

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of *
*
CITY OF EVERETT *
*
and * Case No. MUP-20-8310
*
THE INTERNATIONAL BROTHERHOOD *
OF TEAMSTERS, LOCAL 25 * Date Issued: July 26, 2021
*
and *
*
THE NEW ENGLAND POLICE *
BENEVOLENT ASSOCIATION *
*

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

Lynn Alexis, Esq. - Representing the International Brotherhood of
Teamsters, Local 25
Colleen Mejia, Esq. - Representing the City of Everett
Thomas Horgan, Esq - New England Police Benevolent Association

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the City of Everett (City) violated Sections
2 10(a)(1) and (2) of Massachusetts General Laws Chapter 150E (the Law) by: 1)
3 interfering in the existence and administration of the exclusive representative, and 2)
4 independently interfering with, restraining, and coercing its employees in the exercise of

1 their rights under Section 2 of the Law. The City admitted, and therefore I find, that the
2 City violated the Law as alleged.

STATEMENT OF THE CASE

3 On November 11, 2020, the International Brotherhood of Teamsters, Local 25
4 (Teamsters) filed a charge of prohibited practice (Charge) with the Department of Labor
5 Relations (DLR) alleging that the City had violated Section 10(a)(1) and (2) of the Law.
6 On May 28, 2021, a DLR investigator issued a Complaint of Prohibited Practice
7 (Complaint).¹ On June 3, 2021,² the City waived its right to a hearing in accordance with
8 DLR Rule 13.18, which provides as follows:

9 (1) If the respondent desires to waive a hearing on the allegations set
10 forth in the complaint or the amended complaint and not contest the
11 proceeding, the answer to the complaint may consist of a statement
12 that respondent refrains from contesting the proceedings or that
13 respondent consents that the Department may make, enter and serve
14 upon respondent an order to cease and desist from violations of M.G.L.
15 c. 150E alleged in the complaint or that respondent admits all the
16 allegations of the complaint. Either of the first two such answers shall
17 have the same force and effect as if all the allegations of the complaint
18 were admitted and, as in that case, shall be deemed by the Department
19 to waive a hearing thereon and to authorize the Department, without a

¹ Thereafter, on November 23, 2020, the New England Police Benevolent Association (NEPBA) filed a petition in Case No. MCR-20-8331 seeking certification as the exclusive bargaining unit representative of all full-time and part-time employees in the Emergency Communications Unit, currently represented by the Teamsters. On April 22, 2021, the Teamsters filed a Motion to have the Charge in this matter block further proceedings in Case No. MCR-20-8331. On June 30, 2021, the Commonwealth Employment Relations Board (CERB) granted the Motion and Case No. MCR-20-8331 is being held in inactive status until the final disposition of the instant Charge.

² On June 3, 2021, the City also submitted an affidavit from Police Chief Steven Massie, however, because the City admitted to the violations alleged in the Complaint, the information in the affidavit has no bearings on my decision.

1 hearing, without evidence and without findings as to facts or other
2 intervening procedure, to make, enter, issue and serve upon
3 respondent an order to cease and desist from the violation of c. 150E
4 charged in the complaint or to take such other action as provided in c.
5 150E.

6
7 (2) If the respondent does not file an answer, the Department may
8 proceed in a like manner.³
9

10 On July 21, 2021, the NEPBA motioned to intervene in this proceeding. On July 22, 2021,
11 I granted the NEPBA's motion to intervene.⁴

12 By waiving its right to a hearing in accordance with DLR Rule 13.18, the City has
13 admitted to all the allegations in both counts to this Complaint, as follows:

14 Count I

- 15 1. The City is a public employer within the meaning of Section 1 of the Law.
16
17 2. The Union is an employee organization within the meaning of Section 1 of
18 the Law.
19
20 3. The Union is the exclusive bargaining representative for a unit of 9-1-1
21 dispatchers employed by the City (Unit).
22
23 4. The City's police officers are represented by the New England Police
24 Benevolent Association (NEPBA) in two separate bargaining units of
25 superior officers and patrol officers.
26
27 5. Unit employees work in the City's dispatch center, a secure building that
28 requires an authorized City-issued keycard for access. Unit employees
29 work in three-person shifts and are not allowed to bring unauthorized
30 individuals into the dispatch center.
31

³ The City did not file an Answer to the Complaint.

⁴ Prior to the NEPBA's intervention in this case, the City and the Teamsters were provided with the opportunity to submit a brief on the limited issue of an appropriate remedy, which they declined.

- 1 6. At all relevant times, Captain Paul Hamilton (Hamilton) was the acting
2 director of the dispatch center, supervised Unit employees, acted as an
3 agent of the City, and was included in the NEPBA's superior officers'
4 bargaining unit.
5
- 6 7. At all relevant times, Sean McArdle (McArdle) was an executive board
7 member of the NEPBA and a business agent for the City's patrol officers'
8 bargaining unit.
9
- 10 8. The City and the Union were parties to a collective bargaining agreement
11 (Agreement) which expired on June 30, 2020. The parties mutually agreed
12 to suspend successor Agreement negotiations during the pendency of the
13 COVID-19 pandemic.
14
- 15 9. Beginning on or about September 2020, Hamilton encouraged on-duty
16 subordinate Unit employees to select the NEPBA as their exclusive
17 collective bargaining representative in place of the Union.
18
- 19 10. During September and October 2020, Unit employees gave McArdle
20 unauthorized access to the secure dispatch center on two occasions in
21 order to solicit on-duty Unit employee support for the NEPBA.
22
- 23 11. On or about November 3, 2020, Unit employees gave McArdle and another
24 NEPBA executive board member unauthorized access to the secure
25 dispatch center and allowed them to conduct a meeting with Unit employees
26 to solicit support for the NEPBA. A majority of Unit employees attended the
27 meeting.
28
- 29 12. On or about November 2020, the City conducted an investigation into the
30 unauthorized access referred to in paragraphs 10 and 11. Allowing
31 unauthorized access to the dispatch center would normally result in
32 discipline or discharge.
33
- 34 13. Since November 3, 2020, the City have not disciplined Unit employees for
35 allowing the unauthorized access into the secure dispatch center referred
36 to in paragraphs 10 and 11.
37
- 38 14. On or about November 23, 2020, the NEPBA filed a representation petition
39 with the DLR seeking to represent the Unit.
40
- 41 15. Following receipt of the DLR's Notice of Representation Hearing on or about
42 December 1, 2020, the City notified the Union that it would not participate

1 in successor Agreement negotiations until the NEPBA's representation
2 petition was resolved.
3

4 16. By the conduct described in paragraphs 9 and 13, the City has interfered in
5 the existence and administration of the Union in violation of Section 10(a)(2)
6 of the Law.
7

8 17. By the conduct described in paragraphs 9 and 13, the City has derivatively
9 interfered with, restrained, and coerced its employees in the exercise of
10 their rights guaranteed under Section 2 of the Law in violation of Section
11 10(a)(1) of the Law.
12

13 Count II
14

15 18. The allegations in paragraphs 1 through 15 are re-alleged.
16

17 19. By the conduct described in paragraph 9, the City has independently
18 interfered with, restrained and coerced its employees in the exercise of their
19 rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1)
20 of the Law.
21

22 DECISION

23 Section 10(a)(2) of the Law provides that it is an unfair labor practice for an
24 employer to dominate, interfere, or assist in the formation, existence, or administration of
25 any employee organization. Unlawful assistance can arise where an employer's actions
26 aid one employee organization at the expense of another employee organization.
27 Commonwealth of Massachusetts, 7 MLC 1228, 1235, SUP-2380 (August 22, 1980).

28 A public employer violates Section 10(a)(1) of the Law when it engages in conduct
29 that may reasonably be said to interfere with, restrain, or coerce employees in the
30 exercise of their rights under Section 2 of the Law. Commonwealth of Massachusetts, 40
31 MLC 297, 299-300, SUP-12-1829 (April 2, 2014), modified on other grounds, 41 MLC 186

1 (January 16, 2015). Pursuant to Section 2 of the Law, an employee has the right to “form,
2 join, or assist any employee organization for the purpose of bargaining collectively
3 through representatives of their own choosing on questions of wages, hours, and other
4 terms and conditions of employment, and to engage in lawful, concerted activities for the
5 purpose of collective bargaining or other mutual aid or protection, free from interference,
6 restraint, or coercion.” The focus of a Section 10(a)(1) inquiry is on the effect of the
7 employer’s conduct on a reasonable employee, Commonwealth of Massachusetts, 40
8 MLC at 299, rather than the motivation behind the conduct, Town of Chelmsford, 8 MLC
9 1913, 1915, MUP-4620 (March 12, 1982), aff’d sub nom. Town of Chelmsford v. Labor
10 Relations Commission, 15 Mass. App. Ct. 1107 (1983), or whether the coercion
11 succeeded or failed. Groton-Dunstable Regional School Committee, 15 MLC 1551, 1556,
12 MUP-6748 (March 20, 1989).

13 The City not only admitted to all the facts that gave rise to the Complaint, but also
14 admitted that, by its actions, the City violated Sections 10(a)(1) and 10(a)(2). Given this
15 admission, I find that the City violated Sections 10(a)(1) and 10(a)(2) of the Law as
16 alleged.

17 ORDER

18 WHEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the City
19 shall:

- 20
21 1. Cease and desist from:
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23 a. Dominating and interfering with the administration of the Teamsters, or with
24 the formation or administration of any employee organization of its
25 employees;

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- b. Permitting its agents to encourage bargaining unit employees to select a particular exclusive collective bargaining representative;
- c. Permitting representatives from the NEPBA, or other labor organizations, to have unauthorized access to employees in the bargaining unit represented by the Teamsters in the secure dispatch center in order to solicit their support;
- d. Otherwise, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Law.

2. Take the following affirmative action that is necessary to effectuate the purposes of the Law:

- a. Post immediately, in all conspicuous places where members of the Teamster’s bargaining unit 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;
- b. 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



Gail Sorokoff, Esq.
Hearing Officer

APPEAL RIGHTS

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

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

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

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The City of Everett violated Sections 10(a)(1) and 10(a)(2) of Massachusetts General Laws, Chapter 150E (the Law) by: 1) interfering in the existence and administration of the International Brotherhood of Teamsters, Local 25; and 2) independently interfering with, restraining, and coercing its employees in the exercise of their rights under Section 2 of the Law. 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 of Everett assures its employees that:

WE WILL NOT dominate and interfere with the administration of the International Brotherhood of Teamsters, Local 25, or with the formation or administration of any employee organization of its employees;

WE WILL NOT permit our agents to encourage bargaining unit employees to select a particular exclusive collective bargaining representative;

WE WILL NOT permit representatives from the New England Police Benevolent Association, or other labor organizations, to have unauthorized access to employees in the bargaining unit represented by the International Brotherhood of Teamsters, Local 25, in the secure dispatch center in order to solicit their support;

WE WILL NOT otherwise interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under the Law.

City of Everett

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 of Labor Relations, Lafayette City Center, 2 Avenue de Lafayette, Boston MA 02111 (Telephone: (617) 626-7132).

