

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF BRAINTREE

and

BRAINTREE POLICE OFFICER'S
ASSOCIATION, MCOP, LOCAL 365

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Case No. MUP-15-4450

Date issued:
January 22, 2018

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

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| Brian M. Maser Esq. | - | Representing the Town of Braintree |
| Leigh A. Panettiere, Esq. | - | Representing the Braintree Police Officer's Association, MCOP, Local 365 |

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Town of Braintree (Town) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. c.150E (the Law) by failing to
3 bargain to resolution or impasse with the Braintree Police Officer's Association, MCOP,
4 Local 365 (Union) over the impacts of the decision to reduce the minimum number of
5 patrol officers assigned to the weekend day shift on the employees' workloads. For the

1 reasons explained below, I find that the Town did not violate Section 10(a)(5) and,
2 derivatively, Section 10(a)(1) of the Law as alleged.

3 STATEMENT OF THE CASE

4 On March 27, 2015, the Union filed a Charge of Prohibited Practice (Charge) with
5 the Department of Labor Relations (DLR), alleging that the Town had engaged in
6 prohibited practices within the meaning of Section 10(a)(5) and 10(a)(1) of the Law. On
7 July 23, 2015, a duly-designated DLR Investigator conducted an investigation into the
8 Charge and, on August 24, 2015, issued a Complaint of Prohibited Practice and Partial
9 Dismissal (Complaint). In his Complaint, the Investigator alleged that the Town had
10 failed to bargain in good faith with the Union over the workload impacts of the decision
11 to reduce the minimum number of patrol officers working weekend day shifts without
12 giving the Union prior notice and an opportunity to bargain to resolution or impasse in
13 violation of Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law. The Investigator
14 dismissed the Union's other 10(a)(5) allegations pertaining to overtime and safety,
15 finding that the Town's decision had no impacts on unit members' safety, and that
16 unscheduled overtime for patrol officers working weekend day shifts was not a condition
17 of employment subject to mandatory bargaining. On September 2, 2015, the Town filed
18 its Answer to the Complaint.

19 On May 31, June 16 and September 26, 2016, I conducted three days of hearing
20 at which both parties had a full opportunity to be heard, to examine and cross-examine

witnesses and to introduce evidence. The Town and the Union filed their post-hearing briefs on November 11 and 15, 2016, respectively.

ADMISSIONS OF FACT

The Town admitted to the following facts:

1. The Town is a public employer within the meaning of Section 1 of the Law.
2. The Union is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for a unit that includes patrol officers employed by the Town.
4. Prior to November 29, 2014, the Town required that a minimum of six (6) patrol officers work weekend day shifts.
5. On November 29, 2014, the Town required that a minimum of five (5) patrol officers work weekend day shifts.
6. The Town did not provide the Union with advanced notice of the personnel order issued on November 26, 2014.

STIPULATION OF FACT

1. At the time of the facts giving rise to this matter, the Union and the Town were parties to collective bargaining agreements effective from July 1, 2010 to June 30, 2013, and from 2013 through 2016.

FINDINGS OF FACT

The Collective Bargaining Agreements

Article 6 from the parties' July 1, 2013 – June 30, 2016 Agreement pertains to Management Rights and states, in full:

Except as there is contained in this Agreement an express and specific provision limiting the rights, authority, functions, or prerogatives of the Town, all rights, authority, function and prerogatives which were formerly

1 exercised or exercisable by the Town prior to the signing of any collective
2 bargaining agreement with the Union shall remain vested exclusively in
3 the Town.
4

5 The Town shall also retain and may exercise through its Mayor and its
6 Chief of Police all rights to manage and control the Braintree Police
7 Department and its employees that are given to the Town by the
8 applicable statutes of the Commonwealth of Massachusetts.
9

10 Without limiting the generality of the foregoing, and without limiting itself to
11 the specific rights enumerated as follows, the Town specifically reserves
12 to itself exclusively: the right to manage the Police Department; the right to
13 determine the composition of the work force; the right to determine and re-
14 determine duties; the right to direct the work force; the right to determine
15 employee qualification and evaluate competency; the right to establish
16 and enforce reasonable standards or performance as provided by statute;
17 the right to promulgate and enforce rules of conduct; the right to determine
18 and re-determine job content; the right to establish and discontinue job
19 positions; the right to maintain job discipline, order and efficiency; the right
20 to determine operational methods, policies and procedures; the right to
21 determine procedures by which to establish and maintain a record of
22 hours worked; the right to hire, transfer, promote or demote; the right to
23 suspend, discharge or otherwise discipline employees for just cause; the
24 right to lay off employees; the right to require overtime work; the right to
25 initiate, continue or discontinue in-service training or educational
26 programs; the right to determine the quantity, quality and type of
27 equipment used; the right to determine the work complement for such
28 equipment; the right to subcontract work; the right to decide the number
29 and location of facilities; the right to transfer employees temporarily from
30 one job to another; and the right to promulgate and enforce rules and
31 regulations relating to the operation of the Police Department.
32

33 The Chief of Police shall make all suitable rules and regulations governing
34 the Police Department and the officers thereof, subject to the approval of
35 the Mayor. The Chief of Police shall be in immediate charge of all Town
36 properties used by the Police Department and of the police officers, whom
37 he shall assign to their respective duties and who shall obey his orders.
38 Nothing in this agreement will be construed to abridge or modify the
39 powers of the Chief of Police as set forth in Chapter 41, Section 97A of the
40 Massachusetts General Laws.
41

Beginning with the parties' July 1, 2010 – June 30, 2013 Agreement, Article 29 has pertained to "Specialists," stating, in pertinent part:

Specialists appointed by the Chief and approved by the Mayor are as follows:

- A. DETECTIVES
- B. ADMINISTRATIVE AIDE TO THE CHIEF
- C. SCHOOL RESOURCE OFFICER
- D. TRAFFIC OFFICER
- E. JUVENILE OFFICER
- F. COMMUNICATIONS OFFICER

....

Consistent with past practice, the Police Chief shall have the right to count Traffic Division employees and the Juvenile Officer towards minimum staffing levels with the mutual consent of the Union[]. Also consistent with past practice, the Chief of Police shall have the right to re-assign detectives and school resource officers to the Patrol Division for a specific period of time with the mutual consent of the Union.

The Police Department

1. Organizational Structure

The Department's top-down organizational structure consists of: chief, deputy chief, lieutenants, sergeants and patrol officers. The Department employed police dispatchers until 2010, when it began using civilian dispatchers. At all relevant times, the Department has assigned employees to one of four shifts: day, evening, night and relief. The day shift hours are 6:30 a.m. to 2:30 p.m.

2. Relevant Employees

From June of 1993 until his retirement in August of 2012, the Town employed Paul Frazier (Frazier) as Chief of Police. In 1983, the Town hired Russell Jenkins

1 (Jenkins) and promoted him to Chief of Police in October of 2012. In 1996, Paul
2 Campbell (Campbell) began employment with the Town as an officer and, at all relevant
3 times, was assigned to the weekend day shift.

4 At all relevant times, the Town has employed Ryan McHugh (McHugh) as a
5 patrol officer on the relief shift. At no point during his employment has McHugh ever
6 worked the weekend day shift, except when the Town required him to work that shift on
7 overtime. Beginning in December of 2014, McHugh became Union President and, prior
8 to that time, he served on the Union's executive board. At all relevant times, the
9 Department has employed Brian Cohoon (Cohoon) as a detective when he also served
10 as Union President from 2009-2012, Vice President in 2008, Steward in 2007, and
11 executive board member several times prior to 2007. At no time during his
12 employment, did Cohoon ever work a weekend day shift unless it was on overtime.

13 **3. Weekend Calls**

14 In 2005, the Department received a total of 19,466 calls.¹ In 2014, that number
15 increased by 3,049 for a total of 22,515 calls.² Between December of 2006 and July of
16 2015,³ the Department received over 4,000 calls during the weekend shift.⁴ On

¹ Neither party provided evidence to distinguish whether the Department received these calls during the weekend shifts, the weekday shifts or a combination of both.

² Again, neither party provided evidence to show whether the Department received these calls during the weekend shifts, the weekday shifts or a combination of both.

³ Neither party provided evidence to show any weekend call data for the periods: 2007 – 2008; 2008 – 2009; 2010 – 2011; 2012 – 2013; or 2013 – 2014.

1 December 1, 2006 through July 21, 2007, the Department received 1,009 calls during
2 the weekend shift. On November 1, 2009 through July 31, 2010, the Department
3 received 1,063 calls on the weekend shift. Beginning November 1, 2011 through July
4 31, 2012, the Department received 1,077 weekend calls. On November 1, 2014
5 through July 19, 2015, the Department received 1,097 calls on the weekend shift.

6 The Department documents calls that it receives by generating dispatch incident
7 detail reports (incident reports)⁵ and computer-aided dispatch (CAD) summaries.⁶ The
8 incident reports indicate: when dispatch receives a call; the identity of the officer who
9 responds to the call; the time of the officer's arrival to the incident; the time when
10 dispatch clears the officer from the incident; and whether the responding officer took
11 action related to the incident (such as, rendering service, making arrests, transporting
12 detainees, issued citations or completing a report). The CAD summaries indicate the
13 incident number and the incident status (e.g., when the call was dispatched, and when
14 the responding officer arrived, and when that officer was cleared from the incident), but

⁴ Neither party provided evidence to show whether the Department received these calls only during the weekend day shift, during other weekend shifts, or a combination of both.

⁵ The Union submitted into evidence incident reports for some of the weekend day shifts between December 13, 2014 and July 5, 2015; but, provided no reports for May of 2015. Specifically, of the 34 full weekends that occurred during this time period, the Union only provided incident reports for five full weekends and nine half weekends.

⁶ Concerning May of 2015, the Town only provided evidence of CAD summaries for six weekend day shifts out of the ten weekend days occurring in that month.

1 it does not identify the individual officer or show the action taken by the officer (e.g.,
2 completing reports).

3 **4. Work Shifts**

4 At all relevant times, the Department has assigned one officer to work inside the
5 station during the weekend day shift pursuant to the parties' Agreement. The remaining
6 officers are assigned outside of the station where they respond to dispatched calls and
7 generate written reports depending on the type of call. If a call required a report, the
8 officer would usually return to the station at the conclusion of the incident and complete
9 the report. Sometimes, the officer would complete the report prior to the end of his or
10 her shift. Other times, the officer would either stay after his shift had ended and
11 complete the report on overtime (especially if it was needed for court the next day), or
12 return on his next shift to complete the report. On rare occasions, a commanding officer
13 might order a patrol officer to abandon a report during his shift and respond to a call.
14 The nature of an officer's work can be very unpredictable. As a result, it is not unusual
15 to either have an officer tied up on a call or to have all officers free to respond to a call,
16 regardless of the shift or number of officers assigned to that shift.

17 Except for the station officer, there is no contractual minimum manning level for
18 patrol officers. The minimum number of patrol officers assigned by the Department to
19 work the weekend day shift has fluctuated up and down since at least 2005.

20 **The GFFV Personnel Orders (1994-2014)**

1 When the Department wants to change the minimum manning level, the Chief
2 will issue a Guideline for Filling Vacancies (GFFV) to outline the changes. Sometimes
3 the Chief will attach a memorandum to the GFFV explaining the change, but this does
4 not always occur.

5 Since at least 1994 to the present, the Chief has issued numerous GFFV
6 personnel orders, but none of those orders have ever included expiration deadlines.
7 Rather, since 1994 the Chief has always included the following language in every GFFV
8 order, informing Department employees that each order was "subject to change as
9 circumstances dictate."

10 **1. 1994 and 1995**

11 In 1994, Chief Frazier issued at least seven GFFV orders between April and
12 December of 1994, staffing a minimum of five patrol officers on the weekend day shift.
13 The Chief did not issue any explanatory memoranda to accompany those seven orders.
14 Chief Frazier issued at least another seven GFFV orders in 1995. The May 12, 1995
15 order increased the number of officers on the Sunday day shift from five to six, and the
16 September 1, 1995 order decreased the number of officers assigned to the Sunday day
17 shift from six to five. The Chief did not issue any explanatory memoranda to
18 accompany his 1995 orders.

19 **2. 1997 and 2002**

20 In May through December of 1997, Chief Frazier issued at least five GFFV
21 orders, two of which were accompanied by explanatory memoranda (i.e., explaining

1 holiday changes on Thanksgiving, New Year's Eve and New Year's Day). During that
2 time, the minimum staffing levels for officers assigned to the weekend day shift
3 remained at five. The Chief issued at least three GFFV orders in 2002, but none
4 contained a supplemental explanatory memorandum. By his June 25, 2002 order, Chief
5 Frazier increased the minimum number of patrol officers assigned to the weekend day
6 shift to six. By that same order, he also increased the number of supervisors on that
7 shift to two. On October 18, 2002, the Chief issued another personnel order that
8 decreased the number of officers on the Saturday day shift to five, and decreased the
9 number of supervisors back to one.

10 **3. 2003 and 2004**

11 In 2003, Chief Frazier issued at least eight GFFV orders with two that were
12 accompanied by explanatory memoranda. Specifically, on March 19, 2003, he issued a
13 GFFV personnel order and memorandum, explaining why he changed the minimum
14 staffing levels on the weekend day shift to six officers on Sunday, and to five officers on
15 Saturday (i.e., due to a "SATURN" national security alert). By that order and
16 memorandum, the Chief also informed employees that the "guidelines [would] remain in
17 effect until further notice." On March 27, 2003, the Chief issued a GFFV order and
18 memorandum, explaining his rescission of the SATURN order. Between May 29 and
19 December 11, 2003, Chief Frazier issued four more personnel orders that did not
20 include memoranda, but which fluctuated the minimum manning staffing levels between
21 five and six. For example, on July 18, 2003, the Chief required that five officers be

1 staffed on both weekend day shifts, but on November 25, 2003, he increased that
2 number to six for the Sunday day shift.

3 In 2004, Chief Frazier issued at least two GFFV personnel orders without
4 memoranda, reducing the minimum staffing levels for officers on the weekend day shift
5 to five.

6 **4. 2007 and 2008**

7 In 2007, Chief Frazier issued at least one GFFV order that was not accompanied
8 by an explanatory memorandum. That order kept minimum staffing levels to five
9 officers on the weekend day shift.

10 The Chief issued at least two more GFFV orders in 2008. One of those orders
11 was dated April 11, 2008, and was accompanied by an explanatory memorandum
12 related to "temporary" transfer assignments to the South Shore Plaza. Based on that
13 order, the Chief met with the Union to impact bargain over the transfers.

14 **5. 2009 and 2012**

15 In 2009, Chief Frazier issued at least six GFFV personnel orders, with one
16 accompanied by an explanatory memorandum. On February 6, 2009, the Chief issued
17 an order that reduced minimum manning levels on the Sunday day shift to four officers,
18 while keeping the number at five for the Saturday day shift. On April 1, 2009, he issued
19 a personnel order that increased the number of supervisors on the Saturday day shift
20 from one to two, while keeping unchanged the number of officers assigned to the
21 weekend shift at four on Sunday and five on Saturday.

1 On May 14, 2009, Chief Frazier issued a personnel order with a memorandum
2 explaining that his change to the minimum staffing level of officers assigned to the
3 weekend day shift was due to "a line item transfer into [the Department's] overtime
4 account." By that order, the Chief increased the number of officers on the Sunday day
5 shift to five, and to six on the Saturday day shift. He also kept the number of
6 supervisors assigned to the Saturday day shift at two. Pursuant to this May 14, 2009
7 order, then-Union President Cohoon met with Chief Frazier to bargain over the impacts
8 of the Chief's decision to change the minimum staffing levels on the weekend day shift.

9 In 2012, the Town created the station officer position, requiring for the first time a
10 fixed minimum of one officer assigned to work inside the station during the weekend day
11 shifts. Chief Frazier then issued at least three GFFV personnel orders, with one
12 accompanied by an explanatory memorandum. The Chief's February 15, 2012 order
13 included a memorandum that assigned a minimum of five patrol officers on weekend
14 day shifts, and instructed supervisors to notify the Deputy Chief if they needed to
15 change the guidelines. On June 29, 2012, the Chief changed the minimum number of
16 officers on the Saturday day shift to six, while keeping the number at five on the Sunday
17 day shift. After Chief Frazier's retirement, Chief Jenkins issued a personnel order on
18 October 19, 2012, increasing the minimum number of officers assigned to both
19 weekend day shifts to six. Like Chief Frazier, Chief Jenkins concluded his personnel
20 order by stating that "[t]he above guidelines are subject to change as circumstances
21 dictate."

6. 2013, 2014 and 2015

In 2013, Chief Jenkins issued at least one GFFV personnel order that was not accompanied by an explanatory memorandum, but maintained the minimum number of officers assigned to the weekend day shift at six.

On November 26, 2014, Chief Jenkins issued at least one GFFV personnel order that reduced patrol officers assigned to the weekend day shift from six to five. By that order, Chief Jenkins also increased the number of supervisors on that shift from one to two, but he did not accompany the order with an explanatory memorandum.

On June 26, 2015, Chief Jenkins issued at least one GFFV personnel order that maintained the minimum number of officers assigned to the weekend day shift at five. The Chief did not include an explanatory memorandum with that order.

The Weekend Day Shifts (December 13, 2014 – July 5, 2015)

After Chief Jenkins issued Personnel Order 14-28 on November 26, 2014, members of the bargaining unit complained that their workload had increased (e.g., insufficient time to respond to calls and complete reports⁷) due to the reduction of the minimum staffing level from six to five patrol officers on the weekend day shift.

1. December 2014

⁷ Neither party submitted evidence to show when the officers actually completed their reports (i.e., whether they were completed during their shifts or after their shifts had ended).

On Saturday, December 13, 2014, Chief Jenkins scheduled five officers to work outside of the station. During the day shift on that day, four officers responded to the following incidents while assigned to the weekend day shift:

- Officer Paul B. Campbell (Campbell) arrived at an incident at 8:41:40 a.m. and was cleared by dispatch approximately 26 minutes later at 9:07:18 a.m.
- Officer Corey R. Hutson (Hutson) arrived at an incident at 8:38:40 a.m., and was cleared by dispatch four seconds later at 8:38:44 a.m.
- Officer Ronald C. Solimini (Solimini) arrived at an incident at 8:41:42 a.m., and was cleared by dispatch at 8:46:57 a.m.
- Officer Kevin Timulty (Timulty) arrived at an incident at 10:50:01 a.m., and was cleared by dispatch at 10:58:26 a.m. Twelve minutes later, Officer Timulty arrived at another incident at 11:10:35 a.m., and was cleared after approximately 30 minutes at 11:30:09 a.m.

On Sunday, December 14, 2014, six officers responded to the following incidents:

- Officer Brendan M. McLaughlin (McLaughlin) arrived at an incident at 7:22:00 a.m., and was cleared by dispatch at 7:41:12 a.m. At some point after this call, Officer McLaughlin completed a report. Four hours later, he arrived at an incident at 11:42:11 a.m., and was cleared at 1:35:58 p.m. At 2:59:48 p.m., he arrived at another incident but was cleared one second later at 2:59:49 p.m.
- Officer Preston A. Williams (Williams) arrived at an incident at 7:27:16 a.m. and was cleared at 7:47:33 a.m. At some point after this call, he completed a report.
- Officer Campbell arrived at an incident at 7:41:43 a.m., and was cleared at 8:22:47 a.m.
- Officer John J. Ouellette (Ouellette) arrived at an incident at 11:31:17 a.m., and was cleared by dispatch at 11:31:21 a.m.
- At 11:15:37 a.m., dispatch sent a call to Officer Solimini. He arrived at the incident at 11:28:11 a.m., and was cleared by dispatch at 11:28:12 a.m.

- After receiving a dispatch call at 2:07:41, Officer John M. Hurley (Hurley) arrived at an incident at 2:07:43 p.m. and was cleared as soon as he arrived at 2:07:43 p.m.⁸

On Saturday, December 20, 2014, the Department scheduled five officers to work outside of the station. During the day shift on that day, five officers responded to the following incidents:

- Officer Solimini arrived at an incident at 12:47:24 p.m., and was cleared by dispatch at 12:47:29 p.m. Less than one hour later, he arrived at another incident at 1:44:43 p.m. and was cleared at 2:04:09 p.m.
- Officer Campbell arrived at an incident at 1:02:12 p.m., and was cleared at 1:11:45 p.m. At some point after this call, he completed a report.
- Officer McLaughlin arrived at an incident at 12:59:48 p.m., and was cleared at 1:33:39 p.m. At some point after this call, he completed a report.
- At 1:00:26 a.m., dispatch sent a call to Officer Hurley. He arrived at the incident at 1:16:39 p.m., and was cleared by dispatch at 1:16:40 p.m. Less than one hour later, he arrived at another incident at 2:05:28 p.m. and was cleared about five minutes later at 2:10:39 p.m.
- Officer Kenneth J. Bregoli (Bregoli) arrived at an incident at 1:12:02 p.m. and was cleared by dispatch at 1:13:45 p.m. Approximately, 12 minutes later, Officer Bregoli arrived at another incident at

⁸ Officer McHugh testified on cross examination that dispatchers can sometimes “mis-enter” information into the detail call list “because you can’t get dispatched to a call, arrive at a call, and clear a call in three seconds flat. It just doesn’t happen.” McHugh conceded that the “incident detail reports are not 100% reliable.” Because neither the Union nor the Town rebutted McHugh’s testimony, and because the total time of the dispatched call, officer Hurley’s arrival to and clearing from this incident is three seconds, I credit McHugh’s testimony that the incident report for this call is not accurate.

Consequently, I do not credit any of the incident reports documented by the Department where the total incident time occurred within three seconds (i.e., from the time of the dispatched call, to the officer’s arrival and clearance). There were at least six additional incident reports that occurred in 2015 where the total time was three seconds: February 14 and 15; March 14, 21 and 22, and on June 28.

1 1:25:13 p.m., and was cleared seconds later at 1:25:34 p.m. Less
2 than two minutes later, he arrived at third incident at 1:27:12 p.m.
3 and was cleared at 1:45:42 p.m.
4

5 On Sunday, December 21, 2014, the Department scheduled five officers to work
6 outside of the station. During the day shift on that day, five officers and one lieutenant
7 responded to the following incident details:

- 8 • Officer Solimini arrived at an incident at 12:12:54 p.m., and was
9 cleared by dispatch at 12:55:41 p.m.
- 10 • The Department does not have a record of the reporting "officer"
11 who responded to a dispatched call at 12:53:41 p.m. Rather, the
12 incident report lists Lieutenant Karen M. MacAleese (MacAleese)
13 as the shift supervisor who responded to that call.⁹ That report
14 shows that she arrived at the incident one second after being
15 dispatched at 12:53:42, and was cleared one second later at
16 12:53:43 p.m.¹⁰ Approximately one hour later, dispatch sent out an
17 ambulance call at 1:17:30 p.m. Again, while there is no record of a
18 reporting officer, the incident report showed Lieutenant MacAleese
19 as the lieutenant who arrived at the incident at 1:54:47 p.m., and
20 was cleared one second later at 1:54:48 p.m.

⁹ Neither party submitted evidence showing whether Lieutenant MacAleese was the responding "officer" on this call. However, both parties provided evidence that the supervisor (i.e., lieutenant or sergeant) will sometimes respond to dispatched calls. Specifically, Chief Jenkins testified that "sometimes the supervisor will go on calls" but they "are not dispatched to a call unless it's a domestic call," and that "they're not dispatched to calls as the primary responding officer unless we are out of officers." Based on this evidence, I find that Lieutenant MacAleese was the on-duty "supervisor" during the weekend day shift on Sunday, December 21, 2014.

¹⁰ Relying on McHugh's testimony that the Department's incident detail reports are not 100% reliable when someone is "dispatched to a call, arrive[s] at a call, and clear[s] a call in three seconds flat," I find that the Department's incident report as it relates to this call is neither accurate nor reliable. This is because the total time between the dispatched call, Lieutenant MacAleese's arrival to the incident and her clearance was within three seconds.

- Dispatch sent out a call around 12:49 p.m. Officer Williams arrived at the incident at 1:06:29 p.m., and was cleared one second later at 1:06:30 p.m.
- Officer McLaughlin arrived at an incident at 12:55:25 p.m., and was cleared at 1:12:19 p.m.
- Officer Campbell arrived at an incident at 1:16:00 p.m. and was cleared seconds later at 1:16:58 p.m.
- Officer Hurley arrived at an incident at 1:51:39 p.m. and was cleared by dispatch at 2:02:50 p.m.

2. January 2015

On Saturday, January 3, 2015, the Chief assigned six officers until the last half hour of the day shift, and then assigned only five officers. There were 15 incidents reported on that date during that shift. One officer responded to back-to-back incidents after being cleared from one incident at 12:13 p.m., and was dispatched to the next at 12:13 p.m.

On Sunday, January 4, 2015, the Chief assigned six officers to work outside the station during the day shift. There were 19 incidents reported on that date during that shift. One officer responded to back-to-back incidents after being cleared from one incident at 1:31 p.m., and was dispatched to the next at 1:31 p.m.

On Saturday, January 17, 2015, the Chief assigned six officers to the first half of the day shift, and assigned seven officers to the remaining half. There were 16 incidents reported on that date during that shift. One officer responded to back-to-back incidents after being cleared from one incident at 1:34 p.m., and was immediately dispatched to the next call at 1:34 p.m.

1 On Saturday, January 24, 2015, the Chief assigned six officers to the day shift.
2 There were 18 incidents reported on that date during that shift. One officer responded
3 to back-to-back incidents after being cleared from one incident at 10:30 a.m., and was
4 dispatched to the next call at 10:30 a.m.

5 On Sunday, January 25, 2015, the Department scheduled five officers to the day
6 shift. Three officers responded to the following three incident details:

- 7 • Officer Campbell arrived at an incident at 11:20:07 a.m., and was
8 cleared by dispatch at 11:25:13 a.m.
- 9 • Officer Solimini arrived at an incident at 12:04:33 p.m. and was
10 cleared by 12:30:14 p.m.
- 11 • Officer Williams arrived at an incident at 11:46:20 a.m. and was
12 cleared by dispatch at 11:50:48 a.m.

13
14 On Saturday, January 31, 2015, the Chief assigned 7.5 officers to the day shift,
15 where one officer was scheduled to work only half the shift. There were 22 incidents
16 reported on that date during that shift, and two officers responded to back-to-back
17 incidents at 11:18 a.m. and 9:40 a.m. One officer responded to one incident within 60
18 seconds of being cleared from a prior one, between 10:03 a.m. and 10:04 a.m.

19 3. February 2015

20 On Sunday, February 1, 2015, the Department scheduled five officers to work
21 outside of the station. During the day shift on that day, five officers responded to the
22 following incidents:

- 23 • Officer McLaughlin arrived at an incident at 10:05:19 a.m., and was
24 cleared by dispatch at 10:19:11 a.m. At some point after this call,
25 he completed a report. Over an hour later, Officer McLaughlin
26 arrived at another incident at 11:56:06 a.m., and was cleared at

1 11:57:52 a.m. Less than an hour later, McLaughlin arrived at an
2 incident at 12:46:10 p.m. and was cleared at 1:21:35 p.m.

- 3 • Officer Bregoli arrived at an incident at 11:10:29 a.m. and was
4 cleared by 11:31:25 a.m. At some point after this call, he completed
5 a report.
- 6 • After receiving a dispatch call at 11:37:29 a.m., Officer Brianna C.
7 Mahoney (Mahoney) arrived at an incident at 11:37:34 a.m. and
8 was cleared by dispatch two seconds later at 11:37:36 a.m.
9 Approximately twelve minutes later, Officer Mahoney arrived at
10 another incident at 11:49:07 a.m., and was cleared 30 seconds
11 later at 11:49:37 a.m.
- 12 • Officer Campbell arrived at an incident at 12:36:47 p.m., and was
13 cleared by dispatch at 12:42:19 p.m. Less than 40 minutes later,
14 Officer Campbell arrived at another incident at 1:19:40 p.m., and
15 was cleared by dispatch within seconds at 1:20:16 p.m.
- 16 • Officer Paul Zaniboni (Zaniboni) arrived at an incident at 1:54:02
17 p.m., and was cleared by dispatch thirteen seconds later at 1:54:15
18 p.m. Approximately ten minutes later, Officer Zaniboni arrived at
19 another incident at 2:06:51 p.m., and was cleared at 2:26:16 p.m.
20 Approximately thirty minutes later, he arrived at an incident at
21 2:57:31 p.m., and was cleared at 3:20:46 p.m.

22
23 On Saturday, February 7, 2015, the Department scheduled five officers to work
24 outside of the station. During the day shift on that day, six officers responded to the
25 following incident details:

- 26 • Officer Williams arrived at an incident at 11:50:22 a.m. and was
27 cleared by dispatch at 12:19:47 p.m. At some point after this call,
28 he completed a report. Officer Williams arrived at another incident
29 at 2:07:20 p.m. and was cleared at 2:15:22 p.m.
- 30 • Officer Solimini arrived at an incident at 12:00:51 p.m., and was
31 cleared at 12:22:13 p.m. At some point after this call, he completed
32 a report. Over one hour later, Officer Solimini arrived at an incident
33 at 1:27:14 p.m. and was cleared by dispatch at 1:39:34 p.m.
34 Twelve minutes later, after receiving a dispatch call at 1:51:38 a.m.,
35 he arrived at an incident at 1:55:47 p.m. and was cleared by
36 dispatch one second later at 1:55:48 p.m.
- 37 • Officer Campbell arrived at an incident at 12:00:59 p.m. and was
38 cleared by dispatch at 12:05:27 p.m. Less than one hour later,
39 Officer Campbell arrived at another incident at 12:59:30 p.m. and

1 was cleared at 1:02:40 p.m. Over an hour later, after receiving a
2 dispatch call at 1:34:50 p.m., he arrived at an incident at 2:04:38
3 p.m. and was cleared one second later at 2:04:39 p.m.

- 4 • Officer Bregoli arrived at an incident at 12:18:02 p.m., and was
5 cleared by dispatch at 12:27:27 p.m. He arrived at another incident
6 at 12:31:32 p.m., and was cleared at 12:35:43 p.m.
- 7 • Officer Ouellette arrived at an incident at 1:02:45 p.m. and was
8 cleared by dispatch at 1:09:58 p.m.
- 9 • Officer Chin arrived at an incident at 2:22:10 p.m. and was cleared
10 by dispatch at 2:32:13 p.m.

11
12 On Saturday, February 8, 2015, the Department scheduled five officers to work
13 outside of the station. During the day shift on that day, four officers responded to the
14 following incidents:

- 15 • At 10:19:23 a.m., dispatch sent a call to Officer Chin. He arrived at
16 the incident at 10:30:05 a.m., and was cleared by dispatch on
17 arrival at 10:30:05 a.m. At 11:54:52 a.m. Officer Chin arrived at
18 another incident and was cleared at 12:01:50 p.m. Under two
19 hours later, after receiving a call from dispatch at 1:46:08 p.m., he
20 arrived at an incident at 1:47:51 p.m. and was cleared by dispatch
21 two seconds later at 1:47:53 p.m. Seventeen minutes later Officer
22 Chin arrived at an incident at 2:05:22 p.m. and was cleared at
23 2:34:56 p.m.
- 24 • Officer Ouellette arrived at an incident at 10:40:23 a.m. and was
25 cleared by dispatch at 11:06:45 a.m.
- 26 • Officer Williams arrived at an incident at 11:01:44 a.m. and was
27 cleared by dispatch at 11:02:28 a.m. Almost ninety minutes later,
28 Officer Williams arrived at another incident at 12:26:19 p.m. and
29 was cleared at 12:43:07 p.m. At some point after his second call,
30 he completed a report for that incident.
- 31 • Officer Hutson arrived at an incident at 11:17:52 a.m. and was
32 cleared by dispatch at 11:22:03 a.m.

33
34 On Saturday, February 14, 2015, the Department scheduled five officers to work
35 outside of the station. During the day shift on that day, six officers responded to the
36 following incident details:

- Officer Ouellette arrived at an incident at 7:29:58 a.m. and was cleared by dispatch at 7:33:21 a.m. Approximately 90 minutes later, Officer Ouellette arrived at another incident at 9:04:09 a.m. and was cleared by dispatch at 9:14:09 a.m. Fifteen minutes later he arrived at an incident at 9:29:32 a.m. and was cleared five seconds later at 9:29:37 a.m. At 9:51:24 a.m., he arrived at an incident before dispatch cleared him at 10:02:16 a.m. Two minutes later Officer Ouellette arrived at an incident at 10:04:30 a.m. and was cleared by dispatch at 10:38:25 a.m. At 11:55:11 a.m., he arrived at an incident before being cleared at 12:00:26 p.m. About thirty minutes later, he arrived at an incident at 12:29:23 p.m. and was cleared by dispatch at 12:54:24 p.m.
- Officer Williams arrived at an incident at 8:39:25 a.m. and was cleared by dispatch at 8:52:22 a.m. At some point after this first call, he completed a report for that incident. Over three hours later, dispatch sent another call at 11:59:05 a.m., and Officer Williams arrived at that incident at 12:08:52 p.m. and was cleared one second later at 12:08:53 p.m. Less than thirty minutes later, dispatch sent a call at 12:18:56 p.m., where he arrived at the incident at 12:42:42 p.m. and was cleared by dispatch ten seconds later at 12:42:52 p.m. At 1:28:59 p.m., Officer Williams arrived at an incident and was cleared by dispatch at 2:02:29 p.m.
- Officer Hutson arrived at an incident at 9:13:47 a.m. and was cleared by dispatch four seconds later at 9:13:51 a.m. Dispatch sent another call at 10:04:58 a.m., he arrived at 10:35:00 a.m., and was cleared at 10:35:05 a.m. Approximately ninety minutes later, he received a dispatched call at 10:35:58 a.m., arrived at the incident at 11:58:54 a.m. and was cleared by dispatch two seconds later at 11:58:56 a.m. About six minutes later, he arrived at an incident at 12:04:50 p.m. and was cleared at 12:24:17 p.m. Over one hour later at 1:37:03 p.m., Officer Hutson arrived at an incident and was cleared by dispatch at 1:44:07 p.m. Less than ten minutes later, he arrived at an incident at 1:52:15 p.m. and was cleared at 2:49:10 p.m.
- Officer Timulty arrived at an incident at 9:04:07 a.m. and was cleared by dispatch at 9:30:08 a.m. Thirteen minutes later, after another dispatched call at 9:31:21 a.m., Officer Timulty arrived at the incident at 9:43:19 a.m. and was cleared two seconds later at 9:43:21 a.m. At 10:16:08, he arrived and was cleared by dispatch on arrival. Over three hours later, Officer Timulty arrived at an incident at 1:36:57 p.m. and was cleared at 1:39:12 p.m.

- Officer Chin arrived at a "disturbance" incident at 10:03:02 a.m. and was cleared by dispatch at 10:04:54 a.m. At some point after the disturbance incident, he completed a report. Somehow at 10:03:32, dispatch sent a call to Officer Chin to respond to the same address for the disturbance incident but this time to check on an "alarm." He arrived at the alarm incident at 10:04:29 a.m. and was cleared by dispatch at 10:36:08 a.m. At 12:07:39 p.m., he arrived at an incident and was cleared at 12:17:00 p.m. Approximately 80 minutes later, Officer Chin arrived at an incident at 1:36:58 p.m. and was cleared at 1:54:15 p.m. Less than fifteen minutes later, dispatch sent a call at 2:00:53 p.m., he arrived at the incident at 2:10:33 p.m., and was cleared two seconds later at 2:10:35 p.m.
- Officer Meredith Goldman (Goldman) arrived at an incident at 2:50:27 p.m. and was cleared by dispatch at 3:11:20 p.m.

On Sunday, February 15, 2015, the Department scheduled five officers to work outside of the station. During the day shift on that day, five officers responded to the following incident details:

- Dispatch sent a call at 6:47:58 a.m., Officer McLaughlin arrived at the incident at 7:14:13 a.m., and was cleared by dispatch one second later at 7:14:14 a.m. Less than one minute later at 7:15:06 a.m., dispatch sent another call where he arrived at 7:25:20 a.m., and was cleared one second later at 7:25:21 a.m. About forty seconds later Officer McLaughlin arrived at another incident at 7:26:01 a.m., and was cleared just under one hour later at 8:22:08 a.m. Two minutes later he arrived at an incident at 8:24:05 and was cleared forty-seven seconds later at 8:24:52 a.m. Almost five hours later, Officer McLaughlin arrived at an incident at 1:10:50 p.m. and was cleared at 1:18:15 p.m. At some point after this last call, he completed a report for that incident.
- Officer William Cushing (Cushing) arrived at an incident at 7:43:57 a.m., and was cleared seven seconds later at 7:44:04 a.m. Dispatch sent a call at 8:51:43 a.m., with Officer Cushing arriving at 9:16:18 a.m., and was cleared by dispatch two seconds later at 9:16:18 a.m. Thirteen minutes later he arrived at an incident at 9:29:10 a.m., and was cleared by dispatch at 9:37:02 a.m.
- Officer Zaniboni arrived at an incident at 8:19:01 a.m. and was cleared by dispatch at 9:23:11 a.m. Officer Zaniboni arrived at

1 another incident at 10:21:05 a.m. and was cleared at 10:33:06 a.m.
2 At 1:47:01 p.m. he arrived at an incident and was cleared about
3 three minutes later at 1:50:26 p.m.

- 4 • Officer Brian Stuart (Stuart) arrived at an incident at 8:25:20 a.m.,
5 and was cleared by dispatch at 8:27:27 a.m. Officer Stuart arrived
6 at another incident at 8:34:24 a.m. and was cleared at 8:35:06 a.m.
7 About an hour later he arrived at an incident at 9:31:23 a.m. and
8 was cleared by dispatch at 9:53:34 a.m. Just under one hour later,
9 Officer Stuart arrived at an incident at 10:45:47 a.m. and was
10 cleared at 12:08:57 p.m.
- 11 • At 9:04:11 a.m., dispatch sent a call to which Officer Jennifer
12 Zakowsky (Zakowsky) arrived at 9:22:34 a.m., and was cleared by
13 dispatch one second later at 9:22:35 a.m. Two minutes later
14 dispatch sent another call at 9:24:20 a.m., with Officer Zakowsky
15 arriving at 9:28:19 a.m., and was cleared one second later at
16 9:28:20 a.m. She arrived at another incident at 11:20:07 a.m., and
17 was cleared by dispatch at 11:25:13 a.m.

18
19 On Sunday, February 22, 2015, the Department scheduled six officers to work
20 outside of the station. During the day shift on that day, six officers responded to 14
21 incidents. One of those officers responded to an incident within 60 seconds of being
22 cleared from a prior one (i.e., between 12:46 p.m. and 12:47 p.m.), while another officer
23 responded to an incident within two minutes of being cleared from a prior one (between
24 11:32 a.m. and 11:34 a.m.). On Saturday, February 28, 2015, the Department
25 scheduled seven officers to work outside of the station. During the day shift on that day,
26 seven officers responded to 19 incidents, but none responded to back-to-back incidents.

27 **4. March 2015**

28 On Sunday, March 1, 2015, the Department scheduled six officers to work
29 outside of the station. During the day shift on that day, six officers responded to 10
30 incidents, but only one officer responded to an incident within 60 seconds of being

1 cleared from a prior one between 2:29 p.m. and 2:30 p.m. On Sunday, March 8, 2015,
2 the Department again scheduled six officers to work outside of the station. During the
3 day shift on that day, six officers responded to 13 incidents; again, with only one officer
4 responding to an incident within 60 seconds of being cleared from a prior one between
5 7:08 a.m. and 7:09 a.m.

6 On Saturday, March 14, 2015, six officers responded to the following incident
7 details:

- 8 • At 11:34:07 a.m., dispatch sent a call to which Officer Solimini
9 arrived at 11:46:09 a.m., and was cleared by dispatch two seconds
10 later at 11:46:11 a.m. About thirty minutes later, Officer Solimini
11 arrived at another incident at 12:16:48 p.m. and was cleared at
12 12:35:18 p.m. At 2:19:28 p.m. he arrived at another incident and
13 was cleared by dispatch at 2:24:06 p.m. About twenty minutes later
14 he arrived at an incident at 2:43:42 p.m. and was cleared at 2:45:04
15 p.m.
- 16 • Officer Campbell arrived at an incident at 11:57:47 a.m. and was
17 cleared by dispatch at 12:16:28 p.m. Officer Campbell arrived at
18 another incident at 12:46:22 p.m. and was cleared at 12:48:09 p.m.
19 At some point after his last call, Officer Campbell completed a
20 report for that incident.
- 21 • Officer Bregoli arrived at an incident at 12:03:02 p.m. and was
22 cleared by dispatch at 12:08:12 p.m. At some point after this call,
23 he completed a report for that incident.
- 24 • Officer Ouellette arrived at an incident at 12:33:25 p.m., and was
25 cleared by dispatch at 12:36:31 p.m. At some point after this first
26 call, he completed a report for that incident. Less than one hour
27 later Officer Ouellette arrived at an incident at 1:33:23 p.m., and
28 was cleared at 1:35:04 p.m.
- 29 • At 12:45:24 p.m., dispatch sent a call to which Officer Richard Hale
30 (Hale) arrived at 12:54:48 p.m., and was cleared by dispatch one
31 second later at 12:54:49 p.m. Officer Hale arrived at another
32 incident at 1:21:28 p.m. and was cleared five seconds later at
33 1:21:33 p.m. At some point after this second call, he completed a
34 report for that incident.

- Officer Chin arrived at an incident at 1:33:16 p.m. and was cleared by dispatch at 2:12:30 p.m. About thirteen minutes later Officer Chin arrived at an incident at 2:25:21 p.m. and was cleared at 2:52:29 p.m.

On Sunday, March 15, 2015, the Department scheduled seven officers to work outside of the station from 6:30 a.m. to 1:00 p.m., and scheduled six officers from 1:00 p.m. to 2:00 p.m. During the day shift on that day, seven officers responded to 10 incidents. One of those officers responded to an incident within two minutes of being cleared from a prior one, between 12:17 p.m. and 12:19 p.m.

On Saturday, March 21, 2015, the Department scheduled seven officers to work outside of the station. During the day shift on that day, seven officers responded to 12 incidents, but none responded to back-to-back incidents. On Sunday, March 22, 2015, the Department scheduled five officers to work outside of the station during the day shift. On that day, the following officers responded to incident details:

- Officer Hurley arrived at an incident at 12:05:21 p.m., and was cleared by dispatch at 12:11:16 p.m. Officer Hurley arrived at another incident at 1:34:30 p.m. and was cleared at 1:43:13 p.m.
- Officer Chin arrived at an incident at 12:10:39 p.m. and was cleared by dispatch at 12:14:23 p.m. Officer Chin arrived at another incident at 1:53:06 p.m. and was cleared at 1:59:18 p.m.
- Officer Golden arrived at an incident at 12:15:38 p.m. and was cleared by dispatch at 12:22:22 p.m. At 1:08:18 p.m., dispatch sent a call where Officer Golden arrived at 1:08:18 p.m.,¹¹ and was cleared by dispatch five seconds later at 1:08:23 p.m. Less than fifteen minutes later she arrived at another incident at 1:22:04 p.m. and was cleared at 1:56:48 p.m.

¹¹ The record is not clear about whether Officer Golden's arrival to this incident was instantaneous with the dispatched call, or if she was already at the scene when the call was dispatched.

- Officer Lisa Fahey (Fahey) arrived at an incident at 1:11:39 p.m., and was cleared by dispatch at 1:19:51 p.m. Officer Fahey arrived at another incident at 1:54:34 p.m. and was cleared at 2:27:52 p.m.
- Officer Zakowsky arrived at another incident at 1:48:13 p.m. and was cleared at 2:05:18 p.m.

On Saturday, March 28, 2015, the Department scheduled seven officers to work outside of the station for the first six hours of the day shift, and five officers scheduled for the last two hours. During that shift, officers responded to 19 incidents, and two officers responded to six back-to-back incidents at 7:24 a.m., 10:06 a.m., 12:18 p.m., 1:09 p.m., and two separate incidents occurring simultaneously at 1:37 p.m.

5. April 2015

On Saturday, April 4, 2015, the Department scheduled seven officers to work outside of the station until 12:30 p.m., and scheduled five officers for the remaining two hours. During that shift, the officers responded to 18 incidents, but none responded to back-to-back incidents. On Sunday, April 5, 2015, the Department scheduled seven officers to work outside of the station until 1:00 p.m., and scheduled six until 2:30 p.m. During that shift, the officers responded to 18 incidents. One of those officers responded to an incident within two minutes of being cleared from a prior one between 9:19 a.m. and 9:21 a.m.

On Saturday, April 11, 2015, the Department scheduled seven officers to work outside of the station during the first half of the day shift, and six to work the last half. There were 27 incidents reported on that date during that shift, and one officer responded to a back-to-back incident at 10:36 a.m.

On Saturday, April 18, 2015, the Department scheduled five officers to work outside of the station on the day shift. Those officers responded to the following incidents:

- Officer Bregoli arrived at an incident at 10:24:17a.m., and was cleared by dispatch at 10:30:06 a.m. Officer Bregoli arrived at another incident at 10:36:33 a.m. and was cleared by dispatch at 10:59:40 a.m. About thirty-six minutes later he arrived at an incident at 11:36:34 a.m. and was cleared at 11:53:37 a.m.
- Officer Solimini arrived at an incident at 10:21:59 a.m. and was cleared by 10:43:56 a.m. Officer Solimini arrived at another incident at 12:33:45 p.m. and was cleared 12:41:20 p.m. At 2:17:43 p.m. he arrived at an incident and was cleared at 2:20:51 p.m. At some point after this last call, Officer Solimini completed a report for the incident.
- Officer Hutson arrived at an incident at 11:16:07 a.m. and was cleared by dispatch at 11:36:46 a.m. Officer Hutson arrived at another incident at 12:03:39 p.m. and was cleared at 12:04:50 p.m.
- Officer McLaughlin arrived at an ambulance call at 11:15:51 a.m., and was cleared by dispatch at 12:23:56 p.m. However, the same incident detail report also has Officer McLaughlin arriving at another incident at 12:19:15 p.m. (and cleared at 12:22:28 p.m.), while he was still responding to the ambulance call above.¹² About four minutes later, he arrived at an incident at 12:26:32 p.m. and was cleared at 12:30:59 p.m. At 1:47:18 p.m. he arrived at an incident and was cleared by dispatch at 2:02:26 p.m. Officer McLaughlin overlapped his third incident by arriving at another incident at 1:58:00 p.m. and was cleared less than two minutes later at 1:59:34 p.m.¹³
- Officer Golden arrived at an incident at 11:54:06 a.m. and was cleared to leave by dispatch at 12:07:38 a.m.

¹² Neither party submitted evidence reconciling the overlap for Officer McLaughlin's incident detail response times between 11:15 a.m. and 12:19 p.m. Consequently, I do not find the incident detail reports as they relates to these two incidents to be accurate.

¹³ Again, the parties failed to reconcile how Officer McLaughlin could respond simultaneously to two incidents (i.e., at 1:47 p.m. and at 1:58 p.m.) while he was presumably in two different locations. Based on the totality of the evidence presented, I do not find the incident detail report for these two incidents to be accurate.

1
2 On Sunday, April 19, 2015, the Department scheduled seven officers to work
3 outside of the station until 1:00 p.m., and scheduled six officers until 2:30 p.m. There
4 were 15 incidents reported on that date during that shift, and two officers responded to
5 three incidents within 60 seconds of being cleared from a prior one. Two of those
6 incidents occurred simultaneously between: 8:59 a.m. and 9:00 a.m., and one incident
7 occurred between 1:22 p.m. and 1:23 p.m. During that shift, another officer responded
8 to an incident within two minutes of being cleared from a prior one, between 8:42 a.m.
9 and 8:44 a.m.

10 On Saturday, April 25, 2015, the Department scheduled eight officers to work
11 outside of the station during the first part of the day shift, and six during the last part of
12 that shift. There were 9 incidents reported on that date during that shift, but no officers
13 responded to back-to-back incidents. On Sunday, April 26, 2015, the Department
14 scheduled six officers to work outside of the station during the first four hours of the day
15 shift, and scheduling five until the last four hours. There were 11 incidents reported on
16 that date during that shift, but no officers responded to back-to-back incidents.

17 **6. May 2015**

18 On Sunday, May 17, 2015, the Department scheduled six officers to work outside
19 of the station until 2:00 p.m., and scheduled five officers for the remaining 30 minutes of
20 that shift. There were 15 incidents reported on that date during that shift. Two officers
21 responded to two separate back-to-back incidents at 12:20 p.m., and one officer

1 responded to an incident within two minutes of being cleared from a prior one between
2 1:33 p.m. and 1:35 p.m.

3 On Saturday, May 23, 2015, the Department scheduled seven officers to work
4 outside of the station on the day shift. There were 25 incidents reported on that date
5 during that shift, but no officers responded to back-to-back incidents. On Sunday, May
6 24, 2015, the Chief assigned six officers to the day shift. There were 11 incidents
7 reported on that date during that shift, and only one officer responded to a back-to-back
8 call at 1:31 p.m.

9 On Saturday, May 30, 2015, the Department scheduled six officers to work
10 outside of the station on the day shift. There were 15 incidents reported on that date
11 during that shift, where two officers responded to two back-to-back calls at 9:54 a.m.
12 and 10:09 a.m. On Sunday, May 31, 2015, the Department scheduled seven officers to
13 work outside of the station until 10:30 a.m., and scheduled six officers to work until 2:30
14 p.m. There were 11 incidents reported on that date during that shift, but there were no
15 officers who responded to back-to-back incidents.

16 7. June 2015

17 On Saturday, June 6, 2015, the Department scheduled six officers to work
18 outside of the station on the day shift. There were 7 incidents reported on that date
19 during that shift, and only one officer responded to a back-to-back call at 8:53 a.m. On
20 Sunday, June 7, 2015, the Department scheduled five officers to work outside of the
21 station on the day shift. Those officers responded to the following incidents:

- Officer McLaughlin arrived at an incident at 12:13:49 p.m., and was cleared by dispatch at 1:11:20 p.m. At some point after this first call, he completed a report for that incident. At 1:02:53 p.m., dispatch sent a call to which Officer McLaughlin arrived at 1:36:54 p.m., and was cleared two seconds later at 1:36:56 p.m.
- Officer Solimini arrived at an incident at 12:20:50 p.m. and was cleared by 1:24:21 p.m.
- Officer Williams arrived at an incident at 1:09:59 p.m. and was cleared by dispatch at 2:35:13 p.m. At some point after this call, he completed a report for that incident.
- Officer Hurley arrived at an incident at 2:58:44 p.m., and was cleared by dispatch at 3:08:46 p.m. At some point after this call, he completed a report for that incident.

On Saturday, June 13, 2015, the Department scheduled six officers to work outside of the station during the first half of the day shift, and five officers to work the last half of that shift. There were 21 incidents reported on that date during that shift. One officer responded to one back-to-back incident at 1:37 p.m., and three officers responded to three incidents: one between 11:48 a.m. and 11:49 p.m.; and two between 10:34 a.m. and 10:36 a.m. On that same date, four officers responded to the following incident details:

- Officer Campbell arrived at an incident at 9:11:32 a.m., and was cleared by dispatch at 9:19:33 a.m. Exactly 20 seconds later, Officer Campbell arrived at an incident at 9:19:53 a.m. and was cleared at 9:27:54 a.m. At 10:40:44 a.m. he arrived at another incident and was cleared at 11:11:10 a.m. Later he arrived at an incident at 1:35:01 p.m. and was cleared by dispatch at 1:40:39 p.m.
- Officer Ouellette arrived at an incident at 10:20:31 a.m., and was cleared by dispatch at 10:34:08 a.m. Officer Ouellette arrived at another incident at 11:52:01 a.m. and was cleared at 12:02:45 p.m. At 1:39:10 p.m. he arrived at another incident and was cleared at 1:53:58 p.m.

- 1 • Officer McLaughlin arrived at an incident at 10:50:36 a.m., and was
2 cleared by dispatch at 11:05:34 a.m. At some point after this call,
3 he completed a report for the incident.
- 4 • Officer Williams arrived at an incident at 9:07:35 a.m., and was
5 cleared by dispatch at 9:37:03 a.m.

6
7 On Saturday, June 20, 2015, the Department scheduled six officers to work
8 outside of the station on the day shift. There were 18 incidents reported on that date
9 during that shift, where one officer responded to one back-to-back call at 10:41 a.m.,
10 and two officers responded to two calls within one minute of dispatch clearing them from
11 the prior one (i.e., with one between 7:05 a.m. and 7:06 a.m., and another between
12 10:41 a.m. and 10:42 a.m.). Three of those officers responded to the following three
13 incident details:

- 14 • Officer Golden arrived at an incident at 1:57:38 p.m., and was
15 cleared by dispatch at 2:04:56 p.m. At some point after this call,
16 she completed a report for the incident.
- 17 • Officer Timulty arrived at an incident at 1:46:52 p.m., and was
18 cleared by dispatch at 1:51:54 p.m.
- 19 • Officer Hurley arrived at an incident at 2:06:53 p.m., and was
20 cleared by dispatch at 2:17:16 p.m.

21
22 On Sunday, June 21, 2015, the Department scheduled six officers to work
23 outside of the station on the day shift. There were 12 incidents reported on that date
24 during that shift, where two officers responded to the same back-to-back call at 9:46
25 a.m.

26 On Saturday, June 27, 2015, the Department scheduled six officers to work
27 outside of the station on the day shift. There were 18 incidents reported on that date
28 during that shift, where three officers responded to three back-to-back calls at 10:10

1 a.m., 11:56 a.m., and 2:22 p.m. Two officers responded to calls within 60 seconds of
2 dispatch clearing them from the prior one (i.e., between 10:23 a.m. and 10:24 a.m., and
3 1:14 p.m. and 1:15 p.m.). Four of those officers responded to the following four incident
4 details:

- 5 • Officer Keith Connaughton (Connaughton) arrived at an incident at
6 10:35:55 a.m., and was cleared by dispatch at 11:40:24 a.m.
- 7 • Officer Hurley arrived at an incident at 10:55:28 a.m., and was
8 cleared by dispatch at 10:58:17 a.m.
- 9 • Officer Golden arrived at an incident at 12:18:29 a.m., and was
10 cleared by dispatch at 12:43:33 a.m. At some point after this call,
11 she completed a report for the incident.
- 12 • Officer Brian Jenkins (Jenkins) arrived at an incident at 12:52:41
13 p.m., and was cleared by dispatch at 1:31:25 p.m.

14
15 On Sunday, June 28, 2015, the Department scheduled five officers to work
16 outside of the station on the day shift. Those officers responded to the following
17 incident details:

- 18 • Officer Timulty arrived at an incident at 10:47:07 a.m., and was
19 cleared by dispatch at 10:57:17 a.m. Officer Timulty arrived at
20 another incident at an unrecorded time but he was cleared from
21 that incident at 11:11:22 a.m. At 11:50:58 he arrived at another
22 incident and was cleared by dispatch at 12:10:34 p.m. About thirty
23 minutes later he arrived at an incident at 12:52:27 p.m. and was
24 cleared at 1:38:44 p.m.
- 25 • Officer Jenkins arrived at an incident at 10:53:50 a.m., and was
26 cleared by dispatch at 11:07:15 a.m. Officer Jenkins arrived at
27 another incident at 12:28:04 p.m. and was cleared at 1:33:06 p.m.
28 About ten minutes later he arrived at an incident at 1:46:37 p.m.
29 and was cleared at 2:04:22 p.m.
- 30 • Officer Connolly arrived at an incident at 11:01:59 a.m., and was
31 cleared by dispatch at 11:54:40 a.m.
- 32 • Officer McLaughlin arrived at an incident at 11:36:02 a.m., and was
33 cleared by dispatch at 11:46:23 a.m.

34
35 **8. July 2015**

On Sunday, July 5, 2015, the Department scheduled five officers to work outside of the station on the day shift. Those officers responded to the following seven incidents:

- Officer Michael Arki (Arki) arrived at an incident at 9:25:55 a.m., and was cleared by dispatch at 9:59:35 a.m.
- Officer Solimini arrived at an incident at 10:02:03 a.m. and was cleared by dispatch at 10:10:19 a.m. Officer Solimini arrived at another incident eight minutes later at 10:18:20 a.m. and was cleared at 10:25:02 a.m. Forty-seven seconds later he arrived at another incident at 10:25:49 a.m. and was cleared at 11:34:44 a.m. At some point after this last call, Officer Solimini completed a report for that incident.
- Officer Jenkins arrived at an incident at 11:52:07 a.m. and was cleared by dispatch at 11:58:41 a.m. Officer Jenkins arrived at another incident at 1:46:19 p.m. and was cleared at 1:58:57 p.m.
- Officer Ryan McHugh (McHugh) arrived at an incident at 11:58:54 a.m., and was cleared by dispatch at 12:05:49 p.m. At some point after this call, he completed a report for the incident.

DECISION

A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving 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); Commonwealth of Massachusetts, 30 MLC 63, SUP-4784 (Oct. 9, 2003), aff'd Secretary of Administration and Finance v. Commonwealth Employment Relations Board, 74 Mass. App. Ct. 91 (2009). The

1 employer's obligation to bargain before changing conditions of employment extends to
2 working conditions established through past practice, as well as those specified in a
3 collective bargaining agreement. Town of Andover, 28 MLC 264, 268, MUP-1012 and
4 MUP-1186 (Feb. 7, 2002) (citing City of Gloucester, 26 MLC 128, 129, MUP-2180
5 (March 1, 2000); Town of Wilmington, 9 MLC 1694, 1699, MUP-4688 (March 18,
6 1983)).

7 To establish a unilateral change violation, the charging party must show that: (1)
8 the employer changed an existing practice or instituted a new one; (2) the change
9 affected a mandatory subject of bargaining; and, (3) the change was implemented
10 without prior notice or an opportunity to bargain to resolution or impasse. Town of
11 Andover, 28 MLC at 268 (citing Commonwealth of Massachusetts, 27 MLC 70, 72,
12 SUP-4503 (Dec. 6, 2000); City of Boston, 26 MLC 177, 181, MUP-1431 (Mar. 23, 2000);
13 Massachusetts Port Authority, 26 MLC 100, 101, UP-2624 (Jan. 14, 2000)).

14 Workload is a mandatory subject of bargaining. See Commonwealth of
15 Massachusetts, 28 MLC 36, 40 (2001); see also City of Boston, 8 MLC 1419, 1434-35,
16 MUP-3821 (Nov. 2, 1981). The charging party bears the burden of proving the
17 workload impacts of an employer's change in staffing, and the Commonwealth
18 Employment Relations Board (CERB) will not infer such an impact based solely on
19 evidence that staffing has changed. Town of Winchester, 42 MLC 332, MUP-13-3289,
20 (June 23, 2016) (citing Town of Seekonk, 14 MLC 1725, 1730-31, MUP-6131 (May 10,
21 1988)).

1 It is undisputed that the Town reduced the minimum staffing levels for patrol
2 officers on the weekend day shift on November 26, 2014, the Town implemented this
3 change without first providing the Union with an opportunity to bargain to resolution or
4 impasse over the impacts of that decision, and that the Town had no obligation to
5 bargain over the staffing-level decision. What is disputed is whether the Town failed to
6 bargain with the Union over the impacts of the Chief's decisions to: (1) issue the
7 November 26, 2014 GFFV without an accompanying memorandum, and (2) decrease
8 the minimum staffing levels on the weekend day shifts pursuant to the November 26,
9 2014 GFFV.

10 **1. No Past Practice**

11 To determine whether a binding past practice exists, the CERB "analyzes the
12 combination of facts upon which the alleged practice is predicated, including whether
13 the practice has occurred with regularity over a sufficient period of time so that it is
14 reasonable to expect that the practice will continue." Commonwealth of Massachusetts
15 30 MLC at 64. While the CERB "inquires whether employees in the unit have a
16 reasonable expectation that the practice in question will continue," City of Westfield, 22
17 MLC 1394, 1404, MUP-9697 (H.O. Jan. 10, 1996), aff'd, 25 MLC 163 (1999), the CERB
18 also focuses on the fact that "[a] past practice is a practice which is unequivocal, has
19 existed substantially unvaried for a reasonable period of time and is known and is
20 accepted by both parties." Town of Dedham School Committee, 5 MLC 1836, 1839,
21 MUP-3002 (Nov. 14, 1978).

1 The Union makes two arguments. First, it argues that prior to November of 2014,
2 the Town had a long-established practice of bargaining with the Union over the impacts
3 of reducing minimum staffing levels on the weekend day shift prior to implementing
4 those reductions. The Union contends that prior to November 26, 2014, every time the
5 Chief issued a GFFV personnel order, he would always attach a memorandum to each
6 order explaining his reasons for the reduction. Second, the Union argues that prior to
7 November of 2014, the Chief would always provide the Union with notice and an
8 opportunity to impact bargain whenever he decided to change the minimum staffing
9 levels for officers on the weekend day shift. Specifically, the Union points to 2008 and
10 2009, when Chief Frazier met with the Union on two occasions to impact bargain over
11 the staffing level changes implemented by the Chief, which affected patrol officers
12 assigned to the weekend day shifts.

13 Conversely, the Town argues that it has never established a regular practice of
14 bargaining with the Union over the impacts of every change made to the minimum
15 staffing levels for patrol officers on the weekend day shift. Nor has it ever attached
16 explanatory memoranda to every GFFV personnel order issued by the Chief since
17 1994. Rather, the Town maintains that with the exception of two incidents in 2008 and
18 2009, the Chief has always changed the minimum staffing levels for patrol officers
19 assigned on the day shift without first bargaining over the impacts with the Union. It
20 also maintains that while the Chief sometimes issues GFFV orders with accompanying

1 memoranda, the majority of GFFVs are not accompanied with any supplemental
2 explanation.

3 I find the Town's arguments to be meritorious because since 1994, the Chief has
4 issued dozens of personnel orders that have changed the numbers of officers assigned
5 to the weekend day shift between four and six officers. Beginning in 1994, the Chief
6 issued at least seven personnel orders that required a minimum of five officers to patrol
7 the weekend day shift. In 1995, the Chief issued at least two more orders increasing
8 that number to six, and then decreasing it to five. The Chief issued another 12 orders
9 between 1997 and 2004, where the minimum staffing number for officers assigned to
10 the weekend day shift fluctuated between five and six. In 2009, the Chief issued at
11 least three orders that reduced the minimum staffing number to four officers on the
12 weekend day shift; while, in 2012, he issued at least two more orders increasing that
13 number to five and six, respectively.

14 Out of the 40 or more GFFV orders that the Chief issued between 1994 and
15 2014, only seven were accompanied with memoranda (two in 1997, two in 2003, one in
16 2008, one in 2009, and one in 2012), while 37 orders did not include any memoranda.
17 Further, no orders have included explanatory memoranda since 2012. With the
18 exception of two incidents (one in 2007 and one in 2008), there is no evidence that the
19 parties met regularly to bargain over the impacts of those GFFV orders. Those
20 exceptions show that the parties bargained once: (1) in 2008 over the Chief's decision
21 to temporarily transfer officers to assignment at the South Shore Plaza; and, (2) in 2009

1 after the Chief increased staffing levels due to “a line item transfer into [the
2 Department’s] overtime account.” Aside from these two events, the parties never met to
3 bargain over the impacts of subsequent GFFV staffing orders issued by the Chief after
4 2009.

5 Consequently, the Union is unable to show that the Town established a practice
6 of bargaining with the Union over the impacts of reducing minimum staffing levels on the
7 weekend day shift. Nor can the Union show that the Town maintained a regular
8 practice of providing the Union with an explanatory memorandum every time the Chief
9 issued a GFFV personnel order related to staffing reductions.

10 **2. No Workload Impacts**

11 Although the Chief reduced the number of officers assigned to the weekend day
12 shift from six to five in November of 2014, his reduction did not affect a mandatory
13 subject of bargaining because there is no evidence that the change impacted
14 employees’ workloads. Contrast School Committee of Newton v. Labor Relations
15 Commission, 388 Mass. 557, 564 (1983) (a public employer is required to bargain over
16 the impact of a managerial decision if it affects employees’ wages, hours, and other
17 terms and conditions of employment).

18 The Union contends that Chief Jenkin’s November 26, 2014 GFFV order
19 impacted unit members’ workloads because it left them with insufficient time to respond
20 to calls and generate necessary reports.

21 **1. Response Times to Calls**

1 Concerning response times to calls, the Union points specifically to the number
2 of “back-to-back” calls on the weekend day shift, which it asserts increased after the
3 Chief reduced the staffing levels in November of 2014. It also points to the number of
4 overall calls that have increased by 3,049 (i.e., from 19,466 in 2005 to 22,515 in 2014).
5 Based on the increase in call volume, the Union argues that there is a correlation
6 between the November of 2014 decrease in officers assigned to the weekend day shift
7 and an increase in their workload.

8 However, nothing in the record shows that officers responded to more “back-to-
9 back” calls than usual after November 26, 2014. Nor is there any evidence that a
10 majority of “back-to-back” calls received by the Department between December 13,
11 2014 and July 5, 2015 occurred when only five officers were assigned to the weekend
12 day shift. While the Union provided incident reports for that portion of time, it failed to
13 provide any reports for May of 2015 and only provided five full weekend day shifts and
14 nine half weekend day shifts—out of a total of 30 full weekend day shifts or 60 half-
15 shifts that occurred during that period. It also failed to provide incident reports for time
16 periods occurring prior to November of 2014, which makes it impossible for me to
17 determine whether the number of back-to-back calls received on the weekend day shift
18 after November 26, 2014, actually increased, decreased or stayed the same. Further,
19 the Union is unable to distinguish between how many of the Department’s 22,515 calls
20 were actually received by dispatch during the weekend day shift (versus other shifts) in
21 2014, or when exactly dispatch received those calls (i.e., prior to, during or after the

1 Chief's November 26, 2014 personnel order). In contrast, the Town is able to show
2 numerous instances between December 13, 2014 and July 5, 2015 where officers
3 assigned to the weekend day shift encountered "back-to-back" calls despite the Chief
4 assigning six or more officers assigned to that shift. For example, during four weekend
5 day shifts in May of 2015, four officers responded to four back-to-back calls even
6 though the Chief had scheduled six or more officers to work those shifts.

7 The parties do not dispute the facts that the nature of police work on the
8 weekend day shift is "unpredictable," or that it is not "unusual to have every officer tied
9 up regardless of the shift." Nor do the parties dispute the fact that some of the data
10 contained in the incident reports are inaccurate because they reflect incidents where an
11 officer received a dispatched call, arrived at the incident and was cleared within three
12 seconds, which "just doesn't happen." Considering the total record, I find no evidence
13 that unit members' workloads were impacted by the number of dispatched calls
14 received by the Department after November 26, 2014.

15 **2. Time to Complete Reports**

16 Next, the Union contends that the Chief's November 26, 2014 reduction order
17 prevented unit members from completing necessary reports in a timely manner.
18 However, nothing in the record supports this contention. The Union did not provide any
19 evidence of when officers actually completed their reports or whether the Chief's
20 November 2014 reduction in staffing actually prevented them from completing those
21 reports in a timely manner. Instead, the incident reports on which the Union relies show

1 only that particular officers did complete reports but, those reports do not indicate any
2 completion times. It is undisputed that officers usually complete reports before the end
3 of their shifts, immediately after their shifts on overtime--especially if it was needed for
4 court the next day—or return on his/her next shift to complete it. However, nothing in
5 the record shows how many reports were generated by officers after November 26,
6 2014, how many were generated prior to that time, and whether there was a significant
7 change in officers' ability to complete reports after the Chief's November 26, 2014
8 GFFV order. Based on this record, I find no evidence that the Chief's November 26,
9 2014 order required unit members to complete more reports than usual after November
10 26, 2014, or that the order prevented them from completing those reports in a timely
11 manner.

12 Consequently, without proof that the Chief's November 26, 2014 GFFV order
13 increased unit members' workloads or impacted any other mandatory subject of
14 bargaining, the Union's arguments amount to speculation; and, therefore, must fail. See
15 generally, City of Boston, 43 MLC 235-37, fn. 5, MUP-15-4374 (May 25, 2017) (CERB
16 rejected the union's speculation about what the evidence "could" mean); see also City of
17 Boston, 8 MLC at 1434-35 (CERB found no unilateral change violation after union failed
18 to prove that employer increased workload beyond the existing parameters). Thus, I
19 must dismiss the Complaint.

20 CONCLUSION

1 For the reasons stated above, I conclude that the Town did not violate Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it reduced the minimum
3 number of patrol officers assigned to the weekend day shift from six to five.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KENDRAH DAVIS, ESQ. HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.