

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 CONSOLIDATED DECISION**

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  
7        with minor injuries; and (e) suicide attempts, without giving the International Association  
8        of Fire Fighters, Local 841 (Union or Charging Party) prior notice and an opportunity to

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

13 For the reasons explained below, I find that the City violated the Law in or about  
14 March of 2020, by transferring to non-bargaining personnel the bargaining unit work of  
15 responding to priority 1 calls involving cardiac care to persons under 60 years of age,  
16 public intoxication, and suicide attempts, without giving the Union prior notice and an  
17 opportunity to bargain to resolution or impasse over this decision and its impacts on  
18 employees' terms and conditions of employment. I also find that the City violated the Law  
19 in or about October of 2020, by transferring to non-bargaining personnel the bargaining  
20 unit work of responding to priority 1 calls involving requests to gain entry to a building,  
21 allergic reactions not involving asthma attacks or anaphylaxis, pregnancy not involving  
22 active childbirth, certain trauma, cardiac care to persons under 50 years of age, and

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

9 STATEMENT OF THE CASE  
10

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

1 opportunity to bargain over that decision and its impacts on employees' terms and  
2 conditions of employment: (a) motor vehicle accidents except for ones that involve known  
3 entrapment inside a vehicle; (b) allergic reactions; (c) pregnancy issues that could include  
4 cramping that leads to childbirth; (d) requests to gain entry; (e) smoke in the building, fire  
5 alarm activation, or smoke in the area; (f) trauma or explosion; (g) overdose; (h) burn from  
6 fireworks; and (i) mutual aid.

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

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<sup>1</sup> 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.

<sup>2</sup> 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 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 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 3. The Union is the exclusive collective bargaining representative for a unit of
- 21 firefighters employed by the City.
- 22 4. The City has a centralized 911 emergency call dispatch system that is located at
- 23 police headquarters and has three unique first responder divisions: police, fire and
- 24 emergency medical services (EMS).
- 25
- 26
- 27
- 28

## FINDINGS OF FACT

**Background**

The City's Fire Department (Department) comprises approximately 200 uniformed firefighters and includes numerous fire stations that share space with EMS ambulances. The Department uses various apparatus, such as ladder trucks and engines which contain radios and computers that allow certain firefighters to monitor all medical calls, including those dispatched from Police headquarters to firefighters, police personnel, and emergency medical technicians (EMTs) employed in the EMS department. While the City designates all firefighters, police officers, and EMTs as "first responders," it categorizes first responder duties based on certain training and certification. For instance, "basic" EMTs possess more training and certification than "entry-level" first responders.<sup>3</sup>

Prior to 1996, the City dispatched only EMTs and police personnel to certain medical calls. Beginning in 1996, the City began dispatching firefighters in addition to police and/or EMTs to those medical calls when the Department believed that a firefighter response would have positive impact on patient outcome. In or around 2016, the City

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<sup>3</sup> 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 implemented a “two-tiered” response system that categorized highest priority, emergency  
2 calls as “priority 1,”<sup>4</sup> and lower priority, non-emergency calls as priority 2 or 3.

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

#### 11 **City Personnel**

12 At all relevant times, Billy Sylvia (Sylvia) was a Department firefighter who  
13 possessed EMT certification as a first responder. During Sylvia’s “first couple of years,”  
14 the City assigned him to the signal room “for about eight months,” and later assigned him  
15 to various Department apparatus. At some point prior to 2019, Sylvia was Union  
16 Treasurer and Shop Steward. Beginning in or around late 2019 or early 2020 and  
17 continuing to present, Sylvia was Union President. Beginning in or about 1998, the City  
18 hired James Fortin (Fortin) as a Department firefighter and later promoted him to  
19 Lieutenant and then to Captain. At some point in 2010, the City promoted Fortin to District

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<sup>4</sup> 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.

<sup>5</sup> The City receives approximately 17,000 to 18,000 medical calls, annually.

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

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

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

### 15 **The FACETS Report**

16 On or about November 12, 2015, the City issued a "Fire & Emergency Medical  
17 Services Study" (FACETS report),<sup>6</sup> which reported on "various types of emergency calls"  
18 dispatched to first responders in 2012, 2013, and 2014. Section five of that report

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<sup>6</sup> 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:

3 ....The call takers and dispatchers<sup>7</sup> 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 **1. The March of 2020 Guidelines**

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<sup>7</sup> 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.<sup>8</sup> 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 EMA<sup>9</sup> 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,<sup>10</sup>

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<sup>8</sup> 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’.”

<sup>9</sup> The parties did not offer evidence that identifies this term.

<sup>10</sup> 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,<sup>11</sup> and public intoxication.<sup>12</sup> 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.”

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<sup>11</sup> 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.”

<sup>12</sup> 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 fires<sup>13</sup> and motor vehicle accidents involving minor injuries,<sup>14</sup> 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.

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<sup>13</sup> 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.”

<sup>14</sup> 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,<sup>15</sup> forced entry calls to gain access to patient (i.e., gain entry),<sup>16</sup> certain

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<sup>15</sup> 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.

<sup>16</sup> 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,<sup>17</sup> overdoses,<sup>18</sup> cardiac care for persons under the age of 50,<sup>19</sup>
- 2 pregnancy including active childbirth,<sup>20</sup> burn from fireworks,<sup>21</sup> smoke in building/area,<sup>22</sup>
- 3 certain trauma,<sup>23</sup> fire alarm activations, explosions,<sup>24</sup> and mutual aid.<sup>25</sup>

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<sup>17</sup> 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.

<sup>18</sup> Sylvia gave unrebutted 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.”

<sup>19</sup> 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.

<sup>20</sup> 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)

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<sup>21</sup> 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."

<sup>22</sup> 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.

<sup>23</sup> 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."

<sup>24</sup> 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.

<sup>25</sup> Fortin gave un rebutted 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,<sup>26</sup> 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

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<sup>26</sup> 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,”<sup>27</sup> cancelled,  
3 delayed, or not dispatched to firefighters for other reasons.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

### DECISION

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<sup>27</sup> 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.”

<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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, pregnancy, burn from fireworks, fire alarm activations,  
14 smoke in building/area, certain trauma, explosions, and motor vehicle accidents including  
15 those involving known entrapment. The record also shows that since at least 2015, the  
16 City established a specific practice of dispatching firefighters to mutual aid calls pursuant  
17 to the FACETS report. The record shows further that beginning in October of 2020, the  
18 City stopped dispatching firefighters to priority 1 calls involving cardiac care for persons  
19 under the age of 50, allergic reactions not involving asthma or anaphylaxis, overdoses,  
20 pregnancy not involving active labor, burn from fireworks, fire alarm activations, smoke in  
21 building/area, certain trauma, explosions, motor vehicle accidents except those involving  
22 known entrapment, and mutual aid. The City memorialized some of these changes in its

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

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

1 October 1 and 21, 2020, the City had failed to dispatch firefighters to at least 62 priority 1  
2 calls, to which it “should have” dispatched firefighters.

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

## 10 **2. Adverse Impact**

11 The Union asserts that the City’s transfer of the disputed unit work in March and  
12 October of 2020, had adverse impacts on firefighters because transferring those duties  
13 “caused an ‘injury to the bargaining unit as an institution,’” and because dispatching  
14 firefighters to those types of priority 1 calls “after-the-fact....create[s] safety issues for the  
15 patient, firefighters and the public when firefighters have to quickly travel to these scenes.”  
16 To support its assertion, the Union relies on two cases. First, the Union cites to City of  
17 New Bedford, 48 MLC 13, MUP-20-7875 (H.O. Aug. 9, 2021); however, that case did not  
18 involve a transfer allegation and the parties did not appeal the decision to the CERB. The  
19 Union also cites to Town of Watertown,<sup>31</sup> 8 MLC 1376, 1378-79, MUP-3907 (Oct. 20,  
20 1981), arguing that the town violated the Law because it failed to bargain on demand with

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<sup>31</sup> In its post-hearing brief, the Union miscites that case as City of New Bedford, 8 MLC 1376.

1 the union over the transfer of unit dispatch work to non-unit personnel. However, that  
2 case is distinguished for several reasons. First, it pertained to transferring dispatch work  
3 to newly hired non-unit, civilian dispatchers, whereas this case pertains to transferring the  
4 firefighter duty of responding to dispatched calls to non-unit, incumbent first responders.  
5 Second, the CERB in that case did not analyze whether the town's transfer of dispatch  
6 work had an adverse impact on the unit. Last, that record was void of evidence  
7 demonstrating a calculated displacement or ascertainable percentages, and the union  
8 presented none.

9 The CERB holds that adverse impacts in transfer cases occur whenever the  
10 bargaining unit loses the opportunity to perform lose opportunities to perform the disputed  
11 work. Contrast Chief Justice for Administration and Management of the Trial Court v.  
12 Commonwealth Employment Relations Board (CJAM), 79 Mass. App. Ct. 374, 387  
13 (2011). The CERB also holds that adverse impacts in transfer cases occur whenever the  
14 bargaining unit loses the opportunity to represent additional members whom the employer  
15 might have hired to perform the disputed work. Town of Norwell, 13 MLC 1200, 1208,  
16 MUP-5655 (Oct. 15, 1986); Lowell School Committee, 28 MLC 29, 32, MUP-2074 (June  
17 22, 2001). Further, absent a reduction in bargaining unit positions, an adverse impact  
18 may occur when a transfer of unit work "could result in the eventual elimination of the  
19 bargaining unit through gradual erosion of bargaining unit duties." Commonwealth v.  
20 Labor Relations Commission, 60 Mass. App. Ct. 831, 834 (2004); Franklin School  
21 Committee, 6 MLC 1297, 1299 n.4 (1979). Additionally, the CERB has found adverse



1 impact to exist where the bargaining unit lost less strenuous assignments to non-unit  
2 personnel. City of Boston, 6 MLC 1117, 1125, MUP-2863 (June 4, 1979).

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

### 20 3. Shared Work

21 In the alternative, the City argues that even if its transfer of bargaining unit work to  
22 non-unit personnel in March and October of 2020 had an adverse impact on the unit, the

1   disputed duty of responding to certain priority 1 calls is shared work and the Union is  
2   unable to demonstrate a calculated displacement of this work. Specifically, the City  
3   asserts that the Union can neither show “an ascertainable percentage of work traditionally  
4   performed by” firefighters, nor show “an ascertainable increase in the percentage of work  
5   that is now performed by non-unit employees.”

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

19           Here, the Union does not dispute that the duty of responding to certain priority 1  
20   calls is shared work. Rather, it contends that prior to March of 2020 and October of 2020,  
21   the City dispatched firefighters to “70%” of annual medical calls of which “most” were  
22   priority 1 calls. Specifically, it points to March of 2020, when the City failed to dispatch

1 firefighters to at least 195 cardiac calls for persons between the ages of 50 and 60, and  
2 at least 7 calls for motor vehicle accidents with minor injuries. Similarly, it points to  
3 October of 2020, when the City failed to dispatch firefighters to at least 90 calls involving  
4 motor vehicle accidents except those involving entrapment. Based on this documented  
5 evidence and, in addition to the anecdotal evidence reported to Sylvia and Fortin, the  
6 Union asserts that the City's failures to dispatch firefighters to these calls demonstrate a  
7 calculated displacement of unit work which had an adverse impact on the bargaining unit  
8 by eliminating the "practice of initially dispatching [them]...to priority 1 medical [calls],"  
9 and by "create[ing] safety issues...when firefighters have to quickly travel to these  
10 scenes."

11 **a. March of 2020**

12 The evidence shows that since at least 2016, and continuing to March of 2020, the  
13 City dispatched firefighters to priority 1 calls involving cardiac care to persons under the  
14 age of 60, suicide attempts, and public intoxication. Although the City disputes that  
15 firefighters were dispatched to these types of medical calls prior to March of 2020, both  
16 Sylvia and Fortin gave un rebutted testimony that firefighters did respond to these calls  
17 during this time period. Additionally, Kruger and McGraw admitted to discussing firefighter  
18 responses to medical calls involving cardiac care, suicide attempts, and public  
19 intoxication pursuant to the 2019 EMS report. Kruger also conceded that the City had  
20 stopped dispatching firefighters as first responders to priority 1 calls involving cardiac care  
21 for persons under 60 years of age, non-severe suicide attempts, and public intoxication  
22 after March of 2020. Moreover, the City concedes, generally, that since 1996 it has

1 dispatched firefighters to certain “high priority calls” as “First Responder[s]” because if  
2 they “can reach the patient before an ambulance arrives,” their “prompt response...may  
3 help to improve patient outcome.”

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

17       However, the record is void of evidence showing that firefighters performed an  
18 ascertainable percentage of dispatch work involving motor vehicle accidents with minor  
19 injuries and trash fires. The record is also void of evidence showing that the City’s  
20 changes to these types of calls in March of 2020 either caused a significant reduction of  
21 bargaining unit work or caused a corresponding increase in the same work performed by  
22 police and/or EMTs. While the Union points to Sylvia’s testimony that prior to March of

2020, the City dispatched firefighters “to all” motor vehicle accidents “even if there [were] no injuries reported,” and that it failed to dispatch firefighters to at least seven calls involving motor vehicle accidents with minor injuries in June of 2020, he admitted to not knowing the actual percentage of these calls that the City either dispatched or did not dispatch to firefighters during the relevant time period. Similarly, the Union failed to demonstrate a “significant reduction” of calls for trash fires and motor vehicle accident calls involving minor injuries, or a corresponding increase in these calls of for EMTs and/or police. Moreover, the March of 2020 Guidelines are silent about these types of calls, and there is no evidence that the 2019 EMS report analyzed data for these types of calls prior to the change.

Consequently, without more evidence, the Union is unable to show that the City’s transfer of priority 1 calls involving motor vehicle accidents with minor injuries and trash fires in or about March of 2020, amounted to a calculated displacement of firefighters responding to these types of calls as shared bargaining unit work. See, e.g., Commonwealth of Massachusetts, 42 MLC 109, 111 SUP-13-2604 (Oct. 19, 2015) (citing City of Lawrence, 23 MLC 213, 215, MUP-9876 (March 31, 1997) (no transfer violation where union unable to show percentage of work performed by bargaining unit members)); see also City of Somerville, 23 MLC 256, 259-260, MUP-8160 (May 2, 1997) (no transfer violation where union unable to demonstrate a “clearly-identifiable percentage” of the disputed work shared between unit members and non-unit personnel) .

**b. October of 2020**

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

10           Additionally, Kruger admitted that prior to October of 2020, he spoke with McGraw  
11 about lowering the age of cardiac care calls, and eliminating calls for non-severe trauma,  
12 allergic reactions not involving asthma or anaphylaxis, and pregnancy without active labor  
13 pursuant to the 2019 EMS report. McGraw also conceded that based on that report,  
14 beginning in October of 2022, the City stopped dispatching firefighters to calls involving  
15 cardiac calls for persons under the age of 50, non-severe traumas, allergic reactions not  
16 involving asthma or anaphylaxis, and pregnancy not involving childbirth. Moreover, Fortin  
17 gave un rebutted testimony that beginning in October of 2020, the City dispatched  
18 firefighters to mutual aid calls only "75 percent" of the time.

19           Based on the totality of this evidence, I find that firefighters performed at least one-  
20 third (or 33.3 percent) of the disputed dispatch work prior to October of 2020, as it related  
21 to priority 1 calls involving cardiac care for persons under 50 years of age, certain trauma  
22 regardless of severity, certain allergic reactions including asthma attacks and

1 anaphylaxis, and pregnancy including active childbirth. However, beginning in October of  
2 2020, the City reduced this percentage to zero for these types of priority 1 calls pursuant  
3 to its October of 2020 Guidelines. The City also reduced the percentage of dispatched  
4 mutual aid calls by 25 percent to 75 percent beginning in October of 2020. These  
5 reductions of unit work resulted in corresponding increases in the amount of the same  
6 work performed EMTs and/or police. Specifically, the City increased this work to 100  
7 percent for EMTs and/or police for priority 1 calls involving cardiac care for persons under  
8 50 years of age, certain trauma regardless of severity, certain allergic reactions including  
9 asthma attacks and anaphylaxis, and pregnancy including active childbirth. The City also  
10 increased this work by 25 percent for EMTs and/or police for priority 1 calls involving  
11 mutual.

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

17 However, the record is void of evidence showing that firefighters performed an  
18 ascertainable percentage of dispatch work for priority 1 calls involving overdoses,  
19 requests to gain entry, burn from fireworks, smoke in building/area, fire alarm activations,  
20 explosions, and motor vehicle accidents except those involving known entrapment. The  
21 record is also void of evidence showing that the City's changes to these types of calls in

1 October of 2020 either caused a significant reduction of bargaining unit work or caused a  
2 corresponding increase in the same work performed by police and/or EMTs.

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

12 Further, the Union's reliance on the unrebutted testimonies of Sylvia and Fortin  
13 falls short because while their testimonies show that the City failed to dispatch firefighters  
14 to priority 1 calls involving overdoses, requests to gain entry, burn from fireworks, smoke  
15 in building/area, explosions, motor vehicle accidents except those involving known  
16 entrapment, and fire alarm activations after October of 2020, they both admitted to not  
17 knowing the actual percentage(s) of these calls that the City either dispatched or did not  
18 dispatch to firefighters during the relevant time period. In fact, the record is void of  
19 evidence showing either a "significant reduction" of bargaining unit work related to priority  
20 1 calls involving overdoses, requests to gain entry, burn from fireworks, smoke in  
21 building/area, explosions, motor vehicle accidents except those involving known  
22 entrapment, and fire alarm activations beginning in October of 2020, or a corresponding



1 increase of these same types of calls for EMTs and/or police. Moreover, the October of  
2 2020 Guidelines are silent about these types of calls, and there is no evidence that the  
3 2019 EMS report analyzed data for these types of calls prior to the change.

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

#### 11 **4. Core Managerial Prerogative**

12 Last, the City argues that it was not obligated to bargain with the Union when it  
13 stopped dispatching firefighters to priority 1 calls involving cardiac care for person under  
14 the age of 60, suicide attempts, and public intoxication in March of 2020, and when it  
15 stopped dispatching them to priority 1 calls involving cardiac care for persons under the  
16 age of 50, allergic reactions not involving asthma or anaphylaxis, pregnancy not involving  
17 active labor, non-severe trauma, and mutual aid in October of 2020. Specifically, it asserts  
18 that it has a non-delegable right to "preserve accountability to the public in the  
19 performance of the essential functions of government," and to "review and update the  
20 City's list of high priority medical calls and to assign [firefighter] and...First Responder  
21 resources only to those medical calls where First Responders can have a positive impact  
22 on patient outcome[s]." It also asserts that "medical calls can delay fire companies from

1 responding to fires and other emergency calls,” thus, “assigning...Department apparatus  
2 to low priority medical calls is clearly not a use of resources that is most protective of the  
3 public.”

4 To support its argument, the City cites to Town of Dracut v. Dracut Firefighter  
5 Union, IASS Local 2586, 97 Mass. App. Ct. 374, 379-396 (2020). In that case, an  
6 arbitrator issued an award for the union, finding that the town’s policy of banning travel  
7 for on-duty firefighters to attend union meetings at the central fire station violated the  
8 parties’ collective bargaining agreement. On appeal, the superior court vacated the award  
9 because it infringed on the town’s non-delegable authority to make decisions concerning  
10 public safety. Balancing the town’s interests to perform the public safety function of  
11 responding to fire emergencies, against the union’s interest to self-organization and  
12 collective bargaining, the appeals court found that the town had failed to demonstrate “the  
13 existence of a public policy of sufficient weight, or a core managerial function of sufficient  
14 gravity, to warrant denying effect to collective bargaining.” Town of Dracut, (citing “Board  
15 of Higher Educ., 483 Mass. at 320; Lynn, 43 Mass. App. Ct. at 180)). The appeals court  
16 also found that the disputed “policy [was] directed solely to attendance at union meetings,”  
17 and that the non-delegability doctrine did not apply despite the town’s specific reliance on  
18 G. L. c. 48, § 42. Thus, the appeals court reversed the lower court and reinstated the  
19 award in favor of the union. Town of Dracut, 97 Mass. App. Ct. at 379-396 (citing City of  
20 Worcester, 438 Mass. at 181; Local 346, Intl Bhd. of Police Officers, 391 Mass. at 438).

21 For the following reasons, I am unpersuaded by the City’s argument that it was  
22 exempted from bargaining with the Union over its decisions to stop dispatching firefighters

1 to priority 1 calls involving cardiac care for person under the age of 60, suicide attempts,  
2 and public intoxication in March of 2020, and to stop dispatching them to priority 1 calls  
3 involving cardiac care for persons under the age of 50, allergic reactions not involving  
4 asthma or anaphylaxis, pregnancy not involving active labor, non-severe trauma, and  
5 mutual aid in October of 2020.

6 First, the City's reliance on Town of Dracut is misplaced because the CERB found  
7 that the town did not possess the core managerial prerogative to make its decisions  
8 without first bargaining with the union. Next, while the CERB holds that a public employer  
9 may exercise its core managerial prerogative concerning the nature and level of its  
10 services without first bargaining with its employees' exclusive collective bargaining  
11 representative over the decision, Newton School Committee v. Labor Relations  
12 Commission, 388 Mass. 557, 563 (1983), it also holds that an employer must first  
13 negotiate over the decision to transfer unit work outside of the unit. Lowell School  
14 Committee, 28 MLC at 32. Thus, because I have already found that the City's decisions  
15 to transfer the disputed bargaining unit work in March and October of 2020 affect  
16 mandatory subjects of bargaining, and because the City is unable to point to other  
17 authority exempting it from bargaining with the Union, the City's core managerial  
18 prerogative defense must fail. See, e.g., Commonwealth of Massachusetts, 28 MLC 308,  
19 311, SUP-4740 (April 11, 2002) (after analyzing employer's managerial prerogative  
20 defense, CERB found employer was still obligated to bargain with the union over decision  
21 to transfer unit work outside of the unit); compare, Commonwealth of Massachusetts, 26  
22 MLC 228, 231-232, SUP-4288 (June 12, 2000) (although employer did not fail to bargain

1 with union over the decision to reduce its workforce, it violated the Law by failing to  
2 bargain with union over decision to transfer unit work to non-unit personnel); see,  
3 generally, Town of Danvers, 3 MLC at 1576 (assignment of unit work to non-unit  
4 personnel is a mandatory subject of bargaining);

### 5 CONCLUSION

6 In conclusion, I find that the City violated Section 10(a)(5) and, derivatively, Section  
7 10(a)(1) of the Law when, in or about March of 2020, it unilaterally transferred to non-  
8 bargaining personnel the bargaining unit work of dispatching firefighters to priority 1 calls  
9 involving cardiac care to persons under 60 years old, public intoxication, and suicide  
10 attempts. I also find that the City violated Section 10(a)(5) and, derivatively, Section  
11 10(a)(1) of the Law when, in or about October of 2020, it unilaterally transferred to non-  
12 bargaining personnel the bargaining unit work of dispatching firefighters priority 1 calls  
13 involving cardiac care to persons under 50 years of age, allergic reactions not involving  
14 asthma attacks or anaphylaxis, pregnancy not involving active childbirth, non-severe  
15 trauma, and mutual aid. However, the City did not violate the Law by transferring to non-  
16 bargaining personnel the bargaining unit work of dispatching firefighters to priority 1 calls  
17 involving trash fires and motor vehicle accidents with minor injuries in March of 2020. Nor  
18 did it violate the Law by transferring to non-bargaining personnel the bargaining unit work  
19 of dispatching firefighters to priority 1 calls involving motor vehicle accidents except those  
20 involving entrapment, burn from fireworks, certain fire alarm activations, smoke in the  
21 building/area, explosions, and overdoses in October of 2020.

ORDER

WHEREFORE, based upon the foregoing, it is HEREBY ORDERED that the City

shall:

1. Cease and desist from:

- a) Unilaterally transferring 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;
- b) In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

2. Take the following action that will effectuate the purposes of the Law:

- a) 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 the City satisfies its obligation to bargain with the Union about the transfer of this unit work and the impacts of the decision;
- 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;

- 1 c) Post immediately in all conspicuous places where members of  
2 the Union's bargaining unit usually congregate, or where notices  
3 are usually posted, including electronically, if the City customarily  
4 communicates with these unit members via intranet or email and  
5 display for a period of thirty (30) days thereafter, signed copies of  
6 the attached Notice to Employees;  
7  
8 d) Notify the DLR in writing of the steps taken to comply with this  
9 decision within ten (10) days of receipt of this decision.  
10

11 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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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 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.

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City of New Bedford

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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.