

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

TOWN OF AMHERST

and

AMHERST POLICE LEAGUE,
MASSCOP LOCAL 431

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Case Number: MUP-19-7180

Date Issued: July 8, 2020

Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

David Jenkins, Esq. – Representing the Town of Amherst

Terence Coles, Esq. – Representing the Amherst Police League,
MASSCOP Local 431

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Town of Amherst (Town) violated Section 10
2 (a)(5), and derivatively, Section 10(a)(1) of Massachusetts General Law Chapter 150E
3 (the Law) by implementing a decision to require members of the bargaining unit to
4 respond to all calls for service at the Hampshire College campus requiring sworn police
5 personnel and/or an investigation without providing the Amherst Police League,
6 MASSCOP Local 431 (Union) with prior notice and an opportunity to bargain over the
7 workload impacts of that decision.

8 I find that the Town did not violate the Law.

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STATEMENT OF CASE

On February 26, 2019, the Union filed a charge of prohibited practice (Charge) with the Department of Labor Relations (DLR) alleging that the Town had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On May 2, 2019, a DLR Investigator investigated the Charge. On June 11, 2019, the Investigator issued a one-count Complaint of Prohibited Practice and Partial Dismissal (Complaint) alleging that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.¹ On June 19, 2019, the Town filed its Answer to the Complaint. On January 15, 2020, I conducted a hearing during which the parties received a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On February 28, 2020, the parties filed post-hearing briefs. Based on my review of the record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

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STIPULATIONS OF FACT

1. The Town of Amherst (the "Town") is a public employer within the meaning of M.G.L. c. 150E, §1.
2. The Amherst Police League, MASSCOP Local 431 (the "Union") is an employee organization within the meaning of M.G.L. c. 150E, § 1.
3. The Union is the exclusive representative for full-time police officers employed by the Town's Police Department ("Department").
4. Hampshire College is a private higher education institution located in the Town. Prior to January 23, 2019, Hampshire College contracted with the Mt. Holyoke

¹ The Investigator dismissed the Union's allegations that the Town had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to bargain to resolution or impasse over its decision to require the Department to respond to calls for service on the Hampshire College campus.

1 College Public Safety Department to provide police services to the Hampshire
2 College campus.

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4 5. In or around January of 2019, Hampshire College discontinued its relationship with
5 the Mt. Holyoke College Public Safety Department.

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7 6. On or about January 23, 2019, the Town informed bargaining unit members that
8 the Department would be required to respond to all calls for service on the
9 Hampshire College Campus that required a response by sworn personnel and/or
10 [an] investigation.

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12 FINDINGS OF FACT

13 General Background

14 The Union is the exclusive bargaining representative for all permanent, full-time
15 sworn employees of the Amherst Police Department, but excluding the Chief of Police,
16 Deputy Chief, Captions, Lieutenants, Sergeants, Community Service Officers, Special
17 Police Officers, Emergency Dispatchers, and all part-time employees. In September of
18 2005, Scott Gallagher (Gallagher) began working as a full-time police officer for the
19 Town's Police Department (Amherst Police Department or Department). Since
20 approximately 2015, Officer Gallagher has served as the president of the Union's local.
21 Around October of 2019, Officer Gallagher was assigned to the Detective Unit. Prior to
22 October of 2019, Officer Gallagher was assigned to the patrol unit.

23 In July of 1994, James Demouras ("Demouras") began working as a full-time police
24 officer for the Amherst Police Department. From approximately 2007 to 2011, Officer
25 Demouras was assigned to the Detective's Unit, at all other times he was assigned to the
26 patrol officers' unit. Since at least December of 2018, Scott Livingston has been the Chief
27 of Police.

28 Hampshire College ("College"), a private higher education institution, is located in
29 the Town. Prior to January 23, 2019, the College contracted with the Mt. Holyoke College

1 Public Safety Department (Holyoke Public Safety Department) to provide police services
2 to the College campus. In addition, before 2019, the Amherst Police Department was
3 required to respond to certain calls for service on the College campus.²

4 In or around January of 2019, the College discontinued its relationship with the
5 Holyoke Public Safety Department. On January 23, 2019, the Town informed the Union's
6 bargaining unit members that the Police Department would be required to respond to all
7 calls for service on the College campus that required a response by sworn personnel
8 and/or an investigation.

9 The Amherst Police Department's workload before January 23, 2019

10 Throughout the Town, the Department responds to approximately 27,000 calls for
11 service a year.³ As of December 17, 2016, the Department had answered approximately
12 23,645 calls for service throughout the Town during 2016.⁴ Four of the 23,645 calls were
13 calls for service on the College campus.⁵ On August 31, 2016, a member of the Amherst

² Officer Gallagher compiled the annuals calls for service from the College from 2016 through December 3, 2019.

³ On cross examination, Officer Gallagher was asked if he agreed that generally the Amherst Police Department gets annually between 18,000 and 20,000 calls for service. Officer Gallagher testified that the number was approximately 27,700 calls for service but could not remember the exact number.

⁴ On direct examination, Officer Gallagher testified that each call for service has a call ID number. The first two digits of the call ID number were the year in which the call was taken, and the remaining digits was the number of calls the Department had responded to in that year. For example, in Joint Exhibit 5, the first call for service number is 16-15092. The first two numbers indicate the call was taken in 2016, and the remaining digits indicate that it was the Amherst Police Department's 15,092 call for service for 2016. In Joint Exhibit Five, the last call for service on the College campus was dated December 17, 2016 with a call ID number of 16-23645.

⁵ Beyond offering the call for service list for 2016 and confirming through testimony that there were only four calls for service in that year, neither party provided extensive

1 Police Department stopped an uninspected motor vehicle on the College campus. On
2 November 12, 2016, a member of the Department stopped a motor vehicle on campus
3 and issued a verbal warning. On November 29, 2016, the President of Hampshire College
4 called the Amherst Police Department to report an incident where a news crew followed
5 him into his home. On December 17, 2016, Officer Demouras responded to a motor
6 vehicle crash.

7 As of December 12, 2017, the Amherst Police Department had responded to
8 approximately 25,181 calls for service throughout the Town during 2017.⁶ Seven of those
9 25,181 calls were calls for service on the College campus.⁷ On March 14, 2017, a member
10 of the Amherst Police Department responded to a motor vehicle accident on the College
11 campus. On March 27, 2017, the Department responded to a request for information from
12 an individual from the College. On April 30, 2017, the Department assisted the Town of
13 Hadley in checking nearby parking lots for a vehicle and female operator. On May 9, 2017,
14 the Amherst Police Department assisted the College with a female who was experiencing
15 suicidal thoughts. On August 1, 2017, a member of the Amherst Police Department
16 answered a call for service for a two-car motor vehicle accident. On September 11, 2017,
17 the Department assisted the College with questioning a student who allegedly brought a

information on what, if any, bargaining unit work was performed in each call for service during that time period.

⁶ On the third page of Joint Exhibit Six, the last call for service listed, dated December 12, 2017, has a call ID number of 17-25181, which means the call was taken in 2017 and was the 25,181 call for service in that year.

⁷ Beyond offering the call for service list for 2017 and confirming through testimony that there were only seven calls for service in that year, neither party provided extensive information on what, if any, bargaining unit work was performed in each call for service during that time period.

1 gun on campus. On December 12, 2017, the Department assisted the College with a call
2 for service.⁸

3 As of November 13, 2018, the Amherst Police Department responded to
4 approximately 23,154 calls for service throughout the Town during 2018.⁹ Of those
5 approximate 23,154 calls for service, four were calls for service on the College campus.¹⁰
6 On April 22, 2018, the Amherst Police Department assisted the College and the Hadley
7 Police Department in locating a man who was lost. On May 2, 2018, the Amherst Police
8 Department assisted with the arrest, booking, and transport of an individual located on
9 the College campus who was charged with drug possession and distribution. On May 8,
10 2018, a member of the Amherst Police Department advised the College of recent events
11 at Pufton Village.¹¹ On November 13, 2018, the Amherst Police Department returned a
12 student's wallet to the College.

13 The January 23, 2019 Letter

14 As the Union president, Officer Gallagher routinely meets with Chief Livingstone
15 to discuss pending labor relations issues. When Officer Gallagher and Chief Livingstone

⁸ On the third page of Joint Exhibit 6, under call for service dated December 12, 2017, the narrative entered simply states: "Assisting HCPD". Neither party offered any further information on what happened during this call for service.

⁹ On the second page of Joint Exhibit Seven, the last call for service, dated November 13, 2018, has a call ID number of 18-23154 meaning that the call was taken in 2018, and that was the Amherst Police Department's 23,154 call for service for the 2018 calendar year.

¹⁰ Beyond offering the call for service list for 2018 and confirming through testimony that there were only four calls for service in that year, neither party provided extensive information on what, if any, bargaining unit work was performed in each call for service during that time period.

¹¹ The Union did not provide any further information on this call.

1 met in December of 2018, Chief Livingstone informed Officer Gallagher that the College
2 would be discontinuing its relationship with the Holyoke College Public Safety
3 Department, and that the Amherst Police Department would need to “support the College”
4 in their capacity as police officers of the Town. Officer Gallagher asked Chief Livingstone
5 for more information, but Chief Livingstone stated that he did not have any further
6 information on the Amherst Police Department’s responsibilities on the College campus
7 moving forward. Chief Livingstone informed Officer Gallagher that the transition was still
8 in its infancy, but that he wanted to communicate to the Union that this change would
9 likely be taking place.

10 After meeting with Chief Livingstone, Officer Gallagher contacted the Union’s
11 attorney, Terence Coles (Coles) about the impending change in policing services at the
12 College. In a letter dated December 18, 2018, Attorney Coles informed David Jenkins
13 (Jenkins), the Town’s attorney, that the Union believed the Town’s decision to take over
14 a large portion of the policing services at the College constituted a substantial change to
15 the workload and job responsibilities of the bargaining unit’s members. Additionally, the
16 Union believed that the change raised safety concerns and, as such, demanded to
17 bargain with the Town over these mandatory subjects of bargaining before the Amherst
18 Police Department took over the additional policing services at the College. By letter
19 dated December 26, 2018, Attorney Jenkins informed Attorney Coles that there was no
20 agreement between the College and the Amherst Police Department at that time, and
21 that the Town did not anticipate any change in working conditions. Attorney Jenkins
22 explained that the Town would not bargain with the Union as there was no agreement
23 with the College or changes to the bargaining unit’s working conditions.

1 On January 23, 2019, Chief Livingstone issued a letter to all Amherst Police
2 Department personnel with the following message:

3 Effective January 23, 2019, Hampshire College is no longer supported
4 by the Mt. Holyoke College Public Safety Department to provide security
5 and policing services. At this time, the Hampshire College Department of
6 Safety and Security (HCDSS) will assume the role in the protection and
7 safety of the Hampshire College community. The jurisdiction HCDSS is
8 restricted to the lands owned, used or operated by Hampshire College
9 and its trustees. It is, and always has been, the policy of this Department
10 to cooperate with all public safety organizations that share our jurisdiction
11 whenever they are conducting legal operations, whether or not they seek
12 our assistance or cooperation.

13
14 As a non-sworn security force, HCDSS security officers do not have the
15 right of arrest. The primary responsibility of the HCDSS security officers
16 will be that of enforcing Hampshire College policy, routine calls for
17 service and minor criminal offenses. Routine calls for service and minor
18 criminal offenses that the Amherst Police have delegated the authority to
19 Hampshire College Safety and Security Department to conduct
20 investigation include: larceny, larceny from residence halls/rooms/shared
21 spaces, vandalism, simple assault and battery, trespass cases where
22 arrest is not an issue, identity theft, annoying telephone calls, noise
23 issues, and minor calls involving drugs. Should the Amherst Police
24 Department receive a request for such routine service on the lands
25 owned, used or operated by Hampshire College, this agency will refer
26 the calls to The Department of Campus Safety.

27
28 Incidents that will be promptly referred to the Amherst Police Department
29 for sworn personnel response and investigation include: firearms,
30 deaths, incidents resulting in serious bodily injury, missing persons,
31 domestic violence between intimate partners, service and violations of
32 209A or harassment orders, sexual assault, felony drug possession,
33 narcotic overdoses, motor vehicle theft, robbery, motor vehicle crashes
34 with injury, hate crime, service of MGL Chapter 123 Section 12 when
35 Hampshire College Counseling Center is closed, or as requested by
36 HCDSS security staff.

37
38 1. *Sharing of information:*

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40 To further enhance public safety, it is imperative that the Shift
41 Commander notify Hampshire College Department of Safety and
42 Security of any on-going incident, hazard, disaster or threat that
43 threatens the safety of Hampshire College Campus community. While
44 it is not possible to list all incidents that would fall under this category,

1 some include: chemical or hazardous material accident, natural
2 disaster, riot, down-town demonstration, change to traffic patterns due
3 to MVC or an active shooter that has fled. Immediate notification would
4 include instances of a death that occurs in our jurisdiction of a
5 Hampshire College student or employee. "The Chief of Police may
6 approve the sharing of criminal offender information when it is
7 necessary to enhance public safety of the Amherst and Hampshire
8 College community." Restrictions as outlined in the Massachusetts
9 CORI statute and public records law will be adhered to. The Chief of
10 Police will authorize the release of identifiable criminal statistical data
11 that occurs within the properties of Hampshire College as necessary for
12 Hampshire College to comply with the reporting requirements of the
13 Clery Act.

14
15 *2. Language regarding their request for assistance.*

16
17 Amherst Police Department personnel will respond to any request for
18 assistance from the HCDSS that is within the parameters of this policy
19 or other written protocol. In circumstances when Amherst Police
20 Department personnel are unsure if the request for assistance falls
21 within the guidelines of this policy they shall consult with Shift
22 Commander, whose determination will be final.

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24 *3. Supervision, command of scene with multiple jurisdiction.*

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26 Amherst Police Personnel have overall authority and command of an
27 incident when responding with HCDSS staff.

28
29 *4. APD reporting requirements.*

30
31 Refer to reporting policy #54, Field Reporting and Records Function.
32 This order will be reviewed annually by an officer assigned by the Chief
33 of Police.

34
35 Scott P. Livingstone
36 Chief of Police.

37
38 The Chief's order did not amend the parties' collective bargaining agreement or alter any
39 existing Department policies. The January 23, 2019 letter did not change the bargaining
40 unit members' schedules, job description, or hours of work. Prior to issuing the January
41 23, 2019 letter, the Town did not bargain with the Union over any workload impacts.

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1 The Amherst Police Department's Workload after the January 23, 2019 Letter.

2 After January 23, 2019, bargaining unit members continued to respond to certain
3 calls for service on the College's campus. As of December 3, 2019, the Amherst Police
4 Department in the 2019 calendar year answered approximately 21, 191 calls for service
5 throughout the Town.¹² Of the approximate 21,191 calls for service in 2019, 25 were calls
6 for service for the College campus.¹³ Of the 25 calls for service on the College campus,
7 six calls the Amherst Police Department would have taken prior to 2019, one was
8 answered by a non-bargaining unit member, two calls for service should have been
9 referred to the College's Security Department, two calls involved motor vehicle accidents,
10 one call required only minimal bargaining unit work, and three calls provided no
11 information as to what, if any, bargaining unit work was performed.

12 Additionally, the Holyoke Public Safety Department transferred six sexual assault
13 cases to the Amherst Police Department. As part of the transfer of cases, the Amherst
14 Police Department took custody of any evidence attached to each sexual assault
15 investigation. The Amherst Police Department logged the sexual assault cases and
16 respective evidence into its computer system and assigned each case an identification
17 number.¹⁴

¹² On the eleventh page of Union Exhibit One (UX1), the last call for service, dated December 3, 2020, has a call ID number of 19-21191, indicating that the call was taken in 2019, and that it was the Amherst Police Department's 21,191 call for service for the 2019 calendar year.

¹³ Beyond offering the call for service list for 2019, the parties only provided testimony as to what, if any, bargaining unit work was performed for some, but not all, of the 25 calls for service.

¹⁴ Apart from taking custody and logging the evidence for each case, the record does not establish what, if any, work was performed on these cases by bargaining unit members.

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2 2019 Calls for Service that the Amherst Police Department would have taken
3 before the January 23, 2019 Letter

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5 Of the 25 calls for service on the College campus, six of the calls would have been

6 answered by the Police Department before the January 23, 2019 letter. On February 8,

7 2019, the Department helped find a woman who had intentionally injured herself on the

8 College campus and then run away. The Amherst Police Department found her at the

9 Amethyst Brook Conservation which is not on the College campus. Even before the

10 January 23, 2019 letter, the Amherst Police Department would have been called in to

11 assist with the search.

12 On February 28, 2019, the Department responded to a call for service where a

13 woman had made suicidal threats at an Autozone store in the Town, and then left the

14 store. The Amherst Police Department helped search the Town, including off-campus

15 spots, for the woman who was eventually found on the College campus. Even before the

16 January 23, 2019 letter was issued, the Amherst Police Department would have

17 responded to a 911 call stating that someone was making suicidal threats at the AutoZone

18 store. On April 16, 2019, the Department assisted with finding an injured party on campus

19 and returned him to a nearby assisted living facility. The Amherst Police Department has

20 jurisdiction over the assisted living facility, and it is not part of the College's campus.

21 On April 19, 2019, the Amherst Police Department assisted with a complaint about

22 possible fraudulent online pizza orders from Bruno's Pizzeria

23 (Bruno's). At Bruno's request, an Amherst Police Officer assisted in positively identifying

24 the purchaser of several online orders. Later in the day, the Bruno's owner emailed the

25 Amherst Police Department copies of receipts of potentially fraudulent orders. Given that

1 Bruno's is not on the College's campus, the Amherst Police Department would have
2 investigated these fraudulent online orders prior to the January 23, 2019 letter.

3 On December 2, 2019, the Amherst Police Department assisted with a call for
4 service involving a "be on the lookout" (BOLO) for an individual who had traveled from
5 the College campus to the Town's community while under the influence of alcohol or
6 drugs. Prior to January 23, 2019, the Amherst Police Department would have assisted
7 with any call for service involving a BOLO in connection with the Town's community.

8 2019 Calls for Service taken by Non-Bargaining Unit Members

9 On February 1, 2019, the Amherst Police Department assisted the College on a
10 call for service, but the call was not taken by a bargaining unit member.¹⁵

11 2019 Calls for Service where Minimal Bargaining Unit Work was Performed

12 On February 6, 2019, a member of the Department took a call for service which
13 involved a vehicle repossession. Beyond taking the call and creating the police log, the
14 Union could not identify any other bargaining unit work performed in the February 6 call.

15 2019 Calls for Service that should have been referred to the Hampshire College
16 Department of Safety and Security.

17
18 On March 8, 2019, a student of the College called the Department to report her
19 passport was missing. A bargaining unit member took the call and created the narrative
20 in the log sheet, but performed no other work. On March 12, 2019, the same woman
21 walked into the Amherst Police Department to report her missing passport. Before the
22 January 23, 2019 letter, the Amherst Police Department would not have entered the case

¹⁵ On cross examination, Officer Gallagher testified the February 1, 2019 call for service had no value in this case.

1 narrative into the system for these types of situations, but would have referred the
2 reporting party to the Holyoke Public Safety Department. However, according to the
3 January 23, 2019 memo, the Amherst Police Department should have referred the above
4 referenced calls to the Hampshire College Department of Safety and Security.

5 2019 Calls for Service involving Motor Vehicles Crashes

6 On April 10, 2019, the Amherst Police Department answered a call for service
7 where a party reported that their car was hit in a parking garage on campus. On October
8 29, 2019, the Amherst Police Department responded to a motor vehicle crash on the
9 College's campus, where a parked vehicle was struck.

10 2019 Calls for Service where there is no information on what bargaining unit work
11 was performed

12
13 On April 25, 2019, the Amherst Police Department followed-up on a previous
14 matter. On November 15, 2019, the Department responded by phone to a call for service
15 regarding a Harassment Order. On December 3, 2019, the Amherst Police Department
16 answered a 911 call, but the caller apologized and stated that the call was a mistake.
17 Beyond the 2019 call sheet, the Union did not provide details as to what, if any, bargaining
18 unit work was performed on the above three calls for service.

19 2019 Medical/Mental Health Calls for Service

20 On February 8, 2019, the Department responded to a request for police on the
21 College campus to assist with a male who had made suicidal threats. On November 26,
22 2019, the Department assisted with a female on campus who had suicidal thoughts and
23 had attacked a staff member. On September 14, 2019, the Department responded to a
24 911 call on the College campus where the caller reported that the ex-boyfriend of a friend
25 had made suicidal threats.

1 union over the impacts its decision will have on mandatory subjects of bargaining, before
2 it implements that decision. Id. at 1023.

3 The Complaint in this case does not allege that the Town unlawfully failed to
4 bargain over the decision to require members of the bargaining unit to respond to all calls
5 for service at the College campus requiring sworn personnel and/or an investigation.
6 Rather, the Complaint alleges that the Town failed to bargain over the impact of an
7 increased workload for bargaining unit members from a higher volume of calls for service.
8 Thus, the issue I consider is whether the Town violated Section 10 (a)(5), and derivatively,
9 Section 10(a)(1) of the Law by implementing the decision to require members of the
10 bargaining unit to respond to all calls for service at the College campus requiring sworn
11 personnel and/or an investigation without providing the Union with prior notice and
12 opportunity to bargain over the workload impacts of that decision..

13 Workload is a mandatory subject of bargaining. See Commonwealth of
14 Massachusetts, 28 MLC 36, 40, SUP-4345 (June 29, 2001). The charging party bears the
15 burden of proving the workload impacts of an employer's unilateral change, and the
16 Commonwealth Employment Relations Board (CERB) will not infer such an impact based
17 solely on evidence that a change has occurred. Town of Winchester, 42 MLC 332, MUP-
18 13-3289, (June 23, 2016) (citing Town of Seekonk, 14 MLC 1725, 1730-31, MUP-6131
19 (May 10, 1988)). It is undisputed that the Town failed to provide the Union with an
20 opportunity to bargain over the workload impacts of its decision to require members of
21 the bargaining unit to respond to all calls for service at the College campus requiring
22 sworn personnel and/or an investigation. Consequently, the key issue is whether the
23 decision impacted the bargaining unit members' workloads. I find that Chief's January 23,

1 2019 memo requiring bargaining unit members to respond to all calls for service at the
2 College requiring sworn personnel and/or an investigation did not affect a mandatory
3 subject of bargaining because there is no evidence that the change impacts employees'
4 workloads.

5 The Union argues that the January 23 memo impacted employee workloads in
6 three ways: 1) by changing employees' job responsibilities; 2) by increasing the number
7 of calls for service; and 3) by requiring advanced police work. For the following reasons,
8 I am not persuaded by these arguments.

9 As noted, the Union first argues that the decision changed the job responsibilities
10 of the bargaining unit with respect to the College. Specifically, it asserts that as a result
11 of the January 23, 2019 memo, bargaining unit members now must respond to incidents
12 on the College campus that require a sworn personnel response and/or an investigation
13 such as deaths, domestic violence, and involuntary commitments. I find no merit in this
14 argument because the call sheets presented at the hearing for the three years preceding
15 2019, clearly demonstrate that the bargaining unit members were already responding to
16 and investigating serious crimes on the College campus.

17 From 2016 through 2018, the bargaining unit members answered calls for service
18 on the College campus that involved motor vehicle accidents, individuals who made
19 suicidal threats, a possible gun on campus, and an arrest warrant for drug possession.
20 The Union points to the transfer of several sexual assault cases as evidence that the job
21 responsibilities for the bargaining unit members have changed. However, the Union's
22 witnesses did not provide any evidence as to what, if any, work was done by bargaining

1 unit members on these investigations.¹⁶ Beyond taking control of the evidence and
2 assigning the case an identification number, the Union has not provided any evidence
3 that bargaining unit members performed any work on these investigations. Given that the
4 Amherst Police Department was responsible for answering calls for service on the
5 College campus involving serious crimes even before the January 23, 2019 letter, the
6 Union has not established a change.

7 Even if the Union had demonstrated bargaining unit members only started to
8 respond to and investigate serious crimes and incidents on the College campus in 2019,
9 there would still be no change in the bargaining unit members' job responsibilities. As
10 sworn police officers, the bargaining unit members' job responsibilities already include
11 responding to and investigating serious crimes. I am not persuaded by the Union's
12 argument that such job responsibilities are different merely because they are conducted
13 on the College campus. Consequently, I do not find that the Town's decision impacted
14 the bargaining unit's workload by changing the members' job responsibilities.

15 Next, the Union argues that the assumption of policing services for the College
16 altered the workload of the bargaining unit members by increasing the number of calls for
17 service. The Union alleges that, prior to 2019, the bargaining unit rarely answered a call
18 for service at the College campus, but after 2019, the call volume increased significantly.
19 As evidence of the increase in call volume, the Union notes that Officer Gallagher and
20 Officer Demouras rarely responded to a call for service on the College campus prior to

¹⁶ Officer Gallagher testified that in some of the cases there was follow up done by the bargaining unit members. However, Officer Gallagher could not identify which case was worked on, who worked on the case, and what work was actually performed by bargaining unit members.

1 2019. However, Officer Gallagher only responded to one call for service after the January
2 23, 2019 letter. In 2019, Officer Demouras responded to, or had personal knowledge of
3 the February 8, February 28, April 19, September 19, and the December 2 calls for
4 service. Significantly, Officer Gallagher stated that the Amherst Police Department would
5 have responded to four of those calls prior to 2019.

6 Given that Officer Gallagher only responded to one call for service on the College
7 campus in 2019, and Officer Demouras primarily only responded to or had personal
8 knowledge of calls for service that would have been answered by the Department prior to
9 the Town's decision, the personal experiences of the two Union witnesses do not
10 convince me that there was a change in workload. In addition to witness testimony, the
11 Union presented a call sheet for 2019 that indicated that the Amherst Police Department
12 responded to 25 calls for service stemming from the College campus.

13 According to the Union, the bargaining unit members answered 25 calls for service
14 on the College campus, which is a fivefold increase in calls from the previous three years.
15 However, the Department answers on average 27,000 calls for service per year. Given
16 the overall call volume, an additional 25 calls for service on the College campus is a de
17 minimus increase in workload. The Union did not provide any evidence to suggest that
18 the increase in call volume resulted in a reduction of non-active time for the bargaining
19 unit members. Contrast City of Newton and International Association of Firefighters, Local
20 2759, MUP-6477, 16 MLC 1036 (June 15, 1989). Additionally, the Union did not provide
21 any evidence to demonstrate that the bargaining unit members would have been
22 performing another job duty other than answering calls for service if not for the Town's
23 decision. Compare City of Boston, 35 MLC 289, 291, MUP-04-4077 (May 20, 2009).

1 Considering the total number of calls for service the bargaining unit members answer per
2 year, the additional calls for service at the College campus in 2019 are insignificant.

3 Even if I disregard the approximate 27,000 calls for service per year that the
4 Amherst Police Department answers, and only consider the calls for service answered on
5 the College campus, the additional calls for service would still be a de minimis increase
6 in workload. Prior to 2019, the bargaining unit members answered between 4 and 7 calls
7 for service per year on the College campus. An increase of approximately 20 calls for
8 service spread over almost an entire year is not a significant increase in workload
9 because the increase in calls did not create new job duties, take away from time spent
10 performing other job duties, or reduce non-active duty time. Additionally, the Union did
11 not establish on the record what, if any, bargain unit work was performed for each of the
12 25 calls.¹⁷ Without such information, it is impossible to determine if all 25 calls represent
13 work performed by bargain unit members.

14 The Union's witnesses provided some evidence regarding the calls listed on the
15 2019 calls for service sheet, but the evidence they provided does not support the Union's
16 argument. Officer Gallagher testified that six of the 25 calls for service would have been
17 answered by the bargaining unit prior to 2019.¹⁸ Additionally, Officer Gallagher testified
18 that one of the calls for service was not answered by a bargaining unit member.¹⁹ On one

¹⁷ All 25 calls for service for 2019 are listed on Union Exhibit 1.

¹⁸ Officer Gallagher testified that the following cases would have been answered by the Department before the January 23, 2019 letter: 19-2161, 19-6568, 19-6787, 19-6793, 19-3404, and 19-21138.

¹⁹ Call for service # 19-1715 was not answered by a bargaining unit member.

1 of the calls for service, Officer Gallagher testified that the only bargaining unit work
2 performed was answering the phone and creating the log of the call in the system.²⁰

3 Further, according to the January 23, 2019 memo, two of the 25 calls for service
4 should have been referred to the College's Safety Department.²¹ Of the 25 calls for
5 service in 2019, two of the calls were in response to motor vehicle crashes which based
6 on the previous years' call sheets would have been answered by a bargaining unit
7 members prior to 2019.²² Also, three of the calls for service's narratives offer little to no
8 information on what, if any, bargaining unit work was actually performed in response to
9 the calls.²³

10 After subtracting cases that were not answered by bargaining unit members, calls
11 that would have been answered by bargaining unit members prior to 2019, those calls
12 where the bargaining unit member did little to no work, and those calls with no information
13 as to what bargaining unit work was performed, the number shrinks to ten additional calls
14 for service. Several of the remaining calls are medical or mental health-related calls,
15 where the bargaining unit member needed to assist with an individual who had expressed

²⁰ Call for service # 19-2017.

²¹ Under the January 23, 2019 letter, calls for service # 19-3931 and #19-4117 should have been referred to College's security department.

²² Calls for service #19-6130 and #19-18942 involve motor vehicle crashes similar to calls for service answered by the Department in previous years.

²³ The narratives for the following calls for service do not provide any information as to what, if any, bargaining unit work was performed for the following cases: 19-21191, 19-7175, and 19-20060.

1 suicidal threats or thoughts and determine whether they should be hospitalized.²⁴ The
2 Union alleges that responding to such calls for service on the College campus is a new
3 development. However, on May 9, 2017, the Amherst Police Department responded to a
4 call for service where an individual had made suicidal threats and was transported to the
5 hospital.

6 The Union has not established how the three-remaining medical/mental health
7 calls for service in 2019 differ from similar calls that the Amherst Police Department
8 answered on the College campus in the past. Of the remaining 7 calls for service, one of
9 the cases deals with breaking and entering.²⁵ However, Officer Gallagher testified about
10 an incident that the Amherst Police Department responded to before 2019 which involved
11 a home invasion on the College campus. The Union did not establish how a home
12 invasion was different than the breaking and entering in terms of bargaining unit workload.
13 In short, the Town's decision to require members of the bargaining unit to respond to all
14 calls for service at the College campus requiring sworn personnel and/or an investigation,
15 only increased the number of cases answered by the bargaining unit members to
16 potentially 6 calls for service. Such a small increase in the calls for service volume is too
17 insignificant to require the Town to negotiate with the Union.

18 Additionally, the Union argues that the workload of the bargaining unit members
19 increased by the transfer of six sexual assault cases. However, as stated above, the
20 bargaining unit members have only accepted custody of the cases and assigned the

²⁴ Calls for service #19-2186, 19-20705 and 19-15441 involved persons on campus making suicidal statements or threats.

²⁵ Call for service #19-14547.

1 cases an identification number. The Union has not provided any evidence to support that
2 bargaining unit members have performed any work on the sexual assault cases. Without
3 evidence that bargaining unit work was performed in the investigations, the bargaining
4 unit's workload cannot have increased by the investigations. Although it is possible the
5 bargaining unit members could perform work on the investigations in the future or the
6 volume of calls on the College campus could increase beyond the current numbers, it is
7 merely speculation at this point. See generally, City of Boston, 43 MLC 235-37, fn. 5,
8 MUP-15-4374 (May 25, 2017) (CERB rejected the union's speculation about what the
9 evidence "could" mean); see also City of Boston, 8 MLC at 1434-35 (CERB found no
10 unilateral change violation after union failed to prove that employer increased workload
11 beyond the existing parameters). Considering the entire record, I find no evidence that
12 bargaining unit members' workloads were impacted by an increase in call volume
13 received from the College campus after January 23, 2019.

14 Finally, the Union argues that the Town's decision to require members of the
15 bargaining unit to respond to all calls for service at the College campus requiring sworn
16 personnel and/or an investigation now requires the bargaining unit members to perform
17 advanced police work. According the Union, the bargaining unit members are now
18 required to respond to calls involving serious criminal activity that constitutes a substantial
19 change in working conditions. According to the Union, the bargaining unit members are
20 now responsible for responding to calls for medical/mental health assistance that require
21 the officers to assess individuals for possible involuntary commitment. Additionally, the
22 Union argues that the bargaining unit members are responding to calls for serious criminal
23 conduct such as credit card fraud. The Union asserts that the bargaining unit members'

- 1 of bargaining because there is no evidence that the change impacts employees'
- 2 workloads.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MEGHAN VENTRELLA, 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 Notice of Appeal with 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 ten days, this decision shall become final and binding on the parties.