

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF NEW BEDFORD

and

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 841

Case Nos. MUP-20-7998 and
MUP-20-8280

Issued: September 26, 2022

Hearing Officer:

Kendrah Davis, Esq.

Appearances:

Jane Medeiros Friedman, Esq. - Representing the City of New Bedford

Leah Barrault, Esq. - Representing the International
Association of Fire Fighters, Local 841

HEARING OFFICER'S AMENDED CONSOLIDATED DECISION¹

SUMMARY

1 There are two issues in these consolidated cases. The first issue is whether the
2 City of New Bedford (City or Respondent) violated Section 10(a)(5) and, derivatively,
3 Section 10(a)(1) of G.L. c. 150E (the Law) when in or about March of 2020, it transferred
4 to non-bargaining personnel the bargaining unit work of responding to the following types
5 of 911 emergency medical dispatch calls (priority 1 calls): (a) cardiac care to persons
6 under 60 years of age; (b) public intoxication; (c) trash fires; (d) motor vehicle accidents

¹ The Hearing Officer amends the original decision pursuant to the Errata that issued on September 26, 2022.

1 with minor injuries; and (e) suicide attempts, without giving the International Association
2 of Fire Fighters, Local 841 (Union or Charging Party) prior notice and an opportunity to
3 bargain to resolution or impasse over this decision and its impacts on employees' terms
4 and conditions of employment. The second issue is whether the City violated Section
5 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in or about October of 2020, when
6 it transferred to non-bargaining personnel the bargaining unit work of responding to the
7 following types of priority 1 calls: (a) motor vehicle accidents except those involving known
8 entrapment; (b) requests to gain entry to a building; (c) allergic reactions not involving
9 asthma attacks or anaphylaxis; (d) overdoses; (e) pregnancy not involving active
10 childbirth; (f) burn from fireworks; (g) fire alarm activations; (h) smoke in the building/area;
11 (i) certain trauma; (j) explosions; (k) cardiac care to persons under 50 years of age; and,
12 (l) mutual aid, without giving the Union prior notice and an opportunity to bargain to
13 resolution or impasse over this decision and its impact on employees' terms and
14 conditions of employment.

15 For the reasons explained below, I find that the City violated the Law in or about
16 March of 2020, by transferring to non-bargaining personnel the bargaining unit work of
17 responding to priority 1 calls involving cardiac care to persons under 60 years of age,
18 public intoxication, and suicide attempts, without giving the Union prior notice and an
19 opportunity to bargain to resolution or impasse over this decision and its impacts on
20 employees' terms and conditions of employment. I also find that the City violated the Law
21 in or about October of 2020, by transferring to non-bargaining personnel the bargaining
22 unit work of responding to priority 1 calls involving allergic reactions not involving asthma

1 attacks or anaphylaxis, pregnancy not involving active childbirth, certain trauma, cardiac
2 care to persons under 50 years of age, and mutual aid without giving the Union prior
3 notice and an opportunity to bargain to resolution or impasse over this decision and its
4 impacts on employees' terms and conditions of employment. However, I find that the City
5 did not violate the Law, as alleged, in March of 2020 as it relates to responding to priority
6 1 calls involving trash fires and motor vehicle accidents with minor injuries. I also find that
7 the City did not violate the Law, as alleged, in or about October of 2020 as it relates to
8 responding to priority 1 calls concerning requests to gain entry to a building, motor vehicle
9 accidents except those involving entrapment, burn from fireworks, certain fire alarm
10 activations, smoke in the building/area, explosions, and overdoses.

11 STATEMENT OF THE CASE

12
13 On May 8, 2020, the Union filed a Charge of Prohibited Practice (Charge I) with
14 the Department of Labor Relations (DLR), alleging that the City had engaged in prohibited
15 practices within the meaning of Sections 10(a)(5), 10(a)(3) and, derivatively, Section
16 10(a)(1) of the Law by transferring to non-bargaining unit personnel the bargaining unit
17 work of responding to the following types of priority 1 calls without providing the Union
18 with prior notice and an opportunity to bargain over that decision and its impacts on
19 employees' terms and conditions of employment: (a) motor vehicle accidents; (b) forced
20 entries; (c) suicide attempts; (d) intoxicated persons; (e) trash fires; and (f) certain medical
21 calls. On October 28, 2020, the Union filed a second Charge of Prohibited Practice
22 (Charge II) with the DLR, alleging that the City had engaged in prohibited practices within
23 the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by

1 transferring to non-bargaining unit personnel the bargaining unit work of responding to
2 the following priority 1 calls without providing the Union with prior notice and an
3 opportunity to bargain over that decision and its impacts on employees' terms and
4 conditions of employment: (a) motor vehicle accidents except for ones that involve known
5 entrapment inside a vehicle; (b) allergic reactions; (c) pregnancy issues that could include
6 cramping that leads to childbirth; (d) requests to gain entry; (e) smoke in the building, fire
7 alarm activation, or smoke in the area; (f) trauma or explosion; (g) overdose; (h) burn from
8 fireworks; and (i) mutual aid.

9 On October 26, 2020, a DLR Investigator issued a Complaint of Prohibited Practice
10 and Partial Dismissal (Complaint I)² on Charge I, alleging that the City had violated
11 Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when "at some point
12 between March and May of 2020," it transferred to non-bargaining personnel the
13 bargaining unit work of responding to the following types of priority 1 calls without giving
14 the Union prior notice and an opportunity to bargain to resolution or impasse over the
15 decision and its impacts on employees' terms and conditions of employment: (a) cardiac
16 care to persons under 60 years old; (b) public intoxication; (c) trash fires; (d) motor vehicle
17 accidents with minor injuries, and (e) suicide attempts.³ On January 22, 2021, another

² The Investigator dismissed the Union's allegations that the City had violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law.

³ Although the Union raised this allegation in Charge I, Complaint I does not allege that the City violated the Law by transferring the bargaining unit duty of responding to dispatched calls involving "suicide attempts." However, this issue relates to the general subject matter of Complaint I, both parties had a full and fair opportunity to litigate this matter at the hearing, and they addressed the issue in their briefs. For these reasons, I

1 DLR Investigator issued a Complaint of Prohibited Practice (Complaint II) on Charge II,
2 alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of
3 the Law when, in or about October of 2020, it transferred to non-bargaining personnel the
4 bargaining unit work of responding to the following types of priority 1 calls without giving
5 the Union prior notice and an opportunity to bargain to resolution or impasse over the
6 decision and its impacts on employees' terms and conditions of employment: (a) motor
7 vehicle accidents except those involving known entrapment; (b) gain entry to a building;
8 (c) medical issues involving allergic reactions, overdoses, pregnancy, and burn from
9 fireworks; (d) certain fire alarm activations and smoke in the building/area; (e) certain
10 trauma or explosions; and (f) certain mutual aid.

11 On November 5, 2020, the City filed its Answer to Complaint I. On May 13, 2021,
12 the City filed its Answer to Complaint II. I conducted two days of hearing on June 8 and
13 16, 2021 via WebEx at which both parties had a full opportunity to be heard, to examine
14 and cross-examine witnesses, and to present evidence. Both parties filed their respective
15 post-hearing briefs on September 3, 2021.

16 ADMISSIONS OF FACT

17 The City admitted to the following facts:

- 18 1. The City is a public employer within the meaning of Section 1 of the Law.
 - 19 2. The Union is an employee organization within the meaning of Section 1 of the Law.
- 20
21
22

consider the allegation that the City violated the Law by transferring the bargaining unit duty of responding to dispatched calls involving "suicide attempts." Provincetown School Committee, 13 MLC 1396, 1417 n. 17 (1987); Commonwealth of Massachusetts, 18 MLC 1161, 1164 n. 5, SUP-3356 and SUP-3459 (Oct. 16, 1991) (citing Whitman-Hanson Regional School Committee, 10 MLC 1606, MUP-5249 (May 17, 1984)).

- 1 3. The Union is the exclusive collective bargaining representative for a unit of
2 firefighters employed by the City.
3
- 4 4. The City has a centralized 911 emergency call dispatch system that is located at
5 police headquarters and has three unique first responder divisions: police, fire and
6 emergency medical services (EMS).
7

FINDINGS OF FACT

8 **Background**

9 The City's Fire Department (Department) comprises approximately 200 uniformed
10 firefighters and includes numerous fire stations that share space with EMS ambulances.
11 The Department uses various apparatus, such as ladder trucks and engines which
12 contain radios and computers that allow certain firefighters to monitor all medical calls,
13 including those dispatched from Police headquarters to firefighters, police personnel, and
14 emergency medical technicians (EMTs) employed in the EMS department. While the City
15 designates all firefighters, police officers, and EMTs as "first responders," it categorizes
16 first responder duties based on certain training and certification. For instance, "basic"
17 EMTs possess more training and certification than "entry-level" first responders.⁴

18 Prior to 1996, the City dispatched only EMTs and police personnel to certain
19 medical calls. Beginning in 1996, the City began dispatching firefighters in addition to
20 police and/or EMTs to those medical calls when the Department believed that a firefighter

⁴ EMS training captain and quality assurance officer David Zander (Zander) gave un rebutted testimony that the term "entry-level" first responder "applies to everybody," including "paramedic, firefighter, police officer," and includes "24 hours of some general first aid[,]...CPR, the use and operation of an automatic external defibrillator [(AED),]....EpiPens...and Narcan." Zander also testified that after entry-level, "[t]he next step up would be a basic EMT," which requires "a three-month program [with] 160 hours [of training]" among other requirements. EMS director Mark McGraw (McGraw) testified that "police do not" carry EpiPens, and that firefighters are the only first responders who have them in the City.

1 response would have positive impact on patient outcome. In or around 2016, the City
2 implemented a “two-tiered” response system that categorized highest priority, emergency
3 calls as “priority 1,”⁵ and lower priority, non-emergency calls as priority 2 or 3.

4 Located at Police headquarters, the City has a “signal room” from where it
5 dispatches priority 1 emergency calls and other non-emergency calls (e.g., minor injuries)
6 to one, two, or all three first responder units. At all relevant times, the City has assigned
7 certain firefighters and other non-unit personnel from the Police and EMS departments to
8 dispatch calls from the signal room. The Police department is responsible for the day-to-
9 day supervision of all dispatchers assigned to the signal room, including firefighters. The
10 Police department is also responsible for producing a monthly report of all dispatched
11 calls.⁶

12 **City Personnel**

13 At all relevant times, Billy Sylvia (Sylvia) was a Department firefighter who
14 possessed EMT certification as a first responder. During Sylvia’s “first couple of years,”
15 the City assigned him to the signal room “for about eight months,” and later assigned him
16 to various Department apparatus. At some point prior to 2019, Sylvia was Union
17 Treasurer and Shop Steward. Beginning in or around late 2019 or early 2020 and
18 continuing to present, Sylvia was Union President. Beginning in or about 1998, the City
19 hired James Fortin (Fortin) as a Department firefighter and later promoted him to

⁵ McGraw testified that “the general consensus is that priority 1s are...life-threatening [calls, such as] cardiac arrest, respiratory arrest, obstructed airways,” and certain trauma.

⁶ The City receives approximately 17,000 to 18,000 medical calls, annually.

1 Lieutenant and then to Captain. At some point in 2010, the City promoted Fortin to District
2 Chief, where he has remained at all relevant times. Since 1996, Fortin has also been a
3 basic EMT. Since 2012, Fortin has served as Union Shop Steward and was a member of
4 the Union's negotiating committee. Early in Fortin's Department tenure, the City assigned
5 him to the signal room for several years where he monitored the dispatched calls. As
6 District Chief, Fortin continues to monitor dispatch calls from the signal room via radio
7 transmission.

8 In July of 1991, the City hired Scott Kruger (Kruger) as a basic EMT in the EMS
9 department. In November of 1993, Kruger transferred to the Department as a firefighter
10 and the City later promoted him to Lieutenant in 2003, Captain in 2006, District Chief in
11 2010, Acting Deputy in 2019, and Acting Chief in November of 2020. At all relevant times
12 prior to November of 2020, Paul Coderre Jr. (Coderre Jr.) was Department Acting Chief.

13 At all relevant times, Mark McGraw (McGraw) was EMS Director, Michael Thomas
14 (Thomas) was EMS Deputy Director, and David Zander (Zander) was EMS Training
15 Captain and Quality Assurance Officer.

16 **The FACETS Report**

17 On or about November 12, 2015, the City issued a "Fire & Emergency Medical
18 Services Study" (FACETS report),⁷ which reported on "various types of emergency calls"
19 dispatched to first responders in 2012, 2013, and 2014. Section five of that report

⁷ Kruger gave un rebutted testimony that when the City published the FACETS report on its website, it was "finalized" even though the document stated "draft." Kruger admitted on cross examination that he "was not involved in...compiling [the FACETS] report," and his "involvement [in creating that document] was minimum."

1 pertained to “Fire and EMS Dispatch and Communications in New Bedford,” and stated
2 in pertinent part:

3The call takers and dispatchers⁸ are either police cadets or non-
4 uniformed personnel and are certified Emergency Medical Dispatchers
5 (EMD's). These personnel conduct the following:

- 6 • Receive emergency phone calls.
- 7 • Triage and prioritize calls for medical emergencies using criteria-
8 based dispatching protocols....The call can be prioritized as Priority
9 1, 2, or 3 and will receive one of the following resources allocations:
 - 10 ○ New Bedford EMS only
 - 11 ○ New Bedford EMS and Fire [First] Responder for
12 priority 1 calls
 - 13 ○ Private transport company and Fire [First] Responder
- 14 • Provide pre-arrival instructions for medical emergencies.
- 15 • Dispatch EMS ambulances via phone or radio notification.
- 16 • Notify private ambulance for assistance.
- 17 • Notify the Fire Alarm Signal room of the need for fire units to respond
18 to medical emergencies.
- 19 • If a Fire [First] responder is needed, the...call taker will contact the
20 Fire Alarm Signal Room who will notify the appropriate response
21 unit(s) of the location and nature of the emergency. Note that
22 the...call takers never directly contact the Fire units.
- 23 • Forward phone calls reporting fire emergencies to the Fire Alarm
24 Signal Room.
- 25 • Maintain radio communications with the EMS and police units via the
26 radio system.

27

28
29 **1. The March of 2020 Guidelines**

⁸ Zander testified to the difference between a dispatcher and a “call taker.” All call takers are police cadets who “share roles” with dispatchers and “are exclusive to call taking” but “they can’t dispatch [calls].” Dispatchers can both take and dispatch 911 calls. Zander also testified that only the dispatcher decides which first responder to dispatch to an incoming call.

1 In or around the fall of 2019, the City directed EMS to report on the status of all
2 medical calls.⁹ Pursuant to that EMS report, and due partially to the Coronavirus
3 pandemic, the City issued a joint memorandum on March 11, 2020, where then-Fire
4 Department Acting Chief Coderre Jr., along with Police department chief Joseph
5 Cordiero, EMS Director McGraw, and EMA¹⁰ department director Brian Nobrega notified
6 “All Fire, EMS, & Police Personnel” that the City was changing its “call screening
7 procedures” and would send first responders to priority 1 medical calls based on the City’s
8 availability of personal protective equipment (PPE).

9 Around that time, the City also issued “911 Medical Call Screening and Priority 1
10 Response Guidelines” (March 2020 Guidelines), which eliminated firefighter responses
11 to priority 1 calls that involved patients under the age of 60 with cardiac conditions,¹¹

⁹ Both McGraw and Zander testified that at no time has the City ever dispatched only firefighters to every medical call. Similarly, Kruger testified that “[t]he [City’s dispatch] system was never designed for [firefighters] to go on every call, and no one should be going on every single medical call,” because the Department does not have the resources to respond to all calls. Kruger also testified that the City eventually issued its March of 2020 Guidelines, in part, “to [both] cure a several decades long and deliberate practice of sending...Fire to all [p]riority 1 medical calls” and to “eliminate...‘duplicative services’.”

¹⁰ The parties did not offer evidence that identifies this term.

¹¹ Both Sylvia and Fortin gave corroborating testimonies that prior to March of 2020, firefighters responded to all cardiac calls regardless of age, and that the City “always” dispatched firefighters to those calls. Despite this corroboration, Sylvia conceded that while he did not know the actual numbers, he knew that the City’s failure to dispatch firefighters to these types of calls occurred “regularly.” Kruger also admitted that prior March of 2020, the City dispatched all three units to cardiac calls for persons under the age of 60.

1 suicide attempts,¹² and public intoxication.¹³ Specifically, those Guidelines limited
2 firefighter responses to certain medical calls where one or more “qualifying factors” occur,
3 such as: (1) an “EMS ambulance is unable to break for a call, and a mutual aid ambulance
4 or a private ambulance is responding;” (2) the call “[l]ocation has an active safety hazard;”
5 or (3) “EMS makes specific request for fire assistance.”

¹² Sylvia testified that prior to March of 2020, the City “always” dispatched firefighters to medical calls involving suicide attempts, regardless of severity; however, since that time, the City may dispatch firefighters to those types of calls only if EMS requests assistance, which forces firefighters to “rush [to the scene] on a double time.” McGraw conceded that prior March of 2020, the City would dispatch firefighters to all suicide calls regardless of severity, and that since March of 2020, the City first dispatches EMS and police to calls for non-severe suicide attempts, including “verbal threats.”

¹³ McGraw testified that police usually accompany EMS to medical calls involving public intoxication because the patients “tend to be somewhat violent.” However, both McGraw and Kruger admitted that prior to March of 2020, the City dispatched all three units to these types of calls, and that the City changed this practice after deciding that firefighters did not need to be dispatched unless the calls involved a “trauma or a cardiac condition” or another “qualifying factor.” Sylvia testified that prior to March of 2020, the City “always” dispatched firefighters to calls involving public intoxication “to assist EMS,” but since the change, the City only dispatches firefighters “after the fact,” where they “have to rush [to the scene] and then get there on double time.” Sylvia admitted that he does not “really count what happens...on a regular basis,” and does not know the number of annual calls involving public intoxication, or how many of those calls to which the City failed to dispatch firefighters after March of 2020.

1 While the March of 2020 Guidelines were silent about medical calls concerning
2 trash fires¹⁴ and motor vehicle accidents involving minor injuries,¹⁵ unit members and
3 other dispatchers assigned to the signal room informed the Union that the City had
4 stopped dispatching firefighters to these types of calls after March of 2020. Specifically,
5 at some point between March 11, 2020 and July 11, 2020, Sylvia spoke with a police
6 dispatcher who confirmed that the City had stopped dispatching firefighters to these types
7 of medical calls, along with other calls involving cardiac care for patients under age 60,
8 public intoxication, and suicide attempts. On June 1 and 2, 2020, June 17, 24, and 25,
9 2020, and on July 3, 4, and 11, 2020, Sylvia also became aware of 16 “incidents” where
10 the City had received the following types of medical calls but did not dispatch firefighters
11 as first responders: motor vehicle accidents with “head,” “facial,” and other “unknown”
12 injuries; “trash fire behind [two] buildings caused by fireworks;” certain trauma (i.e.,
13 “breathing problems,” 40 year-old and 49 year-old with “chest pains,” “possible stroke”);
14 and hand laceration.

¹⁴ Sylvia testified that prior to the spring of 2020, the City had always dispatched firefighters to certain medical calls involving trash fires. Although Sylvia testified that after March of 2020, he worked shifts where the City did not dispatch firefighters to “numerous” calls for trash fires, he admitted that during this time, the City had dispatched firefighters to calls involving “[t]rash fires and illegal burns....[a] majority of the time.”

¹⁵ Fortin testified that prior to March of 2020, the City dispatched firefighters to all motor vehicle accidents or MVAs “even if there [were] no injuries reported,” and that those dispatches occurred “[a]ll the time.” Fortin also testified that “[w]hen there [were] multiple calls of people injured or multiple vehicles...[firefighters would] be dispatched right away;” however, he conceded that if there was “only a single call, and it’s questionable,” the City would only dispatch firefighters if needed by EMS. McGraw admitted that because “[a] lot of MVAs...are minor,” the City decided in March of 2020 that there was “no need for additional resources other than a police officer to make an accident report,” which prompted the City to stop dispatching firefighters automatically to these types of calls.

1 The City did not provide the Union with prior notice before implementing the
2 changes included in the March 2020 Guidelines; and the parties never bargained to
3 resolution or impasse over these changes.

4 **2. The October of 2020 Guidelines**

5 At all relevant times prior to October of 2020, the City dispatched firefighters to
6 certain medical calls involving motor vehicle accidents except those involving known
7 entrapment,¹⁶ forced entry calls to gain access to patient (i.e., gain entry),¹⁷ certain

¹⁶ Sylvia testified that prior to October of 2022, the City dispatched firefighters to “all MVAs, even if there w[ere] no injuries...reported.” Sylvia also testified that since October of 2020, the number of times that the City has dispatched firefighters to these types of calls have been a “hit or miss,” and that a “[m]ajority of the time” the City does not dispatch firefighters to these calls. McGraw testified that prior to October of 2020, “[a] lot of the MVAs that [firefighters] go to [were] minor.” However, McGraw conceded that since October of 2020, the City stopped dispatching firefighters to these calls because “[t]here’s no need for additional resources other than a police officer to make an accident report;” unless “it’s a serious car accident [such as] entrapment, roll-over, or high-speed accidents,” in which case the City will dispatch firefighters along with EMS and/or police.

¹⁷ Sylvia and Fortin gave corroborating testimonies that prior October of 2020, the City “always” dispatched firefighters to gain entry calls, but stopped this practice after October of 2020. Fortin conceded that he could not “specify...how many gain [entry calls occur annually]” or how many of those calls to which the City failed to dispatch firefighters after October of 2020. Kruger admitted that prior to October of 2020, both firefighters and police would respond to gain entry calls but, after October of 2020, the City first dispatched police and EMS, and would later dispatch firefighters but only if needed. However, Kruger gave un rebutted testimony that in October of 2020, there were at least “11 gain entries” where the City did dispatch firefighters to those calls “automatically.”

- 1 allergic reactions,¹⁸ overdoses,¹⁹ cardiac care for persons under the age of 50,²⁰
- 2 pregnancy including active childbirth,²¹ burn from fireworks,²² smoke in building/area,²³
- 3 certain trauma,²⁴ fire alarm activations, explosions,²⁵ and mutual aid.²⁶

¹⁸ Both Kruger and McGraw admitted that prior to October of 2020, the City dispatched all three units to medical calls involving certain allergic reactions; but, since October of 2020, the City no longer dispatches firefighters automatically to these types of calls. McGraw testified that since October of 2020, the City dispatches firefighters to these calls only if they involve anaphylaxis, “some type of respiratory distress[,] or swelling in the airway.” He also testified that “[a]naphylaxis is a true medical emergency [involving] somebody having a true allergic reaction...[with] severe respiratory distress...and they can become unresponsive and go into shock.” Fortin testified that since October of 2020, he is personally aware of calls involving allergic reactions to which the City did not dispatch firefighters, which occurred on a “frequent” basis.

¹⁹ Sylvia gave un rebutted testimony that calls involving “welfare check” can include overdoses. Fortin testified that prior to October of 2020, firefighters responded to priority 1 calls involving welfare checks that could involve “a person slumped over a wheel, [or] a person [where the responder is] not sure if they’re sleeping or if they’re breathing.” Conversely, McGraw testified that while the City dispatches ambulances to every medical call, not every call concerning a welfare check involves a medical issue. However, McGraw conceded that beginning in October of 2020, the City stopped dispatching firefighters to calls involving welfare checks because it wanted to “[e]liminate...three or four different assets responding to a call that’s going to result in no-patient.”

²⁰ Zander admitted that prior October of 2020, the City dispatched all three units to cardiac calls for persons under the age of 50, but changed this practice in October of 2020, by dispatching only EMS and police to those calls. Zander testified that the City based its decision, in part, on the EMS report between “December of 2019 to...April or May of 2020,” showing “about 1,105 patients [who] called with chest pain [complaints]...between 65 and 74 years old,” and that for persons between the ages of “50 and 60,” the number of cardiac calls during that time frame had decreased to “190.” Sylvia admitted to neither knowing the actual number of cardiac calls that the City received annually, nor the number of these calls to which the City failed to dispatch firefighters after October of 2020.

²¹ Both Sylvia and Fortin testified that prior to October of 2020, the City dispatched firefighters to calls involving pregnancy, but stopped those dispatches beginning in October of 2020. Conversely, McGraw testified that the City does not categorize pregnancy as a priority 1 call unless it involves “active labor,” in which case, the City continues to dispatch firefighters to pregnancy calls involving active labor.

- 1 In or around October of 2020, Mayor Jonathan F. Mitchell (Mitchell) and EMS
2 Director McGraw issued “Priority 1 Medical Call Guidelines” (October 2020 Guidelines)

²² Without specifying a number, Fortin testified that since October of 2020, the City has stopped dispatching firefighters to a “lot of those calls [including fireworks].” He also testified that medical calls involving fireworks were “grouped in with all the other calls that [firefighters] weren’t getting called on.”

²³ Both Sylvia and Fortin testified that prior to October of 2020, the City immediately dispatched firefighters to certain “types of fire...incidences, [such as] smoke in the area.” Similarly, they both testified that after October of 2020, the City stopped dispatching firefighters to those types of calls. However, Fortin admitted that he neither knew the total number of annual calls that involved smoke in the area, nor the number of those calls to which the City did not dispatch firefighters after October of 2020.

²⁴ McGraw admitted that after October of 2020, the City stopped dispatching firefighters to calls involving lower-level traumas such as those involving a “[s]mall laceration,” a trip and fall resulting in “an abrasion,” or “a dislocated ankle,” because those types of traumas “wouldn’t be time-sensitive.” However, McGraw testified that there are certain calls involving severe trauma where the City continues to dispatch all three first responder units, which include “life-threatening [conditions], massive bleeding [or]...massive hemorrhaging.”

²⁵ Fortin testified that prior to October of 2020, the City would dispatch firefighters to investigate “any sign of...fire or large explosion...[and] to find the area of origin,” but after October of 2020, there were at least three calls involving explosions to which the City did not dispatch firefighters. Although Fortin admitted that he did not know the number of annual calls involving explosions, he reiterated to being personally aware of “about three or four” calls on the “days [that he] worked” when the City did not dispatch firefighters in October of 2020.

²⁶ Fortin gave unrebutted testimony that prior to the October of 2020, the City always dispatched firefighters to mutual aid calls; and that since October of 2020, the City dispatches firefighters to mutual aid calls “75 percent of the time.” Conversely, Kruger testified that beginning in 1996, firefighters responded to mutual aid calls “where there...was some reason to believe that a fire [D]epartment response would...help in mitigating the incident or improving patient outcome.” However, Kruger admitted that while there were some “missed calls” between October 1, 2020 to October 21, 2020, to which the City should have initially dispatched firefighters, he conceded that there were “a few” mutual aid calls during this period to which the City should have dispatched firefighters.

1 which changed how the City dispatched firefighters to certain priority 1 calls. Specifically,
2 the Guidelines limited firefighter responses to allergic reaction calls that involved only
3 asthma attacks and anaphylaxis, and eliminated all firefighter responses to medical calls
4 involving cardiac care to patients under 50 years of age, pregnancy not involving
5 childbirth, and non-severe trauma.

6 While the October of 2020 Guidelines were silent about medical calls involving
7 motor vehicle accidents except those involving entrapment, gain entry, burn from
8 fireworks, fire alarm activation, smoke in building/area, and explosions, unit members and
9 other dispatchers assigned to the signal room informed the Union that the City had
10 stopped dispatching firefighters to those types of medical calls shortly after the City issued
11 these Guidelines. In addition to monitoring dispatched calls over Department radios,
12 Sylvia and Fortin also learned about these changes after a unit member and a non-unit
13 dispatcher, respectively, notified them.

14 Between October 1 and 21, 2020, Kruger documented that the City had dispatched
15 firefighters to approximately 318 medical calls which included: cardiac calls,²⁷ overdose
16 calls, gain entry calls, motor vehicle accidents (without identifying type of injuries or
17 entrapment), asthma and anaphylaxis calls, public intoxication calls, pregnancy not
18 involving active labor (i.e., bleeding and nausea), one suicide attempt, respiratory and
19 severe trauma calls, mutual aid calls, welfare check, and other “unknown medical” calls.
20 Also, between October 1, and 21, 2020, Kruger documented that the City had received

²⁷ Neither party offered evidence about why some of the cardiac calls listed in Kruger’s document identified some patients by their age, while other cardiac calls did not identify any patient age.

1 another 118 medical calls, to which the City did not dispatch firefighters. Specifically, the
2 City determined that 56 of those calls were either “outside of protocol,”²⁸ cancelled,
3 delayed, or not dispatched to firefighters for other reasons.²⁹ Of the remaining 62 calls,
4 the City acknowledged that it “should have” dispatched firefighters to those calls which
5 involved: cardiac care, respiratory, severe trauma, mutual aid, asthma, pregnancy not
6 involving active labor, overdose, motor vehicle fire, and other “unknown” calls.³⁰

7 The City did not provide the Union with prior notice before implementing the
8 changes included in the October 2020 Guidelines, and the parties never bargained to
9 resolution or impasse over these changes.³¹

DECISION

²⁸ Calls described by Kruger as “outside of protocol” included: cardiac heart/chest pain under 50 years of age; stroke/slurred speech; respiratory; minor motor vehicle crash; head trauma; patients “laying on ground confused” or “acting strange but had been unconscious;” vomiting; struggling to stand; pregnancy not in active labor; diabetic and “poss [sic] took pills;” “caller screaming for help for son - DOA;” public intoxication, fainting, other unidentified acronyms, and “free standing medical facility.”

²⁹ Calls described by Kruger as “fire calls not dispatched” included motor vehicle accidents with fire, gain entry, 53 year old man with abdominal pain, and “no age” male kidney/back/chest pain.

³⁰ At the hearing, the Union provided evidence, showing that the City had failed to dispatch firefighters to at least 15 additional priority 1 calls between February 25, 2021 and May 12, 2021. The Town did not object to this evidence coming into the record.

³¹ While Kruger testified that prior to issuing the October 2020 changes, he “advised [the Union] that... changes were forthcoming,” he did not identify with whom in the Union he spoke, or when he spoke to them. On direct examination, Kruger admitted that he spoke with Sylvia, but only after the City had implemented the changes, and that “[t]here was no resolution reached.”

1 Section 6 of the Law requires public employers to negotiate in good faith with
2 respect to wages, hours, standards of productivity and performance, and any other terms
3 and conditions of employment. This statutory requirement to bargain in good faith
4 includes the duty to give the exclusive collective bargaining representative notice and an
5 opportunity to bargain to resolution or impasse before changing an existing condition of
6 employment or implementing a new condition of employment involving a mandatory
7 subject of bargaining. Commonwealth of Massachusetts v. Labor Relations Commission,
8 404 Mass. 124, 127 (1989); School Committee of Newton v. Labor Relations
9 Commission, 388 Mass. 557 (1983).

10 A public employer violates Section 10(a)(5) of the Law when it transfers work
11 performed by bargaining unit members to non-bargaining unit personnel without first
12 giving the exclusive bargaining representative prior notice and an opportunity to bargain
13 to resolution or impasse over the transfer. City of Cambridge, 23 MLC 28, 36, MUP-9171
14 (June 28, 1996), aff'd sub nom., Cambridge Police Superior Officers Association v. Labor
15 Relations Commission, 47 Mass. App. Ct. 1108 (1999). To establish that a public
16 employer has violated the Law, an employee organization must demonstrate that: (1) the
17 employer transferred bargaining unit work to non-unit personnel; (2) the transfer of unit
18 work had an adverse impact on individual employees or the bargaining unit itself; and (3)
19 the employer failed to give the employee organization prior notice and an opportunity to
20 bargain to resolution or impasse over the decision and the impacts of the decision to
21 transfer the work on bargaining unit employees' terms and conditions of employment.
22 Lowell School Committee, 28 MLC 29, 31, MUP-2074 (June 22, 2001) (citing City of

1 Gardner, 10 MLC 1216, 1219, MUP-4917 (Sept. 14, 1983); City of New Bedford, 15 MLC
2 1732, 1739, MUP-6488 (May 31, 1989)).

3 **1. Transfer of Unit Work**

4 There is no dispute that the City did not provide the Union with prior notice and an
5 opportunity to bargain before implementing the changes contained in the March of 2020
6 Guidelines, which pertained to how the City dispatches firefighters to certain priority 1
7 calls. While the City disputes that it did provide the Union with prior notice and an
8 opportunity to bargain before implementing the changes contained in the October of 2020
9 Guidelines, the record shows that Kruger notified Sylvia about these changes after the
10 City had implemented them, but the parties never met to bargain over it.

11 The City also disputes that it transferred the bargaining unit duty of responding to
12 certain priority 1 medical calls to non-unit personnel in either March of 2020 or October
13 of 2020. Rather, it contends that all medical calls have always been “EMS work, or the
14 work of a private ambulance service when...EMS is unavailable,” and that firefighters
15 (and police) “do not possess the training, experience, or equipment to perform the skills
16 necessary to respond to calls for medical assistance.” While the City concedes that
17 firefighters “are trained to the First Responder level, and are called upon to assist...EMS”
18 with certain medical calls, it maintains that firefighters are only needed on high priority
19 calls if they “reach the patient before an ambulance arrives” and their response “may help
20 to improve patient outcome.”

21 **a. March of 2020**

1 Here, the evidence shows that prior to March of 2020, the City dispatched
2 firefighters to priority 1 medical calls involving cardiac care for persons under the age of
3 60, public intoxication, and suicide attempts, motor vehicle accidents with minor injuries,
4 and trash fires. The record also shows that beginning in March of 2020, the City stopped
5 dispatching firefighters to priority 1 calls involving cardiac care under the age of 60, public
6 intoxication, and suicide attempts per the March of 2020 Guidelines, which stated that the
7 City would initially dispatch only EMS and/or police to those calls based on certain
8 “[q]ualifying [f]actors.” The Union became aware of this change at some point between
9 May and June of 2020, by listening to certain dispatched calls over Department radios,
10 and by speaking with certain dispatchers assigned to the signal room. During this same
11 period and by the same means, the Union also became aware that the City had also
12 stopped dispatching firefighters to priority 1 calls involving motor vehicle accidents with
13 minor injuries and trash fires.

14 The City implemented these changes pursuant to an EMS report conducted in the
15 fall of 2019, which analyzed annual medical call data and recommended reducing the
16 types of certain medical calls dispatched to firefighters. In fact, between the fall of 2019
17 and March of 2020, Kruger admitted that he spoke with McGraw about lowering the age
18 of cardiac care calls to 50 and dispatching only EMS and/or police to calls involving public
19 intoxication and severe suicide attempts. Kruger also admitted that the City eventually
20 issued the March of 2020 Guidelines, in part, “to [both] cure a several decades long and
21 deliberate practice of sending...Fire to all [p]riority 1 medical calls,” to also
22 “eliminate...‘duplicative services,’” and to conserve Department resources. Moreover, the

1 Union presented un rebutted testimony from both Sylvia and Fortin, that certain unit
2 members and other dispatchers assigned to the signal room informed them that the City
3 had stopped dispatching firefighters to these calls, along with calls involving trash fires
4 and motor vehicle accidents with minor injuries beginning in May of 2020.

5 Based on this evidence, I find that beginning in or about March of 2020, the City
6 transferred to non-unit personnel (i.e., EMTs and police) the bargaining unit duty of
7 responding to priority 1 medical calls involving cardiac care to persons under 60 years of
8 age, public intoxication, suicide attempts, motor vehicle accidents with minor injuries, and
9 trash fires.

10 **b. October of 2020**

11 Here, the record shows that prior to October of 2020, the City dispatched
12 firefighters to priority 1 calls involving cardiac calls for persons under the age of 50, certain
13 allergic reactions, overdoses, requests to gain entry to a building, pregnancy, burn from
14 fireworks, fire alarm activations, smoke in building/area, certain trauma, explosions, and
15 motor vehicle accidents including those involving known entrapment. The record also
16 shows that since at least 2015, the City established a specific practice of dispatching
17 firefighters to mutual aid calls pursuant to the FACETS report. The record shows further
18 that beginning in October of 2020, the City stopped dispatching firefighters to priority 1
19 calls involving cardiac care for persons under the age of 50, allergic reactions not
20 involving asthma or anaphylaxis, overdoses, requests to gain entry to a building,
21 pregnancy not involving active labor, burn from fireworks, fire alarm activations, smoke in
22 building/area, certain trauma, explosions, motor vehicle accidents except those involving

1 known entrapment, and mutual aid. The City memorialized some of these changes in its
2 October of 2020 Guidelines, which stated that the City would initially dispatch only EMS
3 and/or police to certain medical calls based on certain “qualifying factors,” including
4 allergic reactions not involving asthma attacks and anaphylaxis, cardiac care under age
5 of 50, and pregnancy not involving active childbirth. The Union became aware of the
6 change in October of 2020, after listening to certain dispatched calls over Department
7 radios, and speaking with certain dispatchers assigned to the signal room. During this
8 same period and by the same means, the Union also became aware that the City had
9 also stopped dispatching firefighters to calls involving requests to gain entry to a building,
10 motor vehicle accidents except those involving known entrapment, overdoses, burn from
11 fireworks, fire alarm activations, smoke in building/area, certain trauma, explosions, and
12 mutual aid.

13 The City implemented the change pursuant to the 2019 EMS report which
14 analyzed annual medical call data, and recommended reducing the amount of certain
15 medical calls dispatched to firefighters. Additionally, between the fall of 2019 and October
16 of 2020, Kruger admitted that he spoke with McGraw about lowering the age of cardiac
17 care calls, and eliminating calls for non-severe trauma, allergic reactions not involving
18 asthma or anaphylaxis, and pregnancy without active labor. Further, the Union presented
19 un rebutted testimony from Sylvia and Fortin, that certain unit members and other
20 dispatchers assigned to the signal room informed the Union that the City had stopped
21 dispatching firefighters to these calls, along with other types of medical calls involving
22 requests to gain entry to a building, motor vehicle accidents except those involving known

1 entrapment, overdoses, burn from fireworks, fire alarm activations, smoke in
2 building/area, certain trauma, explosions, and mutual aid beginning in October of 2020.
3 Moreover, Kruger conceded that between October 1 and 21, 2020, the City had failed to
4 dispatch firefighters to at least 62 priority 1 calls, to which it “should have” dispatched
5 firefighters.

6 Based on this evidence, I find that beginning in October of 2020, the City
7 transferred to non-unit personnel (i.e., EMS and/or police) the bargaining unit duty of
8 responding to priority 1 dispatch calls involving cardiac care to patients under 50 years of
9 age, requests to gain entry to a building, allergic reactions not involving asthma or
10 anaphylaxis, overdoses, pregnancy not involving active labor, burn from fireworks, fire
11 alarm activations, smoke in building/area, non-severe trauma, explosions, motor vehicle
12 accidents except those involving known entrapment, and mutual aid.

13 **2. Adverse Impact**

14 The Union asserts that the City’s transfer of the disputed unit work in March and
15 October of 2020, had adverse impacts on firefighters because transferring those duties
16 “caused an ‘injury to the bargaining unit as an institution,’” and because dispatching
17 firefighters to those types of priority 1 calls “after-the-fact....create[s] safety issues for the
18 patient, firefighters and the public when firefighters have to quickly travel to these scenes.”
19 To support its assertion, the Union relies on two cases. First, the Union cites to City of
20 New Bedford, 48 MLC 13, MUP-20-7875 (H.O. Aug. 9, 2021); however, that case did not
21 involve a transfer allegation and the parties did not appeal the decision to the CERB. The

1 Union also cites to Town of Watertown,³² 8 MLC 1376, 1378-79, MUP-3907 (Oct. 20,
2 1981), arguing that the town violated the Law because it failed to bargain on demand with
3 the union over the transfer of unit dispatch work to non-unit personnel. However, that
4 case is distinguished for several reasons. First, it pertained to transferring dispatch work
5 to newly hired non-unit, civilian dispatchers, whereas this case pertains to transferring the
6 firefighter duty of responding to dispatched calls to non-unit, incumbent first responders.
7 Second, the CERB in that case did not analyze whether the town's transfer of dispatch
8 work had an adverse impact on the unit. Last, that record was void of evidence
9 demonstrating a calculated displacement or ascertainable percentages, and the union
10 presented none.

11 The CERB holds that adverse impacts in transfer cases occur whenever the
12 bargaining unit loses the opportunity to perform lose opportunities to perform the disputed
13 work. Contrast Chief Justice for Administration and Management of the Trial Court v.
14 Commonwealth Employment Relations Board (CJAM), 79 Mass. App. Ct. 374, 387
15 (2011). The CERB also holds that adverse impacts in transfer cases occur whenever the
16 bargaining unit loses the opportunity to represent additional members whom the employer
17 might have hired to perform the disputed work. Town of Norwell, 13 MLC 1200, 1208,
18 MUP-5655 (Oct. 15, 1986); Lowell School Committee, 28 MLC 29, 32, MUP-2074 (June
19 22, 2001). Further, absent a reduction in bargaining unit positions, an adverse impact
20 may occur when a transfer of unit work "could result in the eventual elimination of the

³² In its post-hearing brief, the Union miscites that case as City of New Bedford, 8 MLC 1376.

1 bargaining unit through gradual erosion of bargaining unit duties.” Commonwealth v.
2 Labor Relations Commission, 60 Mass. App. Ct. 831, 834 (2004); Franklin School
3 Committee, 6 MLC 1297, 1299 n.4 (1979). Additionally, the CERB has found adverse
4 impact to exist where the bargaining unit lost less strenuous assignments to non-unit
5 personnel. City of Boston, 6 MLC 1117, 1125, MUP-2863 (June 4, 1979).

6 Although, the record is void of evidence showing lost bargaining unit positions,
7 gradual erosion of bargaining unit strength, or a loss of less strenuous assignments, the
8 record shows, as demonstrated above, that firefighters lost opportunities to respond to
9 the following priority 1 calls due to the City’s changes in March 2020: cardiac care to
10 persons under 60 years of age, public intoxication, suicide attempts, motor vehicle
11 accidents with minor injuries, and trash fires. Contrast, CJAM, 79 Mass. App. Ct. at 387
12 (where the employer transferred unit work to non-unit personnel but no bargaining unit
13 members lost opportunity to perform unit work, the Court refrained from finding a
14 violation). The record also shows that firefighters lost opportunities to respond to the
15 following priority 1 calls due to the City’s changes in October of 2020: cardiac care to
16 patients under 50 years of age, allergic reactions not involving asthma or anaphylaxis,
17 overdoses, requests to gain entry to a building, pregnancy not involving active labor, burn
18 from fireworks, fire alarm activations, smoke in building/area, non-severe trauma,
19 explosions, motor vehicle accidents except those involving known entrapment, and
20 mutual aid. Id. For these reasons, I find that the City’s transfer of the disputed priority 1
21 calls to non-unit personnel in March and October of 2020 had an adverse impact on the

1 bargaining unit because firefighters lost opportunities to respond to these calls after the
2 change.

3 **3. Shared Work**

4 In the alternative, the City argues that even if its transfer of bargaining unit work to
5 non-unit personnel in March and October of 2020 had an adverse impact on the unit, the
6 disputed duty of responding to certain priority 1 calls is shared work and the Union is
7 unable to demonstrate a calculated displacement of this work. Specifically, the City
8 asserts that the Union can neither show “an ascertainable percentage of work traditionally
9 performed by” firefighters, nor show “an ascertainable increase in the percentage of work
10 that is now performed by non-unit employees.”

11 The CERB holds that when bargaining unit members and non-unit members share
12 work, that work does not belong exclusively to the bargaining unit. Higher Education
13 Coordinating Council (HECC), 23 MLC 90, 92, SUP-4090 (Sept. 17, 1996). Rather, in
14 shared work situations, the employer is not obligated to bargain over every incidental
15 variation in job assignments between unit and non-unit personnel, but must bargain only
16 in situations where there is a calculated displacement of the disputed bargaining unit
17 work. City of Quincy/Quincy City Hospital, 15 MLC 1239, 1241, MUP-6490 (Nov. 9, 1988);
18 City of Boston, 10 MLC 1539, 1541-42, MUP-4967 (April 24, 1984). Thus, when unit
19 employees have traditionally performed an “ascertainable percentage” of the disputed
20 work, and there is a “significant reduction” in the portion of work performed by unit
21 employees, coupled with a “corresponding increase in the work performed by non-unit

1 employees,” the CERB may find a calculated displacement of the unit work. HECC, 23
2 MLC at 92.

3 Here, the Union does not dispute that the duty of responding to certain priority 1
4 calls is shared work. Rather, it contends that prior to March of 2020 and October of 2020,
5 the City dispatched firefighters to “70%” of annual medical calls of which “most” were
6 priority 1 calls. Specifically, it points to March of 2020, when the City failed to dispatch
7 firefighters to at least 195 cardiac calls for persons between the ages of 50 and 60, and
8 at least 7 calls for motor vehicle accidents with minor injuries. Similarly, it points to
9 October of 2020, when the City failed to dispatch firefighters to at least 90 calls involving
10 motor vehicle accidents except those involving entrapment. Based on this documented
11 evidence and, in addition to the anecdotal evidence reported to Sylvia and Fortin, the
12 Union asserts that the City’s failures to dispatch firefighters to these calls demonstrate a
13 calculated displacement of unit work which had an adverse impact on the bargaining unit
14 by eliminating the “practice of initially dispatching [them]...to priority 1 medical [calls],”
15 and by “create[ing] safety issues...when firefighters have to quickly travel to these
16 scenes.”

17 **a. March of 2020**

18 The evidence shows that since at least 2016, and continuing to March of 2020, the
19 City dispatched firefighters to priority 1 calls involving cardiac care to persons under the
20 age of 60, suicide attempts, and public intoxication. Although the City disputes that
21 firefighters were dispatched to these types of medical calls prior to March of 2020, both
22 Sylvia and Fortin gave unrebutted testimony that firefighters did respond to these calls

1 during this time period. Additionally, Kruger and McGraw admitted to discussing firefighter
2 responses to medical calls involving cardiac care, suicide attempts, and public
3 intoxication pursuant to the 2019 EMS report. Kruger also conceded that the City had
4 stopped dispatching firefighters as first responders to priority 1 calls involving cardiac care
5 for persons under 60 years of age, non-severe suicide attempts, and public intoxication
6 after March of 2020. Moreover, the City concedes, generally, that since 1996 it has
7 dispatched firefighters to certain “high priority calls” as “First Responder[s]” because if
8 they “can reach the patient before an ambulance arrives,” their “prompt response...may
9 help to improve patient outcome.”

10 The totality of this evidence demonstrates that firefighters performed at least one-
11 third (or 33.3 percent) of the disputed dispatch work prior to March of 2020, as it related
12 to priority 1 calls involving cardiac care for persons under 60 years of age, suicide
13 attempts, and public intoxication. The evidence also demonstrates that, beginning in
14 March of 2020, the City reduced this percentage to zero for priority 1 calls involving
15 cardiac care for persons over the age of 60, severe suicide attempts, and public
16 intoxication pursuant to its March of 2020 Guidelines. Further, this reduction of bargaining
17 unit work resulted in a corresponding increase in the amount of work performed EMTs
18 and/or police in that non-unit personnel now respond first to 100 percent of these calls.
19 For all these reasons, I find that the Union has successfully demonstrated a calculated
20 displacement of bargaining unit work priority 1 calls involving cardiac care for persons
21 under the age of 60, severe suicide attempts, and public intoxication. HECC, 23 MLC at
22 92.

1 However, the record is void of evidence showing that firefighters performed an
2 ascertainable percentage of dispatch work involving motor vehicle accidents with minor
3 injuries and trash fires. The record is also void of evidence showing that the City's
4 changes to these types of calls in March of 2020 either caused a significant reduction of
5 bargaining unit work or caused a corresponding increase in the same work performed by
6 police and/or EMTs. While the Union points to Sylvia's testimony that prior to March of
7 2020, the City dispatched firefighters "to all" motor vehicle accidents "even if there [were]
8 no injuries reported," and that it failed to dispatch firefighters to at least seven calls
9 involving motor vehicle accidents with minor injuries in June of 2020, he admitted to not
10 knowing the actual percentage of these calls that the City either dispatched or did not
11 dispatch to firefighters during the relevant time period. Similarly, the Union failed to
12 demonstrate a "significant reduction" of calls for trash fires and motor vehicle accident
13 calls involving minor injuries, or a corresponding increase in these calls of for EMTs and/or
14 police. Moreover, the March of 2020 Guidelines are silent about these types of calls, and
15 there is no evidence that the 2019 EMS report analyzed data for these types of calls prior
16 to the change.

17 Consequently, without more evidence, the Union is unable to show that the City's
18 transfer of priority 1 calls involving motor vehicle accidents with minor injuries and trash
19 fires in or about March of 2020, amounted to a calculated displacement of firefighters
20 responding to these types of calls as shared bargaining unit work. See, e.g.,
21 Commonwealth of Massachusetts, 42 MLC 109, 111 SUP-13-2604 (Oct. 19, 2015) (citing
22 City of Lawrence, 23 MLC 213, 215, MUP-9876 (March 31, 1997) (no transfer violation

1 where union unable to show percentage of work performed by bargaining unit members));
2 see also City of Somerville, 23 MLC 256, 259-260, MUP-8160 (May 2, 1997) (no transfer
3 violation where union unable to demonstrate a “clearly-identifiable percentage” of the
4 disputed work shared between unit members and non-unit personnel) .

5 **b. October of 2020**

6 Here, the evidence shows that prior to October of 2020, the City dispatched
7 firefighters to priority 1 calls involving cardiac care for persons under the age of 50, certain
8 allergic reactions including asthma attacks and anaphylaxis, overdoses, requests for gain
9 entry, pregnancy including active childbirth, burn from fireworks, fire alarm activations,
10 smoke in building/area, trauma regardless of severity, explosions, motor vehicle
11 accidents including entrapment, and mutual aid. Although the City disputes that
12 firefighters were dispatched to these priority 1 calls prior to October of 2020, both Sylvia
13 and Fortin gave un rebutted testimony that firefighters did respond to these types of
14 medical calls during that time.

15 Additionally, Kruger admitted that prior to October of 2020, he spoke with McGraw
16 about lowering the age of cardiac care calls, and eliminating calls for non-severe trauma,
17 allergic reactions not involving asthma or anaphylaxis, and pregnancy without active labor
18 pursuant to the 2019 EMS report. McGraw also conceded that based on that report,
19 beginning in October of 2022, the City stopped dispatching firefighters to calls involving
20 cardiac calls for persons under the age of 50, non-severe traumas, allergic reactions not
21 involving asthma or anaphylaxis, and pregnancy not involving childbirth. Moreover, Fortin

1 gave un rebutted testimony that beginning in October of 2020, the City dispatched
2 firefighters to mutual aid calls only “75 percent” of the time.

3 Based on the totality of this evidence, I find that firefighters performed at least one-
4 third (or 33.3 percent) of the disputed dispatch work prior to October of 2020, as it related
5 to priority 1 calls involving cardiac care for persons under 50 years of age, certain trauma
6 regardless of severity, certain allergic reactions including asthma attacks and
7 anaphylaxis, and pregnancy including active childbirth. However, beginning in October of
8 2020, the City reduced this percentage to zero for these types of priority 1 calls pursuant
9 to its October of 2020 Guidelines. The City also reduced the percentage of dispatched
10 mutual aid calls by 25 percent to 75 percent beginning in October of 2020. These
11 reductions of unit work resulted in corresponding increases in the amount of the same
12 work performed EMTs and/or police. Specifically, the City increased this work to 100
13 percent for EMTs and/or police for priority 1 calls involving cardiac care for persons under
14 50 years of age, certain trauma regardless of severity, certain allergic reactions including
15 asthma attacks and anaphylaxis, and pregnancy including active childbirth. The City also
16 increased this work by 25 percent for EMTs and/or police for priority 1 calls involving
17 mutual.

18 For all these reasons, I find that the Union has successfully demonstrated a
19 calculated displacement of bargaining unit work for certain priority 1 calls involving cardiac
20 care for persons under the age of 50, non-severe trauma, allergic reactions not involving
21 asthma attacks and anaphylaxis, pregnancy not involving active childbirth, and mutual
22 aid. HECC, 23 MLC at 92.

1 However, the record is void of evidence showing that firefighters performed an
2 ascertainable percentage of dispatch work for priority 1 calls involving overdoses,
3 requests to gain entry, burn from fireworks, smoke in building/area, fire alarm activations,
4 explosions, and motor vehicle accidents except those involving known entrapment. The
5 record is also void of evidence showing that the City's changes to these types of calls in
6 October of 2020 either caused a significant reduction of bargaining unit work or caused a
7 corresponding increase in the same work performed by police and/or EMTs.

8 Although the Union points to Kruger's admission that the City failed to dispatch
9 firefighters to at least 90 priority 1 calls involving motor vehicle accidents with entrapment
10 in October of 2020, it offered no additional evidence demonstrating either the total number
11 of annual calls involving motor vehicle accidents with entrapment, or the actual
12 percentage of those calls that the City failed to dispatch to firefighters. While the Union
13 also points to Fortin's unrebutted testimony that the City had failed to dispatch firefighters
14 to "about three or four" priority 1 calls involving explosions, it failed to present additional
15 evidence on this issue, including the total, annual number of calls involving explosions or
16 the percentage of these calls dispatched to firefighters before and after October of 2020.

17 Further, the Union's reliance on the unrebutted testimonies of Sylvia and Fortin
18 falls short because while their testimonies show that the City failed to dispatch firefighters
19 to priority 1 calls involving overdoses, requests to gain entry, burn from fireworks, smoke
20 in building/area, explosions, motor vehicle accidents except those involving known
21 entrapment, and fire alarm activations after October of 2020, they both admitted to not
22 knowing the actual percentage(s) of these calls that the City either dispatched or did not

1 dispatch to firefighters during the relevant time period. In fact, the record is void of
2 evidence showing either a “significant reduction” of bargaining unit work related to priority
3 1 calls involving overdoses, requests to gain entry, burn from fireworks, smoke in
4 building/area, explosions, motor vehicle accidents except those involving known
5 entrapment, and fire alarm activations beginning in October of 2020, or a corresponding
6 increase of these same types of calls for EMTs and/or police. Moreover, the October of
7 2020 Guidelines are silent about these types of calls, and there is no evidence that the
8 2019 EMS report analyzed data for these types of calls prior to the change.

9 Consequently, the Union is unable to show that the City’s transfer of priority 1,
10 medical calls involving overdoses, requests to gain entry, burn from fireworks, smoke in
11 building/area, explosions, motor vehicle accidents except those involving known
12 entrapment, and fire alarm activations in October of 2020, amounted to a calculated
13 displacement of the shared bargaining unit work performed by firefighters.
14 Commonwealth of Massachusetts, 42 MLC at 111 (citing City of Lawrence, 23 MLC at
15 215); City of Somerville, 23 MLC at 260.

16 **4. Core Managerial Prerogative**

17 Last, the City argues that it was not obligated to bargain with the Union when it
18 stopped dispatching firefighters to priority 1 calls involving cardiac care for person under
19 the age of 60, suicide attempts, and public intoxication in March of 2020, and when it
20 stopped dispatching them to priority 1 calls involving cardiac care for persons under the
21 age of 50, allergic reactions not involving asthma or anaphylaxis, pregnancy not involving
22 active labor, non-severe trauma, and mutual aid in October of 2020. Specifically, it asserts

1 that it has a non-delegable right to “preserve accountability to the public in the
2 performance of the essential functions of government,” and to “review and update the
3 City’s list of high priority medical calls and to assign [firefighter] and...First Responder
4 resources only to those medical calls where First Responders can have a positive impact
5 on patient outcome[s].” It also asserts that “medical calls can delay fire companies from
6 responding to fires and other emergency calls,” thus, “assigning...Department apparatus
7 to low priority medical calls is clearly not a use of resources that is most protective of the
8 public.”

9 To support its argument, the City cites to Town of Dracut v. Dracut Firefighter
10 Union, IASS Local 2586, 97 Mass. App. Ct. 374, 379-396 (2020). In that case, an
11 arbitrator issued an award for the union, finding that the town’s policy of banning travel
12 for on-duty firefighters to attend union meetings at the central fire station violated the
13 parties’ collective bargaining agreement. On appeal, the superior court vacated the award
14 because it infringed on the town’s non-delegable authority to make decisions concerning
15 public safety. Balancing the town’s interests to perform the public safety function of
16 responding to fire emergencies, against the union’s interest to self-organization and
17 collective bargaining, the appeals court found that the town had failed to demonstrate “the
18 existence of a public policy of sufficient weight, or a core managerial function of sufficient
19 gravity, to warrant denying effect to collective bargaining.” Town of Dracut, (citing "Board
20 of Higher Educ., 483 Mass. at 320; Lynn, 43 Mass. App. Ct. at 180)). The appeals court
21 also found that the disputed “policy [was] directed solely to attendance at union meetings,”
22 and that the non-delegability doctrine did not apply despite the town’s specific reliance on

1 G. L. c. 48, § 42. Thus, the appeals court reversed the lower court and reinstated the
2 award in favor of the union. Town of Dracut, 97 Mass. App. Ct. at 379-396 (citing City of
3 Worcester, 438 Mass. at 181; Local 346, Intl Bhd. of Police Officers, 391 Mass. at 438).

4 For the following reasons, I am unpersuaded by the City's argument that it was
5 exempted from bargaining with the Union over its decisions to stop dispatching firefighters
6 to priority 1 calls involving cardiac care for person under the age of 60, suicide attempts,
7 and public intoxication in March of 2020, and to stop dispatching them to priority 1 calls
8 involving cardiac care for persons under the age of 50, allergic reactions not involving
9 asthma or anaphylaxis, pregnancy not involving active labor, non-severe trauma, and
10 mutual aid in October of 2020.

11 First, the City's reliance on Town of Dracut is misplaced because the CERB found
12 that the town did not possess the core managerial prerogative to make its decisions
13 without first bargaining with the union. Next, while the CERB holds that a public employer
14 may exercise its core managerial prerogative concerning the nature and level of its
15 services without first bargaining with its employees' exclusive collective bargaining
16 representative over the decision, Newton School Committee v. Labor Relations
17 Commission, 388 Mass. 557, 563 (1983), it also holds that an employer must first
18 negotiate over the decision to transfer unit work outside of the unit. Lowell School
19 Committee, 28 MLC at 32. Thus, because I have already found that the City's decisions
20 to transfer the disputed bargaining unit work in March and October of 2020 affect
21 mandatory subjects of bargaining, and because the City is unable to point to other
22 authority exempting it from bargaining with the Union, the City's core managerial

1 prerogative defense must fail. See, e.g., Commonwealth of Massachusetts, 28 MLC 308,
2 311, SUP-4740 (April 11, 2002) (after analyzing employer's managerial prerogative
3 defense, CERB found employer was still obligated to bargain with the union over decision
4 to transfer unit work outside of the unit); compare, Commonwealth of Massachusetts, 26
5 MLC 228, 231-232, SUP-4288 (June 12, 2000) (although employer did not fail to bargain
6 with union over the decision to reduce its workforce, it violated the Law by failing to
7 bargain with union over decision to transfer unit work to non-unit personnel); see,
8 generally, Town of Danvers, 3 MLC at 1576 (assignment of unit work to non-unit
9 personnel is a mandatory subject of bargaining);

10 CONCLUSION

11 In conclusion, I find that the City violated Section 10(a)(5) and, derivatively, Section
12 10(a)(1) of the Law when, in or about March of 2020, it unilaterally transferred to non-
13 bargaining personnel the bargaining unit work of dispatching firefighters to priority 1 calls
14 involving cardiac care to persons under 60 years old, public intoxication, and suicide
15 attempts. I also find that the City violated Section 10(a)(5) and, derivatively, Section
16 10(a)(1) of the Law when, in or about October of 2020, it unilaterally transferred to non-
17 bargaining personnel the bargaining unit work of dispatching firefighters priority 1 calls
18 involving cardiac care to persons under 50 years of age, allergic reactions not involving
19 asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe
20 trauma, and mutual aid. However, the City did not violate the Law by transferring to non-
21 bargaining personnel the bargaining unit work of dispatching firefighters to priority 1 calls
22 involving trash fires and motor vehicle accidents with minor injuries in March of 2020. Nor

1 did it violate the Law by transferring to non-bargaining personnel the bargaining unit work
2 of dispatching firefighters to priority 1 calls involving requests to gain entry to a building,
3 motor vehicle accidents except those involving entrapment, burn from fireworks, certain
4 fire alarm activations, smoke in the building/area, explosions, and overdoses in October
5 of 2020.

6 ORDER

7
8 WHEREFORE, based upon the foregoing, it is HEREBY ORDERED that the City
9 shall:

- 10 1. Cease and desist from:
11
12 a) Unilaterally transferring to non-unit personnel the bargaining unit
13 duties of responding to priority 1 medical calls involving cardiac
14 care to persons under 60 years of age, public intoxication, suicide
15 attempts, allergic reactions not involving asthma attacks or
16 anaphylaxis, pregnancy not involving active childbirth, non-
17 severe trauma, cardiac care to persons under 50 years of age,
18 and mutual aid, without first bargaining to resolution or impasse
19 with the Union over the decision to transfer this work and the
20 impacts of this decision on bargaining unit members' terms and
21 conditions of employment;
22
23 b) In any like manner, interfering with, restraining and coercing its
24 employees in any right guaranteed under the Law.
25
26 2. Take the following action that will effectuate the purposes of the Law:
27
28 a) Restore to the bargaining unit the duties of responding to priority
29 1, medical calls involving cardiac care to persons under 60 years
30 of age, public intoxication, suicide attempts, allergic reactions not
31 involving asthma attacks or anaphylaxis, pregnancy not involving
32 active childbirth, non-severe trauma, cardiac care to persons
33 under 50 years of age, and mutual aid, until the City satisfies its
34 obligation to bargain with the Union about the transfer of this unit
35 work and the impacts of the decision;
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- b) Upon request, bargain in good faith with the Union to resolution or impasse about the decision and impacts of the decision to transfer to non-unit employees, the bargaining unit duties of responding to priority 1 medical calls involving cardiac care to persons under 60 years of age, public intoxication, suicide attempts, allergic reactions not involving asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe trauma, cardiac care to persons under 50 years of age, and mutual aid;
- c) Post immediately in all conspicuous places where members of the Union’s bargaining unit usually congregate, or where notices are usually posted, including electronically, if the City customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees;
- d) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KENDRAH DAVIS, ESQ.
HEARING OFFICER

APPEAL RIGHTS

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



THE COMMONWEALTH OF MASSACHUSETTS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The City of New Bedford (City) has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by transferring to non-unit personnel, the bargaining unit duties of responding to certain medical calls involving cardiac care to persons under 60 years of age, public intoxication, suicide attempts, allergic reactions not involving asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe trauma, cardiac care to persons under 50 years of age, and mutual aid, without providing the International Association of Firefighters, Local 841 (Union) with prior notice and an opportunity to bargain to resolution or impasse over the decision and its impacts.

The Law gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities. Based on these rights, the City assures its employees that:

WE WILL NOT unilaterally transfer to non-unit personnel the bargaining unit duties of responding to priority 1 medical calls involving cardiac care to persons under 60 years of age, public intoxication, suicide attempts, allergic reactions not involving asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe trauma, cardiac care to persons under 50 years of age, and mutual aid, without first bargaining to resolution or impasse with the Union over the decision to transfer this work and the impacts of this decision on bargaining unit members' terms and conditions of employment;

WE WILL restore to the bargaining unit the duties of responding to priority 1 medical calls involving cardiac care to persons under 60 years of age, public intoxication, suicide attempts, allergic reactions not involving asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe trauma, cardiac care to persons under 50 years of age, and mutual aid, until we satisfy our obligation to bargain with the Union about the transfer of this unit work and the impacts of the decision;

WE WILL upon request, bargain in good faith with the Union to resolution or impasse about the decision and impacts of the decision to transfer, to non-unit employees, the bargaining unit duties of responding to priority 1 medical calls involving cardiac care to persons under 60 years of age, public intoxication, suicide attempts, allergic reactions not involving asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe trauma, cardiac care to persons under 50 years of age, and mutual aid;

WE WILL refrain from interfering with, restraining or coercing employees in the exercise of their rights under Section 2 of the Law.

City of New Bedford

Date

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

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department Labor Relations, 2 Avenue de Lafayette, Boston, MA 02111-1750 Telephone: (617) 626-7132.