

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

MALDEN POLICE PATROLMEN'S
ASSOCIATION

and

CITY OF MALDEN

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Case No.: MUPL-14-3993

Date Issued: June 14, 2016

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

| | | |
|--------------------------|---|--|
| Paula Minichiello, Esq. | - | Representing the Malden Police Patrolmen's |
| Christopher Fallon, Esq. | - | Association |
| Albert Mason, Esq. | - | Representing the City of Malden |

HEARING OFFICER'S DECISION

Summary

1 The issue in this case is whether the Malden Police Patrolmen's Association
2 (Union) insisted to impasse on a permissive subject of bargaining in violation of M.G.L.
3 c.150E, Sections 10(b)(1) and (2) of the Law (the Law), and thereby failed to participate
4 in good faith in the mediation, fact-finding and arbitration procedures of the Joint Labor
5 Management Committee (JLMC) in violation of Section 10(b)(3). I find that the Union
6 violated the Law as alleged.

Statement of the Case

On September 10, 2014, the City of Malden (City) filed a charge of prohibited practice with the Department of Labor Relations (DLR), alleging that the Malden Police Patrolmen's Association (Union) had engaged in prohibited practices within the meaning of Section 10(b)(2) and 10(b)(3), and, derivatively, 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law). Following an in-person investigation of these allegations on October 17, 2014, the Investigator dismissed the charge. The City filed a timely Request for Review with the Commonwealth Employment Relations Board (CERB) pursuant to DLR Rule 456 CMR 15.04(3). The Union filed a response to the Request and the City filed a reply to the Union's response. On April 3, 2015, the CERB issued a ruling concluding that there was probable cause to believe that the Union violated the Law and remanded the matter to the Investigator. The Investigator issued a Complaint of Prohibited Practice on April 3, 2015, and the Union filed an Answer to Complaint on April 24, 2015.¹

The parties subsequently waived their right to a hearing with witness testimony and agreed to submit evidence in the form of a stipulated record. They filed briefs on or about May 24, 2016. Based on the record, which includes stipulated facts² and documentary exhibits, and in consideration of the parties' arguments, I render the following opinion.

¹ On April 24, 2016, the Union filed a Motion to Dismiss the Complaint (Motion) arguing that the proposal at issue in the Complaint does not materially conflict with M.G.L. c.44, Section 53C. I declined to rule on the Motion because the Union did not clearly admit in its Answer that it made the proposal at issue in the Complaint and Motion.

² The Union's brief references facts that are not included in the stipulated record. I have not considered any of those facts in rendering my decision.

Stipulated Facts

1. The Union is an employee organization within the meaning of Section 1 of the Law.

2. The City is a public employer within the meaning of Section 1 of the Law.

3. The Union is the exclusive bargaining representative for certain patrol officers employed by the City.

4. The City and the Union are parties to a collective bargaining agreement (2010-2013 CBA) that was negotiated by the prior municipally-elected administration and that expired on June 30, 2013.

5. The current mayoral administration took office on January 2, 2012.

6. On March 1, 2011, the Union and the previous administration reached agreement on a Memorandum of Understanding (MOU) that extended the prior collective bargaining agreement, except as modified by the MOU. The agreement was effective on July 1, 2010 and continued until June 30, 2013.

7. The March 1, 2011 MOU added the following new paragraph to Article 23, Details of the collective bargaining agreement:

Section 13: "The City agrees to fund and maintain a separate budgetary line item in the police budget each July 1 in the amount of \$100,000. This amount of money will be used to timely pay a patrolman for details performed in the event a vendor does not pay within fourteen (14) days of the detail being performed. The parties agree that accounts receivable for details shall be used to offset such funding after officers have been paid for detail service."

8. Since at least July 1, 1996, all of the collective bargaining agreements between the City and the Union, including the 2010-2013 CBA, have included the following language in Article 23, Details:

"The detail board shall interview and nominate for hiring the detail clerk subject to the City affirmative action plan and subject to the approval of the Commissioner or his designee. No person shall be hired as detail clerk without the nomination of the detail board. Further, the detail board may terminate the said detail clerk subject to the approval of the Commissioner or his designee."

9. The Union and the City have a long-standing history and practice of including Article 23 in successive collective bargaining agreements. The language of Article 23 has not changed since the 1996-1999 CBA except as follows:

- Section 6 of Article 23 in the 1996-1999 CBA which read: "The detail rate as per Section 2 of this Article shall take effect Sunday, April 18, 1982" has been omitted.
- The following language from Section 7 of the 1996-1999 CBA has been omitted: "Said form shall be developed within fifteen (15) days of the signing of this agreement...."
- The 2010-2013 CBA contains Section 13 which states as follows: "The City agrees to fund and maintain a separate budgetary line item in the police budget each July 1 in the amount of \$100,000. This amount of money will be used to timely pay a patrolman for details performed in the event a vendor does not pay within fourteen (14) days of the detail being performed. The parties agree that accounts receivable for details shall be used to offset such funding after officers have been paid for detail service."

10. The City, upon receipt from the "paid detail clerk" of appropriate amounts coupled with the names of the officers involved, facilitates the payment to officers who perform outside details in their regular paycheck. These payments are reflected in a separate line item on each pay stub.

11. After seven successor contract bargaining sessions, the Union petitioned the Joint Labor Management Committee (JLMC) to take jurisdiction on January 21, 2014. The JLMC docketed the case as JLM-14-3406. On March 27, 2014, the JLMC voted to exercise its jurisdiction over the matter.

12. Early on in the negotiation process with the administration that took office in January of 2012, the Union met on several occasions with a negotiating team from the City which included Mayor Gary Christensen. Several members of the Union's Executive Board, including the current President, John Lanni, attended these informal meetings. In these negotiations, detail pay and the timely payment of said work performed was addressed. At certain points in the negotiations, the Mayor proposed to the Union that the City would become current on all outstanding detail pay to each and every police officer if the Union would turn over to the City the responsibility for all billing and collection of detail entitlement.

13. On June 17, 2014, during a mediation session with a JLMC Mediator, the Union, for the first time in these successor negotiations, presented the City with the following specific written "proposal for settlement purposes." The Union's proposal included the following provision:

"City will be responsible for all billing and collection of detail entitlements. The detail clerk will remain an employee, full time, of the

1 Malden Police Department. City of Malden will become current on all
2 outstanding detail pay owed to Patrolmen on or before September 1,
3 2014. Thereafter, City agrees to pay detail pay as earned every two
4 weeks, court overtime and regular overtime will be paid two weeks as
5 earned."

6
7 14. On November 21, 2014, the City's "Package Proposal" dated June 14,
8 2014 was resubmitted to the MPPA with the date crossed out and the current
9 date hand written across the top of the two page proposal.

10
11 15. There have been no further JLMC proceedings in JLMC case no. JLM-14-
12 3406 after the City filed its charge of prohibited practice on September 10, 2014.
13 The Union maintained its detail proposal referred to in paragraph 13 until it
14 submitted an amended proposal, which is marked as Joint Exhibit 10, to the City
15 and the hearing officer on April 12, 2016, after the Superior Court issued its
16 February 9, 2016 decision referred to in paragraph 19.

17
18 16. The authorizing and enabling provisions of M.G.L. c.44, s.53C, a statute
19 not listed in Section 7 (d) of M.G.L. c.150E, states in pertinent part:

20
21 "All money received by a city. . . as compensation for work performed by
22 one of its employees on an off-duty work detail which is related to such
23 employee's regular employment ... shall be deposited in the treasury
24 and shall be kept in a fund separate from all other monies of such city,
25 town or district and, notwithstanding the provisions of section fifty
26 three, shall be expended without further appropriation in such manner
27 and at such times as shall, in the discretion of the authority authorizing
28 such off-duty work detail or special detail work, compensate the
29 employee or person for such services; provided, however, that such
30 compensation shall be paid to such employee or person no later than
31 ten working days after receipt by the city, town or district of payment for
32 such services.

33
34 When necessary, a city, town or district may appropriate funds to be
35 placed in the special fund authorized by this section to be used for the
36 purpose for which the fund was established."

37
38 17. 12.29 CFR section 553.227, Outside Employment states in pertinent part:

39
40 (d) Section 7(p)(1) The department may require that the separate and
41 independent employer pay the fee for such service directly to the
42 department, and establish procedures for the officers to receive their
43 pay for the special details through the agency's payroll system. Finally,
44 the department may require that the officer's observe their normal
45 standards of conduct during such details and take disciplinary action
46 against those who fail to do so.

1
2 18. M.G.L. Chapter 149 section 148 states in pertinent part:

3
4 Section 148. Every person having employees in his service shall pay
5 weekly or bi-weekly each such employee the wages earned by him to
6 within six days of the termination of the pay period during which the wages
7 were earned if employed for five or six days in a calendar week, or to
8 within seven days of the termination of the pay period during which the
9 wages were earned if such employee is employed seven days in a
10 calendar week, or in the case of an employee who has worked for a period
11 of less than five days, hereinafter called a casual employee, shall, within
12 seven days after the termination of such period, pay the wages earned by
13 such casual employee during such period, but any employee leaving his
14 employment shall be paid in full on the following regular pay day, and, in
15 the absence of a regular pay day, on the following Saturday; and any
16 employee discharged from such employment shall be paid in full on the
17 day of his discharge,

18
19 The word "wages" shall include any holiday or vacation payments due an
20 employee under an oral or written agreement. An employer, when paying
21 an employee his wage, shall furnish to such employee a suitable pay slip,
22 check stub or envelope showing the name of the employer, the name of
23 the employee, the day, month, year, number of hours worked, and hourly
24 rate, and the amounts of deductions or increases made for the pay period.

25
26 19. The Union filed suit on or about January 21, 2015, with the Middlesex
27 Superior Court asserting that the City has failed to promptly pay the members
28 of the Union for paid details which the Union asserts are wages earned. On
29 October 20, 2015, the parties appeared before Judge Henry of the Middlesex
30 Superior Court to present and argue at a Rule 56 hearing. On February 9,
31 2016, the Superior Court denied the Union's Motion for Summary judgment and
32 allowed the City's Motion to Dismiss. The Union has appealed the Court's
33 decision.

34
35 Facts Derived from Joint Exhibits

36 JLMC Labor Staff Representative Joseph Hubley's (Hubley) March 5, 2015 letter
37 to Union attorney Christopher Fallon (Fallon) and Employer attorney Albert Mason
38 (Mason) stated in pertinent part as follows:

39 At its meeting on February 26, 2015, the Joint Labor Management Committee
40 voted on this matter.
41

1 As you know, the Committee previously determined that issues raised in
2 negotiations had remained unresolved for an unreasonable period of time,
3 resulting in the apparent exhaustion of the process of collective bargaining. A
4 duly appointed subcommittee of the Committee, comprised of Chairman John
5 Hanson, Police Representative William DeMille and management representative
6 John Petrin held a hearing on January 24, 2015 regarding the issues in dispute,
7 the positions of the parties, the views of the parties as to how the continuing
8 dispute should be resolved and the preference of the parties as to the
9 mechanism to be followed in order to reach a final agreement between the
10 parties.

11
12 The Committee now finds that there is an apparent exhaustion of the processes
13 of collective bargaining which constitutes a potential threat to public welfare.

14
15 The Committee notifies the parties that it invokes the following procedures and
16 mechanism for the resolution of the collective bargaining negotiations:

17
18 1. The dispute shall be submitted to conventional Issue-by-issue
19 Arbitration to be conducted by an outside neutral, who will serve as chair
20 of the tri-partie panel. The other two members of the panel shall be a
21 Police Representative and a Management Representative designated by
22 the Committee.

23
24 2. The issues to be arbitrated will be limited to wages, duration and the
25 following issues, which were presented at the 3(a) hearing:

26
27 Union's Issues:

- 28 1. Night Shift Differential
29 2. Ten Year Step
30 3. Sick Leave Buyback
31 4. Detail Pay

32
33 Town's Issues:

- 34 1. Night Shift Differential
35 2. Health Insurance

36 ***

37 Opinion³

³ The Union does not formally dispute the DLR's jurisdiction, but argues that the DLR cannot decide this case until the appeal of the Superior Court ruling referenced in Stipulation No. 19 is complete. I see no reason to delay the decision. The Superior Court ruling concerned whether detail compensation constitutes wages as defined in M.G.L. c.149, s.148, and the Union cites no case or rationale to support its assertion that adjudication of this 150E claim must await a decision on a non-payment of wage claim issue.

Insistence to Impasse

It is well-settled that a party violates its obligation to bargain in good faith when it insists to the point of impasse on including non-mandatory subject matters in a collective bargaining agreement. NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958); Town of Andover and Local 1658, IAFF, 4 MLC 1081, 1083 MUPL-2084 (June 24, 1977)(union violated Section 10(b)(2) by insisting to impasse and beyond on a non-mandatory subject of bargaining). While a party is free to propose a permissive subject for bargaining, it may not insist upon it as a condition precedent to an agreement. IAFF, Local 1009, 2 MLC 1238, 1239, MUPL-2018 (December 15, 1975).

Insisting to impasse and beyond on a non-mandatory subject of bargaining during the pendency of the JLMC's dispute resolution proceedings also violates the duty to participate in good faith in JLMC proceedings. See IBPO, 4 MLC 1378, MUPL-2151 (October 17, 1977). The CERB has noted the importance of determining the mandatory or non-mandatory nature of a proposal in cases subject to the final dispute resolution proceedings of Section 9 of the Law, so that a party is not compelled to adopt a proposal in a non-mandatory area. Town of Andover, 4 MLC at 1083.

The stipulated facts in this case show that the Union insisted to impasse on its June 17, 2014 detail proposal. The Union offered the disputed detail proposal a few months after the JLMC voted to exercise jurisdiction over the parties' dispute and maintained it through the JLMC's dispute resolution process, both before and after the

1 City objected to it by filing the prohibited practice charge in September of 2014.⁴ The
2 Union pressed its proposal throughout the JLMC's February/March 2015 determination
3 that the issues raised in negotiations had remained unresolved for an unreasonable
4 period of time, resulting in the apparent exhaustion of the collective bargaining process,
5 and constituting a potential threat to the public welfare. See IBPO, 4 MLC at 1382
6 (union unlawfully insisted to impasse on a non-mandatory subject of bargaining where
7 the parties reached impasse, and the union submitted a non-mandatory proposal to the
8 fact-finder over the city's objection). The JLMC proceedings ceased after the City filed
9 the charge, and the Union made the proposal a precondition to an agreement by
10 submitting it as an issue in the JLMC arbitration proceeding over the City's objection.
11 See generally, Spentonbush/Red Star Companies v. NLRB, 106 F. 3d 484, 493 (1997)
12 (National Labor Relations Act does not prohibit parties from negotiating over non-
13 mandatory subjects during the bargaining process, but prohibits insistence to impasse
14 upon a non-mandatory proposal where the proposal is presented as an ultimatum and
15 its acceptance is a condition precedent to an agreement); IAFF, 2 MLC at 1240. Thus,
16 it is clear that the Union insisted to impasse on its June 17 proposal.

17 **Mandatory Bargaining**

⁴ I have not considered the import of the amended proposal that the Union submitted to me on April 12, 2016, as the parties were preparing to litigate this case. The focus of my inquiry is whether the parties were at impasse during the time frame surrounding the filing of the charge, and specifically, whether the Union maintained the proposal after the City objected to it by filing the charge. Thus, I need not consider a proposal filed over 18 months later. There are no facts in the record demonstrating that the Union removed the 2014 proposal from the JLMC arbitration proceeding, or that a party can substitute a proposal at this late stage in the process.

1 The Union acknowledges that the Law prohibits a party from insisting to impasse
2 on a non-mandatory subject of bargaining. It defends its actions by arguing that the
3 subject of the proposal - detail pay – is a mandatory subject of bargaining. The City
4 disagrees and contends that the June 17 proposal is a non-mandatory subject of
5 bargaining because it conflicts with the requirements of M.G.L. c.44, Section 53C and
6 federal law.⁵

7 To determine whether a matter is a mandatory subject of bargaining, the CERB
8 balances the interests of employees in bargaining over a particular subject with the
9 interests of the public employer in maintaining its managerial prerogatives, and
10 considers factors like the degree to which the issue has a direct impact on terms and
11 conditions of employment, whether the issue concerns a core governmental decision, or
12 whether it is far removed from terms and conditions of employment. Commonwealth of
13 Massachusetts, 25 MLC 201, 205, SUP-4075 (June 4, 1999). The opportunity to
14 perform paid details and compensation for paid details are generally mandatory
15 subjects of bargaining because they directly affect bargaining unit members' terms and
16 conditions of employment. See Town of Winthrop, 28 MLC 200, 202, MUP-2288
17 (January 4, 2002); Town of Burlington, 35 MLC 18, 24-25, MUP-04-4157, (June 30,
18 2008), aff'd sub nom. Town of Burlington v. CERB, 85 Mass. App. Ct. 1120 (2014)(Rule
19 1:28 decision). However, because the City argues that the detail proposal conflicts with
20 the requirements of M.G.L. c.44, Section 53C, I consider the import of Section 7(d) of

⁵ Because I have found that the June 17 proposal conflicts with the M.G.L. c.44, Section 53C, I need not address the City's argument that it also conflicts with "Federal law 12.29 CFR section 553.227." Also, the CERB rejected that argument in its April 3, 2015 remand and limited the issue in the Complaint to whether the Union unlawfully insisted to impasse on a proposal that unlawfully conflicts with M.G.L. c.44, Section 53C.

1 the Law, commonly known as the "Conflicts" statute. City of Newton, 42 MLC 181,
2 MUP-12-2102 (January 29, 2016) (appeal pending).

3 It is well-established that if a statute specifically mandating certain terms and
4 conditions of employment is not listed in Section 7(d), the public employer and union are
5 incapable of amending the statute's requirements through bargaining. Consequently,
6 neither party has a duty to bargain over the subject matter of the statute,
7 notwithstanding the fact that the subject matter refers to what otherwise would be a
8 mandatory subject of bargaining. National Association of Government Employees, 17
9 Mass. App. Ct. 542, 544 (1984). If a statute implicates mandatory subjects of
10 bargaining and the statute is not listed in Section 7(d), the CERB examines the specific
11 language of that statute to see if the statute creates a specific, narrow mandate that
12 controls all issues to the exclusion of any collective bargaining negotiations, Town of
13 South Hadley, 27 MLC 161, 163, MUP-1834 (June 12, 2001), and if bargaining would
14 undermine the purpose of the statute. See Secretary of Administration and Finance v.
15 CERB, 74 Mass. App. Ct. 91, 97 (2009).

16 The City argues that the June 17 proposal conflicts with the terms of G.L. c.44,
17 Section 53C because the proposal requires the City to pay employees within two weeks
18 of when the pay is earned, but the statute directs the City to pay employees only after
19 receipt of payment from a third party. The Union argues in its Motion to Dismiss the

1 Complaint⁶ that there is no conflict between the proposal and the statute because the
2 statute merely provides a framework within which a municipality bills and collects money
3 and then pays employees, if it has not done so already. It notes that the plain language
4 of the statute does not explicitly prohibit a municipality from classifying detail pay as
5 "earned," but simply instructs municipalities on how to handle the money that it receives
6 for details that its employees perform.⁷ I am not persuaded by the Union's arguments
7 and find that the June 17 proposal materially conflicts with the statute.

8 The statute states in pertinent part that "all money received by a city...as
9 compensation for work performed by one of its employees on an off-duty work detail
10 which is related to such employees regular employment...shall be deposited in the
11 treasury and shall be kept in a fund separate from all other monies of such
12 city...and...shall be expended without further appropriation in such manner and at
13 such times as shall, in the discretion of the authority authorizing such off-duty work
14 detail or special detail work, compensate the employee or person for such services;
15 provided, however, that such compensation shall be paid to such employee or person
16 no later than ten working days after receipt by the city...of payment for such services."
17 A few observations can be made from the plain language of the statute. First, even

⁶ The Union does not argue in its brief that there is no conflict between the June 17 proposal and M.G.L. c.44, s. 53C. However, it does note that the Superior Court's ruling "fell short of making a ruling regarding the resolution of the conflict between timely payment of "wages" and the conflict with the municipal finance law G.L. c.44, Section 53C wherein the municipality shall pay within ten (10) days upon receipt of the third party vendor payment."

1 though the statute does not explicitly prohibit a city from paying employees before it
2 receives payment from a detail vendor, the statute clearly contemplates payment to
3 employees after a city receives payment. The requirement that a city deposit
4 compensation for off-duty work details in separate fund would be unnecessary if a city
5 had not already received money from a detail vendor. Prior receipt is also assumed in
6 the language of the introductory phrase which states: “[a]ll money *received by* a
7 city...”(emphasis added). Second, the statute confers discretionary authority on a city
8 regarding the timing and manner of paying employees for off-duty details or special
9 detail work for which it has received payment. However, the statute also limits a city’s
10 discretion over the timing of payment by directing a city to compensate employees who
11 performed detail work within ten days of receipt of payment for the detail work. In this
12 regard, the statute is more than just a set of instructions for municipalities to follow once
13 they receive payment for details.

14 The Union’s proposal materially conflicts with this statute because it eliminates
15 the City’s discretion over the timing of payment by requiring payment by a certain date
16 (September 1, 2014 for “outstanding detail pay”) or timeframe (“thereafter, every two
17 weeks as earned.”) This conflict mirrors the conflict that the Appeals Court noted in City
18 of Lynn v. Labor Relations Commission, 43 Mass. App. Ct. 172, 179 (1997), where it
19 reversed the CERB’s decision to compel a city to bargain over its fire chief’s
20 discretionary authority under G.L. c.32, Section 16(1)(a) to initiate the superannuation

⁷ The Union also argues in its Motion that details are wages within the meaning of M.G.L. c.149, s.148, and must be paid pursuant to that statute. However, questions concerning the applicability of M.G.L. c.149, s.148 exceed the scope of the Complaint and are at issue in the Superior Court litigation referred to in Stipulation no. 19. Consequently, I have not addressed that argument.

1 retirement process for a disabled firefighter. Here as in Lynn, requiring bargaining over
2 the timing of payment for extra-duty details negates the purpose of the statute in
3 entrusting the discretion to determine the manner and payment of timing to the City.
4 See also, City of Somerville v. Somerville Municipal Employees Association, 451 Mass.
5 493, 497 (2008)(court finds a material conflict where an arbitration award usurps a
6 discretionary power that the Legislature granted to the city's mayor.)

7 There is also a conflict between the statute and the proposal concerning the
8 timing of payment. The proposal compels payment as earned every two weeks, yet the
9 statute requires payment no later than 10 working days after the City's receipt of
10 payment. In addition to potentially requiring payment after the statutory payment
11 deadline, the proposal could also require the City to pay officers before it receives
12 payment from the vendor. Compelling bargaining over a proposal to pay officers before
13 it receives payment from a vendor conflicts with and obviates the purpose of the statute.
14 There would be no reason to give a municipality the discretion over the timing of paying
15 an employee after it receives payment from a vendor if an arbitrator could order the
16 municipality to pay the employee before it receives payment. In short, compulsory
17 submission of this proposal to arbitration over the City's objection could produce an
18 award compelling the City to pay officers before receiving payment, when the statute
19 gives the City the discretion – within specified limits – to decide the timing and manner
20 of payment after receiving compensation from the detail vendor.

21 Finally, Worcester Police Officials Association, 4 MLC 1366, MUPL-2069
22 (October 13, 1977) does not require a different result. In Worcester, the former Labor
23 Relations Commission, the CERB's statutory predecessor, declined to decide whether a

1 union proposal conflicted with a non-150E statute when it considered whether the union
2 had unlawfully insisted to impasse on a non-mandatory proposal. The former
3 Commission determined that this statutory analysis was best left to the courts and
4 would not injure the parties because any illegal proposal that became part of a contract
5 through arbitration could be stricken by a court upon review. 4 MLC at 1369. However,
6 subsequent cases have signaled a different approach. The Lynn court stated that a
7 governmental employer cannot be compelled to submit a matter to collective bargaining
8 or the arbitration process where the employer acts with reference to a statute that
9 authorizes the employer to perform a specific, narrow function or has a specific purpose
10 that would be undermined if the employer's freedom of action was compromised by the
11 collective bargaining process or by arbitration. 43 Mass. App. Ct. at 180. This statement
12 contravenes the sentiment expressed in Worcester, which compelled arbitration of
13 proposals that may have materially conflicted with a statute not listed in Section 7(d).
14 Consequently, I find that the Law does not permit the Union to insist to impasse on a
15 proposal that conflicts with G.L. c.44, Section 53C.

16 I have reviewed the Union's remaining arguments and find that they have no
17 merit. The Union's primary argument is that the detail pay proposal is a mandatory
18 subject of bargaining because the parties have a past practice of bargaining over detail
19 pay in successor contract negotiations. The Union emphasizes that the parties
20 discussed various aspects of detail pay in the current negotiations, including timely
21 payment for detail work, and it notes that the Mayor had offered to become current on
22 all outstanding detail pay if the Union gave the City the responsibility for detail billing
23 and collection.

Finally, I decline to address the Union's contentions that the City has: 1) violated the contract by rejecting the Union's proposal and failing to pay detail wages; 2) frustrated the Union and obstructed resolution of the contract; 3) failed to timely pay wages pursuant to G.L.c.149; and/or 4) improperly capped the \$100,000.00 fund described in Article 23 of the CBA. Because the complaint alleges that the Union violated the Law, the lawfulness of the City's actions is not at issue.⁹

For the foregoing reasons, I find that the Malden Police Patrolmen's Association insisted to impasse and beyond on a non-mandatory subject of bargaining while participating in the JLMC's dispute resolution procedures. Such conduct violates M.G.L. c.150E, Sections 10(b)(2), (b)(3), and, derivatively, 10(b)(1) of the Law.

⁹ In a timely-filed addendum to its closing brief, the Union queries why the City has not elected to withdraw the charge in this case when the Union's actions mirror the actions of the City in what the Union views as a similar case. Because the Union's question appears to be rhetorical and directed towards the City, I do not address it.

Order

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT the Malden Police Patrolmen's Association shall:

1. Cease and desist from:
 - a) Failing to bargain in good faith by insisting to impasse on its June 17, 2014 detail proposal; and
 - b) In any like or related manner interfering with, restraining or coercing the City in the exercise of its rights guaranteed under the Law.
2. Take the following action that will effectuate the purposes of the Law:
 - a) Immediately withdraw its June 17, 2014 detail proposal from consideration in JLMC proceeding JLM-14-3406, including arbitration, and not resubmit the proposal in the same form during any negotiations or impasse resolution procedures;
 - b) Post immediately in all conspicuous places where members of Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the Union customarily communicates with its members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees. The Notice to Employees shall be signed by an elected Union officer, and the Union shall take reasonable steps to ensure that the Notice is not altered, defaced, or covered by any other material. If the Union is unable to post copies of the Notice in all places where notices to bargaining unit employees are customarily posted in the City, the Union shall immediately notify the Executive Secretary of the DLR in writing, so that the DLR can ask the City to permit the posting; and
 - c) 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



SUSAN L. ATWATER, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for review with the Executive Secretary of 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
DEPARTMENT OF LABOR RELATIONS**

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE DEPARTMENT OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Department of Labor Relations has determined that the Malden Police Patrolmen's Association (Union) violated Sections 10(b)(1),(2) and (3) of Massachusetts General Laws, Chapter 150E (the Law) by insisting to impasse on a non-mandatory subject of bargaining.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights: to engage in self-organization; to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT fail to bargain in good faith by insisting to impasse on our June 17, 2014 detail proposal.

WE WILL NOT, in any like or related manner interfere with, restrain or coerce the City in the exercise of its rights guaranteed under the Law.

WE WILL immediately withdraw our June 17, 2014 detail proposal from consideration in JLMC proceeding JLM-14-3406, including arbitration, and we will not resubmit the proposal in the same form during any negotiations or impasse resolution procedures.

Malden Police Patrolmen's Association

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, 19 Staniford Street, 1st Floor, Boston MA 02114 (Telephone: (617) 626-7132).