

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

CITY OF ATTLEBORO

and

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 848

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Case No. MUP-19-7340

Date issued: April 23, 2021

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Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Daniel C. Brown, Esq. - Representing City of Attleboro

Patrick N. Bryant, Esq. - Representing International Association of  
Firefighters, Local 848

**HEARING OFFICER'S DECISION**

SUMMARY

1 The issue in this case is whether the City of Attleboro (City or Employer) violated  
2 Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws,  
3 Chapter 150E (the Law) by transferring dispatch duties to non-unit personnel without first  
4 bargaining with the International Association of Firefighters, Local 848 (Union) to  
5 resolution or impasse over the impacts of the decision on unit members' terms and  
6 conditions of employment. For the reasons explained below, I find that the City did not  
7 violate the Law when it transferred dispatch duties to non-unit personnel without first  
8 bargaining with the Union to resolution or impasse over the impacts of the decision on  
9 unit members' terms and conditions of employment.

STATEMENT OF THE CASE

1  
2  
3 On May 17, 2019, the Union filed a Charge of Prohibited Practice (Charge) with  
4 the Department of Labor Relations (DLR), alleging that the City had engaged in prohibited  
5 practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the  
6 Law by transferring bargaining unit dispatch duties to non-unit personnel. On November  
7 6, 2019, a DLR Investigator issued a Complaint of Prohibited Practice (Complaint),  
8 alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of  
9 the Law by transferring bargaining unit dispatch duties to non-unit personnel without  
10 bargaining to resolution or impasse over the impacts of its decision on issues such as the  
11 safety of employees and the duties of the displaced 15<sup>th</sup> firefighter. On August 18, 2020,  
12 the City filed its Answer to the Complaint. On September 9, 2020, I conducted a remote  
13 hearing via WebEx<sup>1</sup> at which both parties had a full opportunity to be heard, to examine  
14 and cross-examine witnesses, and to introduce evidence. Both the City and the Union  
15 filed their post-hearing briefs on January 8, 2021.

STIPULATIONS OF FACT

16  
17  
18 The parties stipulated to the following facts:

- 19  
20 1. The City is a public employer within the meaning of Section 1 of the Law.  
21  
22 2. The Union is an employee organization within the meaning of Section 1 of the  
23 Law.  
24  
25 3. The Union is an exclusive bargaining representative for a unit of firefighters  
26 employed by the City.  
27  
28 4. Prior to 2018, unit members performed all of the fire dispatching in the City.

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<sup>1</sup> I conducted the hearing remotely pursuant to the Governor Baker’s teleworking directive to executive branch employees. Neither party objected to participating remotely in the hearing via WebEx.

- 1        5.        Around September 14, 2018, the Union and the City entered into a
- 2                    Memorandum of Agreement (MOA) for a successor collective bargaining
- 3                    agreement.
- 4
- 5        6.        Article 6 of the MOA reads: “The [U]nion shall withdraw with prejudice the two
- 6                    pending grievances related to promotions and implementation of civilian
- 7                    dispatching. All economic issues related to civilian dispatching are resolved.”
- 8
- 9        7.        On March 18, 2019, the Union sent the City a letter, demanding to bargain over
- 10                   aspects of the implementation of civilian dispatching.
- 11
- 12        8.        The City responded to the Union’s letter [described in paragraph 7] in a letter
- 13                   dated March 25, 2019.
- 14
- 15        9.        On April 16 and May 13, 2019, the parties met to bargain over aspects of the
- 16                   implementation of civilian dispatching.
- 17

FINDINGS OF FACT

19        **Background**

20                    At all relevant times prior to January of 2018, Kevin J. Dumas (Dumas) was the

21        City’s Mayor. Beginning in January of 2018 and continuing to present, Paul Heroux

22        (Heroux) was the Mayor. At all relevant times, Scott Lachance (Lachance) was the Fire

23        Department Chief. At all relevant times prior to February of 2019, Jacob Springs (Springs)

24        was the Union President. In or around February of 2019, Paul W. Jacques (Jacques)

25        became Union President. At all relevant times, Dennis Perkins (Perkins) was the Union

26        Vice President.

27        **The Collective Bargaining Agreement**

28                    The parties’ collective bargaining agreement (Agreement) was effective from July

29        1, 2017 until June 30, 2020. Article 2 of the Agreement pertained to “Management Rights”

30        and stated, in full:

- 31                    1. Both parties recognize that under the laws of the Commonwealth of
- 32                    Massachusetts, that the Mayor and the Chief of the Fire Department have
- 33                    the exclusive rights, responsibility, and final authority for establishing the

1 policies for the control, direction, and management of the Fire Department.  
2 Therefore, it is understood and agreed that this Agreement concerns those  
3 matters of wages, hours, and conditions of employment which have been  
4 expressly bargained for and are included herein and expressly reserves  
5 those powers, prerogatives and authority not expressly abridged or  
6 modified by the Agreement to the City.  
7

8 2. Both parties recognize the right of the Union to represent and bargain  
9 collectively for the employees of the City who are covered by this  
10 Agreement.  
11

12 3. Both parties recognize that the Mayor and the Chief shall at all times  
13 retain the right to direct employees, to hire, promote, transfer, assign and  
14 retain employees within the department, to suspend, demote, discharge or  
15 take other disciplinary action against employees for just cause, to determine  
16 the methods, means, and personnel by which such operations are to be  
17 conducted, to determine the mission of the Fire Department, and the taking  
18 of all necessary actions to carry out its mission in emergencies.  
19

20 4. Both parties agree that it is their responsibility to abide by the terms of  
21 the Agreement for its duration.  
22

23 **The Department's Organizational Structure**

24 The Fire Department (Department) comprises four stations (i.e., Headquarters,  
25 Twin Village, South Attleboro, and Briggs Corner) which are usually staffed by a minimum  
26 of 15 firefighters on each 24-hour shift.<sup>2</sup> The apparatus at Headquarters includes Engine  
27 1, Ladder 1, Rescue 1, and Battalion 1. The apparatus at South Attleboro includes Engine  
28 2, Ladder 2, and Rescue 2. The apparatus at Briggs Corner includes Engine 4 and  
29 Rescue 4. The apparatus at Twin Village includes Engine 5 and Rescue 5.<sup>3</sup> At all relevant

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<sup>2</sup> Lachance testified that there are no "formal" minimum staffing levels, and that he bases minimum numbers "on budgetary ability each year." He also testified that, at all relevant times, his "budget [was] based on 15 firefighters" and that he communicated to both Dumas and Heroux the importance of maintaining a minimum level of 15 firefighters. Since March of 2020, the Department's minimum staffing levels have increased to approximately 17 firefighters.

<sup>3</sup> At some point in or after March of 2020, the City added Rescue 5 on a full-time basis.

1 times prior to March 16, 2019, the Department usually maintained a minimum shift-  
2 staffing level of 15 firefighters, where it assigned 14 firefighters on a rotational basis to  
3 different pieces of apparatus at the four stations (i.e., fire suppression apparatus). During  
4 this time, the Department also assigned the 15<sup>th</sup> firefighter<sup>4</sup> to perform regular dispatching  
5 duties at Headquarters. Beginning on or about March 16, 2019, the Department began  
6 assigning all 15 firefighters to fire suppression apparatus as follows:

7           Headquarters

- 8           • Engine 1 – one lieutenant, two firefighters
- 9           • Ladder 1 – one lieutenant, two firefighters
- 10          • Rescue 1 – two firefighters, one paramedic/EMT
- 11          • Battalion 1 – one battalion deputy chief, one battalion aide<sup>5</sup>

12  
13           South Attleboro

- 14          • Engine 2 – one lieutenant, two firefighters
- 15          • Ladder 2 and Rescue 2 – part-time split of one lieutenant, two  
16            firefighters for both apparatus

17  
18           Briggs Corner

- 19          • Engine 4 and Rescue 4 – part-time split of one lieutenant, two  
20            firefighters for both apparatus

21  
22           Twin Village

- 23          • Engine 5 – one lieutenant, two firefighters
- 24          • Rescue 5<sup>6</sup>

25  
26           **A. The Reorganizational Plan**

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<sup>4</sup> Heroux gave un rebutted testimony that the “15<sup>th</sup> firefighter” was not a distinct position and that “firefighters aren’t labeled 1 through 15.”

<sup>5</sup> Lachance gave un rebutted testimony that the position of Battalion 1 Aide has existed for “close to 50 years,” and that during his tenure he would “routinely fill” that position “if we had the staffing levels.” The City did not fill the Battalion 1 Aide position on a regular basis prior to March 16, 2019. Beginning on or about March 16, 2019, the City began assigning the 15<sup>th</sup> firefighter to fill this position on a regular basis pursuant to the Chief’s directive.

<sup>6</sup> Since March of 2020, the Department began assigning the 16<sup>th</sup> and 17<sup>th</sup> firefighters to Rescue 5 at the Twin Village station.

1           In or around 2012, the City began developing a reorganizational plan for the  
2 Department. In or around 2013, the Department and Union began negotiations over the  
3 plan. By letter dated April 22, 2014, Chief Lachance provided Mayor Dumas with an  
4 update on the negotiations and a copy of the plan, stating in part:

5           During the last two years, we have worked diligently to develop a  
6 reorganizational plan for the fire department....

7           ....

8  
9           Key components of the proposed plan include:

- 10           • Improved staffing on Engine-4 and Ladder-1 (presently operat[ing]  
11           with 2 firefighters)
- 12           • Assignment of a company officer to each primary fire apparatus

13           ....

14  
15           As you know, the Attleboro Professional Firefighters, Local 848 [has]  
16 recently ratified the proposed reorganizational plan following twelve months  
17 of negotiation and impact bargaining. Therefore, I respectfully request that  
18 you submit the proposed fire department reorganizational plan, fire  
19 prevention fee schedule, and cost recovery program to the Municipal  
20 Council to implement the necessary modifications to existing City  
21 ordinances.

22  
23           Part of the reorganization plan referred to the National Fire Protection  
24 Association's (NFPA) "national standard for all fire protection issues,"<sup>7</sup> stating, in part:

25           ....

26  
27           Some of the more important standards set forth by NFPA involve response  
28 times, total staffing levels, Company size, RIT establishment, apparatus  
29 age, and training. NFPA has established the minimum recommended  
30 staffing levels for Engine Companies and Ladder Companies as 3  
31 firefighters and 1 Company Officer. All modern Fire Departments work  
32 diligently to improve compliance with NFPA standards while recognizing  
33 financial constraints.

34           ....

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<sup>7</sup> Neither party offered a copy of the complete NFPA standards into evidence.

1 Another part of the reorganization plan listed the proposed duties of the “Fire Alarm  
2 Superintendent” position which included “assisting dispatch during significant incidents”  
3 and “providing communications training for personnel.”

4 **B. The Fire Alarm Superintendent and Dispatcher Positions**

5 1. The Fire Alarm Superintendent

6 On or about October 25, 2017, the Department issued a vacancy announcement  
7 for the position of Fire Alarms Superintendent with duties that included “Dispatch Training,  
8 Supervision, and Oversight,” and with an “anticipated start date [of] February 28, 2018.”  
9 At some point between February 28 and June of 2018, the City filled the Fire Alarm  
10 Superintendent position. At some point between February 28 and July 23, 2018, the Fire  
11 Alarm Superintendent began training and supervising civilian dispatchers alongside the  
12 firefighters assigned to dispatch.

13 Prior to July 23, 2018, only the officer on-duty or shift commander (e.g., captain or  
14 lieutenant) supervised and trained firefighter dispatchers. Also prior to this time, only the  
15 shift commander submitted payroll and made schedules for firefighters assigned to  
16 dispatch. At some point on around July 23, 2018, the shift commander stopped  
17 supervising and training firefighters assigned to dispatch and stopped submitting their  
18 payroll and making their schedules. Instead, on or around July 23, 2018, the  
19 Superintendent of Fire Alarms began supervising and training both civilian dispatchers  
20 and firefighters assigned to dispatch, and also began submitting their payroll and making  
21 their schedules. Beginning on or about December 15, 2018 and continuing to present, the  
22 Fire Alarm Superintendent stopped performing all supervisory, training, and

1 administrative duties for firefighters assigned to dispatch and only performed those duties  
2 for the civilian dispatchers.

3 2. Dispatchers

4 At all relevant times prior to June of 2018, the Department assigned one firefighter  
5 every 12 hours (i.e., half-shift) to perform dispatching duties<sup>8</sup> at headquarters, for a total  
6 of two firefighters on every 24-hour shift. During this time, the assigned firefighters  
7 performed dispatch work exclusively and only at headquarters. In or around June of 2018,  
8 the City first hired non-unit personnel (i.e., civilian dispatchers) to work alongside  
9 firefighters already assigned to dispatch. Between July 23, 2018 and December 15, 2018,  
10 firefighters and civilian dispatchers shared dispatching duties.

11 Beginning on or about December 15, 2018 and continuing to present, the  
12 Department stopped assigning firefighters as dispatchers and began assigning only  
13 civilian dispatchers to perform dispatching duties at the South Attleboro station.<sup>9</sup> Also  
14 beginning on or about March 16, 2019, Chief Lachance directed all shift commanders to

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<sup>8</sup> The Commonwealth of Massachusetts Human Resource Division (HRD) establishes health and physical fitness standards for firefighters pursuant to G.L. c. 31, Section 61A. At some point in 2020, HRD published its “Initial-Hire Medical and Physical Ability Test Standards And Physician’s Guide 2020” (2020 Guide) which included certain essential job functions for firefighters. The 2020 Guide referenced specific driving duties under Section E which included “drive apparatus to and from, and position apparatus at, emergency scene.” While the 2020 Guide did not specifically reference dispatching duties, it included “answer department and outside phone” under Section A. It also included “[m]eet civilians (e.g., walk-ins) in the fire station or talk to them when they call in order to handle situations...and provide information (e.g., basic safety instruction)” under Section X.

<sup>9</sup> At some point between July 23, 2018 and March 16, 2019, the City moved dispatching duties from Headquarters to South Attleboro station.



1 assign the 15<sup>th</sup> firefighter to Headquarters as a Battalion 1 Aide.<sup>10</sup> Prior to March 16, 2019,  
2 the shift commander had the discretion to assign—and usually assigned—the 15<sup>th</sup>  
3 firefighter to perform dispatcher duties at Headquarters.

#### 4 **The Grievances and the MOA**

5 By e-mail on May 1, 2018, Union President Springs notified Chief Lachance that  
6 the Union had agreed to “assist the [C]ity with training civilian personnel to become full  
7 time dispatchers, with the understanding that the [15<sup>th</sup>] firefighter position will not be  
8 replaced.”<sup>11</sup> On or about July 25, 2018 and July 30, 2018, the Union filed two grievances  
9 regarding changes in working conditions for the Fire Alarm Superintendent and for  
10 firefighters who performed dispatching duties, and that the Department had paid those  
11 firefighters less than civilian dispatchers. On July 30, 2018, Lachance met with Springs  
12 and Perkins to discuss the grievances at Level 2.

13 In September of 2018, the parties met to negotiate a successor contract. On  
14 September 14, 2018, the parties entered into a Memorandum of Agreement (MOA) for a  
15 successor contract included language that, “The Union shall withdraw with prejudice the  
16 two pending grievances related to promotions and implementation of civilian dispatching.  
17 All economic issues<sup>12</sup> related to civilian dispatching are resolved.”

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<sup>10</sup> Lachance gave un rebutted testimony that the assignment of the 15<sup>th</sup> firefighter to Battalion 1 Aide after March 16, 2019 was not a written policy but rather a continuing “directive” that he gave to shift commanders.

<sup>11</sup> Lachance testified that despite Springs’ “caveat” about maintaining the 15<sup>th</sup> firefighter position, Lachance entered a “verbal agreement” with Springs to “do everything [he] could to keep staffing levels at 15 firefighters.” Lachance also testified that he kept that “same agreement” when Heroux became mayor.

<sup>12</sup> Heroux testified that during the parties’ MOA negotiations in September of 2018, the Union raised the issue of pay parity between civilian and firefighter dispatchers, and also

1           By letter dated December 15, 2018, Springs asked Lachance to resolve an alleged  
2 violation of the MOA that related to the hiring of four civilian dispatchers and the removal  
3 of “the firefighter working side by side with the civilian dispatcher[s].” At some point  
4 between December 15, 2018 and March 18, 2019, Springs stepped down and Jacques  
5 became Union President. By letter dated March 18, 2019, Jacques demanded to bargain  
6 with the City regarding the implementation of civilian dispatchers with “[s]pecial attention  
7 concerning the preservation of the 15<sup>th</sup> Firefighter formerly assigned to dispatch per shift.”  
8 By reply letter dated March 25, 2019, Mayor Heroux notified Jacques that:

9           ....The City would be willing to discuss any non-economic issues regarding  
10 the implementation of civilian dispatching that also do not relate in any way  
11 to the previously-resolved grievance (see our September 14, 2018 MOA).

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sought to increase the firefighters’ pay. He testified that during those negotiations the City made economic proposals such as accepting the terms of the civilian dispatcher contract—which was entered between the City and another union—and offering an additional one percent above its previous economic offer. Although the Union rejected some of the City’s proposals, Heroux testified that once the parties signed the MOA, “all economic conditions were resolved relating to dispatch.” On cross-examination, Heroux admitted that the MOA did not preclude the Union from later raising other issues such as Fire Alarm Superintendent duties and general safety. However, he testified that the Union’s demand to bargain over both maintaining the 15<sup>th</sup> firefighter as a minimum staffing level and its job duties at the April 16 and May 13, 2019 meetings were “economic issues” because that demand represented “a cost” to the City in that “having 15 firefighters on staff costs more than 14 firefighters.” Conversely, Perkins testified that the relevant “economic issues” in the MOA referred only to pay parity between firefighter dispatchers and civilian dispatchers. However, Jacques conceded on cross-examination that the 15<sup>th</sup> firefighter position was “always subject to funding.” Based on this evidence, I find that the parties had resolved the “economic issue” of pay parity in the MOA because both parties bargained over that issue in September of 2018. I also credit Heroux’s testimony that maintaining a 15<sup>th</sup> firefighter is an economic issue that the parties had resolved during their MOA negotiations because it relates directly to funding and costs as a minimum staffing issue. However, I do not credit Heroux’s testimony that the Union’s post-MOA demand to bargain over the 15<sup>th</sup> firefighter’s job duties was an “economic issue” that the parties had resolved via the MOA because there is no evidence that the parties discussed this issue during their MOA negotiations, nor is there any evidence showing how those duties impact costs or funding.

1           However, it appears that your request is related to “preservation of the 15<sup>th</sup>  
2 [f]irefighter.” My understanding is that the current manning level includes a  
3 15<sup>th</sup> firefighter and I think the Chief plans on continuing to staff to that level  
4 at this time. As you know, minimum manning is only a permissible subject  
5 of bargaining. Further, the issue of a 15<sup>th</sup> [f]irefighter is an “economic issue”  
6 and economic issues have previously been resolved.  
7

8           Should you wish to discuss non-economic issues with the City, please  
9 contact my office to schedule a date and time to meet. Should you have  
10 any questions or concerns, please feel free to contact me.

11           ....  
12

### 13 **The Parties’ Impact Bargaining Meetings**

#### 14           1. The April 16, 2019 Meeting

15           The parties first met on April 16, 2019 to bargain over the impacts of the City’s  
16 December 2018 decision to transfer dispatching duties to civilian dispatchers, with the  
17 meeting lasting about 20 or 30 minutes. Present at that meeting were Heroux, Lachance,  
18 Personnel Director Owen Bebeau (Bebeau), Personnel Assistant Beth Fokin (Fokin), and  
19 Jacques. During the meeting, Heroux took notes and listened<sup>13</sup> to Jacques while he  
20 presented the Union’s position on civilian dispatchers, the Fire Alarm Superintendent, the  
21 15<sup>th</sup> firefighter, and the addition of another Rescue apparatus. The meeting ended with  
22 the parties agreeing to meet again to continue negotiations.

23           Later that same day, Jacques sent an e-mail to Heroux, Lachance, and Bebeau,  
24 stating, in part:

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<sup>13</sup> Jacques testified that Heroux was very “standoffish” at the April 16, 2019 meeting and did not talk to the Union “because he didn’t have to.” Conversely, Heroux testified that the meeting was “productive” because he mostly took notes and the City was “there to listen.” The Union did not offer rebuttal evidence explaining specifically how Heroux was “standoffish” or why Jacques believed that Heroux did not have to talk to the Union at that meeting. Based on the totality of the evidence, I do not credit Jacques’ testimony that Heroux was “standoffish,” but I credit Heroux’s testimony that he primarily took notes, listened to Jacques, and agreed to meet again with the Union to continue bargaining.

1 T[hank you] for meeting with us today to start [i]mpact [b]argaining the  
2 implementation of [c]ivilian [d]ispatchers.

3 ....  
4 Below is a breakdown of topics discussed to be used as groundwork for a  
5 Memorandum of Agreement (MOA) between Attleboro Firefighters Local  
6 848 and the City of Attleboro.

7  
8 Reorganization, consolidation, or abolition of existing City agencies in whole  
9 or in part: [Emphasis omitted]

10 ....  
11 The Union agrees to accept the abolition of the sworn Fire Department  
12 dispatching positions provided the City maintains, at all times, a minimum  
13 [f]irefighting staffing level strength of fifteen per shift.

14  
15 Said sworn [d]ispatcher [p]osition(s) shall be used to eliminate part-time  
16 apparatus/split piece of Engine 4 – Rescue 4. Having Engine 4 remain as  
17 an ALS Engine, staffed at all times with a minimum of one Fire Lieutenant,  
18 one Firefighter, and one secondary Firefighter-Paramedic.

19  
20 Putting in service a full-time Rescue 5 at Twin Village Fire Station, staffed  
21 at all times with a minimum of one Firefighter-EMT Basic and one  
22 Firefighter-Paramedic in addition to the current Engine 5 minimum staffing  
23 levels of one Fire Lieutenant and two Firefighters.

24  
25 The City shall submit an updated version of the new organizational chart to  
26 include [c]ivilian [d]ispatcher(s), their chain of authority, reporting  
27 relationships, and all rules and regulations pertaining to the existence and  
28 maintenance of the [c]ivilian [d]ispatching program.

29 ....

30 By reply e-mail on April 26, 2019, Heroux informed Jacques, in pertinent part:

31 As I stated in my March 25, 2019 letter to you, the City continues to be  
32 willing to discuss any non-economic issues regarding implementation of  
33 civilian dispatching that also do not relate in any way to the previously-  
34 resolved grievance (see our September 14, 2018). In my March letter, as  
35 well as at our meeting, I also specifically explained that the City is not  
36 interested in bargaining over minimum manning.

37  
38 In regard to your references to “reorganization” etc., I assure you that if the  
39 City plans on any reorganization in the Fire Department that would result in  
40 a bargaining obligation, then we will certainly be willing to bargain over such  
41 matters (other than economic issues related to implementation of civilian  
42 dispatchers). I should note that some of your references seem to involve  
43 level of services matters, which are managerial prerogatives and may not  
44 be subject to bargaining. Thank you for meeting with us. I assure you that

1 the City will always act in good faith and fulfil any bargaining obligations it  
2 may have. Should you have any questions or concerns, please feel free to  
3 contact me.  
4

5 By surreply on April 26, 2019, Jacques informed Heroux that “the implementation  
6 of [c]ivilian [d]ispatchers constitutes a change in working conditions for all of our  
7 Members” and that the Union was available to meet again for impact bargaining on May  
8 10, 20, and 28, 2019. By e-mail on April 30, 2019, Heroux informed Jacques that the City  
9 was available to meet on May 13, 2019, and that, “To be perfectly clear, we are willing to  
10 bargain only over non-economic items related to the impacts of civilian dispatching  
11 implementation. We are not willing to bargain over minimum manning, level of services  
12 decisions within the City’s non-delegable authority, and items related to civilian  
13 dispatching that have any economic ramifications.” By e-mail on May 4, 2019, Jacques  
14 confirmed the Union’s availability to meet on May 13, 2019.

## 15 2. The May 13, 2019 Meeting

16 On May 13, 2019, the parties met for a second time to bargain over the impacts of  
17 the implementation of civilian dispatching. Present at the meeting were Heroux,  
18 Lachance, Jacques, Perkins, Springs, Fokin, Bebeau, and Assistant Chief John  
19 Guenette. At the beginning of the meeting, Jacques informed the City that the Union  
20 intended to discuss three issues: the duties of the Fire Alarm Superintendent, safety, and  
21 minimum manning in relation to the 15<sup>th</sup> firefighter’s job duties. Heroux responded that  
22 the City was willing to talk about the first two issues, but not the third issue because it  
23 related to minimum staffing levels. However, when the Union insisted repeatedly on

- 1 bargaining over the issue of minimum manning as it relates to the 15<sup>th</sup> firefighter, Heroux
- 2 terminated the meeting after about five minutes.<sup>14</sup>

---

<sup>14</sup> Jacques testified that “meeting itself was very short” and that Heroux “wouldn’t even allow us, really, to even introduce the people in the room—some that he’s never met before. Basically, he kept saying that...I don’t have to talk to you, I don’t have to talk to you...And, then abruptly said, we’re out of here, and then ordered people with him—the chief and personnel—to leave the room and end the meeting.” Additionally, Jacques testified that Heroux “was very...dismissive, confrontational, obstructionist.” At the end of the meeting when Jacques stood to shake Heroux’s hand, Jacques testified that Heroux “refused to do that...and he just said ‘get out of my way’...proceeded to go around into his office and then came back out screaming some more,” at which point the Union left the meeting. Jacques testified further that the Union “insisted on talking about duties and responsibilities” and that the parties “agreed to not get rid of the 15<sup>th</sup> firefighter.”

Perkins testified that the May 13, 2019 “meeting was very abrupt” and the parties “did not discuss the duties or responsibilities connected to the 15<sup>th</sup> firefighter.” While Perkins did not testify about the specific interaction between Jacques and Heroux at that meeting, he testified that Heroux “was very clear” that the City “wouldn’t be discussing minimum manning.” He also testified that prior to the meeting after the parties had entered the MOA, the Union’s “exclusive goal was to make sure that we got the duties and responsibilities and the boundaries of the Fire Alarm Superintendent established.” He also testified that the Union was also “asking for the preservation of that 15<sup>th</sup> position,” and the purpose of the meetings in the spring of 2019 was “to establish the duties and responsibilities of the position to maintain its integrity.” Perkins testified further to speaking with the Chief prior to the May 13, 2019 meeting who gave the “impression” that he “was going to maintain that 15<sup>th</sup> position.”

Conversely, Heroux testified that the meeting lasted less than five minutes and that he reminded Jacques at the meeting that “I’ve had conversations with you about what to say during that meeting and what the expectations are and I stayed to those guidelines—and you know those guidelines—and we’re not going to talk about minimum manning because the City doesn’t have to talk about it as a permissible subject.” He also testified that Jacques “kept harping” on the issue of minimum manning and repeated it “three or four, maybe five times” toward the end of the meeting. When Jacques first insisted on talking about that issue, Heroux responded, “We’re not going to talk about minimum manning, but let’s go ahead and start talking about the first two issues.” However, Jacques responded, “We’ll talk about the two issues and then we’ll talk about minimum manning.” Again, Heroux told Jacques “We’re not going to talk about minimum manning, but let’s go ahead and start talking about the first two issues.” Jacques then responded “sure, and then we’ll come back to minimum manning,” to which Heroux responded “we’re not going to,” to which Jacques responded, “yes you are.” Heroux testified that the meeting was a “ridiculous waste of time” because “it was clear [that Jacques] was just trying to push my buttons” and that “it felt more like he was trying to provoke a physical reaction from me.”

1 Later that same day, Heroux contacted Jacques by e-mail, stating in pertinent part:

2 I am writing in regard to our meeting today. I again explained that the City  
3 is not interested in discussing/bargaining minimum shift manning with the  
4 Union. As I also mentioned, how the City assigns the firefighter who would  
5 previously have been performing dispatch duties is a managerial  
6 prerogative; however, if someone is assigned to any duties not contained in  
7 the firefighter job description,<sup>15</sup> the City will certainly fulfill any bargaining  
8 obligations it might have. We were willing to discuss the job description for  
9 the Fire Alarm [Superintendent] (other than economic-related issues, which  
10 have all been resolved previously). However, you kept on insisting to  
11 discuss minimum shift manning. As you know, I had to call an end to the  
12 meeting because of your insistence on talking about minimum shift  
13 manning.

14  
15 I must mention your behavior when I ended the meeting. You approached  
16 me and had your hand out, saying you wanted to shake my hand. You  
17 became very aggressive very quickly and were extremely close to me, face-  
18 to-face. I tried to get away from you, but you continued to pursue me in the  
19 conference room; at one point blocking my exit. I said to you at least three  
20 or four times “get away from me.” Your behavior was bizarre and  
21 unprofessional. It could have been taken as intimidating and threatening. I  
22 mention this only to let you know that if you behave similarly in any future  
23 meetings, it will result in an immediate end to the meeting.

24 ....

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At this point, Heroux turned to Bebeau, Fokin, Lachance, and Guenette and said, “We’re done,” and ended the meeting.

Based on the totality of the evidence, I credit Heroux’s testimony that the Union insisted repeatedly on bargaining with the City over the issue of minimum staffing levels. I also credit his testimony that that the parties neither bargained nor reached agreement over any issues raised at the May 13, 2019 meeting. While Jacques and Perkins testified to their recollection of what of what occurred at the May 13, 2019 meeting, I find that Heroux’s testimony demonstrates a more specific recollection about that meeting. Although the Union called Chief Lachance as a rebuttal witness, the Chief did not rebut Heroux’s testimony on this matter. Further, I do not credit Jacques’ testimony that the parties “agreed to not get rid of the 15<sup>th</sup> firefighter” because the meeting ended “abruptly” and without discussion about “the duties or responsibilities connected to the 15<sup>th</sup> firefighter” according to Perkins, and lasted less than five minutes according to Heroux.

<sup>15</sup> Neither party offered a copy of the firefighter job description into evidence.





1 satisfied its bargaining obligations.<sup>16</sup>

2         The Union argues that the City's December 15, 2018 transfer of dispatch duties  
3 coupled with Chief Lachance's March 16, 2019 directive to assign the 15<sup>th</sup> firefighter as  
4 the Battalion 1 Aide are not minimum staffing issues that exempt the City from bargaining  
5 because they concern mandatory subjects of bargaining (i.e., job duties of the 15<sup>th</sup>  
6 firefighter and unit safety). It also argues that the City failed to satisfy its bargaining  
7 obligations by refusing to negotiate the impacts of that decision at the May 13, 2019  
8 meeting. It argues further that it never waived any rights to impact bargain, and that the  
9 parties did not reach impasse at the May 13, 2019 meeting.

10         Relying primarily on Town of Billerica v. International Association of Firefighters,  
11 Local 1495, 415 Mass. 692, 694 (1993),<sup>17</sup> the City argues that it has a non-delegable right  
12 to determine minimum staffing levels, which includes the core managerial prerogative to  
13 decide how and where to assign unit members, including the 15<sup>th</sup> firefighter. It also argues  
14 that assignment of the 15<sup>th</sup> firefighter is a permissive subject of bargaining, not a  
15 mandatory subject, because it involves the nature and level services provided by the City.  
16 Thus, the City contends that it is exempt from bargaining with the Union over the impacts  
17 of the Chief's March 16, 2019 directive to assign the 15<sup>th</sup> firefighter to Battalion 1 Aide. In  
18 the alternative, the City argues that even if it was obligated to bargain over the impacts of

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<sup>16</sup> The Complaint alleges only that the City had failed to bargain over the impacts of the decision to transfer dispatching duties to non-unit personnel, not the decision itself.

<sup>17</sup> In Billerica, the Court refused to enforce a minimum-staffing requirement in the parties' collective bargaining agreement because it unlawfully interfered with the town's exercise of its non-delegable managerial prerogatives. Id. at 694-695.

1 the transfer of dispatching duties and the reassignment of the 15<sup>th</sup> firefighter, the Union  
2 waived its rights to bargain by contract and by inaction.<sup>18</sup>

### 3 **Core Managerial Prerogative**

4 A public employer's decision to change the nature and level of its municipal  
5 services is a core governmental decision that is exempt from the collective bargaining  
6 process. Newton School Committee v. Labor Relations Commission, 388 Mass. 557, 563  
7 (1983); City of Boston, 31 MLC 25, 31, MUP-1758 (Aug. 2, 2004). However, the  
8 Commonwealth Employment Relations Board (CERB) requires an employer to bargain  
9 with the union over the impacts of such a decision on employees' terms and conditions  
10 of employment. Town of Norwell, 13 MLC 1200, 1206, MUP-5655 (Oct. 15, 1986) (citing  
11 Newton School Committee, 5 MLC 1016, 1022, MUP-2501 (June 2, 1978); Town of  
12 Danvers, 3 MLC at 1559)).

#### 13 **1. Permissive Bargaining**

14 "The concept of a mandatory/permissive standard for collective bargaining is not  
15 rooted in statute. It evolved in the private sector labor law through administrative

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<sup>18</sup> Although the Union argued the issue of waiver in its brief, the City's brief did not specifically raise either affirmative defense of "waiver by inaction" or "waiver by contract." However, at the pre-hearing conference on August 25, 2020, the City stated its intent to raise the issue of waiver by contract. It also argued in its brief that: (1) the Union had failed to respond to the Mayor's May 13, 2019 e-mail after the parties' second bargaining session; and, (2) the Union bound itself to the terms of Article 2 of the Agreement which recognizes the City's "right to...assign" and to "determine the...personnel by which such operations are to be conducted." Because the City addressed these arguments in the context of its defense against the Charge and Complaint, and because the substance of both arguments pertains generally to the affirmative defenses of waiver, I am interpreting the City's arguments as affirmative waiver defenses. More specifically, I treat the City's argument that the Union failed to respond to the Mayor's May 13, 2019 e-mail as an argument for waiver by inaction, and I treat the other argument that the Union agreed to adhere to the terms of Article 2 of the Agreement as an argument for waiver by contract.

1 interpretation of the [National Labor Relations Act] by the National Labor Relations  
2 Board...and confirmation thereof by the United States Supreme Court.” Town of Danvers,  
3 3 MLC at 1563 (citing NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342  
4 (1958)). In Town of Natick, MUP-326, 351 (1973),<sup>19</sup> the CERB “formally adopted the  
5 mandatory/permissive framework of analysis.” Town of Danvers, 3 MLC at 1564. In Town  
6 of Danvers, the CERB held that permissive subjects of bargaining involving core  
7 governmental decisions, such as minimum shift-staffing levels, “should be negotiable only  
8 at the will of the public employer.” Id. at 1573-1574; see IAFF, Local 1009, 2 MLC 1238,  
9 1239 and n.4, MUPL-2018 (Dec. 15, 1975) (CERB held that while a party is free to  
10 propose a permissive subject of bargaining, it may not “insist” on it as a condition  
11 precedent to agreement; and, conversely, the “opponent” has no legal obligation to  
12 negotiate a non-mandatory subject). Decisions concerning the nature and level of public  
13 services to be delivered, including minimum shift-staffing coverage in a fire department,  
14 are permissive subjects of bargaining. Town of Danvers, 3 MLC at 1574; Town of Halifax,  
15 20 MLC 1320, 1323, 1325, MUP-7823 (Dec. 16, 1993); see also Billerica, 415 Mass. at  
16 694-695 (citing School Comm. of Boston v. Boston Teachers Union, Local 66, 378 Mass.  
17 65, 70-72 (1979); Danvers, 3 MLC at 1573) (Court refused to enforce a minimum-staffing  
18 requirement in parties’ agreement because it unlawfully interfered with town’s exercise of  
19 non-delegable managerial prerogatives, holding “there are certain nondelegable rights of  
20 management, matters that are not mandatory subjects of collective bargaining” and a

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<sup>19</sup> The DLR publishes its decisions via the Massachusetts Labor Relations Reporter which does not include decisions that the DLR issued prior to July 1, 1974.

1 minimum shift-staffing requirement “represents an intrusion into that type of governmental  
2 decision which should be reserved for the sole discretion of the [employer]”).

3       The record shows that on numerous occasions, beginning in May of 2018, the  
4 Union insisted on bargaining with the City over the issue of minimum staffing as it  
5 pertained to the transfer of dispatching duties and the displacement of the 15<sup>th</sup> firefighter.  
6 First, on May 1, 2018, Springs informed the Chief that the Union agreed to “assist the  
7 [C]ity with training civilian personnel to become full time dispatchers, *with the*  
8 *understanding that the [15<sup>th</sup>] firefighter position will not be replaced.*” [Emphasis added.]  
9 Next, Jacques demanded to bargain with the City on March 18, 2019, over the  
10 implementation of civilian dispatchers with “[s]pecial attention *concerning the*  
11 *preservation of the 15<sup>th</sup> firefighter* formerly assigned to dispatch per shift.” [Emphasis  
12 added.] Again, on April 16, 2019, Jacques reiterated his position when he informed  
13 Heroux that the “Union agrees to accept the abolition of the sworn Fire Department  
14 dispatching positions *provided the City maintains, at all times, a minimum [f]irefighting*  
15 *staffing level strength of fifteen per shift.*” [Emphasis added.] At the May 13, 2019 meeting,  
16 Jacques continued to reiterate that position, this time insisting repeatedly that the City  
17 had to bargain over the issue of minimum staffing levels. While the record shows that on  
18 equally numerous occasions the City refused repeatedly to bargain with the Union over  
19 the permissive subject of minimum staffing levels, there is no evidence that the City  
20 refused to negotiate over any mandatory subjects of bargaining related to job duties or  
21 safety. In fact, the City reminded the Union on March 25, April 26, April 30, and May 13,  
22 2019 that while it would not bargain over the issue of minimum staffing levels, it remained  
23 willing to bargain over other non-economic issues such as job duties and safety. See,

1 generally, Commonwealth of Massachusetts, 25 MLC 201, 206, SUP-4075 (June 4, 1999)  
2 (CERB does not require an employer to bargain endlessly over proposals it has previously  
3 considered and rejected).

4         However, the City's decision to determine minimum staffing levels, including  
5 whether to staff a minimum of 15 firefighters, is a permissive subject exempt from  
6 bargaining because it concerns the nature and level of services delivered by the  
7 Department and involves a core managerial prerogative to provide increased fire  
8 protection. Town of Halifax, 20 MLC at 1323; Town of Bridgewater, 12 MLC at 1615-1616;  
9 Town of Danvers, 3 MLC at 1574; see City of Newton, 16 MLC 1036, 1042 (1989)  
10 (decision to provide increased fire protection to better preserve property directly involved  
11 level of municipal services and was reserved to management). The Chief's March 16,  
12 2019 directive to assign the 15<sup>th</sup> firefighter to Battalion 1 Aide is also a permissive subject  
13 of bargaining because it concerns a non-bargainable core governmental decision.  
14 Billerica, 415 Mass. at 694-695; Town of Danvers, 3 MLC at 1573-1574; cf Burlington v.  
15 Labor Relations Commission, 390 Mass. 157, 164 (1983) (town had prerogative to  
16 reassign duties formerly held by police prosecutors to town counsel).

17         Finding that the City's decisions to determine minimum staffing levels and reassign  
18 the 15<sup>th</sup> firefighter from dispatch to Battalion 1 Aide are permissive subjects of bargaining,  
19 I turn to the focus of the Complaint which is whether the City satisfied its obligations to  
20 bargain with the Union over the impacts of the decision to transfer dispatch duties to non-  
21 unit personnel on or about December 15, 2018.

## 22         **2. Workload and Safety**

1 To determine whether a management decision impacts a mandatory subject of  
2 bargaining, the CERB balances the union's interest in bargaining over safety and  
3 workload issues against the employer's interest in making the core management decision  
4 of what level of service to provide. Town of Halifax, 20 MLC at 1323 (other citations  
5 omitted). A topic does not become a mandatory subject of bargaining merely because an  
6 employer's actions marginally or indirectly implicate safety or workload issues. Id. at 1324  
7 (citing Town of Bridgewater, 12 MLC at 1617; Town of Billerica, 8 MLC 1957, MUP-4000  
8 and MUP-4122 (March 19, 1982)). Instead, to outweigh the employer's interest in making  
9 a core management decision, the topic must directly and significantly affect safety or  
10 workload. Id. at 1324 (citing Town of Billerica, 8 MLC at 1957).

11 **a. Job Duties**

12 Here, the Union does not argue that the City's decision increased firefighters'  
13 workload but that it affected safety and the job duties for the 15<sup>th</sup> firefighter. Relying on  
14 Town of Somerset, 31 MLC 47, 48, MUP-01-2957 (Aug. 12, 2004); Peabody Municipal  
15 Light Department, 28 MLC 88, 89, MUP-2351 (Aug. 9, 2001), and Commonwealth of  
16 Massachusetts, 28 MLC 36, 40, SUP-4345 (June 29, 2001), it argues that the decision  
17 created new job duties for the 15<sup>th</sup> firefighter and the City refused to impact bargain over  
18 those duties at the May 13, 2019 meeting. The Union's reliance on those cases is well-  
19 placed because they demonstrate the CERB's long-established holding that job duties  
20 are mandatory subjects of bargaining. However, in this case, I analyze the issue of job  
21 duties in the context of whether the impacts of the decision to transfer the dispatching  
22 duties significantly affected or changed firefighters' job duties. For the following reasons,  
23 I find they did not.

1 First, the record is void of evidence showing that either the December 15, 2018  
2 transfer or the Chief's March 16, 2019 directive created any new job duties. The Union  
3 asserts in its brief that the City's "decision to add a Battalion 1 Aide/Safety Officer position  
4 created a change in job duties," and "the City had an obligation to bargain about the  
5 impacts of any decision to create a new Battalion 1/Safety Aide position." However, the  
6 record does not support this assertion because the Battalion 1 Aide assignment has  
7 existed for "close to 50 years" and, at all relevant times during the Chief's tenure he would  
8 "routinely fill" that assignment "if [the Department] had the staffing levels."

9 Second, there's no evidence that the City refused to bargain with the Union over  
10 the 15<sup>th</sup> firefighter's job duties. Rather, the record reveals that on May 1, 2018, March 18,  
11 2019, April 16, 2019, and May 13, 2019 the Union demanded to bargain over the issue  
12 of minimum staffing levels to preserve and maintain the 15<sup>th</sup> firefighter position, and the  
13 City rejected those demands on March 25, 2019, April 26, 2019, April 30, 2019, and May  
14 13, 2019. At all relevant times, the City remained willing to impact bargain with the Union  
15 over other issues including job duties. This willingness is demonstrated in the City's e-  
16 mails on March 25, April 26 and 30, 2019, where Heroux informed the Union that the City  
17 "continues to be willing to discuss any non-economic issues regarding implementation of  
18 civilian dispatching," but it was "not willing to bargain over minimum manning, level of  
19 services decisions within the City's non-delegable authority, and items related to civilian  
20 dispatching that have any ramifications." Heroux reiterated the City's position in person  
21 at the May 13, 2019 meeting, when he offered to "start talking about the first two issues"  
22 (i.e., job duties and safety) in lieu of discussing minimum staffing. Jacques refused to  
23 accept Heroux's offer to bargain solely on these issues and continued to insist that the

1 parties' bargain over the minimum staffing issue. At that point, Heroux ended the meeting  
2 and sent another e-mail later that day explaining that "the City is not interested in  
3 discussing/bargaining minimum shift manning with the Union" but "will certainly fulfill any  
4 bargaining obligations it might have."

5 Based on this evidence, I find that the City did not fail to impact bargain with the  
6 Union over the subject of job duties but, instead, satisfied its bargaining obligation by  
7 offering repeatedly to bargain over those duties despite the Union's insistence on first  
8 bargaining over the Department's minimum staffing levels, which the City rejected. Town  
9 of Marshfield, 30 MLC at 173-175; Town of Halifax, 20 MLC at 1326; Town of Danvers, 3  
10 MLC at 1573-1574.

11 **b. Safety**

12 Next, the Union argues that the City failed to impact bargain over matters  
13 concerning firefighter safety as it relates to the civilianization of the dispatching function.  
14 It contends that the decision implicates safety issues based on how civilian dispatchers'  
15 gather information for incidents coupled with the training and supervision they received.  
16 Specifically, the Union asserts that the information gathered by civilian dispatchers  
17 impacts safety because they determine "the type of incident that firefighters believe they  
18 are responding to and the manner in which they respond." It also asserts that their training  
19 and supervision have a direct impact on safety because it differs from the training and  
20 supervision received by firefighters. Despite these assertions, the Union failed to show  
21 specifically how the information gathered by civilian dispatchers actually affected  
22 firefighter safety. It also failed to show how the training and supervision provided by the  
23 Fire Alarm Superintendent beginning on or about July 23, 2018 was inadequate,



1 incomplete, or demonstrative of a measurable or increased risk to firefighter safety. Nor  
2 is there any evidence that the training and supervision received by civilian dispatchers  
3 was separate or different from the training and supervision received by firefighter  
4 dispatchers during this period of time. While the Union points to the new duties performed  
5 by the Fire Alarm Superintendent beginning on or about July 23, 2019 (e.g., submitting  
6 payroll and making schedules), I find no evidence that these administrative duties  
7 impacted firefighter safety.

8           The Union also argues that the City was obligated to bargain over Jacques' April  
9 16, 2019 proposals to reassign the 15<sup>th</sup> firefighter to apparatus other than Battalion 1 Aide  
10 which also implicates safety. In support of this argument, the Union points to the NFPA  
11 standards referenced by the Chief in his 2014 reorganization plan which "established the  
12 minimum recommended staffing levels for Engine Companies and Ladder Companies as  
13 3 firefighters and 1 [c]ompany [o]fficer." Again, the Union failed to demonstrate how the  
14 transfer decision or the Chief's directive to reassign the 15<sup>th</sup> firefighter to Battalion 1 Aide  
15 impact employee safety because, at all relevant times before the decision and directive,  
16 the number of firefighters assigned to Battalion 1 Aide has been one firefighter. See,  
17 generally, Town of Reading, 9 MLC, 1730, 1739, MUP-4541 (March 29, 1983) (in a post-  
18 hearing advisory opinion the CERB found that "a proposal for coverage per piece of  
19 apparatus while...awai[ting] an alarm [was] a non-mandatory subject of bargaining.")

20           Additionally, the Union is unable to show how the Chief's reassignment of the 15<sup>th</sup>  
21 firefighter from dispatch to Battalion 1 Aide resulted in reduced minimum staffing levels  
22 that impacted safety. Town of Marshfield, 30 MLC at 175; compare Town of Bridgewater,  
23 12 MLC at 1616 (chief's reduction in the number of fire fighters assigned to the shift was



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

A handwritten signature in black ink, appearing to read "Kendrah W. Davis", with a long horizontal flourish extending to the right.

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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.