COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	
TOWN OF NATICK	Case No.: MUP-15-4244
and	Date Issued: February 17, 2017
NATICK PATROL OFFICERS ASSOCIATION	

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

Karis North, Esq.	-	Representing the Town of Natick
Dennis Coyne, Esq.	-	Representing the Natick Patrol Officers Association

HEARING OFFICER'S DECISION

SUMMARY

The issues in this case are whether the Town of Natick (Town) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by failing to bargain in good faith with the Natick Patrol Officers Association (Union or NPOA) by: 1) implementing a Narcan policy in July of 2015 without bargaining to resolution or impasse about the impacts of the policy on bargaining unit members' terms and conditions of employment; and 2) by delaying providing the Narcan-related Fire Department run sheets that the Union requested in

December of 2014 until January of 2016. For the following reasons, I find that the Town violated the Law as alleged.

STATEMENT OF THE CASE

On January 7, 2015, the Union filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR), alleging that the Town had engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10a(a)(1) of the Law. Following an investigation, the DLR issued a Complaint of Prohibited Practice (Complaint) and Partial Dismissal on April 10, 2015. The Complaint alleged that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: 1) deciding to require bargaining unit members to administer Narcan[1] to individuals suffering from an opiate overdose without giving the Union an opportunity to bargain to resolution or impasse over the impact of that decision on employee terms and conditions of employment; and 2) failing to provide the Union copies of all reports and documentation of Narcan administration by the Fire Department. The investigator dismissed the Union's allegations that the Town had an obligation to bargain about the decision to require bargaining unit members to administer Narcan.[2] The Town filed an Answer to the Complaint on April 17, 2015. I conducted a hearing on February 29, March 1, and April 15, 2016, at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The parties filed post-hearing briefs on June 6, 2016. Based on the record, which includes witness testimony, my observation

[1] Narcan is the trade name for Nasal Naloxone, a nasal spray that has the potential to reverse the effects of an opioid/opiate overdose and revive a person.

[2] The Union appealed the investigator's dismissal. The Commonwealth Employment Relations Board (Board) affirmed the dismissal on July 13, 2015, and the Union subsequently appealed the Board's decision to the Appeals Court.

of the witnesses' demeanor, stipulations of fact, and documentary exhibits, and in consideration of the parties' arguments, I make the following findings of fact and render the following opinion.

ADMISSIONS

The Town admitted the following in its April 17, 2015 Answer to the Complaint:

1. By letter dated April 11, 2014, Union Chief Steward Kevin Delehanty (Delehanty) demanded to bargain over the Town's decision to require bargaining unit members to administer the drug Narcan to individuals who suffered an overdose of opiates.

2. By letter dated June 20, 2014, Police Chief James Hicks (Hicks) told Delehanty that the Town took the position that it only needed to bargain over the impact of the new policy, and he invited the Union to impact bargain.

3. Prior to February 1, 2015, the Town did not require bargaining unit members to administer Narcan to individuals suffering from an overdose of opiates.

STIPULATED FACTS

The parties agreed to the following stipulations of fact:[3]

1. The Union is an employee organization within the meaning of Section 1 of the Law. In that capacity, it serves as the exclusive bargaining representative for patrol officers employed by the Town.

2. The Town is an employer within the meaning of Section 1 of the Law.

3. The NPOA demanded to bargain over the implementation of a Narcan policy on April 11, 2014.

4. On April 11, 2014, NPOA Steward Delehanty sent a letter to Chief Hicks.

5. On June 16, 2014, NPOA Vice President Jason Sutherland (Sutherland) sent an email to Hicks.

6. On June 16, 2014, Hicks sent an email to Sutherland in response to Sutherland's email.

[3] I have made minor technical edits to the parties' stipulations for clarity.

7. On June 20, 2014, Chief Hicks sent an email to Delehanty, which included a copy of a draft Narcan policy.

8. The Town and the Union met to discuss Narcan on July 17, 2014.

9. On August 13, 2014, Delehanty sent an email to Hicks.

10. On August 14, 2014, Town attorney Karis North (North) provided certain information, via email (with attached documents), to NPOA attorney Alan McDonald (McDonald).

11. On September 9, 2014, Town Manager Martha White (White) sent a letter to Delehanty.

12. On October 2, 2014, McDonald sent an email to North.

13. The Town and the Union met to discuss Narcan on December 9, 2014.

14. On December 22, 2014, North sent an email to McDonald.

15. On December 22, 2014, White sent Union President Rick Halloran (Halloran) a letter, which informed the Union that it would implement a revised Narcan policy for all Natick Police Officers effective February 1, 2015.

16. Following the NPOA's receipt of White's December 22, 2014 letter, on December 22, 2014 Delehanty sent Hicks an email.

17. Following his receipt of Delehanty's email, Hicks sent Delehanty an email on December 22, 2014.

FACTUAL FINDINGS

Summary of Events July 2014 - January 2016

Town patrol officers (patrol officers or officers) enforce state and local laws and respond to calls for service. The Town assigns one patrol officer to each police cruiser. Prior to July of 2015, patrol officers responded to medical emergencies and were trained in first aid, cardiopulmonary resuscitation (CPR), and defibrillation with automated external defibrillators (AEDs). However, patrol officers did not carry or administer any type of medication – not aspirin, not asthma medication, and not

epinephrine (epi pens). Nor did patrol officers administer any medical procedure with side effects that include a rapid onset of violent behavior and projectile vomiting. Rather, each patrol officer assigned to a cruiser had a medical kit (with bandages, gloves and face shields), an "ambu" bag to assist in CPR breathing, and an AED. In suspected opiate overdose situations, patrol officers checked victims for signs of life and administered CPR by using the ambu bag and the AED, or by performing chest compressions until the medical team from the Town's Fire Department arrived. Fire Department personnel carried and administered Narcan before 2015.

By memorandum to Union President Halloran on April 4, 2014, Chief Hicks notified the Union that he would require officers to carry and administer Nasal Naloxone to suspected opioid overdose victims effective June 1, 2014. Naloxone, marketed as the brand name Narcan, is an opioid antagonist drug that can reverse the central nervous system and respiratory depression that occurs during an opioid/opiate overdose by displacing opioids from receptors in the brain. In basic terms, opioids/opiates repress the urge to breathe, but Narcan knocks opioids off brain receptors, takes away the high, and gives an opioid/opiate overdose victim a chance to breathe. It typically works within 1-3 minutes of administration and lasts 30-90 minutes. Side effects may include violent behavior and projectile vomiting.

By letter from Union Steward Delehanty to Chief Hicks dated April 11, 2014, the Union demanded to bargain about the decision to require officers to carry and administer Narcan and the impacts of that decision. Chief Hicks responded to the Union's demand to bargain by letter dated June 20, 2014. Hicks agreed to bargain only about the impacts of the policy and provided the Union with a draft Narcan policy.

The parties met to bargain about Narcan twice, on July 17, 2014 and December 9, 2014. At the July 17, 2014 meeting, the Union raised health, safety, equipment, training and liability issues. The parties also discussed paramedic and EMT stipends and McDonald requested information regarding those stipends. The parties did not meet in August and September, but emailed proposals. On August 13, 2014, the Union proposed creating a $1000 hazardous duty stipend. The Town rejected this proposal on September 9, 2014, and offered to pay bargaining unit members for Narcan training in accordance with the parties' existing training practices. By email on October 2, 2014, McDonald told North that the Town's proposal was unacceptable, and that the Union was preparing a counterproposal for the next meeting.

At the beginning of the second meeting on December 9, 2014, North reiterated that the Town would not bargain about the decision to implement Narcan. McDonald responded by stating that the Union would not make its decisional proposal as planned. The parties subsequently discussed safety, equipment, training, liability, and stipends, and the Union requested the Fire Department's run sheets regarding Narcan administration. Town Selectman John Connolly (Connolly) told the Union to accept Narcan and "grieve it later."[4] During a heated and chaotic exchange at the table among Connolly, Delehanty, and Sutherland, Delehanty said that the Union would drop its stipend proposal from $1000 to $880. After a caucus, North told the Union that the Town had heard all of the Union's concerns, would be discussing "this" with the Board of Selectmen the following Monday, and would get back to the Union.

[4] Connolly was not on the Town's bargaining team but attended the December 9, 2014 bargaining session.

On December 22, 2014 at 3:30 p.m., North emailed McDonald that the Town was still working on the Union's December 9, 2014 information request. The same day, Town Manager White sent Union President Halloran a letter stating that the Town would train officers to carry Narcan in January of 2015, and implement a revised Narcan policy on February 1, 2015. After Delehanty emailed Hicks that evening protesting the Town's decision to implement the Narcan policy, Hicks said that he thought that the Union could continue negotiations with the Town, although he claimed to have no authority on the matter.

On January 7, 2015, the Union filed the Charge in this case. The Town implemented a policy requiring patrol officers to carry and administer on Narcan July 13, 2015. The parties did not meet to negotiate about Narcan between December of 2014 and July of 2015. In January of 2016, the Town provided the Union with the Fire Department run sheets that the Union initially requested in December of 2014.

January - March 2014 Events

In early 2014, the Commonwealth faced a growing opioid addiction epidemic that also impacted the Town, where a person died from an opiate overdose in January.[5] In response to the epidemic, former Governor Deval Patrick (Patrick) declared a public health emergency on March 27, 2014. On March 28, 2014, the Massachusetts Department of Public Health (DPH) issued a public health advisory regarding opiate misuse and overdose stating, in relevant part:

> [P]ursuant to the Governor's declaration of a public health emergency, DPH is implementing a series of new actions to immediately impact this

[5] The Town's post-hearing brief refers to a March 2014 overdose death, but I find no testimony or documentary evidence on this point in the record. However, this fact is not material to my decision.

problem, including banning a new high-dose opioid, expanding access to [Narcan] for first responders and convening a task force to study and identify additional recovery options.

* * *

- The Governor's recent action steps include using emergency powers to universally permit first responders to carry and administer naloxone (Narcan), which has already led to more than 2,600 overdose reversals through DPH's education and distribution program.

April 2014 Events

On April 4, 2014, Chief Hicks issued a memorandum to Union President Halloran stating, in relevant part:[6]

> The heroin epidemic and opiate overdoses has (sic) become the leading cause of accidental death in Massachusetts. The recent increase in deaths in many towns in the Commonwealth has lead to (sic) Governor Deval Patrick to declare a state of emergency. As part of his declaration he has ordered the Department of Public Health to promulgate immediate authority and training guidelines for all public safety and first responders to administer Nasal Naloxene.[7] The Public Health Council in response has approved an immediate amendment to authorize first responder agencies and their personnel to carry and use, Naloxene.
>
> As a result of this approval and the epidemic our community is facing I am notifying you that I will begin the process to institute the carrying of Nasal Naloxene for Natick Police Officers. This process will include proper training and policy development.
>
> I welcome your suggestions, comments or concerns as this process moves to completion. The anticipated implementation date to allow for training is June 1, 2014.

[6] Chief Hicks also addressed the letter to Superior Officers Association President Robert Dunlop (Dunlop).

[7] The Town uses the term "Naloxene" and "Naloxone" interchangeably in various documents and its post-hearing brief.

By letter to Chief Hicks dated April 11, 2014, Union Steward Delehanty demanded that the Town bargain with the Union about the decision to deploy Narcan and the impacts of that decision, and requested bargaining dates.

June 2014 Events

By June of 2014, the Town had not responded to the Union's April 11, 2014 demand to bargain, nor had it provided any draft Narcan policy to the Union. Nevertheless, Chief Hicks planned to hold a Narcan training session on June 17, 2014. On June 16, 2014, Sutherland overheard Fire Department Deputy Rothman, Officer Lanoue (Lanoue) and Detective Howard (Howard) discussing preparations for a June 2014 Narcan training.[8] The Department normally posts upcoming topics of in-service trainings in advance on an electronic bulletin board for employees to view, but it had not posted Narcan as a June 17, 2014 training topic on the electronic bulletin board. Sutherland immediately emailed Hicks, stating in relevant part:

> We are disappointed with your decision to train and present a policy that we have not bargained. . . .
>
> We have grave concerns about the implementation of a policy which has officers administering medication which is a clear change in working conditions. While we do not argue that Narcan can be a useful tool to combat opiate overdoses, we worry that many aspects of it's (sic) use have not been taken into consideration. We see this as a safety issue on it's (sic) face, regardless of the change in working conditions. We do not have oxygen or epi-pens or other medication yet will now be expected to put ourselves in a positon of disadvantage with a person who may well become combative if and when revived. Persons suffering an overdose are often in company of other narcotics users or family members who may aid the revived subject. This police department is dwarfed by the town's fire department. When there are three firemen and a police officer, the scene is much safer and controllable than when there is a single officer on bended knee.

[8] Officer Lanoue's and Detective Howard's full names are not in the record.

> I would much prefer to have this conversation in the appropriate forum, rather than an email in response to a refusal to bargain an obvious change, and a legitimate safety concern.

Hicks responded to Sutherland by email the same day, stating in relevant part:

> I discussed this with [Union Steward Delehanty] last week.[9] We have several steps to finish before we can think about implementing a policy. In addition to developing the policy, [and] taking care of any bargaining issues we also need to get MOU's done and certification from OEMS and sign off from a Medical Director. For all of these reasons we are [in] no position to implement at this time however the only thing that is in place is the training program. With training already scheduled and some time in it to fill I decided to at least do the training that way when all items are complete we can implement. Everyone in the training will be told very clearly that there is no policy in place that it is still in draft form going through the normal approval process and that the training is just to prepare. Finally when the training is complete there will be no policy enacted awaiting the process. Most important (sic) we do not have any NARCAN. This is still awaiting a grant application approval (sic).

The following day, on June 17, 2014, the Police Department held a training session but did not provide Narcan training.

A few days later, on June 20, 2014, Chief Hicks acknowledged by letter the Union's April 11, 2014 demand to bargain stating, in relevant part:

> While the Town is more than willing to sit down and discuss the Narcan Policy, a draft of which is attached for your information, we believe that implementation of this policy is within my rights as Chief of Police to set law enforcement priorities and to make determinations as to the expenditure of law enforcement resources . . . as such any bargaining over the Narcan policy would be strictly limited to whether there are any impacts of the policy, and if so, how to best manage those impacts within the Department.

Chief Hicks attached to his June 20, 2014 letter an undated three page draft "Policy and Procedure" on the "Administration of Nasal Naloxone" that stated, in relevant part:

[9] The record does not contain any further information about the conversation that Chief Hicks refers to having had with Delehanty in his June 16, 2014 email to Sutherland.

Background

To reduce the number of fatalities, which can result from opiate overdoses, the Natick Police Department will train its officers in the proper pre-hospital administration of nasal naloxone.

* * *

In order to implement this policy the Natick Police Department relies upon the following statutes: [G.L. c. 94C, §§ 7(d)(3), 19(d), 34A(e) and G. L. c. 258, § 13.]

Policy

Naloxone will be deployed in all marked Department Vehicles, along with [the] prisoner booking area, Station Supervisors Office, and Detective Suite for the treatment of drug overdose victims. The Naloxone will be stored in the cruisers (sic) Automatic Emergency Defibrillator (AED) bags, which will be checked in/out of equipment issue at the start and finish of each shift. If a call is received in public safety dispatch reporting a possible drug overdose a patrol unit shall be dispatched along with the Emergency Medical Services (EMS). The goal of the responding officers shall be to provide immediate assistance via the use of Naloxone where appropriate, to provide any treatment commensurate with their training as first responders, to assist other EMS personnel on scene, and to handle any criminal investigations that may arise.

Procedure

When an officer of the Natick Police Department has arrived at the scene of a medical emergency prior to the arrival of EMS, and has made a determination that the patient is suffering from opiate overdose, the responding officer should administer to (sic) milligrams of Naloxone to the patient by way of the nasal passages. One milligram should be administered to each nostril.

The following steps should be taken:

- Officers should use universal precautions.

- Officers should conduct a medical assessment of the patient; determine unresponsiveness, absence of breathing, and/or pulse as prescribed by first responder and CPR training. Officers should also take into account statements made by witnesses and/or family members regarding drug use.

- If the officer makes a determination that there has been an opiate overdose, the Naloxone kit should be utilized.

- The officer shall use the nasal mist adaptor that is pre-attached to the Naxolone to administer a one-milligram intra-nasal dose of Naxolone to each nostril for a complete dosage of two milligrams. Officers should be aware that a rapid reversal of an opiate overdose may cause projectile vomiting by the patient and/or violent behavior.

- The patient should continue to be observed and treated as the situation dictates.

- The treating officer shall inform arriving EMS personnel about the treatment and condition of the patient, and shall not relinquish care of the patient until relieved by a person with a higher level of training.

Reporting

A complete offense report of the event shall be completed by the training officer, or the primary responding officer, prior to the end of their shift.

Equipment and Maintenance

It shall be the (sic) each officer's responsibility to inspect the Naloxone kits stored in the AED case prior to the start of each shift to ensure that the kits are intact. Naloxone kits shall be returned to equipment issue at the end of each shift.

Damaged equipment shall be reported . . . .

* * *

Training

Officers shall receive a standard two-hour training course administered by the MPTC and the Department prior to being allowed to carry and use Naloxone. The Department shall provide refresher training every two years.

July 2014 Events

The parties conducted their first bargaining session on July 17, 2014, in the Town Hall Selectmen's meeting room.[10] Attorney McDonald, Union President Halloran, Union Chief Steward Delehanty, and Union members Christian Rodriguez (Rodriguez) and Chris Salas (Salas) attended for the Union.[11] Attorney North, Town Administrator White, Chief Hicks, and Town Human Resources Director Richard Tranfaglia (Tranfaglia) attended for the Town.[12] McDonald did most of the talking for the Union, and North was the Town's spokesperson. The parties discussed the following issues: decisional and impact bargaining obligations, health, safety, equipment, training, workload,[13] probable cause issues concerning opiate users,[14] liability, and stipends.

[10] I consider the Town's references in its post-hearing brief to a July 7, 2014 meeting to be an inadvertent error.

[11] There is conflicting testimony between Delehanty and Hicks about the Union's meeting attendees. However, I do not find the June 17, 2014 meeting attendees to be a material fact. Both parties' post-hearing briefs reference the same list of Union meeting attendees.

[12] There is conflicting testimony among Delehanty, Hicks and White about the Town's June 17, 2014 meeting attendees, and the parties' briefs differ on this point. I need not resolve this issue because it is not a material fact.

[13] The record contains no testimony about the substance of the July 17, 2014 workload discussion. According to White, the only witness to testify on this point, the Union raised workload issues and she "imagined" that North responded by telling the Union that the Town did not feel like it was going to be an increase in workload. Because it is undisputed that workload issues arose, I credit White on this point. However, I do not credit White's "imagined" claim that the Town responded to workload issues during the July 17, 2014 meeting.

The Union also requested certain information regarding training, liability and stipends.[15] Neither party offered any proposals.[16] The Union used the meeting to gather information.

The July 17, 2014 meeting began with a discussion about whether the Town had a decisional or impact bargaining obligation. The Town reiterated its position that it had only an impact bargaining obligation, as previously stated in Chief Hicks' June 20,

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[14] The Town's post-hearing brief claims that the parties discussed during the July 17, 2014 meeting, "[e]fforts around drug interdiction" and "[p]robable cause issues concerning opiate users/[n]eed to make arrests," and that the Union requested information on these issues. Although White's December 22, 2014 letter to Halloran refers to a July 17, 2014 discussion about "probable cause issues concerning opiate users," there is no record of any witness testifying about "drug interdiction," "arrests," or related information requests. Based on White's December 22, 2014 letter, I find only that the parties discussed "probable cause issues concerning opiate users" at the July 17, 2014 meeting.

[15] There is conflicting testimony about the information that the Union requested on July 17, 2014. White testified in response to a leading question on direct examination that "at some point" during the July 17, 2014 meeting, the Union requested information about the Fire Department's "administration of Narcan and safety challenges that they encountered." In contrast, Delehanty, Sutherland, and McDonald all testified that the Union made this information request during the December meeting, which is consistent with McDonald's meeting notes and North's December 22, 2014 email to McDonald. Hicks also testified initially that the Union made this request during the July 17, 2014 meeting, but then clarified that he was not sure if the Union made it at the July meeting or at December 2014 meeting. Therefore, I do not credit White's testimony on this point.

[16] The Town's post-hearing brief asserts that during the July 17, 2014 meeting, Chief Hicks asked the Union whether it had any comments on the draft policy, and that the Union said that they had none on language itself. However, while the Town raised this in its opening statements at the hearing, there is no witness testimony on this point. Hicks testified only that after he sent the April 14, 2014 memorandum to Halloran indicating that he would begin instituting a Narcan policy, the Union requested to bargain but had "no comments or feedback at that time." There is also no documentary evidence in support of the Town's point. Although Delehanty's August 13, 2014 email to Chief Hicks states that the Union only saw only a few minor word changes for the policy, it does not indicate that the parties discussed the matter at the July 17, 2014 meeting. Therefore, the evidence does not support the Town's assertion.

2014 letter to the Union. The Union said that it disagreed with the Town's position regarding its bargaining obligation.[17] McDonald also raised multiple concerns about the health and safety impacts of the proposed Narcan policy, including projectile vomiting, combative and violent conduct, and officers' exposure to blood borne pathogens, such as hepatitis and AIDS. McDonald also asked about safety equipment.[18] The Town did not respond to the Union's safety concerns at the July 17, 2014 meeting.[19]

The Union also raised training questions. MacDonald also asked the Town for information about how it would train officers, because the Town had not provided any concrete training plans.[20] Hicks told the Union that a training program that "was being developed" and was not in place yet. He also stated that the Fire Department had an

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[17] There is no more detailed information in the record about the decisional/impact bargaining discussion at the July 17, 2014 meeting.

[18] There is not any detailed testimony in the record about the July 17, 2014 safety equipment discussion. The Union's post-hearing brief claims that Delehanty and Hicks testified that McDonald asked the Town "what safety equipment would be in the police vehicles to deal with overdose victims at the scene." However, Delehanty only mentioned once during his testimony that the parties discussed safety equipment at the July 17, 2014 meeting, without providing any details of the conversation. Hicks only testified about equipment issues with respect to the December meeting, not the July meeting. Therefore, I find only that the issue arose at the July 17, 2014 meeting.

[19] There is conflicting testimony on this point. Hicks testified that the Town did not respond to the Union's safety concerns on July 17, 2014, but White testified that the Town did. However, White raised this point only in response to a leading question on direct examination and was unable to provide additional details in response to follow up questions, aside from vague testimony that the Town expressed a willingness to amend the Narcan policy. Nor could White recall the Town representative that she claimed responded to the Union's safety concerns. Therefore, I do not credit White's testimony on this point.

[20] In its brief, the Union states that Delehanty testified that MacDonald asked how long the training took to complete and what the training protocol for Narcan was. However, Delehanty testified only that the Union raised training issues at the July 17, 2014 meeting, without providing any additional details about the discussion.

existing training program, and that he knew of other municipal police training programs in development.

Additionally, McDonald raised concerns about officer liability related to the administration of Narcan and requested information on this issue. The Union told the Town that it was concerned that patrol officers, who had never before administered any type of medication, could face liability if they administered Narcan incorrectly, or at the wrong time. White explained that the Town's liability insurance policy would cover the patrol officers, and that the liability would be no different or greater than what already existed for officers. Hicks added that the Governor's 2014 public health emergency declaration also provided legal immunity for those administering Narcan, up to their training and abilities.

The parties also discussed the firefighters' paramedic and Emergency Medical Technician (EMT) stipends and McDonald asked for documentation of those stipends. White told the Union that she did not think that police training for Narcan rose to the same level as paramedic or EMT training and certification for firefighters because EMTs require 110 hours of training and paramedics require several months of training, and both require biannual recertification.[21] White also pointed out that dive team members require hours of training and constant practice for certification. Finally, North told the Union about a handful of other police departments that were administering Narcan without stipends, such as Quincy, where "the police officers were racing to beat

[21] White testified that the Town gave the Union EMT stipend information before the July 17, 2014 meeting. I do not credit her testimony on this point because it is contrary to all other witness testimony and documentary evidence.

each other to the overdose calls because they were excited about reviving - bringing people back to life."

August 2014 Events

On August 13, 2014, Delehanty told Chief Hicks during the course of a meeting between the two of them on various Police Department issues, that the Union wanted to make "an off the record proposal" regarding Narcan. Hicks told Delehanty to email the proposal to him so that he could forward it to other members of the Town's negotiating team. That evening Delehanty emailed Hicks, stating in relevant part:

> We are both aware of the possible negative implications to police when giving nasal Narcan. Your own policy clearly states that victims may become violent towards officers or projectile vomit after being given nasal Narcan. Even though the Governor has indemnified officers for giving nasal Narcan officers may still have to endure going through years of litigation. There is increased risk to police officers when giving this drug plain and simple.
>
> Detective Arena came to me because he said that Rick Jennett approached him and said he is surprised we are bargaining and we should just get issued the Narcan because we could save someone. Well, my answer to that is the Fire Department currently gets stipends for being an EMT and/or Paramedic. They also get a stipend for being a member of the dive team. Should they give up their stipends because those activities save lives as well. (sic) It is your job and the job of Martha White to make them aware of the inher[ent] dangers of giving this medication. I don't think they understand what position they are putting us in.
>
> Enough venting here is our offer.
>
> The Town takes the $880.00 it currently pays us for community service. They add $120.00 per officer (which should be available this year because of the excess of community service monies not paid out). Each officer gets a yearly stipend of $1000.00. We will call the stipend a Hazardous Duty Stipend. We will no longer get the Community Service Stipend. We see only a few minor word changes in your policy that we believe need to be changed. If the Town agrees to those terms we can issue Nasal Narcan as soon as officers are trained.
>
> Please let us know how the Town responds.

The $880 that Delehanty refers to in the Union's August 13, 2014 proposal is a community service incentive stipend available to patrol officers for 8 hours of community service.

By email dated August 14, 2014, North followed up with McDonald regarding the July 17, 2014 meeting and the Union's information requests by providing the following documents: 1) the Town Fire Department's Narcan training power point presentation; 2) a copy of M.G.L. c. 94C, Controlled Substances Act; 3) an article entitled "Liability Issues and Narcan" by Attorney John M. Collins (Collins); and 4) links to the Department of Public Health (DPH) "Minimum Standards for First Responder Training in First Aid, Epinephrine Auto-Injector and Naloxone Use" and "Optional Naloxone Program for First Responder Agencies: A How-To." North also reiterated to McDonald in her email that the Quincy Police Department did not pay officers stipends or incentives for Narcan training or administration.

September – October 2014 Events

By letter dated September 9, 2014, Town Manager White responded to the Union's initial proposal for a $1000 hazardous duty stipend, stating in relevant part:

> I am in receipt of your email of August 14, 2014, to Chief Hicks, outlining the NPOA's proposal on Narcan. We appreciate your comments, and the willingness to make a prompt proposal.
>
> However, we do not agree that the duties and responsibilities placed on NPOA Officers by the Narcan Policy is (sic) equivalent to, or should be paid at any similar level to EMT or Paramedic certification, or even Dive-Rescue certification. As you are well aware, certification for an EMT requires a minimum of 110 hours of classroom and field study, and the Paramedic certification can take an additional 6 months of full-time study. Even the Dive-Rescue certification requires multiple hours of classroom study and training dives. All of these certifications require regular recertification and many further hours of study and training. In contrast,

> training for the nasal administration of Narcan is one hour of classroom training.
>
> Further, we believe that NPOA Officers are already well-trained and well-equipped to manage combative suspects, or other combative persons. There is no evidence that the administration of Narcan to an overdose victim will create a situation that creates any additional risk for NPOA Officers, beyond the risk already faced on the job.
>
> Therefore, our counterproposal is as follows: The Town will provide the Narcan training to NPOA Officers, and further annual re-training, as compensated on-duty time, which may be included in hours worked towards contract and/or FLSA overtime.
>
> Please let us know if you are willing to accept this counterproposal, or if you wish to discuss it further at a subsequent bargaining session.

By email to North dated October 2, 2014, McDonald stated that the Town's September 9, 2014 proposal was unacceptable, and that the Union was preparing a counterproposal for the next meeting. McDonald also requested future meeting dates.

December 2014 Events

On December 9, 2014, the parties held their second meeting regarding Narcan. Again the parties met in the Selectmen's room at the Town Hall. Nine days before the December 9 meeting, the Fire and Police Departments had responded to an emergency call where a victim revived with Narcan spent several minutes violently vomiting throughout the apartment at the scene.

At the December 9, 2014 meeting, McDonald, Halloran, Sutherland, Delehanty, Salas, and Rodriguez represented the Union.[22] North, White, Hicks, and Selectman Connolly represented the Town.[23] Connolly was not part of the Town's regular negotiation team, and Selectmen do not normally attend mid-term bargaining sessions. However, the Union knew Connolly to be passionate about the Narcan issue. McDonald and Hicks took notes during the meeting, which was about 45 minutes to an hour long.

After the parties discussed an unrelated matter, North summarized the status of the Narcan negotiations.[24] She stated that: the parties had last met on July 17, 2014; they had competing perspectives on the duty to bargain and had reserved their rights;

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[22] The record contains conflicting information about the December 9, 2014 meeting attendees. McDonald and Delehanty testified that McDonald, Halloran, Sutherland, Delehanty, Salas and Rodriguez attended for the Union, and McDonald's notes are consistent with this testimony. Hicks testified that McDonald, Delehanty, Sutherland and Rodriguez attended for the Union, but omitted Halloran and Salas. White testified that McDonald, Delehanty, Sutherland, and "several of the other officers" attended for the Union. Sutherland testified that he attended the December 9, 2014 meeting, but did not comment on other attendees. The Town's brief omits Halloran, but the Union's brief includes him. Based on McDonald's meeting notes, I find that Halloran attended the December 9, 2016 meeting.

[23] McDonald, Delehanty and Hicks specifically testified that Tranfaglia attended the December 9, 2014 for the Town. However their testimony conflicts with McDonald's meeting notes, which do not list Tranfaglia as a meeting attendee. White could not remember if Tranfaglia was there, Sutherland only testified about his own attendance, and the parties' briefs conflict on this point. Based on McDonald's meeting notes, I find that Tranfaglia did not attend the December 9, 2014 meeting.

[24] There is conflicting testimony about whether North or McDonald summarized the status of negotiations. Delehanty and Sutherland testified that McDonald recapped the Union's August proposal and the Town's September rejection. However, McDonald's notes indicate that it was North who began the Narcan discussion on December 9 by reviewing the parties' proposals, a point that the Union does not dispute it its brief. Therefore, based on McDonald's notes I find that North summarized the status of negotiations.

the Union's August 13, 2014 proposal provided for a $1,000 stipend; and the Town's September 9, 2014 proposal provided for training time or overtime pay. McDonald asked whether the Town was still refusing to bargain over the decision to deploy Narcan, and North confirmed that position.[25] The parties then caucused.

There is conflicting testimony among McDonald, Delehanty, Hicks, and White, about the nature and timing of statements that McDonald made to the Town after the first caucus on Narcan. McDonald testified on direct examination that after North indicated that the Town would not bargain about the decision, he said that the Union was reserving its rights over that refusal, and that although the Union had intended to make a proposal on the decisional issue, it would not in light of the Town's continuing refusal to bargain about the decision. McDonald's meeting notes, which he testified about extensively on direct examination, are consistent with his testimony. Delehanty also denied on direct examination that the Union said anything to the Town about refusing to make an impact bargaining proposal. Sutherland did not testify on this point.

According to Hicks, McDonald asked after a caucus whether the Town still believed it had an impact, not a decisional bargaining obligation, which North confirmed. Hicks testified that McDonald then said that the Union had nothing further to offer. On cross examination, Hicks said that he did not "recall" McDonald saying anything as "specific" as not having a decisional or impact bargaining offer. Hicks testified on rebuttal that the attorneys discussed the decisional/impact issue at the end

[25] McDonald's notes indicate that North said, "no we are not" after McDonald asked whether the Town was still refusing to bargain over the decision. McDonald clarified during his testimony that his notes were incorrect on that point and that the Town still refused to bargain about the decision, which is consistent with Hicks' testimony and undisputed by the Town in its brief.

of the December 9, 2014 meeting, and that, after the Town said it was not a decisional bargaining issue, McDonald "said the Union at that point had nothing to bring forward at that time," and the meeting ended. Hicks also mentioned for the first time during his rebuttal testimony that he had December 9, 2014 meeting notes on salient points. Hicks' notes include a list of about six issues, the fourth of which states: "Decisional Bargaining?? Where now??" However, Hicks did not otherwise testify about his notes, which are sparse and not self-explanatory.

White stated six times in her testimony on direct examination that that she could not recall certain aspects of the December 9, 2014 meeting, but claimed that the Union "specifically declined" to make a counteroffer at the December 9, 2014 meeting. On cross examination, she testified that she "did not remember" McDonald saying that the Union had a decisional proposal to make but could not make it because of the Town's position. In contrast to Hicks, White testified that McDonald specifically declined to make any counteroffer "pretty early on in the meeting."

I credit McDonald's testimony for the following reasons. First, Hicks testified only that he did not recall McDonald distinguishing decisional and impact bargaining offers. He did not deny that McDonald said that the Union had intended to make a proposal on the decisional issue, but in light of the Town's continuing refusal to bargain about the decision, would not. Second, White was unable to recall six other aspects of the December 9, 2014 meeting before testifying that she did not recall McDonald saying that the Union would not offer its decisional proposal. Finally, McDonald's meeting notes, which he testified about extensively on direct examination, are consistent with his testimony. Although Hicks also provided his December 9, 2014 meeting notes, his

notes are sparse and not self-explanatory. Accordingly, I find that McDonald told the Town at the beginning of the December 9, 2014 Narcan discussion that the Union was reserving its rights over the Town's refusal to bargain about the decision, and that although the Union had intended to make a proposal on the decisional issue, it would not do so in light of the Town's continuing refusal to bargain about the decision.

After North acknowledged the Union's position by stating, "noted," the parties discussed the following topics: the Union's concerns with respect to safety, training and liability issues; stipends; and Fire Department run sheets. McDonald reiterated the Union's safety concerns about overdose victims projectile vomiting. Hicks said that the Town could provide universal precautions, including gloves, masks, and gowns. The Union also noted that the firefighters respond to calls in groups of three, whereas officers would be required to respond alone. The Union asked for two officers to respond in Narcan situations, and Hicks said that the policy could be rewritten to require two officers be dispatched. With respect to the Union's questions about training, Hicks said that a municipal police training committee had approved a training program, and that he had two officers to train patrol officers. In terms of liability issues, White explained the Town's liability coverage in general and told the Union that, "as long as Narcan is administered properly by the officer then the officer . . . if sued would be represented by the Town." Hicks also told the Union that the good Samaritan law would cover officers and that they would not be liable if they responded to the best of their abilities and training.

Sutherland also raised the stipend issue again. He explained to the Town that police dispatchers negotiated a $600 stipend for the implementation of the emergency

medical dispatch (EMD) system and he highlighted the similarities and differences between implementing the EMD system and a Narcan policy. He said that with the EMD system, dispatchers went from answering a 911 call and dispatching an ambulance, to answering a 911 call and reading medical information from a card while dispatching an ambulance, whereas, the patrol officers would go from not being able to administer an aspirin or epi pen, to administering a controlled substance into a patient's nose. The Union argued to the Town that it paid dispatchers $600 for doing less medically than the patrol officers would be doing with Narcan.[26] North explained that the Town did not consider carrying Narcan an added responsibility for officers, but rather a new tool to aid officers in serving the community.[27]

After the EMD stipend discussion, McDonald asked for documents with data from the fire personnel's Narcan interventions, including any incident reports created since the Fire Department began administering Narcan. North responded that she did not have any, but would ask for them. Sutherland, McDonald and Hicks then had a conversation regarding the exact wording of the document request and determined that

[26] Delehanty testified that McDonald asked for information on the EMD stipend at the December 9, 2014 meeting. I do not credit him on this point because his assertion is unsupported by any other witness or documentary evidence.

[27] The Town's post-hearing brief states that the Town would not agree to eliminate the community service stipend to create the Union's proposed hazardous duty stipend and that "[i]t was made clear that the Town's position was that the [community service stipend] was an important element of police work." Hicks testified that he considers the community service stipend to be of value because it allows the Department to build community relationships, but he also testified that he "can't be sure if [he] said it at the bargaining table." Therefore, the evidence does not support the Town's assertion.

McDonald was looking for "run sheets."[28] Among other things, run sheets document instances where the Fire Department administers Narcan. The Union requested the information to get an accurate understanding of how many times people had projectile vomiting, or became violent, to determine whether the data supported their safety and workload concerns, and alter their proposals if needed. Chief Hicks acknowledged the Union's request for Fire Department run sheets.

After the parties discussed the EMD issue and McDonald clarified the Fire Department documents that the Union sought, Connolly asked if he could speak. Connolly told the Union that asking for a $1000 stipend for administering Narcan was unreasonable. Delehanty explained to Connolly that the Union proposed taking the community service stipend that was already in the contract and converting it into a hazardous duty stipend, and that only $120 of the proposal was new money. Connolly said "I'm begging you to accept Narcan and grieve it down the road," that he knew a dozen people that had overdosed on narcotics, and that Narcan was a hot topic. Connolly demanded that patrol officers start carrying Narcan and using it on victims, and bargain later.

[28] The Town concedes in its brief that the Union asked for information about overdose victims' responses to Narcan, but claims that "the testimony demonstrates that it is not entirely clear in what format the information was requested or whether the NPOA and the Town had the same understanding of the format requested." This assertion is inaccurate. McDonald testified that he asked for Fire Department "incident reports on each occasion that a firefighter administered Narcan." Likewise, Delehanty testified that McDonald requested "run cards or incident reports from the Fire Department [on] any overdose calls." Additionally, Hicks testified unequivocally on direct examination that "[t]hey were looking for information on Fire Department calls. We explained they call them their run sheets." Therefore, I reject the Town's assertion that the Union's December 9, 2014 information request was unclear.

Delehanty told Connolly that was not the way it worked, that there was a process for these things, and that the meeting was a negotiation about Narcan. Delehanty further explained to Connolly that Narcan was a new, hazardous duty, that officers were concerned about bringing hepatitis, HIV, and other blood borne pathogens to their homes, to their families, and to children for whom they provide, and that they were at the meeting to negate those concerns and bargain. Connolly became upset and the discussion became heated and disorganized. Delehanty then said "make it the $880 with no additional money."[29] He explained that the Union would take the $880 stipend and move it from community service to hazardous duty for a no cost settlement for the Town.[30] There continued to be "back and forth" discussion between everyone at the table, but the Town did not respond to the Union's reduced stipend proposal. Connolly asked, "what do I tell Mrs. Smith when her son overdoses and the

[29] The Union negotiating team had discussed making this offer during the previous caucus.

[30] There is conflicting testimony in the record on this point. Delehanty, Sutherland, and McDonald testified that the Delehanty made this proposal during the exchange with Connolly. In contrast, White testified on direct examination that she "specifically" did not recall Delehanty making an offer to reduce the stipend from $1000 to $880. Likewise, Hicks testified on cross examination that he did not recall Delehanty dropping the Union's $1000 stipend offer to $880 and asserted on redirect examination that he would typically remember something like that. However, when asked to clarify on cross examination whether it never happened, or he had no memory of it happening, Hicks testified merely that he had no memory of it happening. I do not credit White or Hicks on this point for two reasons. First, neither denied that Delehanty made the reduced offer, only that they could not remember him doing so. Second, White's testimony about the December 9, 2014 meeting is replete with long pauses and her inability to recall numerous aspects of the meeting. When asked at the beginning of her testimony what was discussed at the December 9, 2014 meeting, she stated, "it is amazing how quickly these things leave our heads."

police could have saved him, and didn't?"[31] Connolly said "we are talking about saving lives, that is all we are talking about."

Sutherland then again reiterated to Connolly the drastic change that Union considered Narcan to be. He told Connolly that officers "don't have a problem carrying Narcan, we don't have a problem saving lives, we've been doing it for years" and that, "if this was just about saving lives and was not about a change in working conditions and how that affects our contract, then we would all be working for free. We are compensated with time off and with money and that there is really nothing else that we can pass back and forth across the table." White pointed out that the EMD stipend was only for existing employees and not for new hires.[32] North, having asked Connolly several times to stop speaking, requested a caucus. Connolly did not want to caucus and left the meeting.

After the caucus, North stated that the Town had heard all of the Union's concerns, and that "we have a meeting with the Board of Selectmen on Monday. We'll discuss this with them and get back to you." Delehanty asked whether the Selectmen's meeting was an open session, and North clarified that the meeting would be an executive session. The Town made no proposals during the meeting. Neither party stated that they were at impasse or deadlocked.

[31] Mrs. Smith is a fictional person to whom Connolly routinely refers.

[32] There is conflicting information in the record about when White made this statement. Sutherland testified that she made it after he explained the EMD stipend. However, McDonald's notes indicate that White made the statement after Sutherland had a conversation with Connolly. I credit McDonald's notes.

December 22, 2014 Emails

After the December 9, 2014 meeting, Hicks learned that the run sheets from the Fire Department's fire apparatus were different from the Fire Department's medical run sheets which were reported to a third-party ambulance company. Thus, Hicks asked Fire Chief Rick White (Chief White) whether Deputy Rothman, who had been involved with the Fire Department's Narcan program, could give the Police Department "an idea [of Narcan issues that had arisen in the past] based on his experience." Chief White responded to Chief Hicks in two emails, which Hicks forwarded to North, who then sent them onto McDonald.

By email dated December 22, 2014, North wrote to McDonald: "per your request regarding the NFD use of Narcan, please see the information from Chief White, below." Embedded in North's email to McDonald were two December 22, 2014 emails from Fire Chief White to Chief Hicks.[33] At 10:31 a.m., Chief White wrote:

> A/Deputy Rothman is still working on this but in a preliminary search he found possibly one time that an Engine Company administered Narcan, all the rest were by the Ambulance Crew. This process is difficult and time consuming.[34] He has not found any indication at this time of projectile vomiting or violence after administration.

In the second email, at 10:55 a.m., Chief White stated to Hicks, "Just a little more information, we have been administering Narcan on (sic) this dept. for over 13 years and A/Deputy Rothman cannot recall a single time when there was projectile vomiting

[33] The record does not contain the email that Hicks sent to Fire Chief White requesting the information.

[34] The record contains no further details on this point.

or violence after administration."[35] Although the emails that North forwarded to the Union indicated that the Town had conducted only a "preliminary search" in response to the Union's December 9, 2014 information request and that "[t]his process is difficult and time consuming," the Town did not tell the Union at any point in time before the 2016 hearing in this case that a third party ambulance company, not the Town had the run sheets, and that Chief Hicks was experiencing difficulty getting the medical run sheets from the ambulance company.

Also on December 22, 2014, the same day that North provided a preliminary response to the Union's December 9, 2014 request for Fire Department run sheets and indicated that Deputy Rothman was still working on the information request, Town Manager White issued a letter to Union President Halloran announcing implementation of a newly revised Narcan policy, stating, in relevant part:

> This is to advise the [Union] that on February 1, 2015 the Town of Natick will implement a revised Narcan Policy (with revisions discussed more fully below) for all Natick police officers. Required training to carry Narcan will be implemented in January 2015. The revised Narcan Policy is attached to this letter.
>
> It is the Town's position that implementation of this Policy is within the rights of Chief of Police to set law enforcement priorities and to make determinations as to the expenditure of law enforcement resources, as set forth in the Management Rights clauses of the applicable bargaining agreements, and as set forth in various court decisions and decisions of the Labor Relations Commission. See Boston v. Boston Police Superior Officer's Federation, 29 Mass. App. Ct. 907, 908 (1990). As such, the Town's obligation to bargain over the Narcan Policy is limited to the impacts of the policy, and how to best manage any such impacts within the Department. We understand the Association disagrees with this position; however, the parties have been meeting to discuss implementation of the Narcan Policy, each reserving their rights on this issue.

[35] It is unclear from the record whether Rothman is referring to the Engine Company, the Ambulance Crew, or both.

The parties met and discussed these potential impacts in July 17, 2014. The NPOA presented a list of concerns including: potential liability for using Narcan, the potential hazardous impacts to Officers deploying Narcan, the wisdom of the policy decision to make Narcan implementation a priority for the Commonwealth, the probable cause issue concerning opiate users, and the scope and depth of the proposed Narcan training. The Town collected and submitted to the NPOA's counsel a series of documents addressing each of those issues, including the Narcan training power-point used for the Natick Fire Department (and proposed to be used for the Natick Police Department), a copy of Chapter 94C, which provides for immunity from prosecution for those seeking medical assistance from an overdose, a legal analysis of liability for using Narcan, links to the DPH regulations and policy guidance on Narcan, and information from the Quincy Police Department, which successfully implemented a similar Narcan policy.

On August 13, 2014, the NPOA proposed that the Town take the $880.00 it currently pays officers for community service, add $120.00 per officer, and convert that payment into a yearly "Hazardous Duty Stipend" of $1000.00. The NPOA also noted that it saw "only a few minor word changes" in the draft policy. On September 9, 2014, the Town made a written counterproposal which stated: "the Town will provide the Narcan training to NPOA Officers, and further annual re-training, as compensated on-duty time, which may be included in hours worked towards contract and/or FLSA overtime." No additional compensation was offered.

The parties met again on December 9, 2014. The NPOA stated it would not make a counterproposal to the Town's last proposal, due to the fact that the Town continued to hold its position that it was only obligated to engage in impact bargaining. The NPOA did present its concerns with the Narcan Policy and focused on two issues which it had discussed in the previous session: potential impacts to the officers from reviving overdose victims, including managing combative individuals, and the possible impacts from being exposed to projectile vomiting; and the potential legal liability to officers when deploying Narcan.

The Town has listened to the concerns of its officers at the last meeting, and has taken further steps to address these specific impacts. To address the potential issues from exposure, the Narcan Policy has been revised to include a requirement that officers deploying Narcan wear face shields and gloves, and those items will be part of the Narcan kit. In order to address the issue of potentially combative individuals, the Narcan Policy is being revised to suggest that a second officer be dispatched on overdose calls, if possible.

> With respect to the potential liability issue, the Town reiterates that an officer's actions carrying out his or her responsibilities in the line of duty are covered under the Mass Tort Claims Act, and by the Town's insurance policy. Liability claims are directed at the municipality, not the individual officer, so long as the officer was "acting within the scope of his office or employment." Liability is also capped at $100,000. The Town believes that there is nothing inherently different about an officer's deployment of Narcan that would expose he or she (sic) to different or additional liability, when compared to the current use of other public safety tools (such as the AED), or even weapons issued to officers.
>
> After holding these several bargaining sessions, reviewing the exchanged proposals, and considering its obligations to its officers and to protect the health and safety of the citizens of Natick, the Town has determined that it can mitigate each of the concerns presented by the officers by the included policy revisions and because of the legal status of potential liability claims under the Mass. Tort Claims Act. Therefore, the Town will implement the Narcan Policy effective February 1, 2015.

Attached to White's December 22, 2014 letter was a "Police Department Policy and Procedure on the Administration of Nasal Naloxone" with an effective date of December 19, 2014, that the Town had not previously shared with the Union. The December 19, 2014 Narcan policy changed the language in the June 2014 draft policy as follows and stated, in relevant part:[36]

> **Policy**
>
> Naloxone will be deployed in all marked Department vehicles, along with prisoner booking areas, Station supervisors Office, and Detective Suite for the treatment of drug overdose victims. The Naloxone will be stored in the cruisers (sic) Automatic Emergency Defibrillator (AED) bags *along with one-way valve CPR Microshield Clear Mouth Barriers and other protective devices, which will be checked in/out of equipment issue at the start and finish of each shift and recorded by way of the cruiser checklist.* If a call is received in the Public Safety dispatch reporting a possible drug overdose a patrol unit shall be dispatched along with the Emergency Medical Services (EMS). The goal of the responding officers shall be to provide immediate assistance via the use of Naloxone where appropriate, to provide any treatment commensurate with their training as first

[36] The new language added to the Narcan policy in December of 2014 is italicized.

responders, to assist other EMS personnel on scene, and to handle any criminal investigations that may arise.

Procedure

For all known responses relating to an opiate overdose two (2) officers shall, when possible, be dispatched. When an officer(s) have arrived at the scene of a medical emergency prior to the arrival of EMS, and has made a determination that the patient is suffering from an opiate overdose, the responding officer(s) should administer one milligram per nostril of Naloxone if the patient appears older than twelve (12) years of age and 1/2 milligram per nostril if the patient appears younger than twelve (12).

The following steps should be taken:

- Officers should use universal precautions and alert EMS.
- *Officers should evaluate for scene safety.*
- Officers should conduct a medical assessment of the patient; determine unresponsiveness, absence of breathing, and/or pulse as prescribed by first responder and CPR training. *Officers should also look for environmental clues* and take into account statements made by witnesses and/or family members regarding drug use.
- If the officer makes a determination that there has been an opiate overdose *and the patient has no pulse, CPR should be completed for two minutes before utilizing the Naloxone kit.*
- *If the officer determines the patient has a pulse, but still suspects an opiate overdose, and the patient is unresponsive and inadequately breathing the officer shall:*
    - *Assess the patient.*
    - *Suspect opioid overdose based upon signs and symptoms and environmental clues.*
    - *Administer Naloxone.*
    - *Conduct rescue breathing with one (1) breath every five (5) seconds if breathing is still low or absent.*
    - *If after 3-5 minutes the patient is still unresponsive with slow or no breathing, the officer shall administer another dose of Naloxone.*
- The patient should continue to be observed and treated as the situation dictates. *Officers should be aware that a rapid reversal of an opiate overdose may cause projectile vomiting by the patient and/or violent behavior.*
- The treating officer shall inform arriving EMS personnel about the treatment and condition of the patient, and shall not relinquish care of the patient until relieved by a person with a higher level of training.

- *If a patient refuses care and transport after Naloxone is administered the treating officer should:*
  - *Inform the patient of the risk of re- overdosing.*
  - *Inform the patient that Naloxone is only temporary.*
  - *If the patient still refuses; "THINK" of mechanism of Injury or Illness.*
  - *If the treating officer believes the patient does not have a sound mind and clear understanding of the circumstances (remember they just overdosed) they cannot refuse treatment.*

* * *

How does a person respond to Naloxone?

Scenarios:

- *Gradually becomes responsive and starts breathing on own within 3-5 minutes, or*
- *Immediately becomes responsive and starts breathing and is angry, or*
- *Starts breathing within 3-5 minutes, but remains unresponsive, or*
- *Does not respond to first dose and naloxone must be repeated in 3-5 minutes[.]*

Equipment and Maintenance

It shall be each officer's responsibility to inspect the Naloxone kits stored in the AED case prior to the start of each shift to ensure that the kits are intact. The AED with Naloxone kits shall be returned to the medical equipment storage area at the end of each shift.

Damaged equipment shall be reported to the Station Supervisor immediately upon being discovered. The Station Supervisor will record this information in IMC by way of a log note, *and the officer in the cruiser checklist.*

The Department's Medical Services Liaison Officers will maintain a written inventory documenting the quantities and expirations of Naloxone replacement supplies, and a log documenting the issuance of replacement kits.

Replacement

Treating officers shall immediately seek replacement of Naloxone kits that have been used during the course of a shift by contacting on-duty EMS personnel at the Natick Fire Department.

> **Training**
>
> Officers shall receive a standard two-hour training course administered by the MPTC and the Department prior to being allowed to carry and use Naloxone. The Department shall provide refresher training every two years.

Chief Hicks had not signed the December 19, 2014 Narcan policy that White sent to the Union.

After Halloran gave Delehanty White's December 22, 2014 letter, Delehanty emailed Hicks, stating, in relevant part, "thank you and Martha for issuing this policy without completing our bargaining sessions . . . two days before Christmas." Hicks responded by email to Delehanty a few hours later, stating in relevant part:

> I do feel that I have to point out that any ability to negotiate or make any decisions as to this policy was taken out of my hands when the union brought in legal counsel. As you know once that is done all decision making, negotiations and settlements fall under the authority of the Board of Selectmen and/or the Town Administrator unless they give me the authority to do so, which they did not. Given that I am unable to discuss the legal aspects of this process I clarify some points. There has been no policy issued as of yet. As the letter states this notice is to the union that the policy will be implemented February 1st (not 2 days before Christmas as you state). My understanding is that this notification gives the union the option to continue negotiations if it wishes. Again this is an issue for the legal people but as of today no policy has been issued by me.

The Union did not request any further bargaining sessions.

2015 Events

For reasons that are not included in the hearing record, the Town delayed implementing the revised Narcan policy from February 1, 2015 to July 13, 2015. The Town changed the effective date on the policy from December 19, 2014 to July 13, 2015, and Chief Hicks signed the July 13, 2015 policy. The Town also postponed Narcan training from January of 2015 to June of 2015, when it provided a one hour

class as part of the in-service training program for patrol officers and paid them in accordance with the Agreement. The Town did not communicate or negotiate with the Union about the Narcan policy after it decided to delay implementation.

Narcan Administration

Pursuant to the July 13, 2015 Narcan policy, patrol officers carry a Narcan kit in a small box that is stored within the first aid kit, which has always had latex gloves and face shields. Because Narcan can freeze when left in the cold, patrol officers carry the Narcan to and from their cruisers at beginning and end of each shift. Narcan also has an expiration date to be monitored. The Narcan kit has three parts: a nasal adaptor, applicator, and Narcan prefilled syringe. Each syringe contains 2ml of Narcan. To administer Narcan to a victim, the officer removes caps from the ends of the syringe, twists the nasal atomizer onto the tip of the syringe, removes a cap from the Narcan, and twists the Narcan on the other side of the syringe. After assembling the applicator and the vial of Narcan, the officer applies a dosage setting, places the small rubber gasket on the applicator into the victim's nose, and using rapid, steady pressure, pushes the syringe on the back of the vial to eject half of the Narcan into one nostril and half into the other nostril of a victim. Adults receive 1 ml per nostril and children under 12 receive ½ ml per nostril.

When responding to a medical call, a patrol officer takes the first aid kit with the Narcan and the AED to the scene and asks witnesses about the victim's medical history and whether they have a history of narcotics use to determine whether the victim is having an opioid overdose. Because Narcan is not effective against respiratory depression due to non-opioid drugs, officers must distinguish opioid

overdoses from overdoses caused by other street drugs. Officers must also differentiate between victims who have overdosed and those who are experiencing a significant "high." In suspected overdose situations, officers follow different procedures in different circumstances.[37] If the officer is alone and the victim has no pulse, then:

1. The officer checks victim for a pulse;
2. If victim has no pulse, then the officer initiates CPR;
3. The officer does 2 minutes of CPR, 5 cycles;
4. If the officer suspects an opioid overdose, the officer administers Narcan;
5. The officer applies defibrillator and follows defibrillator prompts;
6. The officer continues CPR.

In that scenario, if the victim has no pulse but there are two officers at the scene, then one of the officers administers Narcan during the first 5 cycles of CPR.

In other situations where the victim has a pulse, but is unresponsive and has inadequate breathing, then:

1. The officer assesses the patient (patient is unresponsive, pulse is present, respiration is less than 8 breaths per minute or absent);
2. The officer suspects an opioid overdose based upon signs and symptoms and environmental clues;
3. The officer administers Narcan;
4. The officer conducts rescue breathing;
5. If there is no change after 3-5 minutes, then the officer repeats Narcan administration and continues rescue breathing until help arrives.

If a victim has no immediate reaction to Narcan, officers administer a second dose.[38] Patrol officers treat victims until the Fire Department medical team arrives. Officers get as close to victims to administer Narcan as they do to give CPR.

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[37] I have summarized the scenarios and procedures in the "Municipal Police Training Committee First Responder Overdose Response Training" power point presentation which are consistent with those in the Town's July 13, 2015 policy.

[38] Patrol officers have found that two vials of Narcan are often insufficient, and once in 2016 used 6 vials on a victim.

Contraindications of Narcan include known hypersensitivity to the medication, severe head/facial trauma, and nasal trauma. Narcan must be used with caution in narcotic-dependent people and newborn babies of narcotic-addicted mothers. Narcan cannot cause an overdose, but it can cause withdrawal symptoms including nausea/vomiting, disorientation and combativeness. It typically works within 1-3 minutes of administration with a peak effect in 12-20 minutes, and it lasts 30-90 minutes. However, victims may also react to Narcan within seconds. Some victims "pop-up" in a fighting stance within 10-30 seconds of regaining consciousness. Other victims react with projectile vomiting. In one instance where a Town police officer revived a victim with Narcan, the victim "became extremely frustrated and uncooperative and as a result . . . [had to be] handcuffed to the bed. Once at the hospital, [the victim] was uncooperative with doctors and nurses." In another incident, Delehanty observed the victim regain consciousness, stand up, and vomit all over the bathroom.

January 2016 Events

In January of 2016, after the parties' pre-hearing conference and one month before the hearing in this case, the Town provided the Union with the Narcan-related Fire Department run sheets that the Union requested in December of 2014.

Opinion

For the following reasons I find that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by: 1) implementing a Narcan policy in July of 2015 without bargaining to resolution or impasse about the impacts of the policy on bargaining unit members' terms and conditions of employment; and 2) by delaying

providing the Narcan-related Fire Department run sheets that the Union requested in December of 2014 until January of 2016.

Duty to Bargain

A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first providing its employees' exclusive bargaining representative notice and an opportunity to bargain to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983). Here, the Town's decisional bargaining obligation is not at issue. The Board, in its July 13, 2015 review upholding the investigator's dismissal of the Town's alleged decisional bargaining obligations with respect to Narcan, stated, in relevant part that "the Town's decision to require police officers to administer Narcan to combat overdoses as first responders was a level of services decision regarding the deployment of public safety personnel made in furtherance of [a] public health policy."

A public employer's prerogative to make certain types of core managerial decisions without prior bargaining does not relieve the employer of all attendant bargaining obligations. City of Boston, 31 MLC 25, 31, MUP-1758 (August 2, 2004). An employer may still be required to bargain with the employee representative over the manner in which to implement a decision, as well as the impacts of a decision on mandatory subjects of bargaining, before implementing a decision. Id.; School Committee of Newton, 388 Mass. at 563. For instance, the Board has held that the

impacts of the implementation of a defibrillation program is a mandatory subject of bargaining. Town of Arlington, 21 MLC 1125, MUP-8966 (August 1, 1994); Town of Somerset, 31 MLC 47, MUP-01-2957 (August 12, 2004). However, an employer has no impact bargaining obligation where there is no evidence that a decision impacts bargaining unit members' terms and conditions of employment. City of Boston, 32 MLC 4, 13, MUP-2749, MUP-01-2892 (June 24, 2005).

As a threshold matter, I reject the Town's argument that the Narcan policy has no impact on officers' terms and conditions of employment. The Town concedes that Narcan is a new medical intervention, but argues that officers are already first responders, and that bending down over a victim to deliver Narcan is no different from other duties such as checking for life, clearing airways, performing chest compressions, and using the ambu bag or AED. The Town argues that because the physical steps to administering Narcan and CPR are the same, the fact that Narcan is a medical, and not a physical intervention, is a distinction without a difference.

I find that the Town's implementation of the Narcan policy impacted both the officers' job duties and workload. First, it is undisputed that the Town's Narcan policy requires officers to administer medication to people, something they never did before July of 2015. Second, the Town's Narcan policy requires officers to receive specialized training to perform Narcan duties. Narcan training is independent of other first aid, CPR, and AED training. Third, officers perform Narcan duties in addition to CPR and AED duties. In suspected opiate overdose situations, prior to implementation of the Narcan policy, officers checked victims for signs of life and administered CPR by using the ambu bag and the AED, or by performing chest compressions. Since

implementation of the Narcan policy in July of 2015, officers arriving on the scene of a suspected overdose victim may administer not only CPR, rescue breathing, and defibrillation as necessary, but also Narcan. Narcan does not supplant CPR, rescue breathing, and defibrillation. Rather, it is performed in addition to those steps. The Town's argument that Narcan duties are no different from CPR or defibrillation duties because officers work in the same proximity to the victim ignores the fact that Narcan administration is an additional lifesaving procedure requiring specialized training. Fourth, the Narcan policy requires officers to evaluate whether victims should receive Narcan, determine Narcan dosage amounts, and provide medical advice to victims who refuse further care after Narcan administration, all of which are new duties. Thus, implementation of the Narcan policy affected and increased employees' job duties and workload.

I also find that the Town's Narcan policy impacts officers' safety. Before 2015, officers administered CPR, rescue breathing and defibrillation to overdose victims, types of rescues that do not provoke victims to "pop-up" in an angry fighting stance when they regain consciousness, or commence prolonged projectile vomiting, as Narcan does. In contrast to CPR and AED administration, Narcan administration may require officers to transition within seconds from giving lifesaving procedures to an unconscious victim, to addressing a physically violent, or violently ill individual. Not every victim who receives Narcan will have an adverse reaction resulting in violence or projectile vomiting. Yet, every time that an officer administers Narcan increases their exposure to injury and disease because of the potential for an adverse reaction. Although officers generally face violent individuals and exposure to disease from bodily

fluids unrelated to Narcan, Narcan administration exposes officers to new means of injury and disease, thereby affecting their safety.

Finally, the Town's communications to the Union directly acknowledge the impacts of the Narcan policy on officers' terms and conditions of employment. White's December 22, 2014 letter states that the "Town has listened to the concerns of its officers at the last meeting, and has taken further steps to address those specific impacts." Additionally, between the first draft of the Narcan policy in June of 2014 and the second draft of the policy in December of 2014, the Town made numerous language changes to the sections on procedures, reactions, and equipment and maintenance. Therefore, I find that the Town's Narcan policy impacted officers' terms and conditions of employment. Accordingly, the Town had an obligation to bargain about the impacts of implementing its Narcan policy.

Delay of Information

Before evaluating whether the parties bargained to impasse about the impact of the Town's Narcan policy on officers, I first must determine whether the Town failed to provide, or delayed providing requested Narcan-related information to the Union. If a public employer possesses information that is relevant and reasonably necessary to an employee organization in the performance of its duties as the exclusive collective bargaining representative, the employer is generally obligated to provide the information upon the employee organization's request. Higher Education Coordinating Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's right to receive relevant and reasonably necessary information is derived from the statutory obligation to engage in good faith collective bargaining, including both

grievance processing and contract administration. Boston School Committee, 10 MLC 1501, 1513, MUP-4468 (April 17, 1984). The Board's standard in determining whether the information requested by an employee organization is relevant is a liberal one, similar to the standard for determining relevancy in civil litigation proceedings. Board of Higher Education, 26 MLC 91, 92, SUP-4509 (January 11, 2000); Board of Trustees, University of Massachusetts, 8 MLC 1139, 1141, SUP-2306 (June 24, 1981).

Once a union has established that the requested information is relevant and reasonably necessary to its duties as the exclusive representative, the burden shifts to the employer to establish that it has legitimate and substantial concerns about disclosure, and that it has made reasonable efforts to provide the union with as much of the requested information as possible, consistent with its expressed concerns. Board of Higher Education, 26 MLC at 93 (citing Boston School Committee, 13 MLC 1290, 1294-1295, MUP-5905 (November 2, 1986); Adrian Advertising a/k/a Advanced Advertising, 13 MLC 1233, 1263, UP-2497 (November 6, 1986), aff'd sub nom., Despres v. Labor Relations Commission, 25 Mass. App. Ct. 430 (1988)). When an employer has concerns about the confidentiality of information requested by a union, it has an obligation to initiate a discussion to explore acceptable alternative ways to permit the union access to the necessary information. City of Boston, 22 MLC 1698, 1709, MUP-9605 (April 26, 1996).

The Union argues that it requested the Fire Department's Narcan-related run sheets during the December 9, 2014 meeting because that information would help it to assess the Town's proposed Narcan policy in terms of the frequency of Narcan administration, to tailor its position on the issues of safety and job duties, particularly

with respect to whether the safety provisions in the policy were adequate and whether substantial added duties warranted additional compensation. The Town does not deny that the run sheets are relevant and reasonably necessary to the Union's performance as the exclusive representative. There also is no dispute that the Town provided the run sheets to the Union in January of 2016. However, the Town's conduct raises the issue of whether it unreasonably delayed providing the run sheets to the Union.

An employer may not unreasonably delay furnishing requested information that is relevant and reasonably necessary. Boston School Committee, 24 MLC 8, 11, MUP-1410, 1412 (August 26, 1997). In determining whether a delay in the production of information is unreasonable, the Board considers a variety of factors including: 1) whether the delay diminishes the employee organization's ability to fulfill its role as the exclusive representative; Id.; 2) the extensive nature of the request, UMass Medical Center, 26 MLC 149, 158, SUP-4392, 4400 (March 10, 2000); 3) the difficulty of gathering the information, Id.; 4) the period of time between the request and the receipt of the information, Higher Education Coordinating Council, 23 MLC at 269; and 5) whether the employee organization was forced to file a prohibited practice charge to retrieve the information. Board of Higher Education, 26 MLC at 93.

The Town argues that it promptly turned over the Fire Department information within its custody and control on December 22, 2014, and that it continued to work to provide the additional information that the Union requested. The Town also emphasizes that the ambulance company, a third-party contractor, maintained the run sheets, and that the run sheets had to be redacted because they contained statutorily

protected information pursuant to the Health Insurance Portability and Accountability Act (HIPPA), 42 U.S.C. s. 201 et. seq.

I dismiss the Town's arguments for the following reasons. First, the Town's failure to tell the Union that a third-party ambulance company held the run sheets interfered with the Union's ability to fulfill its role as the exclusive representative. In general, if an employer cannot grant an information request, it is required to initiate a discussion with the Union to explore acceptable alternatives. Board of Higher Education, 29 MLC 169, 172, SUP-4612 (March 6, 2003). Here, the Town initiated no such discussion with the Union to clarify that it did not actually have the ambulance run sheets. On December 22, 2014, the Town responded to the Union's December 9, 2014 information request by forwarding the results of a "preliminary search" and stating that it was still working on the information request. The Town never told the Union at any point in time prior to the hearing that a third-party ambulance company, not the Town held the run sheets. Consequently, the Town prevented the Union from either accessing the information directly from the ambulance company, or from possibly assisting the Town in its efforts to get the information.

Second, the Town's one year delay in providing the run sheets to the Union also diminished the Union's ability to fulfill its role as the exclusive representative by interfering with the Union's ability to evaluate the Town's assertions and the Union's proposals. In its September 9, 2014 letter to the Union, the Town claimed that "[t]here is no evidence that the administration of Narcan to an overdose victim will create . . . any additional risk" for officers. On December 22, 2014, North sent McDonald emails between Fire Chief White and Police Chief Hicks in which Deputy Rothman said he

could not recall a single instance of projectile vomiting or violence in 13 years of administrating Narcan. The Town also insisted in its December 22, 2014 letter to the Union that it could mitigate all of the officers' concerns. Yet, without the ambulance run sheet data, the Union lacked a critical means of evaluating the merit of the Town's claims, as well as the ability to measure the quality of its own proposals. When an employer asserts that its proposed action would have no effect on terms and conditions of employment, a union should at least have the opportunity to satisfy itself of the merit of an employer's position, as a prompt response to an information request may obviate unnecessary litigation. City of Boston, 8 MLC 1418, 1438, MUP-3821 (November 2, 1981).

Third, the evidence does not establish that the Union's information request was extensive or difficult to gather. Although the Town argues that it had to get the run sheets from a third party, and that it had to redact the documents to comply with HIPPA, the Town never told the Union that it was having a difficult time getting the run sheets from the ambulance company or that it needed time to redact the documents to comply with HIPPA, and it only raised these issues for the first time at hearing and in its post-hearing brief. Moreover, the Town did not substantiate at the hearing in any quantifiable way, the time or resources that it expended to comply with the Union's request. See generally, Colgate-Palmolive Co., 261 NLRB 90, 92 (1982) (finding that an employer failed to substantiate its defense of undue burden). In the absence of factual details regarding the actual amount of time and personnel required to produce the information, or the process of acquiring the information, I find that the information requested was neither extensive nor difficult to gather.

Finally, the evidence establishes that the Union not only had to file a Charge to access the run sheets, but had to wait until just before the hearing to get the information. The Town provided the run sheets to the Union more than a year after the Union first requested the information at the December 9, 2014 meeting, about 12 months after the Union filed the January 7, 2015 Charge in the case, and about 6 months after the Town implemented the July of 2015 Narcan policy. Accordingly, I find the Town's delay in providing the requested run sheets to the Union to be unreasonable.

The Town argues that the original allegation in Count II of the Complaint, alleging a failure to provide information, is moot because it was working to provide the run sheets at the time the Union filed the Charge, and because it provided the run sheets to the Union prior to the hearing. I disagree. The Board recognizes an exception to the mootness doctrine if there is a possibility that the challenged conduct will recur in substantially the same form, especially if the asserted violator contends it was properly engaged in the conduct. City of Cambridge, 35 MLC 183, 186, MUP-04-4429 (March 5, 2009) (citing City of Boston, 7 MLC 1707, 1709, MUP-3812 (December 31, 1980)). Here, the Town provided the run sheets to the Union more than a year after the information request and contends that it was properly engaged in that conduct. Yet, for reasons stated above, I have determined that the Town's delay in providing the information was unlawful. A similar wrong could occur in the future because the parties have a continuing bargaining relationship, and the Town denies that its actions violated the Law. City of Boston, 41 MLC 119, MUP-13-3371, MUP-14-3466, MUP-14-3504 (November 7, 2014). Therefore, this issue is not moot.

Impasse

After good faith negotiations have exhausted the prospects of concluding an agreement, an employer may unilaterally implement changes that are reasonably comprehended within its pre-impasse proposals. Hanson School Committee, 5 MLC 1671, MUP-2196 (February 27, 1979). To fulfill its responsibility to bargain in good faith, an employer is obligated to make itself available at reasonable times and places to negotiate, to negotiate in good faith, and to refrain from unilateral action until impasse is reached. Taunton School Committee, 28 MLC 378, 390, MUP-1632 (June 13, 2002). Although the good faith obligation does not compel parties to agree to a proposal or make a concession, it requires parties to have discussions with an open and fair mind, have a sincere purpose to find a basis of agreement, and make reasonable efforts to compromise their differences. Taunton School Committee, 28 MLC at 391 (citing, School Committee of Newton, 388 Mass. at 574).

The Board will determine that the parties have reached impasse only where both parties have bargained in good faith on negotiable issues to the point where it is clear that further negotiations would be fruitless because the parties are deadlocked. Town of Brookline, 20 MLC 1570, 1594, MUP-8426, 8478, 8479 (May 20, 1994). The factors to be weighed in deciding whether impasse exists include: the good faith of the parties, bargaining history, length of negotiations, the importance of the issues to which there is disagreement, and the contemporaneous understanding of the parties concerning the state of the negotiations. Commonwealth of Massachusetts, 8 MLC 1499, 1513, SUP-2508 (November 10, 1981) (citing Taft Broadcasting Co. 163 NLRB 475 (1967)). Impasse is not established because one party believes it is so or has

stated such belief to the other party. Board of Higher Education, 30 MLC 141, 145, SUP-4650 (May 15, 2004). Rather, the existence of impasse is a question of fact involving consideration of the totality of the circumstances. School Committee of Newton, 388 Mass. at 574. The ultimate test is whether there is a likelihood of further movement by either side and whether the parties have exhausted all possibility of compromise. City of Boston, 29 MLC 6, 9, MUP-2413 (June 27, 2002) (citing Commonwealth of Massachusetts, 25, MLC 201, 204, SUP-4075 (June 4, 1995)).

The Town argues that on the balance of all of the competing factors, it was justified in declaring impasse and implementing the revised Narcan policy. The Town maintains that it listened to and responded to the Union's concerns, provided information, communicated that it would not pay any stipend, and revised the Narcan policy to address the Union's concerns by requiring that officers use the gloves and shields and that a second officer be dispatched for overdose calls. The Town emphasizes that it provided information to the Union regarding liability and that it "promptly provided information from the Fire Department concerning violence and projectile vomiting, albeit, not the run sheets." The Town also argues that the Union never told the Town that its changes were insufficient and made no further attempts to bargain after December 22, 2014.

For the following reasons, I find that the parties had not reached impasse and that the Town unlawfully implemented the Narcan policy in July of 2015. First, the Union had an outstanding information request and proposal when the Town announced on December 22, 2014, that it would implement a revised Narcan policy, effective February 1, 2015, and when it actually implemented the Narcan policy on July 13,

2015. For reasons discussed above, I determined that the Union had requested the Fire Department run sheets and adjusted its first stipend proposal downwards at the December 9, 2014 meeting. After the Union proposed a reduced stipend, the Town ended the meeting by stating, "we have a meeting with the Board of Selectmen on Monday. We'll discuss this with them and get back to you." However, the Town never responded to the Union's reduced stipend proposal, and did not provide the Fire Department run sheets until January of 2016. Yet, despite the outstanding information request and proposal, the Town announced on December 22, 2014, that it would implement a revised Narcan policy effective February 1, 2015, and actually implemented in July of 2015. In contrast to the facts of this case, the Board finds impasse in situations where there are no outstanding proposals or information requests. City of Boston, 28 MLC 175, 185, MUP-1087 (November 21, 2001).

Second, I do not find that the Town otherwise bargained in good faith. "Good faith implies an open and fair mind as well as a sincere effort to reach common ground." Taunton School Committee, 28 MLC 378, 391, MUP-1632 (June 13, 2002). In April of 2014, the Town first announced implementation of a Narcan policy, effective in June 1, 2014. Although the Town did not implement the policy on June 1, 2014, it ignored the Union's April 11, 2014 demand to bargain and planned a Narcan training for June 17, 2014. Ultimately, the June 17, 2014 training did not occur, but the Town continued to ignore the Union's demand to bargain until June 20, 2014. Additionally, at the end of the December 9, 2014 meeting, after the Union had revised its stipend proposal downwards, the Town told the Union that it would discuss it with the Selectmen and get back to the Union. The Town did get back to the Union, but only by

announcing implementation of a revised Narcan policy, effective February 1, 2015, that it had not shared with the Union. The revised Narcan policy contains different language from the Town's initial proposal that the parties negotiated. For instance, the revised policy requires officers to provide medical advice when a victim declines further care after Narcan administration, and is a new duty. However, there is no evidence that the parties negotiated about this issue. Therefore, the revised Narcan policy went beyond what the Town proposed, and what the parties bargained. "There can be no impasse justifying unilateral action if the cause of the deadlock is the failure of one of the parties to bargain in good faith." School Committee of Newton, 388 Mass. at 572.

Third, the Town's own bargaining team was not on the same page regarding the status of negotiations after the December 9, 2014 meeting concluded, and presented conflicting perspectives to the Union's negotiating team. At the end of the December 9, 2014 meeting, without saying a word about impasse, the Town told the Union that it would get back to it after meeting with the Selectmen. Then, on December 22, 2014, three different Town negotiation team members communicated to three different Union negotiation team members three different versions of the status of negotiations. Town attorney North provided preliminary Fire Department information to McDonald that stated that the Town was still working on the run sheets request. Town Manager White announced to Halloran that the Town would implement a revised Narcan policy on February 1, 2015. And, Chief Hicks told Delehanty that the Union could continue negotiations. This disparity shows that even the Town's own negotiating team lacked a coherent and uniform understanding of the status of negotiations, which precludes a finding of impasse.

Contrary to the Town's argument, the Union's failure to demand further bargaining is of no significance in the face of the Town's fait accompli. A fait accompli exists where, "under all the attendant circumstances, it can be said that the employer's conduct has progressed to a point that a demand to bargain would be fruitless." See generally, Massachusetts Port Authority, 36 MLC 5, 14, UP-04-2669 (June 30, 2009) (citing Holliston School Committee, 23 MLC 211, 212-13, MUP-1300 (March 27, 1997)). Here, the Town told the Union on December 22, 2014, that it had addressed all of the Union's concerns and would implement the revised policy, effective February 1, 2015. Although Chief Hicks told Delehanty that the Union could continue bargaining, he also said that he had no authority on the matter. The Board will not find waiver by inaction in cases where, as here, a union is presented with a fait accompli. City of New Bedford, 38 MLC 239, 250-51, MUP-09-5581 and MUP-09-5599 (April 3, 2012).

Fourth, the actual duration of time spent negotiating the Narcan policy is exceptionally short in comparison to the significance of the issues to both parties. The Town announced in April of 2014 that it would implement a Narcan policy on June 1, 2014. After the Union demanded to bargain on April 11, 2014, the Town responded more than two months later, on June 20, 2014. The parties' first meeting on July 17, 2014, consisted of information gathering and not an exchange of proposals. On August 13, 2014, Delehanty told Chief Hicks that the Union wanted to make an off the record proposal, and Hicks asked him to email it so that he could forward it to other members of the Town's negotiating team. The parties then exchanged proposals by email on August 13, and September 9, 2014, before meeting a second time for about 45 minutes to an hour on December 9, 2014. Thus, the brevity of the negotiations shows

that there is no impasse. See Taunton School Committee, 28 MLC at 391 (finding that the parties had not bargained for a sufficient amount of time to approach deadlock).

CONCLUSION

Based on the record, and for the reasons stated above, I conclude that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by implementing a Narcan policy in July of 2015 without bargaining to resolution or impasse about the impacts of the policy on bargaining unit members' terms and conditions of employment, and by delaying providing the Narcan-related Fire Department run sheets that the Union requested in December of 2014 until January of 2016.

REMEDY

Here, the Union does not seek an order returning the parties to the status quo, but rather an order that the Town bargain to resolution or impasse with the Union over the impacts of the Narcan policy on mandatory subjects of bargaining and post a notice that it has violated the Law by refusing to bargain. This remedy is appropriate in cases such as this where the effects of an employer's decision are certain, and the union's efforts to impact bargain cannot substantially change, but only ameliorate, those effects. Transmarine Navigation Corp., 170 NLRB 389 (1968). Accordingly, I order the Town to bargain prospectively and in good faith to resolution or impasse with the Union over the impacts of the decision to implement a Narcan policy and to post the attached notice.

ORDER

WHEREFORE, based on the foregoing, it is hereby ordered that the Town of Natick shall:

1. Cease and desist from:

   a. Failing to bargain over the impacts of its decision to implement a Narcan policy requiring officers to carry and administer Narcan, without first bargaining with the Union to resolution or impasse over the impacts of that decision;

   b. Unreasonably delaying providing relevant and reasonably necessary information when requested by the Union.

   c. In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

2. Take the following affirmative action that will effectuate the purpose of the Law:

   a. Upon request, bargain in good faith with the Union to resolution or impasse over the impacts of the July 2015 Narcan policy;

   b. Sign and post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate and where notices to these employees are usually posted, including electronically, if the Town customarily communicates to its employees via intranet or e-mail, and maintain for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees; and

   c. Notify the DLR in writing within thirty (30) days of receiving this Decision of the steps taken to comply with the Order.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

Kathleen Goodberlet

KATHLEEN GOODBERLET, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 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.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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 (DLR) has held that the Town of Natick has violated Section 10(a)(5), and derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by implementing a Narcan policy without first bargaining with the Natick Patrol Officers Association (Union) to resolution or impasse over the impacts of that decision on employees' terms and conditions of employment.

The Town posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of the Law 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 Town assures its employees that:

WE WILL not fail and refuse to bargain in good faith by implementing a Narcan policy without first bargaining with the Union to resolution or impasse over the impacts of that decision.

WE WILL NOT fail to bargain in good faith with the Union by unreasonably delaying providing relevant and reasonably necessary information when requested by the Union.

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

WE WILL upon request, bargain in good faith with the Union to resolution or impasse over the impacts of the July 2015 Narcan policy on officers' terms and conditions of employment.

_____ _____

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