

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of:

CITY OF WORCESTER

and

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL 495

Case No.: MUP-23-10383

Date Issued: August 31, 2026

Hearing Officer:

Gail Sorokoff, Esq.

Appearances:

Michael Manning, Esq.	-	Representing the National Association of
Kara Parks, Esq. (on brief)		Government employees, Local 495
Theresa Reichert, Esq.	-	Representing the City of Worcester

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this is case whether the City of Worcester (City or Employer) violated Section
2 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the
3 Law) by failing to bargain in good faith by changing the manner of assigning librarians to work
4 Sunday overtime hours without providing the National Association of Government Employees,
5 Local 495 (Union) with an opportunity to bargain to impasse or resolution over the decision and
6 the impacts of the decision on bargaining unit employees' terms and conditions of employment.

7 For the reasons explained below, I find that the City did not violate the Law as alleged.

STATEMENT OF THE CASE

The Union filed a charge of prohibited practice (Charge) with the Department of Labor Relations (DLR) alleging that the City engaged in prohibited practices within the meaning of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. Following an investigation, a DLR investigator issued a Complaint of Prohibited Practice (Complaint) on September 19, 2024. The Complaint alleged that the City violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by failing to bargain in good faith over the change to the manner of assigning Sunday overtime hours. The City filed its Answer to the Complaint on September 27, 2024.

I conducted a hearing on March 3, 2026. Both parties had the opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence during the hearing. On May 1, 2026, both parties filed timely post-hearing briefs. Based on the record, which includes witness testimony, stipulations of fact, and documentary exhibits, and my observation of the witnesses' demeanor, in consideration of the parties' arguments, I make the following findings of fact and render the following opinion.

STIPULATIONS OF FACT

1. The National Association of Government Employees, Local 495 ("Union"), is a labor organization as defined by G.L. c. 150E, § 1.
2. The Union is the exclusive bargaining representative for a unit of employees, including librarians employed by the City.
3. The City is a municipality of the Commonwealth of Massachusetts, located in Worcester County.
4. The City is a public employer as defined by G.L. c. 150E, § 1.
5. The Union and the City have been parties to a collective bargaining agreement (CBA) at all relevant times.

FINDINGS OF FACT**Background**

The Worcester Public Library system consists of seven branches. The main branch, located in downtown Worcester, is staffed by librarians and paraprofessional employees. The librarians, who hold a Master of Library Science degree, are referred to interchangeably as graduate or professional librarians.

The main branch is open from 9:00 a.m. to 5:30 p.m. on Mondays, Thursdays, Fridays and Saturdays. The main branch operates expanded hours on Tuesdays and Wednesdays, and is open from 9:00 a.m. until 8:30 p.m. Each year from October through April, the main branch is also open on Sundays from 12:00 p.m. to 4:00 p.m. These Sunday hours are referred to as the library's "winter hours." The main branch is the only branch that is open on Sundays.

The Union represents a citywide bargaining unit that includes graduate librarians. The current CBA, dated 2010-2013, addresses library Sunday hours in Special Article 2 Section B as follows:

1. The City agrees to provide all professional librarians assigned to work on Sunday the option of compensation on a paid overtime basis (at the rate of time and one-half), or compensatory time off as provided for under current practice, in accordance with City ordinance not otherwise amended by this provision for the Sunday work. Compensatory time off will be subject to scheduling by the Library.

2. The City shall allow professional librarians to request Sunday work out of normal order, and shall grant said request provided the supervisory, subject, and area requirements of the Library are met for the Sunday assignments. Any professional librarian requesting such an assignment shall, if his request is approved by the City, be obligated to perform such assignment and shall not be considered a "volunteer".

3. This article is understood to be without prejudice to the City's position that mandatory overtime service is a governmental prerogative, and to the Union's position that overtime service by the employee is voluntary, provided, however both the Union and the City agree that overtime is mandatory during a declared emergency by the City Manager.

1 **Winter Hours Scheduling Process**

2 The Worcester Public Library has maintained Sunday operating hours at its main branch
3 since 1872.¹ Between approximately 1991 and 2014, Faucher, in her role as the Human
4 Resources Manager, distributed an annual overtime request form asking library employees to
5 indicate whether they wished to work Sunday shifts. After collecting the completed forms,
6 Faucher provided Paul Pelletier (Pelletier), a Graduate Librarian IV, with a list of the Sunday
7 dates requiring coverage and the names of employees who had volunteered to work those dates.
8 Pelletier then prepared the Sunday work schedule.²

9 The 2013–2014 Sunday Overtime Request Form instructed librarians to circle the dates
10 for the Sundays that they wished to work and place an "X" through any Sundays that they were
11 unavailable to work. The form notes that "[i]f there are insufficient volunteers, and I am assigned
12 overtime, I am not available on the dates X'd out above." Separately, the form asks employees
13 who wished to be placed on the Sunday overtime call list to identify the service desks on which
14 they have been cross trained, including the children's desk, circulation department, and
15 reference desk. The Sunday overtime call list is used to identify qualified replacements when an
16 employee who is scheduled to work a Sunday overtime shift calls out sick.

¹ The parties did not present evidence explaining how Sunday work was assigned prior to the 1970s. Denise Faucher (Faucher) began her employment with the library as a page in the 1970s before becoming a clerk, then a children's librarian, and later the human resources manager. Faucher testified that she was assigned to work Sundays in the mid-1970s, probably when she was a clerk working at circulation and possibly when she served as a children's librarian. Faucher also testified that she did not object to those assignments or raise the issue with the Union.

² The record does not establish whether there was ever a need to assign employees to work Sunday shifts due to an insufficient number of volunteers for those shifts. Faucher testified that, "back in those days, we had a lot of people who were interested in working Sundays."

1 Since 2014, Sulma Rubert-Silva (Rubert-Silva), the library's Director of Administration
2 and Operations, has overseen the scheduling of Sunday winter hours. Each August, Rubert-
3 Silva distributes a memorandum and scheduling form to graduate librarians identifying the
4 Sundays that the library will be open during the upcoming winter hours season. Each year,
5 Rubert-Silva instructs the employees to indicate the Sundays that they wish to work by circling
6 those dates and to place an "X" through any Sundays on which they are unavailable to work.

7 On August 22, 2019, following her established practice, Rubert-Silva emailed library staff
8 the Sunday overtime request form for the upcoming Sunday winter hours season. Rubert-Silva
9 reminded employees that:

10 [w]hen you sign up to work on Sundays and you are assigned to work on a given
11 Sunday the expectation is that you will report to work as you would any other
12 scheduled day. Although signing up to work on a Sunday is voluntary, once you
13 are assigned to work a given Sunday, you will no longer be considered a volunteer.
14 Once the schedule is completed and distributed, you will be expected to work on
15 the dates assigned. (emphasis in the original)
16

17 At this time, Sunday shifts were popular among graduate librarians and the number of
18 volunteers frequently exceeded the number of available Sunday shifts. Consequently, volunteers
19 were not always scheduled to work every Sunday for which they had expressed interest.³

³ Alex London (London) is a Graduate Librarian 3 who also sits on the Union's Executive Board and serves as the Recording Secretary. London testified that Sunday overtime shifts were popular, referring to them as a "hot ticket back then." Due to this popularity, prior to 2022, London was never scheduled to work on all of the Sundays that he requested. According to Rubert-Silva's August 22, 2019 communication, in previous years the City was only able to assign professional librarians 60% of the Sunday shifts that they had requested.

1 The library was closed during the COVID-19 pandemic.⁴ Once the library reopened, it
2 resumed Sunday winter hours, and the City continued to use the same annual scheduling
3 process.

4 **2022-2023 Winter Hours**

5 On August 10, 2022, Rubert-Silva distributed the Sunday overtime request form for the
6 2022-2023 winter hours schedule. As in prior years, she instructed employees to circle the
7 Sundays they wished to work. The form also stated that, in case there were insufficient
8 volunteers and Rubert-Silva needed to assign Sunday overtime shifts, employees should place
9 an "X" through the Sunday dates that they were unavailable to work. Rubert-Silva instructed
10 employees to return the completed forms by August 25, 2022. Her email reminded employees
11 that once they signed up to work on Sunday, they were expected to work and were no longer
12 considered a volunteer.

13 Unlike prior years, employees did not volunteer in sufficient numbers to staff all of the
14 Sunday shifts for the 2022-2023 winter hours schedule. Consequently, on September 6, 2022,
15 Rubert-Silva emailed the librarians who had not volunteered, writing as follows:⁵

16 Unfortunately, we do not have enough graduate librarians sign up to work on
17 Sundays. As a result, we will need to assign Sunday OT to some staff. You will be
18 assigned to work one Sunday. I have listed the dates below. I will do my best to
19 accommodate your Sunday request. Assignments will be based on seniority. The
20 more seniority you have, the more likely you will be assigned the date you selected.
21

⁴ The record does not contain the specific dates when the library closed due to the pandemic or when it reopened.

⁵ London testified that because there had always been sufficient volunteers to cover all Sunday shifts, he could not recall the City ever having to send out a second solicitation prior to 2022.

1 Rubert-Silva asked the employees to identify three preferred Sunday dates, ranking them as
2 their first, second, and third choices.⁶ Rubert-Silva further wrote that "[i]f you do not have a
3 preference as to which Sunday you are assigned, please let me know and I will assign you a
4 Sunday that has not been selected by another staff member." Rubert-Silva sent this message to
5 twelve employees, including Cara Young (Young).

6 All twelve employees responded to Rubert-Silva's second email by submitting their
7 preferred dates. The City did not treat these employees as volunteers.⁷ Although one employee
8 provided the requested three dates, the employee also suggested that the library close on any
9 Sunday when it lacked sufficient volunteers to cover the overtime. The employee explained that
10 a recent staff development day focused on mental health and wrote that "some of us very much
11 appreciate having Sundays off to recover from the work week."

12 The City assigned nine of the twelve employees to work Sunday overtime shifts during
13 the 2022–2023 winter hours season. The City did not assign Sunday shifts to the remaining
14 employees, including Young, because, after scheduling nine of the twelve employees, additional
15 Sunday staffing was no longer necessary.

⁶ The dates that still required coverage at this time were October 23, 2022, November 13, 2022, November 27, 2022, December 18, 2022, January 22, 2023, January 29, 2023 and April 23, 2023.

⁷ Rubert-Silva testified that she did not consider these employees to be volunteers because they had not volunteered during the initial solicitation. Rather, after determining that there were insufficient volunteers, she informed them that she would assign them Sunday work and requested their scheduling preferences solely to assist in making those assignments. In contrast, the Union characterizes employees who identified preferred Sunday dates in response to the second solicitation as volunteers. For reasons explained later in this decision, I find that these twelve employees were not volunteers but merely provided preferred dates for the Sunday shift assignments.

2023-2024 Winter Hours

On August 15, 2023, Rubert-Silva distributed the Sunday overtime request form for the 2023-2024 winter hours schedule. The form was substantially the same as the form used in prior years, updated only to reflect the applicable Sunday dates.⁸ The form again instructed employees to identify the Sundays that they wished to work and advised that, if there were insufficient volunteers, employees could indicate dates on which they were unavailable in the event that the City assigned them to Sunday overtime. Rubert-Silva instructed the employees to return the completed forms by August 31, 2023.

After determining that there were again insufficient volunteers, on September 6, 2023, Rubert-Silva emailed fourteen graduate librarians who had not volunteered for Sunday hours, including, among others, Young, Claire Laprade (Laprade) and Ben Izaurrealde (Izaurrealde). Rubert-Silva wrote in her email, in relevant part:

Unfortunately, we did not have enough graduate librarians sign up to work on Sundays. As a result, we will need to assign most graduate librarians to work two Sundays. I have listed the dates below. I will do my best to accommodate your Sunday request. Assignments will be based on seniority. The more seniority you have, the more likely it is that you will be assigned the date you selected.

I would ask that you pick six dates and label them based on preference: first, second, and so on. If you do not have a preference as to which Sunday you are assigned, please let me know, and I will assign you a Sunday that has not been selected by another staff member. Please respond by Friday, September 15... If I do not hear back from you, I will assume you do not have a preference.

On September 6, 2023, Young responded by selecting October 15, 2023 and October 29, 2023 as her preferred Sundays. Later that day, Rubert-Silva emailed Young that she needed to identify six preferred dates because if the two dates Young had selected were not available,

⁸ The following dates were offered in 2023: October 15, 22, 29, November 5, 19, 26, December 3, 10, and 17. The following dates were offered in 2024: January 7, 21, 28, February 4, 11, 25, March 3, 10, 17, 24, April 7 and 21.

1 Rubert-Silva would have no other choice but to assign her other dates. Rubert-Silva explained
2 that other staff with more seniority had already listed the two dates Young listed as top choices.

3 Young submitted six additional dates in ranked order. On September 7, 2023, Rubert-
4 Silva confirmed that she would include all eight dates among Young's scheduling preferences.
5 Young subsequently asked Rubert-Silva to remove one of her selected dates, November 5,
6 2023, because she was unavailable on that date.

7 On September 14, 2023, prior to receiving any assigned dates for Sunday overtime,
8 Young informed Rubert-Silva that she was not available to work any Sunday shifts, writing,
9 “[u]nfortunately, I’m not available to do Sundays. If you have questions please contact [Union
10 steward] Doren [Crawley], Alex [London] or myself.”⁹

11 The following day, Rubert-Silva replied to Young, noting that the library had not received
12 enough volunteers to work Sunday hours. Rubert-Silva wrote as follows:

13 As I explained in my original email to you, the library did not have enough
14 professional librarians sign up to work on Sundays. As a result, we will need to
15 assign 2 Sundays to most of the professional staff who did not sign up to work on
16 Sundays. I will be assigning you to work two Sundays (I will do my best to assign
17 you the dates that you listed as preferred) and the expectation is that you will report
18 to work as you would for any other scheduled workday.

19
20 If you have questions about that I would advise you to reach out to Alex and or
21 Doren.

22
23 Two other employees acted in a similar manner by indicating that they could not work on
24 Sundays. In response to Rubert-Silva’s September 6, 2023 email soliciting Sunday dates from
25 all of the employees who had not volunteered for Sunday overtime hours, Izaurrealde originally
26 offered six Sunday dates that he was available to work. However, on September 15, 2023,

⁹ Young did not testify at the hearing. The Local Union President, Sean Maher (President Maher), testified that Young, who had a child born in 2019, found Sunday work burdensome.

1 Izaurrealde wrote to say that his previous message was in error, explaining that “I actually have
2 an ongoing commitment on Sundays which simply does not allow me to work on Sundays (you
3 will notice I never sign up for Sundays) and cannot come in to work.”

4 Three minutes later, Rubert-Silva replied:

5 As I explained in my original email to you, the library did not have enough
6 professional librarians sign up to work on Sundays. As a result, we will need to
7 assign 2 Sundays to most of the professional staff who did not sign up to work on
8 Sundays. I will be assigning you to work two Sundays (I will do my best to assign
9 you the dates that you listed as preferred) and the expectation is that you will report
10 to work as you would for any other scheduled workday.

11
12 Similarly, on September 13, 2023, Laprade wrote to Rubert-Silva that she was only
13 available on December 10, 2023, and that “I’m actually not even sure if I can do that day, but I’m
14 going to try and make it work.” On September 14, 2023, Rubert-Silva responded as follows:

15 As I stated in my original email, due to lack of staff not willing to work on Sundays
16 the library will be assigning two Sundays as OT. Your response does not meet the
17 request I made. I would prefer you send me dates and I will do my best to
18 accommodate your preferred dates, however, if I do not hear back from you, then
19 I will assign you two Sundays.

20
21 Please be aware that you would be expected to report to work as you would any
22 other day you are scheduled to work. I am very sorry to interfere with your
23 weekend, but we just don’t have enough professional staff willing to work on
24 Sundays and we have no other choice but to assign 2 Sundays this year.

25
26 Please come see [me] if you want to discuss or have further questions.

27 On September 15, 2023, Laprade informed Rubert-Silva that she was unavailable to
28 volunteer to work any Sundays for the 2023-2024 winter hours season.¹⁰

29 Ultimately, because there was insufficient staff to cover Sunday shifts, Rubert-Silva
30 assigned Young, Laprade, and Izaurrealde to work Sunday hours, as well as other librarians who

¹⁰ London testified that he understood that only Young indicated she was not willing to work any Sundays at all. However, documentary evidence demonstrates that both Laprade and Izaurrealde also declined to work on any Sunday during the 2023-2024 winter hours season.

1 had not volunteered to work Sunday overtime hours in response to Rupert-Silva's initial
2 solicitation. Rubert-Silva assigned Young to work on Sunday, October 29, 2023.¹¹

3 After Young brought her concerns about being involuntarily assigned to a Sunday
4 overtime shift to London's attention, he informed President Maher. President Maher contacted
5 a City representative about the assignment.¹² Despite the Union's inquiries, the City required
6 Young to work on October 29, 2023 as assigned.

7 OPINION

8 The issue presented is whether the City violated the Law by changing the manner in which
9 librarians were assigned to work Sunday winter hours without first providing the Union with notice
10 and an opportunity to bargain. More specifically, the issue is whether the City's decision to
11 require Young to work Sunday overtime hours on October 29, 2023, over her objection,
12 constituted either a change to an established practice governing Sunday overtime assignments
13 or the implementation of a new policy affecting a mandatory subject of bargaining, thereby
14 triggering the City's obligation to negotiate with the Union.

¹¹ The record does not contain any specific information about how many Sundays, or which specific Sundays Rupert-Silva assigned to Laprade and Izaurralde. However, Rubert-Silva did provide undisputed testimony that she assigned all employees to cover at least one Sunday overtime shift during the 2023-2024 winter hours season.

¹² President Maher testified that an unnamed City representative indicated to him that "they felt they were entitled to force people to work." President Maher further testified that an unidentified City representative informed him that the situation constituted an emergency and that the library could not open unless Young reported to work. President Maher also stated that both Human Resources personnel and Attorney Reichert advised him that the library had to remain open.

The record contains no evidence, other than President Maher's testimony regarding those statements, that the City declared or treated the staffing issue as an emergency. Moreover, the City did not contend at hearing that an emergency existed requiring Young, or any other employee, to work a specific Sunday shift.

1 Section 6 of the Law requires public employers to negotiate in good faith with respect to
2 wages, hours, standards of productivity and performance, and any other terms and conditions
3 of employment. A public employer violates the Law when it unilaterally alters a condition of
4 employment involving a mandatory subject of bargaining without first bargaining with the
5 exclusive collective bargaining representative to resolution or impasse. School Committee of
6 Newton v. Labor Relations Commission, 388 Mass. 557 (1983). An employer's duty to bargain
7 before changing conditions of employment extends to working conditions that have been
8 established through custom and past practice. City of Boston, 16 MLC 1429, 1434, MUP-6697
9 (December 19, 1989). To establish a violation, a union must show that: 1) the employer changed
10 an existing practice or instituted a new one; 2) the change impacted a mandatory subject of
11 bargaining; and 3) the employer implemented the change without prior notice and an opportunity
12 to bargain. Commonwealth of Massachusetts, 20 MLC 1545,1552, SUP-3460 (May 13, 1994);
13 Town of Lexington, 37 MLC 115, 119, MUP- 08-5313 (December 9, 2010).

14 It is well established that the method of assigning overtime is a mandatory subject of
15 bargaining. City of Peabody, 9 MLC 1447, 1450-51, MUP-4765, 4767 (November, 18, 1982);
16 Commonwealth of Massachusetts, Metropolitan District Commission, 17 MLC 1007, 1012, SUP-
17 3144 (June 8, 1990). Therefore, I turn to consider whether the City changed an existing practice
18 or instituted a new practice without bargaining.

19 To determine whether a past practice exists, the Commonwealth Employment Relations
20 Board (CERB) examines the totality of the circumstances surrounding the alleged practice,
21 including whether the practice has occurred with sufficient regularity over an adequate period of
22 time such that employees could reasonably expect it to continue. City of Boston, 41 MLC 119,
23 125, MUP-13-3371, MUP-14-3466, MUP-14-3504 (November 7, 2014). The CERB has not

1 established a fixed period of time necessary for a practice to become a binding condition of
2 employment, explaining “[n]or do we believe that it is practical to consider an artificial or arbitrary
3 length of time as a proper standard to be applied in making these decisions. A case-by-case
4 approach appears to be the sensible method.” City of Boston, 20 MLC 1603, 1608-09, MUP-
5 7976 (May 20, 1994).

6 The Union contends that the City violated the Law by assigning Young to work a Sunday
7 overtime shift during the 2023-2024 winter hours season even though she did not volunteer. I
8 disagree. Although I find that Young did not volunteer for Sunday work, the dispositive question
9 is whether the City changed its established method of staffing Sunday winter hours. The record
10 demonstrates that it did not.

11 For many years, the City staffed Sunday winter hours by first soliciting volunteers and
12 advising employees that it would assign Sunday work if an insufficient number volunteered. The
13 City consistently communicated this procedure to employees through the Sunday scheduling
14 forms that Rubert-Silva distributed each year. Those forms, which remained substantially
15 unchanged since 2014, informed employees that the City would assign Sunday work if it lacked
16 sufficient volunteers.

17 For many years, however, the City never needed to invoke the assignment portion of its
18 staffing procedure because enough employees volunteered to cover the available shifts. Sunday
19 overtime was highly desirable before the 2022-2023 winter hours season. London testified that
20 he routinely volunteered for more Sunday shifts than he ultimately received because so many
21 employees wanted the overtime shifts. London referred to the Sunday overtime shift at the time
22 as a “hot ticket.”

1 The circumstances changed after the library reopened following the COVID-19 pandemic.
2 During both the 2022-2023 and 2023-2024 winter hours seasons, an insufficient number of
3 employees volunteered to meet the City's staffing needs. In 2022, Rubert-Silva notified
4 employees who had not volunteered for the 2022-2023 winter hours season that the City would
5 assign them Sunday overtime shifts, consistent with the City's established procedure, and invited
6 them to identify preferred dates. She explained that she would attempt to accommodate those
7 preferences but did not guarantee that she would schedule employees on their preferred dates.

8 The record demonstrates that the City followed this same procedure during the 2023-
9 2024 winter hours season. Rubert-Silva again distributed the same scheduling form, informed
10 employees that the City would assign Sunday overtime if necessary, and invited employees who
11 had not volunteered to identify preferred dates. The only difference is that for the 2022-2023
12 winter hours season, the employees who had not volunteered offered preferred dates as
13 requested while during the 2023-2024 season, Young and two other employees indicated that
14 they could not work on any Sunday.

15 The Union first argues that the City changed its practice during the 2023-2024 winter
16 hours season because it previously assigned Sunday overtime only to volunteers. In making this
17 argument, the Union considers those employees who initially declined to volunteer, but later
18 identified preferred dates after Rubert-Silva informed them that they would receive Sunday
19 assignments, as volunteers. Conversely, the City does not consider these employees to be
20 volunteers. I agree with the City's position. I conclude that employees who wished to volunteer
21 to work the Sunday overtime shifts did so during the City's initial solicitation seeking volunteers.
22 The City's subsequent request for preferred dates during both the 2022-2023 and the 2023-2024
23 winter hours seasons served a different purpose. After determining that the library lacked

1 enough volunteers, Rubert-Silva informed those employees who had not volunteered that she
2 would assign them Sunday shifts. She invited those employees to identify preferred dates before
3 she made the mandatory assignments. Allowing employees to express scheduling preferences
4 did not transform the mandatory assignment into a voluntary assignment.

5 Moreover, although every employee who received Rubert-Silva's second communication
6 during the 2022-2023 winter hours season submitted preferred dates, the record shows that at
7 least one employee objected to working Sundays and suggested that the City close the library
8 instead of assigning mandatory Sunday work when too few employees volunteered. This
9 evidence further supports my conclusion that even though employees offered preferred dates
10 after it was clear that they were subject to mandatory Sunday assignments, they were not
11 volunteering to work on Sundays. Accordingly, I find that the City enforced its longstanding
12 staffing procedure during the 2022-2023 season by assigning Sunday overtime shifts when there
13 were insufficient volunteers. The City then followed the same procedure during the 2023-2024
14 season.

15 The Union next argues that the City changed its practice because Young was the first
16 employee who categorically refused every Sunday assignment yet nevertheless received an
17 assignment.¹³ I agree that the record contains no evidence that the City had assigned Sunday
18 work to an employee who refused every Sunday shift prior to doing so during the 2023-2024
19 winter hours season. That fact, however, does not establish a unilateral change.

¹³ Although the record also demonstrates that Rubert-Silva assigned both Laprade and Izaurrealde to at least one Sunday overtime shift after they informed her that they did not wish to work on any Sunday, the Union only argued on behalf of Young, and the Complaint only pertains to the City's assigning Young to work Sunday overtime on October 29, 2023.

1 The first prong of a unilateral change analysis is whether the employer changed an
2 existing practice or instituted a new condition of employment. Commonwealth of Massachusetts,
3 20 MLC at 1552 (citing Town of North Andover, 1 MLC 1103, 1106, MUP-529 (September
4 3,1974)). Although the record does not establish the precise contours of the City's staffing
5 procedure in the 1970s, it does establish that the City assigned Faucher to work on Sundays
6 during that period. Further, the record establishes that, since at least the 2013-2014 winter hours
7 season, the City has followed a consistent staffing procedure. Specifically, the City first solicits
8 volunteers and informs employees that it will assign Sunday work if too few employees volunteer.
9 When the number of volunteers was insufficient to meet staffing needs in both 2022-2023 and
10 2023-2024, the City assigned the non-volunteers to Sunday overtime hours. Therefore, although
11 the need to assign non-volunteers was not required frequently over the years, the record
12 establishes that the City has assigned Sunday overtime hours when necessary to satisfy its
13 staffing needs. The CERB has determined that a condition of employment may exist despite
14 sporadic or infrequent activity where a consistent practice that applies to rare circumstances is
15 followed each time that the circumstances preceding the practice recurs. See, e.g., City of
16 Boston, 41 MLC at 125, citing Commonwealth of Massachusetts, 23 MLC 171, 172, SUP-3586
17 (January 30, 1997).

18 Although Young's categorical refusal to work on Sundays presented a novel factual
19 circumstance, the City did not depart from its established staffing procedure. Rubert-Silva
20 followed the final step of the City's long-standing practice when she assigned Young to work a
21 Sunday overtime shift after an insufficient number of employees volunteered.¹⁴ Accordingly, I

¹⁴ Rubert-Silva also followed the established past practice of attempting to accommodate employees' preferred dates when assigning Sunday shifts. She assigned Young to work on

1 conclude that the record does not support a finding that the City changed an existing practice or
2 implemented a new policy.

3 The language in Special Article 2, Section B of the parties' CBA does not require a
4 different finding. That provision reflects the parties' disagreement over whether the CBA
5 authorizes mandatory overtime.¹⁵ It does not change the fact that the City has long maintained
6 a staffing procedure under which it assigns Sunday work when there are insufficient volunteers.

7 Because the Union failed to establish that the City changed its established staffing
8 procedure or implemented a new policy when it assigned Young to work a Sunday overtime shift
9 on October 29, 2023, it failed to establish the first element of a unilateral change claim. I therefore
10 find that the City was not obligated to bargain with the Union before assigning Young the Sunday
11 overtime shift at issue in this matter.

12 CONCLUSION

13 Based on the record and for the reasons stated above, I conclude that the City did not
14 commit a unilateral change or violate Sections 10(a)(5) or, derivatively, 10(a)(1) of the Law as
15 alleged. Accordingly, I dismiss the Complaint.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



GAIL SOROKOFF, ESQ.
HEARING OFFICER

October 29, 2023, one of the first two dates Young identified as “preferred” before Young informed Rubert-Silva that she was not available to work on any Sunday.

¹⁵ At no point during the hearing did the City assert that an emergency existed that required Young or anyone else to work a Sunday overtime shift.

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 no later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.