

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

\*\*\*\*\*

In the Matter of:

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 1713

and

TOWN OF HUDSON

\*\*\*\*\*

\*  
\*  
\*  
\*  
\*  
\*  
\*

Case Number: MUPL-19-7565

Date Issued: March 11, 2021

Hearing Officer:

James Sunkenberg, Esq.

Appearances:

Patrick N. Bryant, Esq. - Representing International Association  
of Firefighters, Local 1713

Kimberly A. Rozak, Esq. - Representing Town of Hudson

HEARING OFFICER'S DECISION

SUMMARY

1 The issue is whether the International Association of Firefighters, Local 1713  
2 (Union) bypassed the Town of Hudson's (Town) bargaining representative in violation of  
3 Section 10(b)(2) and, derivatively, Section 10(b)(1) of Massachusetts General Laws,  
4 Chapter 150E (the Law) by petitioning the Town Meeting to increase firefighter staffing.  
5 Based on the record, and for the reasons explained below, I find that the Union violated  
6 the Law.

STATEMENT OF CASE

7  
8 On September 13, 2019, the Town filed a charge of prohibited practice (Charge)  
9 with the Department of Labor Relations (DLR) alleging that the Union had violated

1 Sections 10(b)(1) and (b)(2) of the Law by: repudiating Article 30 of the parties' collective  
2 bargaining agreement (CBA); attempting to get through the Town Meeting what was not  
3 obtained through contract negotiations; and bypassing the Town's bargaining  
4 representative by going directly to the Town Meeting for a contract term versus  
5 negotiating with the Town's representative. On November 21, 2019, a DLR Investigator  
6 investigated the Charge. On December 5, 2019, the Investigator issued a Complaint of  
7 Prohibited Practice and Partial Dismissal (Complaint) alleging that the Union had violated  
8 Section 10(b)(2) and, derivatively, Section 10(b)(1) of the Law by bypassing the Town's  
9 bargaining representative.<sup>1</sup> On December 16, 2019, the Union filed its Answer to the  
10 Complaint. On May 27, 2020, the Union filed an Amended Answer to the Complaint.<sup>2</sup> On  
11 June 3, 2020, and June 25, 2020, I conducted a hearing by videoconference during which  
12 the parties received a full opportunity to be heard, to examine and cross-examine  
13 witnesses, and to introduce evidence.<sup>3</sup> On September 18, 2020, the parties filed post-  
14 hearing briefs.<sup>4</sup>

---

<sup>1</sup>The Investigator dismissed the repudiation allegation. She also dismissed an allegation that comments made by bargaining unit members at two Town Meetings had violated Section 10(b)(1) of the Law. Additionally, the Investigator concluded that the bypass allegation contained in the Complaint subsumed the Town's allegation that the Union had attempted to obtain through the Town Meeting what it did not obtain through collective bargaining.

<sup>2</sup>The Amended Answer differed from the Answer only in so far as it raised an affirmative defense of untimeliness. The Town did not object to the Union's Amended Answer.

<sup>3</sup>I conducted the hearing remotely pursuant to Governor Baker's teleworking directive to executive branch employees.

<sup>4</sup>On September 17, 2020, the Union filed a Motion to Correct Transcript. The Union argued that Volume II, page 13 of the transcript, which reads, "The Town said that staffing was bargainable," should correctly read, "The Town said that staffing was not bargainable." The Town did not respond to this Motion. To the extent necessary, I hereby

STIPULATIONS OF FACT

1. The Town of Hudson (“Town” or “Employer”) is a public employer within the meaning of Section 1 of G.L. c. 150E (hereinafter, “the Law”).
2. The Hudson Firefighters, Local 1713 (“Union”) is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive collective bargaining representative for firefighters and fire lieutenants employed by the Town in the Hudson Fire Department.
4. The Union and Town (hereinafter collectively “Parties”) are parties to a Collective Bargaining Agreement (hereinafter “CBA”), the current term of which is July 1, 2018 to June 30, 2021.
5. On September 13, 2019, the Town filed a Charge of Prohibited Practice against the Union.
6. On December 5, 2019, the DLR issued a Complaint of Prohibited Practice and Partial Dismissal.
7. On December 16, 2019, the Union filed its Answer to the Complaint of Prohibited Practice. On May 27, 2020, the Union filed an Amended Answer to the Complaint of Prohibited Practice.
8. At all times material to this matter, Jeffrey Chaves has been the Union President for the firefighters’ bargaining unit.
9. At all times material to this matter, Thomas Moses has been the Town’s Executive Assistant and the designated bargaining representative for the Town.
10. On or about April 3, 2019, the Parties finalized a Memorandum of Agreement (“MOA”), setting forth that the terms of the 2015 – 2018 CBA would be the successor CBA for 2019 through 2021, except as modified in the MOA.
11. Article 30 of the CBA, “Minimum Manning” states: “The Town agrees that the Chief will assign at all times six (6) firefighters to duty, and not less than two (2) firefighters to any open station.”

FINDINGS OF FACT

General Background

grant the Union’s Motion to Correct Transcript. The correct testimony should read: “The Town said that staffing was not bargainable.”

1           The Hudson Fire Department (Department) employs approximately 24 firefighters,  
2 8 lieutenants, a deputy chief, and a chief. The firefighters are divided into four groups,  
3 with approximately eight firefighters assigned to each shift at full staffing. The Town's  
4 Board of Selectmen (Board) is the Town's chief executive officer and has the authority to  
5 negotiate collective bargaining agreements, which it delegates to Thomas Moses  
6 (Moses), the Town's Executive Assistant, and D. M. Moschos (Moschos), the Town's  
7 labor counsel. Moses is the Town's chief administrative officer and has held the position  
8 since 2013.

9           Article 30, Minimum Manning, is a longstanding provision of the parties' CBA. The  
10 Union has unsuccessfully sought during the last rounds of successor negotiations to  
11 bargain into the CBA an increase to the minimum manning provision.<sup>5</sup>

#### 12 Successor Negotiations to 2015 – 2018 CBA Commence

13           In or around January 2018, the parties commenced negotiations for a successor  
14 to the 2015 – 2018 CBA. At the outset of negotiations, the Town proposed a ground rule  
15 that prohibited the parties from bypassing the designated bargaining representatives, but  
16 withdrew it upon objection from the Union without prejudice to its position that the Law  
17 nevertheless prohibited the Union from bypassing the Town's bargaining representatives.

---

<sup>5</sup>During the hearing, I allowed the Union, over the Town's objection, to present certain evidence regarding the parties' 2011-2012 and 2015 negotiations. In its brief, the Union cited and discussed a July 10, 2015 letter that I rejected from admitting into evidence during the hearing. Regardless, the evidence of prior negotiations that I accepted into the record does not materially affect the outcome of this matter.

1 The Union's January 8, 2018 proposals included an increase to minimum staffing levels  
2 under Article 30.<sup>6</sup>

3 By letter dated January 29, 2018, Moschos wrote to the Union's attorney:  
4

5 For the record, the Town reiterates its position expressed in the successor contract  
6 negotiations on January 18, 2018, that the Union does not have the right to bypass  
7 the Town's designated representatives for the negotiations (Town Administrator,  
8 Tom Moses and Town Attorney, D.M. Moschos) and deal with the Board of  
9 Selectmen on the negotiations. If the Union does that, it violates Chapter 150E,  
10 and the Town reserves its legal rights if the Union does so.  
11

12 The Town withdrew its ground rules proposal on bypassing the Town  
13 Representative without prejudice to the above position.  
14

15 The Town notes the Union stated that it had the right to contact the Selectmen,  
16 and the Town rejected this Union position.<sup>7</sup>  
17

18 On March 30, 2018, the Town petitioned the Joint Labor-Management Committee  
19 (JLMC) to exercise jurisdiction over the negotiations for a successor agreement and  
20 appoint a mediator. The Town included "Minimum Manning" as an issue in dispute on  
21 this petition. Additionally, the Town's filing included a list of its bargaining proposals that

---

<sup>6</sup>Douglas Schaeffer (Schaeffer), a member of the Union's bargaining team, testified that the Town refused to negotiate over minimum manning. Moschos testified regarding this proposal that the Town listened to the proposal and sought clarification on this issue: "We had a long discussion about whether – what was the actual Union proposal regarding that." He further testified that the Town did not refuse to bargain over minimum manning but did take the position that it was not a subject that the Union could insist upon to impasse. I credit Moschos' specific testimony over Schaeffer's general assertions.

<sup>7</sup>Moschos testified that he drafted and sent this letter in response to the Union taking the position at the beginning of negotiations that the Union "had the right to bypass the Town's representatives, the bargaining agents, and go directly to the Board of Selectmen." He testified: "I drafted this letter to put them on notice that they could not bypass the Town administrator, or during the negotiations, they couldn't bypass me and the Town administrator by going to the selectmen because they have done that in the past." The record does not establish if this discussion occurred in the context of discussions related to minimum manning.

1 included a proposal to remove minimum manning from the CBA while reserving Article  
2 30 for future use.

3 Union Petitions Board to Place Article on Warrant for Annual Meeting

4 In February 2019, the Union petitioned the Board to insert an article on the warrant  
5 for the May 6, 2019 Annual Town Meeting.<sup>8</sup> The proposed article states:

6 To see if the town will take from available funds the amount necessary to staff each  
7 shift in the fire department at seven personnel per shift, that being two Lieutenants  
8 and five firefighters, utilizing and maintaining the existing staffing level of thirty-two  
9 line personnel and appropriating that amount to FY20 Budget Fire Department  
10 Personnel line item; or take any relative action thereto.

11  
12 At a public meeting of the Board on February 25, 2019, Chaves, speaking on behalf  
13 of the Union's petition, addressed the Board, Moses, and Town Counsel. Prior to Chaves  
14 speaking, Moses, in introductory remarks, stated that that the article was petitioned  
15 appropriately and would appear on the warrant, but would not be binding because the  
16 subject matter of the petition was a subject for collective bargaining.<sup>9</sup> Moses further  
17 stated that even if money was appropriated, the Town Meeting could not force the  
18 department head to spend appropriated money. Town Counsel then stated that the  
19 petition was asking to have the "legislative body take over a function of the executive  
20 body," and that collective bargaining rests with the executive and cannot be bypassed.

---

<sup>8</sup> A petition to place an article on the warrant for the Annual Town Meeting requires ten signatures. Union member Kevin Werner, who did not testify at the hearing, was the lead petitioner. Moses testified on cross-examination that "lead petitioner" refers to the person who signed first on the petition. The petition contained fifteen signatures; twelve bargaining unit members, including Chaves and other Union officers, signed the petition.

<sup>9</sup>Moses testified that after verifying the signatures, the Town is obligated to place a properly filed petition on the warrant unless it is withdrawn.

1 Chaves, identifying himself as the Union President, delivered a prepared statement  
2 on behalf of the warrant article that “the Hudson Firefighters are... supporting.” Chaves  
3 described the article as “asking to increase the minimum amount of firefighters on duty  
4 per shift.” Chaves stated, among other things, that the Town had “repeatedly refused to  
5 discuss minimum staffing with the Union,” that the Union had the legal right to resort to  
6 the Town Meeting on minimum staffing, and that, “This warrant article is us realizing there  
7 is something else we could have done.” After Chaves delivered his remarks, members  
8 of the Board assured Chaves that the article would remain on the warrant and reiterated  
9 that the Board believed that the article would not be enforceable. Town Counsel  
10 reiterated that the matter belonged with the executive and not the legislative body.

#### 11 Parties Reach Agreement

12 On April 3, 2019, the parties executed a Memorandum of Agreement (MOA)  
13 providing that the successor CBA, for fiscal year 2019 – 2021, “shall consist of the present  
14 Collective Bargaining Agreement, except as modified herein.” The MOA did not modify  
15 Article 30 of the CBA.

#### 16 Annual Meeting

17 The Union did not withdraw the petition prior to the Annual Meeting.<sup>10</sup> The Town  
18 placed the article on the Annual Town Meeting Warrant as Article 46.<sup>11</sup> In its Report and  
19 Recommendations, the Town’s Finance Committee unanimously recommended

---

<sup>10</sup>A petitioner may withdraw a petition prior to the publication of the warrant, which occurs approximately one week before the Annual Meeting.

<sup>11</sup>The article is listed as petitioned by “Keven M. Werner, et al.”

1 disapproval of Article 46 because “the subject matter of the article would intrude on  
2 collective bargaining issues and could serve to micro-manage firefighter overtime.”<sup>12</sup>

3 The day of the Annual Meeting, May 6, 2019, the Union posted the following on its  
4 public social media page:

5 This is a friendly reminder that tonight Monday, May 6<sup>th</sup> @730 pm is the town  
6 meeting at Hudson High School.

7  
8 There are many warrants on the agenda so please make extra effort to attend as  
9 voting will occur. We also ask that everyone stays for the whole meeting, for all  
10 the warrants, as there are many that may benefit the town.<sup>13</sup>

11  
12 The following warrants are ones that the Local 1713 agree should be seriously  
13 considered by the voters. For an example we’ve had a lot of questions as to what  
14 it would cost for the “7 man minimum” (Article 46) the Executive Assistant has said  
15 that it would cost anywhere from 100,000 to 120,000 to have the minimum  
16 manning raised to 7, we the union think that is a little on the high side but we’ll use  
17 the numbers for the cost example. So at his estimate it would be \$1.20 to \$1.40  
18 increase in taxes per household. We get to that number by using the EAs numbers  
19 for another project in town, stating that 1,000,000 would be an increase in taxes  
20 about \$12 per household. Our “7<sup>th</sup> man minimum” (Article 46) increase is 1/10  
21 that.

22  
23 If you have any questions please don’t hesitate to ask. Our members will be on  
24 hand prior to the meeting to hand out this exact flyer and hopefully answer any  
25 questions you may have.

26  
27 We will be wearing red shirts, please consider showing your support for your fire  
28 department by wearing red but most importantly by attending and voting.

29

---

<sup>12</sup>In the Preamble to the Finance Committee’s Report and Recommendations, the article is incorrectly identified as Article 44.

<sup>13</sup>Article 46 was the last article on the Annual Town Meeting Warrant.



1 At the Annual Town Meeting, firefighters introduced and spoke on behalf of Article 46.<sup>14</sup>  
2 Numerous firefighters attended the meeting wearing red shirts. The Town Meeting voted  
3 in favor of Article 46.

4 On May 7, 2019, the Union posted the following on its public social media page:

5  
6 We'd like to thank everyone who attended last night's annual town meeting. There  
7 was a lot of information out there, as is evident by the length of the meeting. There  
8 was a great showing of citizens.

9  
10 As for our articles: Article 9 was tabled until November. Article 43 and 46 passed.<sup>15</sup>

11  
12 With the passing of Article 46, the proposal of upping our minimum staffing from 6  
13 to 7, will keep us from browning out the Tower.

14  
15 We are excited to actually see this implemented and hope to achieve the "Tower  
16 1 browned out" photo soon.<sup>16</sup>

17  
18 The Town took no action on Article 46 after it passed the Annual Meeting.

19  
20 Communications between Moses and Chaves

21  
22 By letter dated July 2, 2019, and signed by Moses on behalf of the Board, the Town  
23 wrote to Chaves:

24 There appears to be some confusion regarding Article 46 adopted by the Town  
25 Meeting at the Fall [sic] Town Meeting.

26  
27 A Town Meeting is a legislative body and does not have jurisdiction over the  
28 operational staffing of the Fire Department, which is an executive function. While

---

<sup>14</sup>Moses, who was present at this meeting, testified that, "I believe the general spokesman in the introduction for this was Union President Chaves," but he also testified, "I don't recall exactly who spoke, but I know there [were] several firefighters."

<sup>15</sup>The other articles are not relevant to this matter.

<sup>16</sup>Around this time, the Union was also talking with the press. A May 7, 2019 article in the Metrowest Daily News reporting on the passing of the "firefighters' union-backed petition" attributed statements to both Chaves and Lt. Erick Currin, a member of the bargaining unit, advocating for the petition. This news article, the contents of which the Union did not rebut, corroborates other evidence in the record. Accordingly, it further supports the conclusion that the petition was, in fact, a Union petition.

1 the Town Meeting can appropriate funds to the Hudson Fire budget, the  
2 expenditure of the funds is also an executive function under the jurisdiction of the  
3 Board of Selectmen, Town Administrator, and Fire Chief.  
4

5 The Town Meeting, however, did not appropriate any additional funds for the Fire  
6 Department for Fiscal Year 2020. The Town Meeting vote is not legally binding on  
7 the Executive Branch and is merely an expression of the views of the Town  
8 Meeting. The Fire Department staffing decisions are made by the Fire Chief,  
9 subject to the budget and the collective bargaining agreement.  
10

11 As far as the compliment of the Fire Department, please note that the Town  
12 Administrator has applied for a grant that would increase the staffing per shift of  
13 the Fire Department from eight to nine. Such additional staff would enhance the  
14 staffing of the Fire Department. The Board of Selectmen will consider the  
15 acceptance and implications of this grant if and when it is received by the Town for  
16 approval.  
17

18 By email on July 3, 2019, Chaves responded to Moses. In relevant part, Chaves  
19 asserted that no “legal constraints” prevented the Town from adopting Article 46 and that  
20 the Town had made an “Administrative decision not to listen to the voters.” Additionally,  
21 Chaves wrote:

22 If the above mentioned reasons are just for clarifying on how town meeting works,  
23 and what is actually holding you back from adopting this has to do with your  
24 statement about town meeting not appropriating any money for this article. What  
25 exactly does that mean? [sic] Is that because the warrant article didn't specifically  
26 have a dollar amount? If so, why wasn't this issue ever brought to our attention  
27 during the initial submission of articles or during the pre-town meeting where  
28 issues with other articles was brought up and discussed? Also, it is worth noting  
29 that prior to the vote for article 46, the question on how much it would cost was  
30 brought up. Your answer was \$100,000 and I agreed with that number. So the  
31 town did vote to appropriate \$100,000. If for some strange reason that is not  
32 satisfactory, If and when we submit the same article inclusive with a specified dollar  
33 amount and the town votes in favor of it in November, will you adopt it then?<sup>17</sup>  
34 (again referring to you and the BOS) Or do you have no intentions of ever adopting  
35 this article regardless of what the towns people vote for?  
36

37 Moses responded the same day, July 3, 2019. He wrote, in relevant part:

---

<sup>17</sup> On July 8, 2019, Chaves was quoted in a local newspaper expressing intent to submit the petition again. The news article states: “The union plans to bring forward another petition article at the fall Town Meeting that includes funding, said Chaves.” The news report corroborates other evidence in the record that these are Union petitions.

1 Hopefully this will clarify things....

2

3 You are also correct, there is no legal requirement to either follow or ignore the  
4 vote. You incorrectly attribute the decision process to administration only. As  
5 stated in the letter, staffing is an executive body decision (BOS) and expenditure  
6 of funds on staffing is both an executive (BOS) and administrative (EA, Chief)  
7 decision.

8

9 While it is true that the Fire Department has \$100,000, town meeting did not vote  
10 an additional \$100,000 to fund this change in manning. That means that to  
11 implement the protocol, if desired, we would have to take the \$100,000 from some  
12 other line item in the Fire Department budget or wait until the Fall and have town  
13 meeting transfer the \$100,00 from one or more other department budgets.  
14 Regarding potential future funding, that is not my decision alone. I refer again to  
15 the letter and the collaboration between the BOS, EA and Chief. That collaboration  
16 will determine how additional money, if any, would be spent.

17

18 Regarding the grant, I don't know whether the BOS will accept it, but Chief Harris  
19 has indicated to me that we will know whether the grant application is successful  
20 in August. It is my recommendation that BOS accept it if awarded, otherwise I  
21 would not have recommended applying for it. It is my opinion that the grant will be  
22 more effective that using overtime to increase staffing. It is true that it will cost  
23 slightly more than the overtime option, but in addition to reducing the number of  
24 shifts that deploy 6 or 7, it will also increase the number of shifts where 9 are  
25 deployed and the increased minimum manning proposal cannot do that. Increase  
26 manning only decreases the number of 7 person shifts. [sic] The Tower issue is  
27 more complicated. The staff in the Fire Department makes decisions based on  
28 their expertise using the funding, staffing and equipment resources that they have  
29 available. Deployment of equipment is one of those decisions. I depend on their  
30 expertise to inform me as I depend on all department heads for recommendations.

31

### 32 Union Petitions Board to Place Article on Warrant for Special Town Meeting

33

34 In or around August 2019, the Union petitioned the Board to insert an article in the  
35 warrant for the Special Town Meeting to be held on November 18, 2019. The proposed  
36 article states:

37 To see if the Town will take from available funds the sum of \$100,000 to staff each  
38 shift in the fire department at seven personnel per shift, that being two Lieutenants  
39 and five firefighters, utilizing and maintaining the existing staffing level of thirty-two

1 line personnel and appropriating that amount to FY20 Budget Fire Department  
2 Personnel line item; or take any action relative thereto.<sup>18</sup>  
3

4 On September 13, 2019, the Town filed the Charge. The Town placed the  
5 petitioned article on the Special Town Meeting Warrant as Article 19.<sup>19</sup> The Town's  
6 Finance Committee voted 7-1 against recommending that the residents adopt Article 19.  
7 Chaves introduced the article and spoke on its behalf at the Special Town Meeting; other  
8 firefighters also spoke on its behalf. Bargaining unit members again wore red.

9 OPINION

10 The issue is whether the Union bypassed the Town's bargaining representative in  
11 violation of Section 10(b)(2) and, derivatively, Section 10(b)(1) of the Law by petitioning  
12 the Town Meeting to increase firefighter staffing.<sup>20</sup> The Town argues that the Union

---

<sup>18</sup>The Union argues that the Town failed to prove that the Union submitted this petition. The evidence contradicts this position and easily satisfies the preponderance of the evidence standard. In addition to Chaves being the lead petitioner, this proposed article is identical to the article that the Union filed for the Annual Meeting, except that it has been amended to include a specific appropriation. Chaves expressly indicated that the Union intended to pursue this course of action in his July 3, 2019 email exchange with Moses. He also publicly stated this intent to the press. If the Union changed course in the following weeks, the Union easily could have called Chaves to dispel any misconceptions that his previously expressed intent created. Chaves did not testify.

Also, a petition to place an article on the warrant for a special Town meeting requires the lesser of 100 signatures or 10% of the registered voters. The petition contained approximately 153 signatures, of which 16 belonged to bargaining unit members. Although the Union is correct that the majority of the signatures on the petition belonged to residents rather than bargaining unit members, this is unremarkable where the number of signatures required to submit the petition greatly exceeds the number of employees in the bargaining unit, which is 32.

<sup>19</sup> The article is listed as petitioned by "Jeffery Chaves, et al." The warrant for a special meeting is published approximately two weeks prior to the special meeting.

<sup>20</sup> I note that the Union characterizes the issue differently in its brief. The Union writes in the first paragraph of its brief: "In essence, the Town alleges that the petitions bypassed the Town's designated bargaining representative, Executive Assistant Thomas Moses, in

1 engaged in bad faith bargaining by bypassing the Town's exclusive bargaining  
2 representative when it petitioned the Board to add a warrant article to the Town Meeting  
3 that would effectively override Article 30 of the parties' CBA. The Town argues that a  
4 union is not permitted to bypass a town's designated bargaining representative by going  
5 to a town meeting on collective bargaining issues. The Union argues on the merits that  
6 it is free to bypass the Town's bargaining representative on permissive subjects of  
7 bargaining because the duty to bargain in good faith extends only to mandatory subjects  
8 of bargaining. The Union argues that it is free to do so even where, as here, the parties  
9 have bargained the subject into their CBA.

#### 10 Unlawful Bypass

11 In general, a union's obligation to bargain in good faith under Section 10(b)(2)  
12 mirrors an employer's good faith bargaining obligation under Section 10(a)(5) of the Law.  
13 Boston School Committee, 37 MLC 214, 221, MUPL-06-4570 (May 23, 2011). The  
14 Commonwealth Employment Relations Board (CERB) has generally considered a union's  
15 violation of Section 10(b)(2) of the Law in the context of a union's conduct during  
16 negotiations, and found a violation where the union failed to fulfill the Law's requirement  
17 to bargain in good faith. North Middlesex Regional School District Teachers Association,

---

favor of his boss and the Town's executive, the Board of Selectmen." On page 22 of its brief, the Union asserts that, "the Town affirmed the alleged unlawful acts pertain to Union's alleged petitioning of the Board, rather than actions in relation to Town Meetings." As the Complaint clearly states, the allegation is that the Union violated the Law by petitioning the Town Meeting to increase firefighter staffing. The Investigator also expressly indicated that she considered the bypass allegation in the Complaint to subsume the Town's allegation that the Union violated the Law by seeking to get through the Town Meeting what it could not obtain through contract negotiations.

1 28 MLC 160, 163, MUPL-4153 (October 23, 2001) (citing as an example, Local 1462,  
2 AFSCME, 9 MLC 1315, MUPL-2483 (H.O. October 6, 1982) (Local 1462)).

3 In Local 1462, a union sought to obtain an increase in insurance benefits, a  
4 mandatory subject of bargaining, by placing an article on the warrant for the annual town  
5 meeting while the parties were in successor negotiations and without proposing the  
6 desired change during bargaining. The hearing officer concluded that, "The Union's  
7 conduct in taking the question directly to the voters of the Town thus amounts to a  
8 prohibited by-pass of the Town's bargaining representatives in derogation of the Town['s]  
9 bargaining rights." Id. at 1321.

10 Contrary to the Union's position, I do not conclude that the Law necessarily limits  
11 the doctrine of unlawful bypass solely to mandatory subjects of bargaining. In City of  
12 Lawrence School Committee, a case involving an employer's direct dealing with  
13 bargaining unit members over a change to the members' pay period, the CERB stated  
14 that:

15 It is well established that the duty to bargain collectively enunciated in Section 6 of  
16 the Law and enforced in Section 10(a)(5) requires that an employer may not deal  
17 directly with employees regarding matters that are properly the subject of  
18 negotiations with the employees' bargaining representative....If the discussions  
19 concerned a proper subject of collective bargaining, the Committee, in bypassing  
20 the exclusive representative...violated Section 10(a)(5) of the Law. 3 MLC 1304,  
21 1311, MUP-2287 (December 7, 1976).

22  
23 In Town of Danvers, 3 MLC 1559, MUP-2292 (April 6, 1977), issued shortly after City of  
24 Lawrence School Committee, the CERB explained that the term "proper" subject of  
25 bargaining includes subjects that are not illegal:

26 The use of the term "proper" is suggestive of the mandatory/permissive approach.  
27 Under that analysis, if a contract provision covers a subject either mandatorily  
28 bargainable or permissibly bargainable (i.e. "proper"), the contract will be  
29 enforceable. 3 MLC at 1563, 1569, fn. 12.

1 The CERB concluded that minimum manning in a fire department was a permissive  
2 subject of bargaining. Id. at 1573.

3 The Union argues that NAGE v. Labor Relations Commission, 17 Mass. App. Ct.  
4 542 (1984), and Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508 (1990),  
5 “clearly establish that a party does not violate its duty to bargain in good faith by petitioning  
6 town meeting, or bypassing the executive branch, on a permissive subject because the  
7 duty to bargain in good faith extends only to mandatory subjects.” Neither case  
8 establishes such a rule.

9 NAGE v. LRC affirmed the decision in Weymouth School Committee, 9 MLC 1091,  
10 1097, MUP-4293 (July 2, 1982), wherein the CERB held that a school committee did not  
11 violate its duty to bargain in good faith when it placed a question to revoke civil service  
12 status before the voters without first bargaining with the union over its decision to do so  
13 because the specific relief that the employer sought was obtainable only through the  
14 legislative process.<sup>21</sup> In resolving this issue, which involved the interplay between Section  
15 7(d) of the Law and a local option law not at issue in the present matter, the CERB stated:

16 Thus, under Chapter 150E, the board of selectmen of a town must negotiate the  
17 working conditions of the town’s employees independent of any participation from  
18 the legislative branch. The only legislative involvement in the process established  
19 by Chapter 150E is the approval or denial of the request for appropriations  
20 submitted by the board of selectmen to the town meeting. The statutory scheme  
21 under Chapter 150E requires that negotiations over working conditions take place  
22 between the union and the selectmen, and the union and selectmen only.

23  
24 The General Laws thus contain two different mechanisms by which municipal  
25 employees and/or the town in which they work may lawfully seek to establish a  
26 wide variety of the employees’ working conditions. One of these mechanisms is a  
27 vote of the townspeople to accept the provisions of a particular local option law.

---

<sup>21</sup> The employer did have an obligation to bargain over the impacts of its decision on mandatory subjects of bargaining.

1 The other mechanism is the negotiation pursuant to Chapter 150E of a collective  
2 bargaining agreement between the employees' exclusive representative and either  
3 the board of selectmen or, as the case may be, the school committee. Id. at 1094.

4  
5 The CERB determined that a party could bypass a bargaining representative and  
6 appeal directly to the legislative process in situations where the parties lack the authority  
7 to strike a legally binding agreement. "Since the union can lawfully obtain the job benefit  
8 by negotiating with the employer, it would undermine the purposes of Chapter 150E to  
9 permit the union to accomplish its goal by bypassing the employer and appealing to the  
10 town's legislative process." Id. at 1095. The CERB further explained:

11 Conversely, if a union wants a job benefit that is the subject of a local option law  
12 not mentioned in Section 7(d), it may lawfully resort to the town's legislative  
13 process without violating its good faith bargaining obligations under Chapter 150E.  
14 How so? The necessary implication of Section 7(d) is that where a conflict arises  
15 between the terms of a local option law not enumerated in Section 7(d) and the  
16 provisions of a collective bargaining agreement, the terms of the law will prevail.  
17 No matter how insistent or persuasive the union may be at the bargaining table in  
18 such a situation, the employer is legally unable to provide the job benefit that the  
19 union seeks. Therefore, it can hardly be deemed bad faith bargaining on the part  
20 of the union to appeal to the only forum which legally can provide what the union  
21 wants. Id. at 1096.

22  
23 The critical distinction the CERB drew in Weymouth School Committee is not, as  
24 the Union suggests, between mandatory and permissive subjects of bargaining, but rather  
25 between lawful, i.e. proper, and unlawful subjects of bargaining. Under Weymouth School  
26 Committee, a union is free to appeal to the Town's legislative process where the parties  
27 lack the authority to strike a deal; it cannot appeal to that process, however, where the  
28 parties possess the authority to strike a binding deal. Accordingly, where, as here, the  
29 parties not only possess the authority to strike a binding deal over the disputed subject,  
30 but have actually bargained this subject into their CBA, Weymouth School Committee  
31 does not support the Union's position.



1 Similarly, Anderson v. Wrentham does not support the Union's position. This case  
2 involved the interplay between the Law and a local option law permitting a municipality to  
3 contribute more than 50% of its employees' group insurance benefits. The Supreme  
4 Judicial Court (SJC) determined that the process contained three steps:

5 First, the town must vote to accept §7A under the procedure set forth in G.L. c.  
6 32B, §7A(d). Second, a particular contribution percentage must be selected.  
7 Third, the town must fund the resulting contribution percentage. It is clear that the  
8 town meeting is the only branch of town government empowered to take the first  
9 and third steps....The second step, however, involves the chief executive officer  
10 of the town, in this case the board of selectmen, in a mandatory task. Under State  
11 law, the contribution percentage to be paid on behalf of unionized employees must  
12 be collectively bargained by the employer.... In that collective bargaining process,  
13 the town manager or board of selectmen is the exclusive bargaining representative  
14 of the town; the town meeting has no direct role in the process of negotiations.  
15 See G.L. c. 150E, § 1... Weymouth School Committee, 9 M.L.C. 1091, 1094  
16 (1982). Anderson, 406 Mass. at 511-512.<sup>22</sup>

17  
18 Anderson does not hold that a party may freely bypass a bargaining representative  
19 on permissive subjects of bargaining. In fact, it does not expressly mention permissive  
20 subjects of bargaining. Rather, the case articulates the principle that a town meeting's  
21 role in collective bargaining issues is limited to situations where it is performing the  
22 function delegated to it by the legislature: adopting a local option law or funding an  
23 agreement negotiated by the town's executive. Although the SJC is addressing a  
24 mandatory subject of bargaining, the Court's concerns apply with equal force to the  
25 instant case, where the parties' collective bargaining agreement contains an enforceable  
26 provision governing the subject:

27 Furthermore, permitting resort to the town meeting on a subject of mandatory  
28 collective bargaining would enable a party to the negotiations to circumvent the  
29 bargaining process altogether. If a party was unable to achieve the desired

---

<sup>22</sup> I note that the SJC in Anderson repeatedly cited the CERB's Weymouth School Committee decision rather than the appeals court's decision in NAGE v. LRC. See also, 406 Mass. at 512, n.8, 513, n.9.

1 contribution rate through collective bargaining, it could simply put the issue before  
2 the town meeting and pack the meeting with voters who supported its position.  
3 Such a practice would render the bargaining process an empty formality.  
4 Anderson, 406 Mass. at 512, n.8.

5  
6 The Union, relying on City of Chelsea, 13 MLC 1144, MUP-6211 (September 22,  
7 1986), also downplays the relevance of the minimum manning provision within the  
8 contract, arguing that “an employer violates the duty to bargain in good faith on a  
9 permissive subject only [if] its violation of a contract provision on a permissive subject  
10 stems from a failure to take appropriate steps to seek funding. The topic remains  
11 permissive even while codified in an agreement.” The Union argues that the Complaint  
12 did not issue on the Town’s repudiation allegation, and since the Union did not repudiate  
13 the CBA, it could not have violated the Law. Although the Union is correct that City of  
14 Chelsea involved a repudiation, that case neither states nor implies the rule of law that  
15 the Union advances. To the contrary, the CERB’s reasoning strongly supports the  
16 conclusion that the Union has violated the Law in the case at hand. The CERB stated, in  
17 relevant part:

18 Although a shift manning provision may not be a mandatory subject of bargaining,  
19 it is a subject upon which the City may choose to commit itself through collective  
20 bargaining....

21  
22 As a part of the total collective bargaining agreement, the shift manning provision  
23 is inextricably related to all other terms and conditions of employment recorded in  
24 the contract. Although the shift manning provision viewed in isolation might  
25 constitute a non-mandatory subject of bargaining about which either party would  
26 be privileged to refuse to bargain during contract negotiations, once that provision  
27 has been negotiated neither party may unilaterally alter its terms....

28  
29 To hold the parties to the totality of their bargain promotes more stable and  
30 predictable labor relations in the Commonwealth. Both parties to the collective  
31 bargaining agreement may negotiate with the assurance that any deal to which  
32 they ultimately agree cannot be unilaterally altered by one party’s renouncement  
33 of part of the package of compromises. While both parties remain free to decline  
34 to enter into negotiations concerning non-mandatory subjects, neither party may

1 unilaterally repudiate any aspect of the agreement. To hold otherwise would  
2 eviscerate the obligation to bargain in good faith. Id. at 1150-51.

3  
4 Finally, further supporting the position that the doctrine of bypass applies here, in  
5 Service Employees International Union v. Labor Relations Commission, 431 Mass. 710  
6 (2000), the SJC held that “a public employer may not survey its employees about  
7 mandatory subjects of bargaining if the employees belong to a bargaining unit  
8 represented by a union at a time when the union is engaged or preparing to engage in  
9 collective bargaining with the employer.” In reaching this conclusion, the SJC cited the  
10 CERB’s language from City of Lawrence School Committee regarding “proper” subjects  
11 of bargaining: “If the discussions concerned a proper subject of collective bargaining, the  
12 Committee...violated Section 10[a][5].” Id. at 719.

13 In sum, the relevant case law shows that the Law prohibits the conduct at issue in  
14 this case. The Union bypassed, over objection, the Town’s designated bargaining  
15 representative on a proper subject of bargaining and twice attempted to utilize the  
16 municipal legislative process to override a term of the CBA. In so doing, the Union sought  
17 to obtain the precise outcome it failed to obtain during bargaining.<sup>23</sup> I therefore conclude  
18 that the Union’s bypass violated Section 10(b)(2) of the Law.

19 Timeliness, Equity, and Constitutional Concerns

---

<sup>23</sup> The Union further argues that petitioning the Town Meeting “constitutes no more than seeking public support for the Union’s staffing preferences.” I reject this position. Chaves’ statement to the Board on February 25, 2019, and his July 2, 2019 email to Moses plainly show that the Union was trying to use the legislative process to force an increase to minimum staffing within the Department.

1           Having determined that the Union's conduct violated the Law, I briefly address its  
2 arguments that the Complaint should be dismissed on timeliness, equitable, and  
3 constitutional grounds.

4           Section 15.04 of the DLR's Rules and Regulations, 456 CMR 15.04, states:  
5 "Except for good cause shown, no charge shall be entertained by the Department based  
6 upon any prohibited practice occurring more than six months prior to the filing of a charge  
7 with the Department." A charge of prohibited practice must be filed with the DLR within  
8 six months of the alleged violation or within six months from the date that the violation  
9 became known or should have become known to the charging party. Felton v. Labor  
10 Relations Commission, 33 Mass. App. Ct. 926 (1992); Town of Lenox, 29 MLC 51, MUP-  
11 01-3214, MUP-01-3215 (September 5, 2002).

12           Here, the Town filed the Charge on September 13, 2019. The Union's submission  
13 of the initial petition occurred more than six months prior to the Town filing the Charge.  
14 Within six months, however, of the Town filing the Charge, and after the parties agreed  
15 to a successor CBA that did not alter Article 30, the Union continued to pursue a change  
16 to minimum staffing through the Town's legislative branch; and after that attempt proved  
17 unsuccessful, the Union amended and refiled its petition in August 2019, again seeking  
18 to change a contract term through the legislative process. Accordingly, the Charge is  
19 timely.

20           The Union also argues that equity should estop the Town from bringing the  
21 Charge. Essentially, the Union argues that the Town had knowledge of the Union's  
22 intended course of action and either failed to object or condoned such action. The facts  
23 do not support the Union's position. The Town formally objected to the Union bypassing

1 the designated bargaining representatives at the outset of negotiations. At the February  
2 25, 2019 Board meeting, the Town stated to the Union President that the Union was  
3 seeking to bypass the bargaining representative and that the matter was subject to  
4 collective bargaining. The Town's July 2, 2019 letter to Chaves expressly stated that  
5 staffing decisions are made by the Fire Chief "subject to the budget and the collective  
6 bargaining agreement." The Town promptly filed the Charge upon the Union resubmitting  
7 its petition for the Special Town Meeting. In sum, the Town has not waived any rights or  
8 condoned the Union' behavior. Cf., City of Marlborough, 34 MLC 72, 78, MUP-03-3963  
9 (January 9, 2008) (not unlawful direct dealing for police chief to deal directly with  
10 bargaining unit members regarding shift preferences where collective bargaining  
11 agreement expressly permits employer to determine work schedules without bargaining);  
12 IAFF, Local 1009, 2 MLC 1238, 1240, MUPL-2018 (December 15, 1975) (Union  
13 submission of allegedly nonmandatory subjects of bargaining to factfinder did not violate  
14 the Law where the employer failed to timely object).

15 Finally, the Union asserts that finding that the Union violated the Law would infringe  
16 upon the constitutional rights of the members of the bargaining unit to speak in their  
17 personal capacities on matters of public concern. This argument misses the mark. The  
18 portion of the Town's Charge alleging that the Union violated the Law when its bargaining  
19 unit members spoke at the Town Meetings was dismissed. The violation here results  
20 from the Union's failed attempt to circumvent the bargaining process by utilizing the local  
21 legislature to change a contract term. That conduct amounts to bad faith bargaining.  
22 Accordingly, I reject this position.

23 CONCLUSION

1 The Union bypassed the Town's bargaining representative in violation of Section  
2 10(b)(2) and, derivatively, Section 10(b)(1) of the Law by petitioning the Town Meeting to  
3 increase firefighter staffing.

4 ORDER

5 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the  
6 Union shall:

- 7 1. Cease and desist from:
  - 8
  - 9 a. Failing to bargain in good faith by bypassing the Town's bargaining  
10 representative and petitioning the Town Meeting to increase firefighter staffing.
  - 11
  - 12 2. Take the following affirmative action that will effectuate the purpose of the Law:
    - 13
    - 14 a. Bargain in good faith with the Town by dealing only with its designated  
15 bargaining representatives on matters of collective bargaining.
    - 16
    - 17 b. Post immediately in all conspicuous places where members of the Union's  
18 bargaining unit usually congregate, or where notices are usually posted,  
19 including electronically if the Union customarily communicates with these  
20 members via intranet or email, and display for a period of thirty (30) days  
21 thereafter, signed copies of the attached Notice to Employees.
    - 22
    - 23 c. Notify the DLR in writing of steps taken to comply with this Order within ten (10)  
24 days of receipt.
    - 25

26 SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

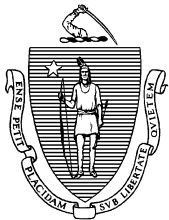


---

JAMES SUNKENBERG, 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.



1  
2  
3  
4  
5

# **NOTICE TO EMPLOYEES**

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

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the International Association of Firefighters, Local 1713 (Union) violated Section 10(b)(2) and, derivatively, Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) by bypassing the Town's bargaining representative and petitioning the Town Meeting to increase firefighter staffing.

WE WILL NOT fail and refuse to bargain in good faith with the Town by bypassing its bargaining representative and petitioning the Town Meeting to increase firefighter staffing.

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

---

IAFF, Local 1317

---

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, 1<sup>st</sup> Floor, Boston, MA 02114 (Telephone: (617) 626-7132).