

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of  
CITY OF BOSTON

and

BOSTON POLICE SUPERIOR  
OFFICERS FEDERATION

Case No.: MUP-20-8232

Date issued: July 8, 2022

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Robert Boyle Jr., Esq. - Representing the City of Boston  
Patrick Bryant, Esq. - Representing the Boston Police  
Superior Officers Federation

RULING ON MOTION TO DEFER TO ARBITRATION AWARD

Summary

The issue before me is whether to allow the City of Boston (City's) motion to defer the prohibited practice complaint in the present case to an arbitrator's award and to dismiss the case. For the reasons discussed below, I have denied the motion.

Statement of the Case

On October 10, 2020, the Boston Police Superior Officers Federation (Union) filed a charge with the Department of Labor Relations (DLR) alleging that the City of Boston (City) had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law). On April 22, 2021, a DLR investigator conducted

an in-person investigation. On August 6, 2021, the investigator issued a complaint alleging that the City violated Sections 10(a)(5) and (1) by failing to bargain to resolution or impasse over the impacts on unit members' terms and conditions of employment of its decisions to: (1) prohibit unit members from requesting or utilizing vacation leave from October 31, 2020 to November 7, 2020 and utilizing discretionary leave from November 2, 2020 through November 9, 2020 (Count I); and 2) alter the vacation request approval process.(Count II).<sup>1</sup> On August 9, 2021, the City filed its answer to the complaint.

### Background

On February 3, 2022, the parties participated in an arbitration hearing before Arbitrator Joan Martin (Arbitrator Martin). The City and the Union did not agree upon an issue and authorized the arbitrator to frame the issue. Arbitrator Martin framed the issue as follows:

1. Is the grievance substantively arbitrable?
2. If so, did the City violate the collective bargaining agreement when it cancelled all vacation and discretionary leave for BPSOF members in the Police Department from October 31 through November 9, 2020?

If so, what shall be the remedy?

On June 5, 2022, Arbitrator Martin issued the following award:

1. The blanket prohibition on discretionary time off violated the collective bargaining agreement. The grievance is substantively arbitrable.
2. If the Federation can show proof of any member having lost accrued time off because of time restrictions on using it, the time shall be restored.

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<sup>1</sup> The investigator dismissed the allegations that the City violated Sections 10(a)(5) and (1) of the Law by failing to bargain to resolution or impasse over the decisions to: a) prohibit unit members from requesting or utilizing vacation leave from October 31, 2020 to November 7, 2020 and utilizing discretionary leave from November 2, 2020 through November 9, 2020; and b) alter the vacation request approval process.

3. Federation reported no monetary losses on the part of its members and no financial award is given.

On June 10, 2022, the City filed this motion to defer the prohibited practice complaint to the arbitrator's award, and the Union filed an opposition to the motion on June 17, 2022.

### Opinion

In Boston School Committee, 1 MLC 1287, 1290-1291, MUP-2084 (February 20, 1975), the Commonwealth Employment Relations Board (CERB) adopted the National Labor Relations Board's guidelines for deferring to an arbitrator's award set forth in Spielberg Manufacturing Co., 112 NLRB 1080 (1955). Deferral to an arbitration award in Spielberg-type cases is appropriate where: 1) the arbitrator proceedings have been fair and regular; 2) all parties agree to be bound by the proceedings; 3) the decision of the arbitrator is not repugnant to the purposes and policies of the Law; and 4) the arbitration award disposes of the substantially identical issues presented to the DLR. City of Cambridge, 7 MLC 2111, 2112, MUP-3386 (May 6, 1981). Deferral to an arbitration award is discretionary. Town of Wilmington, 9 MLC 1694, 1695, MUP-4688 (March 18, 1983).

Here, the City argues that deferral is appropriate because the collective bargaining agreement covers the controversy in this case. The City asserts that paid benefits are themselves creatures of the contract and that Arbitrator Martin acted within her authority when she issued her award. Further, the City notes that when the Union filed the grievance that was the subject of the arbitration, the Union cited multiple provisions of the collective bargaining agreement. Conversely, the Union opposes deferral because it

contends that the arbitrator's award does not dispose of the relevant statutory claims at issue in either Count I or Count II. Specifically, the Union argues that the arbitrator never addressed the City's failure to bargain over the impacts of its decision to cancel all approved vacation and discretionary leave requests or the impacts of the City's decision to implement a new process to request vacation leave.

Upon review and consideration of Arbitrator Martin's award, I conclude that the arbitration award does not dispose of substantially identical issues as presented in the complaint. See e.g. City of Gardner, 26 MLC 189, MUP-2201 (March 30, 2000); (declining to defer because arbitrator's award did not address the issues of union president's alleged concerted, protected activity, or whether he was appointed to a position); City of Cambridge, 7 MLC at 2112-2113 (declining to defer because the arbitrator's award was unclear as to whether it disposed of the same issue in a pending complaint); Boston School Committee, 1 MLC at 1291 (finding that that the "touchstone" in Spielberg deferral cases is whether the issue resolved by the arbitrator is dispositive of the matter before the DLR). Turning to Count I, the arbitrator's award is silent concerning whether the City had an obligation to bargain over the impacts of its decision to prohibit the use of vacation and discretionary leave during certain dates near the 2020 presidential election. Next, Count II concerns the City's alleged failure to bargain over the impacts of its decision to change the vacation request process. However, the arbitrator instead addressed the parallel issue of whether the City's failure to enact a similar request process for discretionary leave during the dates in question constituted a blanket denial of discretionary leave in violation of the parties' collective bargaining agreement.

Conclusion

Accordingly, the City's motion to defer the prohibited practice complaint in the present case to Arbitrator Martin's award is denied. The hearing will proceed as scheduled on July 20 and 21, 2022.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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MARGARET M. SULLIVAN  
HEARING OFFICER