

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

In the Matter of	*	
	*	Case No.: MUP-14-3753
CITY OF LAWRENCE	*	
	*	Date Issued: May 26, 2017
and	*	
	*	
FIREMEN AND OILERS, LOCAL 3, SEIU	*	

CERB Decision on Appeal of Hearing Officer Decision

1 On January 20, 2017, a Department of Labor Relations (DLR) Hearing Officer
2 issued a decision concluding that the City of Lawrence (City) violated Section 10(a)(5)
3 and, derivatively, Section 10(a)(1) of M.G.L. c. 150E (the Law) by implementing a dress
4 code and changing the City's parking policy with respect to a bargaining unit comprised
5 of nine City Inspectors without first providing the Firemen and Oilers Local 3, Service
6 Employees International Union (Union)¹ prior notice and an opportunity to bargain to
7 resolution or impasse. As the Hearing Officer recognized, the CERB had recently
8 addressed whether the identical changes, as applied to a different bargaining unit,
9 violated the Law. City of Lawrence, 43 MLC 96, MUP-14-3666 (September 21, 2016)
10 (Lawrence I).² In Lawrence I, the CERB upheld the Hearing Officer's determination that
11 the City's conduct violated the Law. Id. In so holding, the CERB agreed that the
12 implementation of the new policies changed bargaining unit members' terms and

¹ This case was originally filed by AFSCME Council 93. The Union assumed responsibility for the case after the Union was recognized as the exclusive bargaining representative and successor bargaining agent of the City's nine inspectors (Inspectors) in August 2015.

² The City did not file a notice of judicial appeal from the CERB's decision.

1 conditions of employment with respect to two mandatory subjects of bargaining – dress
2 codes and the benefit of free parking. In this case, the Hearing Officer relied on
3 Lawrence I to reach the same result.

4 The City filed an appeal of the Hearing Officer's decision to the CERB, in which it
5 makes the identical arguments it made to the CERB in Lawrence I - that the changes
6 announced in January 2014 concerning a dress code and employee parking were not
7 material changes to bargaining unit members' terms and conditions of employment that
8 required bargaining.³ The CERB rejected those arguments in Lawrence I for the
9 reasons summarized above. The City offers no substantive reasons for the CERB to
10 reach a different result in this case and the material facts of both cases are the same.
11 The CERB therefore summarily affirms the Hearing Officer's conclusion that the City
12 violated the Law as alleged for all the reasons stated in Lawrence I and issues the
13 following Order.⁴

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³ Other than having a different case caption and final paragraph, the City's supplementary statement is identical to the one that it filed in Lawrence I. In the final paragraph, the City acknowledges that the CERB rejected its appeal in Lawrence I, and states that "to the extent that decision controls, requests that the CERB adopt the position set forth herein."

⁴ As the Union points out, the City erroneously states in its supplementary statement that the dress code policy applied to a "single professional employee" to argue that the change was "de minimis." We reasonably assume that the "single professional employee" the City references is the public health nurse at issue in Lawrence I. There, assuming that there was only one single member of the public nurses bargaining unit, we held that the additional requirement of a tie was "not merely a de minimis change where the City had not previously adopted a dress code applicable to the [Massachusetts Nurses Association] bargaining unit members and, as of the hearing had not absolved public nurses from the full panoply of dress code requirements set forth in the Dress Code letter." 43 MLC at 96. We reach the same result with respect to the nine-member bargaining unit at issue here.

ORDER

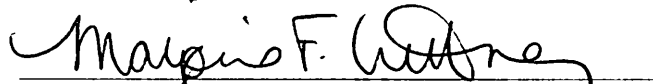
WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT
the City of Lawrence shall:

1. Cease and desist from:
 - a. Failing and refusing to bargain in good faith with the Union over the decision to implement a dress code and the impacts of that decision on bargaining unit members' terms and conditions of employment.
 - b. Failing and refusing to bargain in good faith with the Union over the decision to change a parking policy and the impacts of that decision on bargaining unit members' terms and conditions of employment.
 - c. In any like manner, interfering, restraining and coercing any 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. Rescind the dress code that the Mayor implemented on January 15, 2014.
 - b. Upon request of the Union, bargain in good faith to impasse or resolution with the Union over the decision to implement a dress code and the impacts of that decision on bargaining unit members' terms and conditions of employment.
 - c. Restore all terms of the free parking policy benefit for all bargaining unit members as in effect prior to the City's unilateral change thereto.
 - d. Upon request of the Union, bargain in good faith to impasse or resolution with the Union over the decision to change the parking policy and the impacts of that decision on bargaining unit members' terms and conditions of employment.
 - e. Make whole employees for economic losses suffered, if any, as a direct result of the City's actions, plus interest on any sums owed at the rate specified in M.G.L. c. 231, Section 6I compounded quarterly.
 - f. Sign and post immediately in all conspicuous places where employees usually congregate or where notices to employees are usually posted, including electronically, if the City customarily communicates with these unit members via intranet or email and

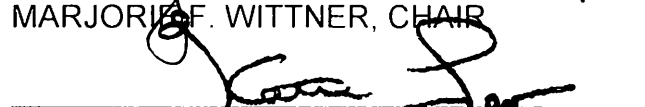
1 maintain and display for a period of thirty (30) days thereafter
2 signed copies of the attached Notice to Employees.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD



MARJORIE F. WITTNER, CHAIR



KATHERINE G. LEV, CERB MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. 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
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

The Commonwealth Employment Relations Board 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 (the Law) when it unlawfully implemented a dress code and changed a parking policy without first giving the Firemen and Oilers, Local 3, SEIU notice and an opportunity to bargain to resolution or impasse over those decisions and the impacts of those 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 City assures its employees that:

WE WILL NOT implement a 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.

City of Lawrence

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).