

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF LEOMINSTER

and

LEOMINSTER PATROLMEN'S UNION

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Case No. MUP-16-5663

Date Issued:

June 7, 2017

Hearing Officer:

Kevin J. Murray, Esq.

Appearances:

Jennifer Rubin, Esq.-

Representing the Leominster
Patrolmen's Union

Brian M. Maser, Esq. -

Representing the City of Leominster

HEARING OFFICER DECISION

Summary

1 The issue in this case is whether the City of Leominster (City) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of Chapter 150E (the Law) by repudiating an
3 October 13, 2015 Memorandum of Agreement (MOA) that it had entered into with the
4 Leominster Patrolmen's Union (Union). Based on the plain meaning of the October 13,
5 2015 MOA, I find that the City violated the Law in the manner alleged.

Statement of the Case

6
7 On December 15, 2016, the Union filed a charge of prohibited practice with the
8 Department of Labor Relations (DLR), alleging that the City had engaged in prohibited

1 practices within the meaning of Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law.
 2 The DLR investigated the Union's charge and on April 14, 2017, issued a Complaint of
 3 Prohibited Practice. The City filed an Answer to the Complaint on or about April 24,
 4 2017.

5 The Complaint alleges that the City repudiated a provision in a MOA executed by
 6 the parties on October 13, 2015. The parties subsequently waived their right to a hearing
 7 and agreed to submit evidence in the form of a stipulated record. The Union filed a brief
 8 on or about May 19, 2017.¹ Based on the record, which includes stipulated facts and
 9 documentary exhibits, and in consideration of the parties' arguments, I render the
 10 following opinion.

11 Stipulations of Fact

12 I. FACTS

- 13 1. The City of Leominster (City) is a public employer within the meaning of Section 1 of
 14 the Law.
 15
 16 2. The Leominster Patrolmen's Union (Union) is an employee organization within the
 17 meaning of Section 1 of the Law.
 18
 19 3. The Union is the exclusive bargaining representative for patrol officers.
 20
 21 4. On October 13, 2015, the parties signed an MOA of which states, in relevant part:

22
 23 The parties agree that in exchange for officers carrying AED equipment in their
 24 cruisers, thirty-five thousand dollars (\$35,000) will be allocated every year in the
 25 budget for supplementary overtime (this fiscal year will be designated as a line
 26 item by the Mayor in the current budget, starting in the next fiscal year it will be a
 27 separate line item). The regular patrolmen overtime list will be used. Which
 28 shifts/work is determined to warrant supplementary overtime will be data driven.
 29 The parties will meet monthly to discuss and agree on the process and
 30 determinations of the supplementary overtime.
 31

¹ The City did not file a brief.

1 5. The separate line item referred to in paragraph 4 was the subject of ongoing
2 discussions between the City and the Union through November 2016.

3
4 6. City failed to create the separate line item referred to in paragraph 4.
5
6

7 II. EXHIBITS
8

9 1. Memorandum of Agreement dated October 2015 (Referenced in paragraph 4
10 above).
11

12 2. August 2016 emails between the City and the Union.
13

14
15 3. November 2016 emails between the City's Mayor and the Chief of Police.
16
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18 Supplementary Facts²
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20 1. By email dated August 11, 2016 to City Mayor Dean Mazzarella (Mazzarella),
21 Union President Richard Woodward (Woodward) stated:

22 I have been hounding the chief about seeing the separate line item for the
23 incident based overtime for local 364. It was clearly stated at negotiations the
24 line item would be created for fyl (sic) 16. To date I am being told that it has not
25 been created as of yet. Local 364 would like the line item created per collective
26 bargaining agreement 2015-2018. I am contemplating filing a grievance on the
27 issue which I think should be unnecessary.
28

29 2. By email dated August 15, 2016 to Woodward, Mazzarella responded:
30

31 I will have John³ move it to a separate account.
32

33 3. By email dated November 7, 2016 to Mazzarella, Interim Police Chief Michael
34 Goldman (Goldman) wrote:
35

36 Just a heads up that the union is making noise about removing the AED's from
37 the cruisers as they obviously feel that the City hasn't held up their end.
38

² The supplementary facts come from various exhibits that the parties submitted, listed in Item II above.

³ The record does not identify John's last name or position. I note that the Union asserts in its brief that he is John Richards, City Comptroller.

1 4. By email to Goldman dated November 7, 2016, Mazzarella responded:
2

3 This is not a case of the funds not being in place. This is a case of it not being
4 listed in a line item. To remove the units for that reason would not be reflective of
5 the essence of our agreement. Furthermore, I don't see why we can't resolve
6 this by just creating that item by line.
7

8 5. In an email to Mazzarella dated November 7, 2016, Goldman responded:
9

10 Mayor, Just keeping you abreast of the latest developments. I don't want anyone
11 to be blindsided. It should never have come to this period and of course it can be
12 resolved by moving the money. Their frustration and mine is that the request has
13 been ongoing since July. John's statement that it is all in one org is exactly
14 contrary to what the city agreed. You and I were both in the meeting when that
15 was settled. John has taken what was for one of the first times in my memory a
16 smooth negotiation and one that had been settled amicably and fairly fast and
17 now sowed the seeds of distrust again. Sorry but that's my take on it.
18

19 6. In an email to Goldman dated November 7, 2016, Mazzarella responded:
20

21 Totally get it.
22
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Opinion

25 Section 6 of the Law requires public employers and unions that represent their
26 employees to meet at reasonable times to negotiate in good faith regarding wages,
27 hours, standards of productivity and performance, and any other terms and conditions
28 of employment. The statutory obligation to bargain in good faith includes the duty to
29 comply with the terms of a collectively bargained agreement. Commonwealth of
30 Massachusetts, 26 MLC 165, 168, SUP-3972 (March 13, 2000) (citing City of Quincy,
31 17 MLC 1603, MUP-6710 (March 20, 1991)); Massachusetts Board of Regents of
32 Higher Education, 10 MLC 1196, SUP-2673 (September 8, 1983). A public employer's
33 deliberate refusal to abide by an unambiguous collectively bargained agreement
34 constitutes a repudiation of that agreement in violation of the Law. Town of Falmouth,
35 20 MLC 1555, MUP-8114 (May 16, 1994), aff'd sub nom., Town of Falmouth v. Labor

1 Relations Commission, 42 Mass. App. Ct. 1113 (1997). If the evidence is insufficient to
2 find an agreement or if the parties hold differing good faith interpretations of the
3 language at issue, the Commonwealth Employment Relations Board (CERB) will
4 conclude that no repudiation has occurred. Commonwealth of Massachusetts, 18 MLC
5 1161, 1163, SUP-3439, SUP-3556 (October 16, 1991).

6 The issue before me is whether the City repudiated the October 13, 2015 MOA
7 by refusing to allocate \$35,000 in supplementary overtime in a separate line item in the
8 budget. The Union argues that the City entered into a collective bargaining agreement,
9 the MOA, in which it agreed to allocate \$35,000 in a separate line item for
10 supplementary overtime and that the City, to date, has failed and refused to create that
11 separate line item. The Union contends that the agreement is unambiguous and that
12 the City's failure to abide by its terms constitutes a repudiation of that agreement. The
13 City, while offered the opportunity, did not file a brief in this matter. Consequently, it
14 has offered no defense or explanation for the allegations lodged against it.

15 The parties stipulated that they agreed upon a MOA that included the provision
16 on supplementary overtime. They further stipulated that the City failed to create the
17 separate line item referred to in the provision.

18 I turn first to consider the supplementary overtime provision of the MOA. The
19 CERB gives effect to the clear meaning of the bargained-for language and does not
20 inquire into the parties' intent where the words of the agreement are unambiguous.
21 Boston School Committee, 22 MLC 1365, 1376, MUP-8125 (January 9, 1996)(citing
22 City of Worcester, 2 MLC 1281, 1285, MUP-2260 (January 8, 1976)).

1 that this proposal reflects a provision in the MOA stipulated by the parties, but it was not
2 specifically addressed in the stipulation of facts. However, I conclude that this provision
3 flows naturally from the MOA. It is a natural consequence of allocating funds to have a
4 determination as to who is going to share in those funds. Thus, having funded the
5 supplementary overtime account, the City must then determine what shifts/work are
6 eligible to receive payment from the account. Moreover, I note that the City, though
7 given the opportunity, failed to file a brief or to raise any defense in this matter.
8 Accordingly, I shall grant the Order as proposed by the Union.⁴

9 ORDER

10 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City
11 of Leominster shall:

12 1. Cease and desist from:

- 13 a. Failing to bargain in good faith with the Union by repudiating the
14 collective bargaining agreement by refusing to implement the
15 provision in the October 15, 2015 Memorandum of Agreement
16 concerning supplementary overtime.
17
18 b. In any like or related manner, interfering with, restraining, or
19 coercing and employees in the exercise of their rights guaranteed
20 under the Law.
21

⁴ The Union has requested that the DLR retain jurisdiction of this case to address any remedial matters. Section 16.08 of the DLR's Rules and Regulations governs compliance with the DLR's Orders and sets forth the procedures for the enforcement of the Orders of the DLR. Consequently, there is no need to rule upon the Union's request as the appropriate procedures are already in place. Also, while the Union in its brief stated that the provision concerning the creation of a line item regarding supplementary overtime should be effective stating July 1, 2018, I believe this to be in error. As I read the MOA, it requires that this provision be effective on the next fiscal year. Accordingly, I have ordered that the City implement this provision effective with the next fiscal year, which begins on July 1, 2017.

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2. Take the following affirmative action that will effectuate the purposes of the Law:
 - a. Adhere to the terms of the October 13, 2015 Memorandum of Agreement.
 - b. Add a new line item to the Police Budget starting with the fiscal year beginning on July 1, 2017 in the amount of \$35,000 for supplementary overtime.
 - c. Pursuant to the Memorandum of Agreement, determine which shifts/work warrant supplementary overtime based on data.
 - d. Post in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the Employer customarily communicates with these unit members via intranet or email, and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
 - e. Notify the DLR in writing of the steps taken to comply with this decision within ten days of the receipt of the decision.

24 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KEVIN J. MURRAY, 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.



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 has held that the City of Leominster (City) violated Section 10(a)(5), and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by failing to bargain in good faith by repudiating a collective bargaining agreement entered into with the Leominster Patrolmen's Union (Union) concerning supplementary overtime.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights: to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

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

WE WILL NOT fail to bargain in good faith by repudiating the collective bargaining agreement entered into with the Union concerning supplementary overtime.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed Section 2 of the Law.

WE WILL add a new line item to the Police Budget starting with the fiscal year beginning on July 1, 2017 in the amount of \$35,000 for supplementary overtime.

WE WILL, pursuant to the Memorandum of Agreement, determine which shifts/work warrant supplementary overtime based on data.

City of Leominster

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114. (Telephone: (617) 626-7133).