

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF LAWRENCE

and

FIREMEN AND OILERS
LOCAL 3 UNION/SEIU

*
*
*
*
*
*
*
*
*

Case No. MUP-14-3753

Date Issued: January 20,2017

Hearing Officer:

Brian K. Harrington, Esq.

Appearances:

Robert D. Hillman, Esq.	-	Representing the City of Lawrence
Nicole H. Decter, Esq.	-	Representing the Firemen and Oilers,
Paige W. McKissock, Esq.		Local 3/SEIU

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1 The issues in this matter are whether the City of Lawrence (City) violated
2 Section10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General
3 Laws Chapter150E (the Law) by implementing a dress code and changing the
4 City's parking policy for City employees without first giving the Firemen and
5 Oilers, Local 3/SEIU (Union) prior notice and opportunity to bargain to resolution
6 or impasse about the decision to change the City's parking policy and
7 implement a dress code and the impact of those decisions on employees'

1 terms and conditions of employment.¹ Based on the record and for the
2 reasons explained below, I conclude that the City did fail to bargain in good faith
3 with the Union by implementing a dress code and changing the City's parking
4 policy for City employees without providing the Union with notice and an
5 opportunity to bargain over the changes and thus, did violate Section
6 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner alleged.

7 STATEMENT OF THE CASE

8 On June 6, 2014, the Union filed a charge with the Department of Labor
9 Relations (DLR) alleging that the City had violated Section 10(a)(5) and
10 derivatively, Section 10(a)(1) of the Law.² The City filed a Written Response to
11 this charge on June 19, 2014. Following an investigation, the DLR issued a
12 Complaint of Prohibited Practice on November 24, 2014, alleging that the City
13 had violated Section 10(a)(5) and derivatively, Section 10 (a)(1) of the Law by
14 implementing a dress code and changing the City's parking policy for City
15 employees without first giving the Union notice and an opportunity to
16 bargain to resolution or impasse over the decision to implement a dress
17 code and change the parking policy and the impacts of those decisions. The
18 City filed an Answer to the Complaint on November 26, 2014.

¹ This case was consolidated for hearing with MUP-14-4215 which concerned a holiday issue. The Union withdrew MUP-14-4215 at the start of the second day of hearing on May 3, 2016.

² This case was originally filed by AFSCME, Council 93. Local 3 assumed responsibility for the case as the successor bargaining agent in August, 2015.

1 I conducted two days of hearing on February 26 and May 3, 2016, at
2 which both parties had the opportunity to be heard, to examine witnesses and to
3 introduce evidence. The parties filed post-hearing briefs on or about June 29,
4 2016. Upon review of the entire record, including my observation of the
5 demeanor of the witnesses, I make the following findings of fact and render the
6 following decision.

7 STIPULATED FACTS

- 8 1. The City is a public employer within the meaning of Section 1 of G. L.
9 c. 150E("the Law").
10
11 2. The Union is an employee organization within the meaning of Section
12 1 of the Law.
13
14 3. The parties, Local 3, Firemen and Oilers, Service Employees
15 International Union ("Union") (and its predecessor, AFSCME Council 93)
16 and the City of Lawrence ("City") (collectively "Parties") have bargained
17 collectively for over thirty (30) years.
18
19 4. In late August 2015, the Union was recognized as the exclusive
20 bargaining representative of the City of Lawrence's nine (9) Inspectors. At
21 all relevant times to this matter, prior to recognition, the Inspectors were
22 represented by AFSCME, Council 93, which filed the instant charge.
23
24 5. In 2011, the City installed parking meters on Common, Essex and other
25 streets abutting the Campone Common and extending several blocks
26 through downtown Lawrence.
27
28 6. Prior to January 15, 2014, City Inspectors were provided with a special
29 placard to display on their dashboard that allowed them to park in any
30 metered spot near City Hall free of charge during working hours.
31
32 7. In January, 2014, the City prohibited public parking in all spaces around
33 City Hall for longer than 15 minutes.
34
35 8. On January 15, 2014, the City announced for the first time that it would
36 no longer honor the placards and that Inspectors were personally
37 responsible for paying for parking during work hours.

1 9. The City imposed this change to its parking policy on the Inspectors on or
 2 around January 15, 2014 as a fait accompli.

3
 4 10. Since the City imposed this change, the Inspectors have been required to
 5 pay for parking when parked at a metered parking space at or near City
 6 Hall or to incur the cost of traffic tickets for failing to do so.

7
 8 11. Union inspectors incurred the following parking fines as a result of this
 9 change:

Inspector	Ticket Amount	Penalty	Other	Total
Fleming	\$75	\$0		\$75
Gilbert	\$100	\$200		\$300
Hanson	\$25	\$30		\$55
Santiago	\$25	\$30		\$55
Miller	\$50	\$0		\$50
Hester	\$350	\$535	\$160 ³	\$1,045

10
 11
 12
 13
 14
 15
 16
 17
 18 12. For many years prior to January 15, 2014, there was no dress code for
 19 Inspectors.

20
 21 13. On January 15, 2014, the City announced that all male City employees
 22 were required to wear neckties when working in an "office environment."

23
 24 14. The City imposed this change to its dress code policy immediately
 25 thereafter as a fait accompli.

26
 27 15. Since this policy was imposed, the City has required Inspectors to wear
 28 neckties. As a result, some Inspectors have been required to expend
 29 funds on neckties and/or have had neckties damaged while at work.
 30

31 Findings of Fact

32 Prior to January 15, 2014, while there was no formal dress code for
 33 inspectors, the City expected inspectors to dress in "professional attire," meaning
 34 collared shirts and no jeans. Hester, who was a City building inspector for over
 35 30 years, followed this informal practice, as did the other inspectors, until
 36 January 15, 2014. Hester incurred the expense of purchasing and cleaning

³ This amount reflects the RMV fee for re-registration of Lawrence Hester's (Hester) personal vehicle.

1 ruling in that case. Therefore, I largely repeat the reasoning and conclusion of the
2 Commonwealth Employment Relations Board (CERB) and the Hearing Officer in
3 that action.

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

1 Inc. 240 NLRB 551, 560 (February 5, 1979). See also St. Luke's Hospital, 314
2 NLRB 434, 440 (1994); Public Service Company of New Mexico, 337 NLRB
3 No. 31 (2001) (appropriate wearing apparel at the workplace is a mandatory
4 bargaining subject). The significance of appearance in the workplace
5 underscores the value of dress codes as a mandatory subject of bargaining.
6 See generally, Karl E. Klare, Power/Dressing: Regulation of Employee
7 Appearance, 26 New Eng. L. Rev. 1395, 1426, 1447 (Summer 1992) (noting dress
8 codes as a mandatory subject of bargaining and discussing the collectively
9 bargained dress code as an approach to appearance regulation that
10 enhances autonomy, welfare, and fairness regarding appearance practices in the
11 workplace.)

12 Dress codes are a mandatory subject of bargaining under the Law. Sheriff
13 of Worcester County, 27 MLC at 106; Town of Dracut, supra. The stipulations
14 reflect that, prior to January 15, 2014, the City had not adopted a formal dress
15 code applicable to members of the Union. On January 15, 2014, the Mayor sent
16 a letter to all City employees that required, among other things, that "all males
17 working in an office environment regardless of the department," wear a tie for
18 the purpose of maintaining a professional environment. The mere fact that the
19 Mayor's letter cites the policy reasons for the new standard does not obviate the
20 City's duty to bargain over the change under the Law. City of Lawrence, supra.
21 For the above reasons, I find that the City violated the Law by implementing
22 a dress code without providing the Union with prior notice and an opportunity

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

3 Count II: Parking Policy

4 Section 6 of the Law provides, in relevant part, "[t]hat the employer
5 and the exclusive bargaining representative shall . . . negotiate in good faith
6 with respect to wages, hours, standards of productivity and performance, and
7 any other terms and conditions of employment." An employer's failure to
8 bargain in good faith constitutes a prohibited practice under Section
9 10(a)(5) of the Law. The CERB has consistently held that inherent in the duty
10 to bargain is the obligation of the employer to refrain from changing
11 established terms and conditions of employment without first bargaining with the
12 exclusive representative. Town of North Andover, 1 MLC 1103, 1106, MUP-
13 529 (September 3, 1974); City of Boston, 3 MLC 1450, 1457, MUP-2646
14 (February 4, 1977); Boston School Committee, 4 MLC 1912, 1915, MUP-2611
15 (April 27, 1978). The CERB has specifically determined that free employee
16 parking is a mandatory subject of bargaining. City of Lawrence, 43 MLC at
17 96; Commonwealth of Massachusetts, 27 MLC 11, 13, SUP-4378 (August 24,
18 2000); Commonwealth of Massachusetts, 9 MLC 1634, 1638, SUP-2513
19 (February 9, 1983).

20 Article XXII, Section 7 of the parties' CBA states that "Because the
21 performance of their duties require frequent going in and out of City Hall, the City
22 will...establish a 'sticker system' or equivalent that will enable the inspectors to
23 park in the area of City Hall during the course of their duties." Consistent with

1 this provision, prior to January 15, 2014, Inspectors were provided with parking
2 placards enabling them to use parking spaces in the area of City Hall at no cost
3 during working hours. On January 15, 2014, without giving the Union notice or
4 an opportunity to bargain, the City's Mayor issued a memorandum stating that
5 employees were "expected *not* to park in parking spaces" (emphasis in original),
6 but instead to use "municipal garage or surfaced lots at your own expense." The
7 Mayor further directed employees to "discontinue from using City placards."
8 Because this directive eliminated the Inspectors' ability to park for free on days
9 when they were travelling in the field, I find that the City was required to bargain
10 over this change. Id. The City failed to do so, and therefore, it violated the Law
11 as alleged.

12 CONCLUSION

13 Based on the record and for the reasons explained above, I conclude
14 that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the
15 Law when it unilaterally implemented a dress code and changed a parking
16 policy on January 15, 2014.

17

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

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



BRIAN K. HARRINGTON, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.15, and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within 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 Firemen and Oilers, Local 3/SEIU (Union) 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 Union 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 Union 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, restore all terms of the free parking policy applicable to bargaining unit members and make whole all affected employees.

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).