

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF ARLINGTON

and

ARLINGTON POLICE PATROLMEN'S
ASSOCIATION

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Case No. MUP-14-3750
Date Issued: March 18, 2015

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

Jason Powalisz, Esq.-

Representing the Arlington Police
Patrolmen's Association

John Foscett, Esq. -
Brian Magner, Esq.

Representing the Town of Arlington

HEARING OFFICER DECISION

Summary

1 The issue in this case is whether the Town of Arlington (Town) refused to bargain
2 with the Arlington Police Patrolmen's Association (Union or Association) over the
3 Town's proposed use of an assessment center as a criteria for promotion from the
4 bargaining unit position of patrol officer to the non-bargaining unit position of sergeant in
5 violation of Section 10(a)(5) and, derivatively, 10(a)(1) of M.G.L. c.150E (the Law). I
6 find that the criteria for promotion from a position in the patrol officers' bargaining unit to

1 a sergeant position in the superior officers' bargaining unit is a mandatory subject of
2 bargaining and, therefore, the Town violated the Law.

3 Statement of the Case

4 On June 4, 2014, the Union filed a charge of prohibited practice with the
5 Department of Labor Relations (DLR), alleging that the Town had engaged in prohibited
6 practices within the meaning of Sections 10(a)(1) and 10(a)(5) of the Law. The DLR
7 investigated the Union's charge and on October 15, 2014, issued a 2-count Complaint
8 of Prohibited Practice. The Town filed an Answer to the Complaint on or about October
9 23, 2014.

10 Count 1 of the Complaint alleges that the Town failed to bargain in good faith by
11 unilaterally replacing the standard Civil Service examination with an assessment center in
12 the process for promoting patrol officers to sergeants. Count 2 alleges that the Town
13 refused to bargain on demand with the Union over the inclusion of the assessment center
14 in the promotional process. The parties subsequently waived their right to a hearing and
15 agreed to submit evidence in the form of a stipulated record. They filed initial briefs on
16 or about February 4, 2015, and reply briefs on or about February 13, 2015. Based on
17 the record, which includes stipulated facts and documentary exhibits, and in
18 consideration of the parties' arguments, I render the following opinion.

19 Stipulations of Fact

- 20 1. The Arlington Police Patrolmen's Association (Association or Union) is the lawful
21 bargaining agent for all police officers employed by the Town of Arlington (Town) in
22 the rank of patrol officer, and is an employee organization within the meaning of G.L.
23 c.150E, Section 1.
24
25 2. At all times material, Patrol Officer Robert Pedrini has served as the President of the
26 Association.
27

- 1 3. The Town and the Association have historically negotiated collective bargaining
2 agreements covering the members of the Association's bargaining unit, and are
3 currently parties to a collective bargaining agreement due to expire in June of 2015.
4
- 5 4. The Town is a public employer within the meaning of G.L. c.150E, Section 1. At all
6 times material, Caryn Malloy (Malloy) has served as the Town's Director of Human
7 Resources and Frederick Ryan (Ryan) has served as the Town's Chief of Police.
8 Both Ms. Malloy and Chief Ryan serve as the Town's representative with the
9 Association for purposes of negotiations, contract administration and other labor
10 relations matters.
11
- 12 5. The Arlington Ranking Officers Association (AROA) is the bargaining agent within
13 the Town for all police officers within the ranks of sergeant, lieutenant, and captain.
14 The sergeants, lieutenants and captains represented by the AROA are public
15 employees within the meaning of G.L. c.150E, Section 1 who supervise the patrol
16 officers, and the superior officers are in a separate bargaining unit from the patrol
17 officers.
18
- 19 6. The Town and the AROA have historically negotiated collective bargaining
20 agreements covering the members of the AROA's bargaining unit, and are currently
21 parties to a collective bargaining agreement due to expire in June of 2015.
22
- 23 7. Historically, the Town has continuously and consistently used the standard civil
24 service testing procedures to establish an eligible list for promotions from patrol
25 officer to sergeant. Those procedures are as follows:
26
 - 27 a. HRD administers the civil service examination.
 - 28 b. Based on the results of the exam, HRD would generate a promotional list based
29 on the exam score and statutory, non-assessment center factors such as veteran's
30 status.
 - 31 c. The Town would requisition the list when it desired to make a promotional
32 appointment.
 - 33 d. Based on the list, the Town reserved the right to conduct interviews and review
34 other non-assessment center relevant factors such as prior discipline and past
35 performance.
 - 36 e. Based on a review of the factors in part d, above, the Town would either appoint
37 the highest ranking applicant on the list or bypass that individual pursuant to the Civil
38 Service Statute, M.G.L. c.31, s.27.
39
- 40 8. On or about May 9, 2014, Chief Ryan verbally advised Association President Pedrini
41 that he wanted to use the assessment center format in the promotional process for
42 sergeant to occur in the fall of 2014. President Pedrini indicated that that issue had
43 to be bargained, but Chief Ryan replied that he did not believe that a bargaining
44 obligation existed.
45

- 1 9. On May 19, 2014, Association counsel wrote to counsel for the Town indicating that
2 a duty to bargain existed over the decision to substitute an assessment center for
3 the standard exam process, and/or the impacts of that decision. The Association
4 counsel's May 19, 2014 letter is marked as Joint Exhibit 1.
5
- 6 10. By email dated May 20, 2014, Ms. Malloy wrote to President Pedrini advising that
7 she had that day requisitioned from the Massachusetts Human Resources Division
8 (HRD) for a "fully delegated assessment center for use in the development of a
9 promotional list for Police Sergeant." The May 20, 2014 email is marked as Joint
10 Exhibit 2.
11
- 12 11. The Town sought to use a delegated assessment center from HRD, and that format
13 would have changed the established practice described in paragraph 7, above, by
14 adding assessment techniques, written, oral or practical, other than the standard
15 written civil service examination, to establish the promotional list.
16
- 17 12. By letter dated June 2, 2014, counsel for the Town replied to the letter from counsel
18 for the Association referenced in Paragraph [9], above, and rejected both the
19 Association's request to cease processing the assessment center and the
20 Association's request for bargaining over the implementation of the assessment
21 center. Town counsel's June 2, 2014 letter is marked as Joint Exhibit 3. The Town
22 refused to bargain over the implementation of the assessment center in response to
23 the Association's bargaining demand, and no bargaining has occurred.
24
- 25 13. The assessment center that the Town plans to use to develop a promotional list will
26 change the method of assessment that establishes placement on the list, that the
27 Town has previously used to promote officers from patrol officer to sergeant.
28
- 29 14. Although on May 20, 2014, Ms. Malloy requisitioned a fully delegated assessment
30 center from HRD for use in the development of a promotional list for Police
31 Sergeant, HRD and the Town have not executed a delegation agreement or posted
32 notice of an assessment center promotional examination.

33 Opinion

34 A public employer violates Sections 10(a)(5) and (a)(1) of the Law when it
35 unilaterally alters a condition of employment involving a mandatory subject of bargaining
36 without first bargaining with the union to resolution or impasse. School Committee of
37 Newton v. Labor Relations Commission, 388 Mass. 557 (1983). The employer's
38 obligation to bargain before changing conditions of employment extends to working
39 conditions established through past practice, as well as those specified in a collective

1 bargaining agreement. Town of Wilmington, 9 MLC 1694, 1699, MUP-4688 (March 18,
2 1983). To establish a violation, a union must demonstrate by a preponderance of
3 evidence that there was a pre-existing practice, that the employer unilaterally changed
4 that practice, and that the change impacted a mandatory subject of bargaining. Boston
5 School Committee, 3 MLC 1603, 1605, MUP-2503, 2528, 2541 (April 15, 1977).

6 The past practice here is undisputed: the Town continuously and consistently
7 used the standard civil service testing procedures to establish an eligible list for
8 promotions from patrol officer to sergeant, and those procedures did not include the use
9 of an assessment center. The parties also agree that the use of an assessment center
10 would change the prior practice, and that the Town refused to bargain over the use of
11 an assessment center in the promotional process. Thus, the question to be decided is
12 whether the Town is obligated to bargain with the Union over its use of an assessment
13 center in the promotional process from the bargaining unit position of patrol officer to the
14 non-bargaining unit position of sergeant.

15 The Union argues that the Commonwealth Employment Relations Board (CERB)
16 has stated or assumed in numerous cases that the criteria for promotion within a
17 bargaining unit and from one bargaining unit to another (unit to unit promotions) is a
18 mandatory subject of bargaining. The Union urges me to follow the CERB's articulated
19 rationale and ignore contrary case law from other jurisdictions regarding unit to unit
20 promotions, noting that those decisions rest on their unique statutes.

21 The Town argues that the CERB has never specifically held that the criteria for
22 promotion from a position in one unit to a position in another unit is a mandatory subject
23 of bargaining, and the commentary on this issue in Boston School Committee and other

1 cases is unpersuasive dicta. The Town criticizes the analysis and case law underlying
2 the CERB's conclusions in Boston School Committee,¹ and suggests that the CERB
3 drew a different and more appropriate distinction in Town of Danvers 3 MLC 1559,
4 1577, MUP-2292, 2299 (April 6, 1977). The Town cites numerous cases from other
5 states concluding that public employers need not bargain with unions over the criteria
6 for unit to unit promotions, and argues that those states got it right. It further suggests a
7 distinction between the residency requirement at issue in Boston School Committee and
8 the proposed use of an assessment center here. Finally, it argues that bargaining over
9 the promotional criteria at issue here is not required by operation of Section 7(d) of the
10 Law.

11 As a threshold matter, I agree with the Town that the CERB has not decided a
12 case which specifically held that a change in the criteria for a promotion from a position
13 in one bargaining unit into a position in another unit requires bargaining. The CERB²
14 has discussed this issue in prior cases, but its holdings addressed different issues. See
15 generally, City of Boston, 41 MLC 119, MUP-13-3371, 14-3466, 14-3504 (November 7,

¹ I express no opinion on the Town's critique of Boston School Committee and its argument that the decision misuses case law from other jurisdictions because, as discussed below, I agree with the CERB's perspective notwithstanding its reliance on other cases. Also, Town of Danvers does not require a contrary result here since its conclusions regarding promotions to non-unit positions concern promotions to confidential and/or managerial positions.

² In Sheriff's Office of Worcester County, 36 MLC 147, SUP-09-5462, (April 1, 2010), a hearing officer considered whether the sheriff had unilaterally implemented a new policy for promoting employees to positions within the same bargaining unit and to positions in a different bargaining unit. The hearing officer held that the sheriff did not violate the Law because the union had waived its bargaining rights. In a footnote, she indicated that one of the counts in the complaint concerned the lieutenant promotional process even though the lieutenant position was not in a bargaining unit "...because it is part of the bargaining unit members' career ladder and is therefore a mandatory subject of bargaining."

1 2014) (employer did not unlawfully include an assessment center in its promotional
2 examination procedures because it did not change the past practice); Boston School
3 Committee, supra, (school committee violated the Law by unilaterally imposing a rule
4 requiring residency for continued employment); Town of Danvers, supra, (CERB simply
5 ruled that the general topic of promotion procedures is mandatorily bargainable).
6 However, I am persuaded by the rationale in Boston School Committee even though I
7 am not required to follow it.

8 To determine whether a matter is a mandatory subject of bargaining, the CERB
9 balances the interests of employees in bargaining over a particular subject with the
10 interests of the public employer in maintaining its managerial prerogatives, and
11 considers factors like the degree to which the issue has a direct impact on terms and
12 conditions of employment, whether the issue concerns a core governmental decision, or
13 whether it is far removed from terms and conditions of employment. Commonwealth of
14 Massachusetts, 25 MLC 201, 205, SUP-4075 (June 4, 1999). Permissive subjects of
15 bargaining involve the type of governmental decision which should be reserved for the
16 sole discretion of the elected representatives. Town of Danvers, 3 MLC at 1577.

17 Applying the Danvers balancing test requires me to first consider whether the
18 issue has a direct impact on terms and conditions of employment. I agree with the
19 perspective that the CERB articulated in Boston School Committee and Town of
20 Danvers, that promotional opportunities available to workers are important regardless of
21 whether the promotional position is in the same or a different bargaining unit because of
22 the possibility of increased pay, benefits, job satisfaction, prestige, and movement on a
23 career ladder. I do not agree with the Town's contention that the criteria for unit to unit

1 promotions has, at best, a minimal impact on an employee since the Town can bypass
2 employees who top the Civil Service promotional list, and any impact can be mitigated
3 by giving advance notice of the promotional criteria. Advanced notice may help an
4 employee to decide whether to seek a promotion or how to prepare for an assessment,
5 but because an employee may not possess or be able to attain all of the necessary
6 skills and qualifications, notice alone is no substitute for a voice in determining which
7 criteria will be used to assess an employee's supervisory skills and thereby determine
8 placement on the list.³ List placement is significant because the Town appoints the
9 highest ranking applicant on the list unless it decides to bypass that applicant following
10 the interview and its assessment of the applicant's prior discipline and past
11 performance. The Town's ability to bypass an applicant notwithstanding their list
12 placement only comes into play if the candidate's rank on the list is high enough to put
13 him or her into consideration for the position. The use of an assessment center, in
14 addition to the selected assessment center techniques and the weight of the
15 assessment center, will help determine if a candidate places high enough on the list to
16 be considered. Therefore, the Town's bypass argument does not persuade me that the
17 use of an assessment center would have a minimal impact.

18 Additionally, I am not persuaded by the Town's alternative argument that some
19 unit to unit promotional criteria might require bargaining, but the use of an assessment
20 center is not one of them. In this vein, the Town tries to distinguish the residency

³ Additionally, an employee who possesses unique skills or experience, i.e. fluency in multiple languages, or prior residence in certain communities, may believe that these are important supervisory attributes and would enhance his/her promotional prospects. This employee would benefit from the union's ability to bargain over inclusion of those skills and experiences as promotional criteria.

1 requirement at issue in Boston School Committee from the use of the assessment
2 center proposed here, arguing that a residency requirement has a fundamentally
3 different impact on an employee because the time, expense, and personal/family
4 disruption involved in changing one's domicile would effectively foreclose a promotional
5 opportunity. The stipulated record does not describe the components of an assessment
6 center in sufficient detail to permit a comparison to other promotional criteria. However,
7 the impact of the assessment center could certainly vary depending on the weight given
8 the results and candidates' aptitude for taking verbal and demonstrative tests. Also, an
9 employee's ability to change his/her residency may not always be as formidable as the
10 Town suggests. Thus, I cannot conclude on this record that requiring residency as a
11 condition of promotion would necessarily have a stronger impact on employee terms
12 and conditions of employment than the use of an assessment center.⁴ An employee
13 could have comparable interests in bargaining over either and consequently, I find that
14 the criteria for promotion to a supervisory position in a different bargaining unit has a
15 direct impact on employee terms and conditions of employment.

16 I next consider whether the use of an assessment center in the process of
17 promoting patrol officers to sergeants concerns a core governmental decision. In

⁴ The Town's argument that allowing the Union to bargain the criteria for promotion to sergeant positions will open the floodgates to any proposal that is important to an upwardly mobile patrol officer is unavailing. The CERB held in an advisory opinion in Chelmsford School Committee, 8 MLC 1515, 1517 (November 13, 1981) that the administrators' union could not insist on bargaining over terms and conditions of employment of the administrators after they leave the bargaining unit and become teachers. The obligation to bargain extends only to the terms and conditions of employment of the employer's employees in the unit appropriate for such purposes which the union represents. Brockton School Committee, 23 MLC 43, MUP-9131 (July 15, 1996).

1 Boston School Committee, the CERB quoted the Michigan Court of Appeals in Detroit
2 Police Officers Association v. City of Detroit, 61 Mich. App. 487, 493-494 (1975) as
3 saying: “[m]anagement prerogative is not threatened by allowing a union some input on
4 the subject of promotions. Fundamental police department policy is not undermined by
5 a decision granting unit members the right to bargain about the conditions under which
6 they will be allowed to rise in the ranks of the profession of their choice.” The Town has
7 not demonstrated here that the criteria to consider in granting promotions from patrol
8 officer to sergeant is so fundamental to the basic direction of a police department that it
9 should be a managerial prerogative. It offers no evidence or argument that unilaterally
10 choosing the criteria for police supervisory positions will enhance public safety; impact
11 the Town’s ability to set law enforcement priorities and deploy law enforcement
12 resources; or implicate the nature of police services in any way. Simply put, it has not
13 shown why the criteria that it uses to assess whether to promote a patrol officer to a
14 sergeant is more important to the Town than it is to the patrol officers. In the absence of
15 any persuasive contrary rationale, I share the CERB’s view.⁵

16 Further, I am not persuaded by the cases that the Town cites from other
17 jurisdictions because they offer little to no rationale for their conclusions. Teamsters
18 Local 117 v. City of Tacoma, 2006 WL 1194958 *3 (Wash. PERC 2006) indicates that

⁵ The Law does not require different bargaining units for each rank of police officer. Consequently, the result that the Town seeks would produce different bargaining obligations depending on whether supervisory employees are included in the same or a different bargaining unit from employees whom they supervise. Yet, the Town does not explain why an employer’s interest in determining promotional criteria differs depending on whether the patrol officers are in the same or a different unit from the sergeants. Moreover, the concerns for loyalty and labor relations that underlay the CERB statements in Boston School Committee regarding the criteria used to promote employees to managerial/confidential positions are not applicable here.

1 setting conditions for promotion to positions outside the unit impacts an employer's
2 managerial prerogative more than it impacts bargaining unit employees because the
3 employer could be hampered in filling managerial or supervisory slots, which could be
4 detrimental to its mission. The Town has not argued or established that bargaining
5 would slow down the promotional process, so I do not find that reasoning persuasive in
6 this case. I do not share the view expressed in Public Employees Relations
7 Commission, 435 So. 2nd 275 (1983), that promotional criteria cannot be a mandatory
8 subject of bargaining because the promotion itself is speculative and uncertain, because
9 the same could be said of similar issues that the CERB has found to require bargaining,
10 i.e. longevity or injured-on-duty pay. See generally, Town of Chatham(II), 28 MLC 56,
11 MUP-9186 (June 29, 2001); Town of Easton, 16 MLC 1407, MUP-6555 (November 29,
12 1989).⁶

13 Finally, I consider the Town's argument that it is not required to bargain over the
14 use of an assessment center in the procedure for promoting patrol officers to sergeants
15 because Section 16 of G.L. c.31, which governs the form, method and subject matter of
16 promotional examinations, is not listed in Section 7(d) of the Law. Section 7(d) of the
17 Law provides that, with respect to matters within the scope of negotiations under G.L.
18 c.150E, s.6, the terms of a collective bargaining agreement prevail over contrary terms
19 in certain enumerated statutes. Commonwealth of Massachusetts v. Labor Relations
20 Commission, 404 Mass. 124, 126 (1989). If a statute specifically mandating certain
21 terms and conditions of employment is not listed in Section 7(d), the public employer

⁶ The other non-Massachusetts state cases that the Town cites do not explain the reason for their conclusion that the criteria for unit to unit promotions is not a mandatory subject of bargaining.

1 and union are incapable of amending the statute's requirements through bargaining,
2 and consequently, neither party has a duty to bargain over the subject matter of the
3 statute, even though the subject matter refers to what otherwise would be a mandatory
4 subject of bargaining. National Association of Government Employees, Local R1-162 v.
5 Labor Relations Commission, 17 Mass. App. Ct. 542, 544 (1984). If a statute implicates
6 mandatory subjects of bargaining, and the statute is not listed in Section 7(d), the CERB
7 examines the specific language of that statute to determine if a public employer has a
8 duty to bargain under that law, looking to see if the statute creates a specific statutory
9 mandate that controls all issues to the exclusion of any collective bargaining. Town of
10 South Hadley, 27 MLC 161, 163, MUP-1834 (June 12, 2001).

11 Section 16 of c. 31 provides in pertinent part as follows:

12 Examinations shall be conducted under the direction of the [personnel
13 administrator of the human resources division within the executive office for
14 administration and finance], who shall determine their form, method and subject
15 matter. Examinations shall fairly test the knowledge, skills and abilities which can
16 be practically and reliably measured and which are actually required to perform
17 the primary or dominant duties of the position for which the examination is held.
18 The administrator shall, in development of examinations, consult with
19 representatives of labor and professionals in the field to increase emphasis upon
20 aptitudes relevant to performing the positions to be tested...

21
22 This section of the statute delegates the form, method and subject matter of promotional
23 examinations to the administrator of HRD, who must consult with labor representatives
24 and professionals in the field that is the subject of the promotional examination. Boston
25 Police Superior Officers Federation v. Civil Service Commission, 35 Mass. App. Ct. 688,
26 692 (1993). Section 16 does not create a specific statutory mandate that controls all
27 issues to the exclusion of any collective bargaining because it does not require the
28 public employer to take any particular action, give the employer unfettered authority to

1 determine promotional criteria, or in any way hinder the employer's ability to bargain.
2 Since Section 16 mandates union involvement in the overall process of developing a
3 promotional examination, the Town cannot be heard to argue that the Union should
4 have no meaningful role. There is no statutory reason why the Town cannot bargain
5 with the Union over the use of an assessment center (or any other promotional criteria)
6 in promotions from patrol officer to sergeant and upon agreement, requisition one from
7 HRD. See generally, School Committee of Medford v. Labor Relations Commission, 8
8 Mass. App. Ct. 139, 141-142 (1979) (school committee free to bargain with teachers'
9 union over whether to pay over fifty percent of the cost of teachers' health insurance
10 even though the legislative body must confirm any agreement to do so by adopting
11 Section 7A of G.L.c.32B); Commonwealth of Massachusetts v. Labor Relations
12 Commission, 404 Mass. at 127 (no inconsistency between statutory provision that
13 commissioner of administration determine salaries and the requirement that the
14 commonwealth bargain to resolution or impasse before doing so); Town of Dedham v.
15 Labor Relations Commission, 365 Mass. 392 (1974) (civil service statute and public
16 employer bargaining statute should be read together to constitute a "harmonious
17 whole").

18 The Town further argues that the recent Supreme Judicial Court decision in City
19 of Somerville, 470 Mass. 562 (2015) compels a different result. In City of Somerville, the
20 SJC considered whether the city's contribution rate for retired employees' health
21 insurance coverage is a mandatory subject of bargaining. The city argued that G.L.

1 c.32B, Section 9E⁷ gave it the exclusive authority to determine those contribution rates.
2 The SJC agreed, citing Lynn v. Labor Relations Commission, 43 Mass. App. Ct. 172,
3 183 (1997) and noting that there is no obligation to engage in collective bargaining over
4 matters entirely controlled by statute, and that bargaining would effectively negate the
5 legislative purpose in entrusting the matter to the city. 470 Mass. at 571-572. The Court
6 then indicated that it would reach the same conclusion if it considered the import of
7 Section 7(d), reciting the familiar rule that statutes not specifically enumerated in
8 Section 7(d) will prevail over contrary terms in collective bargaining agreements, and
9 there is no duty to bargain over the specific requirements of such statutes. Id. at 572-
10 573.

11 The Town appears to suggest that the Court reduced the 7(d) bargaining
12 obligation analysis to a simple determination of whether or not a statute is listed in
13 Section 7(d). The Court's many references to prior case law belie that contention. The
14 Court focused on the specific language of Section 9E of c.32B which gave the city the
15 authority to decide whether and how much to contribute to the monthly health insurance
16 premiums of retired city employees.

17 Section 16 of c.31 is different from Section 9E of c.32B and need not be
18 interpreted the same way. Section 9E concerns the singular authority of the public
19 employer. Section 16 describes the authority of HRD's personnel administrator and

⁷ Section 9E provides in pertinent part as follows: "[a]...city by vote of its city council, approved by the mayor...may provide that it will pay in addition to fifty percent of a stated monthly premium as described in section seven A for contracts of insurance authorized by sections three and eleven C, a subsidiary or additional rate which may be lower or higher than the aforesaid premium and the remaining fifty percent of said premium is to be paid by a retired employee under the provisions of the first sentence of section nine...."

1 does not reference the role or authority of the public employer. Additionally, the
2 legislative goal of Section 16 is to ensure that promotional examinations fairly test an
3 applicant's ability to perform the primary or dominant duties of the position sought, see
4 Boston Police Superior Officers Federation, 35 Mass. App. Ct. at 693-694, and the
5 Town has not demonstrated that collective bargaining would conflict with or hinder that
6 goal. Consequently, Section 16 does not prohibit the Town from bargaining over the
7 criteria to use in the promotional process from patrol officer to sergeant.

8 Conclusion

9 The Town of Arlington violated Section 10(a)(5), and, derivatively Section
10 10(a)(1) of the Law by refusing to bargain with the Arlington Police Patrolmen's
11 Association over the Town's proposed use of an assessment center as a criteria for
12 promotion from the bargaining unit position of patrol officer to the non-bargaining unit
13 position of sergeant.

14 ORDER

15 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Town
16 of Arlington shall:

17 1. Cease and desist from:

- 18 a. Failing to bargain in good faith with the Union to resolution or
19 impasse concerning the decision and the impacts of the decision to
20 use an assessment center as part of the procedure for promoting
21 patrol officers to sergeant positions.
- 22 b. In any like or similar manner, interfering with, restraining, or
23 coercing any employees in the exercise of their rights guaranteed
24 under the Law.
25

- 1 2. Take the following affirmative action that will effectuate the purposes of
2 the Law:⁸
3
4 a. Upon request, bargain in good faith with the Union to resolution or
5 impasse concerning the decision and the impacts of the decision to
6 use an assessment center as part of the procedure for promoting
7 patrol officers to sergeant positions.
8
 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

A handwritten signature in blue ink, appearing to read 'S. Atwater', is written over a horizontal line.

SUSAN L. ATWATER, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 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 ten days, this decision shall become final and binding on the parties.

⁸ The Union indicated in its brief that it does not seek an order from the DLR to post a notice.