to January 15, 2014. Therefore, I find that the City violated
21 the Law as alleged.

22 CONCLUSION

23 Based on the record and for the reasons explained above, I conclude that the City

1 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally
2 implemented a dress code and changed a parking policy on January 15, 2014.

3 REMEDY

4 Section 11 of the Law grants the CERB broad authority to fashion appropriate
5 orders to remedy a public employer’s unlawful conduct. Labor Relations Commission v.
6 Everett, 7 Mass. App. Ct. 826 (1979). When an employer fails to bargain, the usual
7 remedy includes an order to bargain, and to return the parties to the positions they would
8 have been in if the violations had not occurred. Town of Dennis, 12 MLC 1027, 1033,
9 MUP-5247 (June 21, 1985).

10 ORDER

11 Wherefore, based on the foregoing, it is hereby ordered that the City of Lawrence
12 shall:

- 13
- 14 1. Cease and desist from:
 - 15 a. Failing and refusing to bargain in good faith with the Association over
 - 16 the decision to implement a dress code and the impacts of that
 - 17 decision on bargaining unit members’ terms and conditions of
 - 18 employment.
 - 19 b. Failing and refusing to bargain in good faith with the Association over
 - 20 the decision to change a parking policy and the impacts of that
 - 21 decision on bargaining unit members’ terms and conditions of
 - 22 employment.
 - 23 c. In any like manner, interfering with, restraining and coercing its
 - 24 employees in any right guaranteed under the Law.
 - 25
- 26 2. Take the following affirmative action that will effectuate the purpose of
- 27 the Law:
 - 28 a. Rescind the formal dress code the Mayor implemented on January
 - 29 15, 2014.
 - 30 b. Upon request of the Association, bargain in good faith to impasse or
 - 31 resolution with the Association over the decision to implement a
 - 32 formal dress code and the impacts of that decision on bargaining unit
 - 33 members’ terms and conditions of employment.
 - 34 c. Restore all terms of the free parking policy benefit for all bargaining
 - 35 unit members as in effect prior to the City’s unilateral change thereto.

- 1 d. Upon request of the Association, bargain in good faith to impasse or
- 2 resolution with the Association over the decision to change a parking
- 3 policy and the impacts of that decision on bargaining unit members'
- 4 terms and conditions of employment.
- 5 e. Make whole employees for economic losses suffered, if any, as a
- 6 direct result of the City's actions, plus interest on any sums owed at
- 7 the rate specified in M.G.L. c. 231, Section 6I, compounded
- 8 quarterly.
- 9 f. Sign and post immediately in conspicuous places where employees
- 10 usually congregate or where notices to employees are usually
- 11 posted, including electronically, if the City customarily communicates
- 12 to its employees via intranet or email, and maintain for a period of
- 13 thirty (30) consecutive days thereafter signed copies of the attached
- 14 Notice to Employees.
- 15 g. Notify the DLR in writing of the steps taken to comply with this
- 16 decision within thirty (30) days of the steps taken by the City to
- 17 comply with the Order.

18
19
20 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

ZACHARY T. SEE
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 Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within the ten days, this decision shall become final and binding on the parties.



NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE
MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A Hearing Officer of the Massachusetts Department of Labor Relations has held that the City of Lawrence (City) violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E when it unlawfully implemented a dress code and changes a parking policy without first giving the Massachusetts Nurses Association (Association) notice and an opportunity to bargain to resolution or impasse over the decisions and impacts of the decisions.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The Employer assures its employees that:

WE WILL NOT implement a formal dress code without first giving the Association notice and an opportunity to bargain to resolution or impasse over the decision and impacts of that decision.

WE WILL NOT change the parking policy without first giving the Association notice and an opportunity to bargain to resolution or impasse over the decision and impacts of that decision.

WE WILL NOT fail or refuse to bargain in good faith with the Union to resolution or impasse over the decisions and impacts of the decisions to implement a dress code or change the parking policy.

WE WILL rescind the dress code that applies to bargaining unit members and restore all terms of the free parking policy applicable to bargaining unit members.

For the City

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, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).