

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of

BOARD OF TRUSTEES,  
UNIVERSITY OF MASSACHUSETTS  
AMHERST

and

NEW ENGLAND POLICE  
BENEVOLENT ASSOCIATION,  
LOCAL 190

Case No.: SUP-19-7108

Date issued: April 26, 2024

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Nicholas Anastasopoulos, Esq. - Representing the Board of Trustees,  
University of Massachusetts Amherst

Thomas E. Horgan, Esq. - Representing the New England Police  
Benevolent Association, Local 190

HEARING OFFICER'S DECISION

SUMMARY

1       The issues in this case are whether the Board of Trustees, University of  
2       Massachusetts Amherst (University) violated Section 10(a)(5) and, derivatively, Section  
3       10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by: a) transferring  
4       bargaining unit work from the New England Police Benevolent Association, Local 190  
5       (NEPBA) to non-bargaining unit personnel at the Mt. Ida Campus, and b) engaging in  
6       surface bargaining. For the reasons explained below, I find that the University did not  
7       violate the Law in the manner alleged.

## Statement of the Case

On January 29, 2019, the NEPBA filed a charge of prohibited practice in Case No. SUP-19-7108, alleging that the University had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.<sup>1</sup> A DLR investigator investigated the charge on May 22, 2020. On June 16, 2020, the Investigator issued an amended complaint<sup>2</sup> alleging that the University violated Sections 10(a)(5) and, derivatively Section 10(a)(1) of the Law by: (a) transferring bargaining unit work to non-unit personnel without bargaining to resolution or impasse over the decision and the impacts of the decision, and (b) engaging in surface bargaining. The University filed its answer on June 25, 2020.

I conducted a hearing on March 4, 2021,<sup>3</sup> March 30, 2021, and April 16, 2021.<sup>4</sup> Both parties had an opportunity to be heard, to call witnesses, and to introduce evidence. The NEPBA and the University submitted their post-hearing briefs on March 1 and March 2, 2023 respectively. Upon review of the entire record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

## Stipulated Facts

1. The University of Massachusetts Amherst (“University” or “Respondent”) is a public employer within the meaning of Section 1 of the Law.

<sup>1</sup> The DLR referred the matter to mediation on June 13, 2019.

<sup>2</sup> The amended complaint corrected a scrivener's error in the complaint that the investigator originally issued on June 15, 2020.

<sup>3</sup> On March 4, 2021, I allowed the Union's motion to sequester witnesses, except for NEPBA President Justin Green and the University's Labor Relations Director Brian Harrington.

<sup>4</sup> I conducted the hearing remotely via the Webex videoconference platform.

2. The New England Police Benevolent Association ("Union" or "Petitioner") is an employee organization within the meaning of Section 1 of the Law.
3. The Union is the exclusive bargaining representative for all full-time and regular part-time police officers below the rank of sergeant employed by the University.
4. On or about May 17, 2018, the University purchased Mt. Ida College campus ("Mt. Ida") located in Newton Massachusetts. On or about June 25, 2018, the University notified the Union about the Mt. Ida purchase.
5. The Parties met on July 19 and July 25<sup>th</sup>, 2018 to bargain over security duties at Mt. Ida. During the July 25, 2018 bargaining session, the Union made a bargaining proposal to the University.
6. On July 25, 2018, after the bargaining session with the Union described in Paragraph 5 above, the University notified the Union that effective August 1, 2018, employees of private security vendor Internal Security Associates, LLC ("ISA") would provide security at Mt. Ida on behalf of the University.
7. On July 25, 2018, after the bargaining session with the Union described in Paragraph 5 above, the University notified the Union that effective August 1, 2018, officers employed by the Newton Police Department ("NPD") would provide supplemental security at Mt. Ida on behalf of the University.
8. On August 1, 2018, ISA and NPD personnel began performing security work at Mt. Ida on behalf of the University.
9. On January 29, 2019, the Union filed a Charge of Prohibited Practice with the DLR alleging that the University had engaged in prohibited practices within the meaning of Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E ("the Law").
10. On May 22, 2020, the DLR conducted an investigation of the allegations raised by the Petitioner in their January 29, 2019 Charge.
11. On June 16, 2020, the DLR issued an Amended Two Count Complaint of Prohibited Practice finding that the Respondent had violated the Law.

### Findings of Fact<sup>5</sup>

### Background

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<sup>5</sup> The DLR's jurisdiction in this matter is uncontested.

1       The University is a large residential, public institution of higher learning with  
2 undergraduate and graduate students enrolled in classes at its Amherst Campus. The  
3 University deploys its own police department (UMPD) to ensure the safety and security  
4 of students, staff, and visitors to the Amherst Campus. M.G.L. c. 75, s. 32A states in  
5 pertinent part:

6       The [University's] trustees make rules and regulations for the control,  
7 movement, and parking of vehicles on the campus of the university and on  
8 other land of the university and may provide reasonable penalties for the  
9 violation of those rules and regulations. The trustees may appoint as police  
10 officers persons employed by the university, who in the enforcement of  
11 these rules and regulations and throughout university property shall have  
12 the powers of police officers, except as to the service of civil process ....  
13

14       Police officers appointed by the trustees of the University of Massachusetts,  
15 in connection with the operation of any part of the university within the limits  
16 of the campuses, may perform police duties under the direction of the  
17 commanding officer or the person in charge of such campus. While  
18 performing such duties within those limits, the police officers shall have the  
19 same authority, immunities and privileges as duty appointed and qualified  
20 police officers acting elsewhere in the commonwealth. Every officer who  
21 receives an appointment to a position on a full-time basis in which that  
22 person may exercise powers for any of the campuses of the University of  
23 Massachusetts shall, prior to exercising those police powers, be assigned  
24 to and satisfactorily complete a prescribed course of study approved by the  
25 municipal police training committee or the department of state police.

26       The UMPD serves the campus community twenty-four hours per day, every day of the  
27 year. The UMPD's officers are sworn, have powers of arrest, and carry firearms. They  
28 must possess a valid graduate certificate of training from a police academy approved by  
29 the Massachusetts Police Training Committee (MPTC).<sup>6</sup> UMPD officers enforce laws,  
30 conduct investigations, and provide emergency services, which includes assisting the

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<sup>6</sup> The MPTC approved police academies are full-time police academies and are distinct from the part-time police academies which provide training for reserve/intermittent police officers.

1 community when needed, protecting life and property, and preserving the public peace.  
2 As of Spring 2018, when the events in this case arose, the UMPD employed forty-two  
3 patrol officers,<sup>7</sup> ten sergeants, seven lieutenants, two deputy chiefs and a police chief.  
4 The UMPD did not employ any captains.

5 Patrol Officers' Job Duties

6 Patrol officers perform the full spectrum of law enforcement activities,  
7 investigations, and emergency services. The primary duty of the position is the  
8 enforcement of all applicable state and local laws and the enforcement of the University's  
9 traffic rules and regulations. By observation and investigation, patrol officers will identify,  
10 apprehend and when appropriate, detain individuals suspected of violating these laws.  
11 They patrol university properties and adjacent geographic areas (and areas subject to  
12 mutual aid agreements)<sup>8</sup> to ensure the protection of persons and property and to detect  
13 and deter criminal activity. They remain alert for health and safety hazards and theft or  
14 damage to property, which includes taking appropriate action to mitigate and/or report  
15 hazards and damage. Patrol officers aid and assist all persons in danger of physical

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<sup>7</sup> Patrol officers include police officers, who perform certain specialized assignments but hold the classification of patrol officers, including detectives.

<sup>8</sup> C.75, §32B provides, in part, that the University:

... [M]ay enter into an agreement with any subdivision of the federal or state government, town, city or other towns and cities, including towns and cities in states contiguous to the commonwealth, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety, and property of the people in the area designated in the agreement. ...When providing such mutual aid, police officers shall have all the immunities and powers granted to them by the University or the municipalities that employ them including, but not limited to, the same duties, authority, immunities, and privileges as duty appointed and qualified police officers acting as such in the municipality.

1 harm, or victims of crime, accidents, or illness. They maintain order at the scene of public  
2 assemblies and gatherings, protests, marches, concerts, sporting, and other special  
3 events. They provide assistance to the public, including providing directions or  
4 information and making referrals to outside agencies when appropriate.

5 Patrol officers conduct preliminary and follow-up investigations into both routine  
6 and complex offenses, misdemeanors, and felony criminal activities, which includes  
7 applying investigative and interrogatory techniques when interviewing suspects,  
8 witnesses, and crimes. Patrol officers prepare, write, and execute arrest and search  
9 warrants. In compliance with applicable laws and department policy, patrol officers  
10 conduct investigatory searches of persons, places, and property. Incumbents in the  
11 position prepare criminal complaints and other legal paperwork, read, and interpret other  
12 legal documents, including court decisions, briefs, and other judicial opinions. They  
13 identify criminal offenders, make apprehensions via complaint applications, or arrest  
14 offenders without warrants as permitted by law. They detain and restrain criminal  
15 suspects or violent, hostile and/or mentally unstable individuals in accordance with  
16 department policy and applicable law. Patrol officers intervene in cases of domestic  
17 violence and psychiatric crisis and refer victims and witnesses to appropriate social  
18 service agencies. Patrol officers secure and search all detainees before transport to the  
19 station where they perform arrest report entries. They conduct inspections of the UMPD's  
20 detention facilities and maintain control of detainees while in custody.

21 Patrol officers testify in criminal courts and at other judicial and administrative  
22 proceedings. They conduct investigations into motor vehicle, pedestrian, and industrial  
23 accidents to include serious injury and fatal accidents or suicides in conjunction with the

Massachusetts State police. They catalog, secure, and maintain evidence in criminal cases, which includes maintaining lost, found, and seized property in accordance with the accepted chain of custody requirements. They prepare notes, reports, logs, photos, and other electronically generated documents to record significant events, which includes utilizing computers with various software such as MS Office, Excel, IMC, Fusion, and surveillance camera systems. Incumbents in the position operate handheld, patrol mounted, and computer based audio and visual recording devices, cameras, and other surveillance equipment, which includes the operation, inspection and maintenance of preliminary and infrared breath testing equipment, electronic fingerprint identification systems, automated external defibrillators, and RADAR and LIDAR traffic speed measuring devices. They maintain proficiency with various types of firearms and specialty munitions. They assist campus businesses in escorting funds to appropriate depositories during evening hours or as requested, during campus-sponsored events.

#### *Overtime/Details*

The University community frequently requests public safety support in the form of police details to ensure that events are being run in the safest manner possible. The University designates police overtime with color codes that correlate with the entity requesting the detail and the nature of the details. Certain of the color codes have requirements that police officers receive a minimum number of hours for the details and/or earn a higher overtime rate. The overtime designations are white, blue, yellow, and pink. White designates police department overtime, i.e. shift coverage, for which there is no four-hour minimum, unless a police officer is called back to work. Blue designates police details for campus activities, including athletic events that involve University athletic

1 teams, NCAA events that have University teams as participants, and other University  
2 sponsored activities for which there is a four-hour minimum. Pink designates police  
3 details for activities at the Mullins Center, the University's sports, and entertainment  
4 complex, which are not athletic events or University-sponsored events. Pink overtime  
5 involves a four-hour minimum and the overtime rate is calculated using the top step rate  
6 for the police officer's rank plus an additional 7.5%. Yellow designates construction  
7 details with companies not associated with the University and NCAA events that do not  
8 have University athletic teams as participants. Yellow overtime involves a four-hour  
9 minimum and the overtime rate is calculated using the top step for the police officer's rank  
10 plus an additional 15%.

#### 11 *Inversing*

12 The University receives many detail requests and often has more overtime  
13 opportunities available than police officers who are willing to work. The UMPD also  
14 sometimes needs to fill vacancies on a shift when it does not have a sufficient number of  
15 police officers working to satisfy the minimum staffing requirements,<sup>9</sup> and when no police  
16 officer has volunteered to work. When the University requires police officers to work  
17 overtime, either to fill a shift vacancy or a detail, it is known as inversing. The University  
18 inverses patrol officers, who are available to work, to fill patrol officer vacancies on shifts  
19 or details and inverses sergeants, who are available to work, to fill supervisory vacancies  
20 on shifts or details. The University will not inverse patrol officers to work construction  
21 details.

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<sup>9</sup> The minimum staffing for patrol officers is three patrol officers per shift. The record is silent as to the minimum staffing requirement for sergeants and lieutenants per shift.



1           The University's patrol officers have been short-staffed for many years.<sup>10</sup> Because  
2 the patrol officers were not classified as members of group four for state retirement  
3 purposes and previously were not eligible to receive educational incentives pursuant to  
4 c.41, §11, commonly known as the Quinn Bill, it was often more financially advantageous  
5 for patrol officers to transfer to municipal police departments where they would become  
6 eligible for those benefits. The short staffing of patrol officers also resulted in patrol  
7 officers being inversed very frequently, which negatively impacted the patrol officers'  
8 morale. In an attempt to ameliorate the situation, Deputy Police Chief Ian Cyr (Deputy  
9 Chief Cyr) issued a memo on December 19, 2017 to all sworn members of the UMPD  
10 that described a new procedure whereby the University would offer sergeants the  
11 opportunity to work overtime details<sup>11</sup> before the University inversed patrol officers to work  
12 those details.<sup>12</sup> The University would first offer the opportunity to work an overtime detail  
13 to patrol officers. If no patrol officers accepted the opportunity, the University would offer  
14 the opportunity to police officers from nearby municipal police departments that had  
15 mutual aid agreements with the University. If no patrol officers from the nearby  
16 communities accepted the opportunity, the University would then offer the overtime  
17 opportunity to the UMPD's sergeants. If no sergeants accepted the overtime opportunity,

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<sup>10</sup> The UMPD had five vacant patrol officer positions, six police officers, although not specifically identified in the record as patrol officers, were out of work on injuries, two patrol officers were at the police academy, and several patrol officers were in the midst of being hired by other police departments. Also, in the two or three years prior to 2018, approximately twelve patrol officers had retired.

<sup>11</sup> Previously, the University only offered sergeants supervisory overtime opportunities.

<sup>12</sup> The University would not allow sergeants the opportunity to work patrol officer shift vacancies.

1 the University then would inverse the least senior patrol officer, who was available to  
2 work.

3 Other Non-Sworn University Personnel Who Perform Security Functions

4 *Cadets*

5 The UMPD also operates a Cadet Program for students who are pursuing either  
6 an associate degree or a bachelor's degree in law enforcement. The cadets are required  
7 to work two shifts each week on Thursday, Friday, and Saturday nights. They monitor  
8 radio traffic and respond to all calls addressed to them. They register minor guests and  
9 guests without identification at the residence halls as needed. They assist residence life  
10 staff, who are having difficulties with individuals in the lobbies of student residences. They  
11 address persons who fail to cooperate with residence hall security or residence life staff.<sup>13</sup>  
12 They provide crowd control in busy lobbies by organizing persons to leave residence halls  
13 in an orderly fashion and provide crowd control outside residence halls during fire alarms,  
14 etc. They also provide walking safety escorts as directed. Cadets wear a uniform  
15 consisting of black duty pants, black boots, a hat with the UMPD cadet patch, a long or  
16 short sleeve gray shirt with the UMPD cadet patch, and a duty belt with a radio holder,  
17 packet for latex gloves and a CPR mask.

18 *Institutional Security Officers*

19 The University also employs two institutional security officers (ISOs), an ISO I and  
20 an ISO II, who are included in AFSCME's bargaining unit. The ISO II oversees the ISO  
21 I. The ISOs are assigned to the University's Campus Center and Student Union to protect

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<sup>13</sup> Residence Life staff respond to requests to unlock a student's dorm rooms when a student is locked out (student lockouts).

1 the building, grounds, equipment, students, faculty, and visitors which includes locking  
2 and unlocking conference rooms and securing the building. They receive supervision  
3 from the senior manager of facilities services. The ISOs make periodic rounds and  
4 security checks, conduct surveillance, and respond to emergency situations by  
5 administering first aid and summoning assistance. They respond to reported shoplifting  
6 incidents by approaching and questioning suspects and calling the UMPD. They also  
7 provide information to the public, which includes answering questions about services,  
8 rooms, catering and special functions.

### 9 *Private Security*

10 Since at least 2007, the University has entered into contracts with private security  
11 companies to conduct pat searches and bag searches of individuals entering events at  
12 the Student Union and football games. From 2007 to 2017, the University had a contract  
13 with CSC, and from 2017 and continuing, the University has had a contract with Green  
14 Mountain. A UMPD officer is present at the entry points of Student Union events and  
15 football games, while Green Mountain conducts the pat searches and bag searches of  
16 attendees. The reason that the University uses Green Mountain personnel to conduct  
17 the searches rather than UMPD officers is to avoid violating attendees' fourth amendment  
18 rights.

### 19 University Properties Other than the Amherst Campus

20 The University owns a number of properties in addition to the Amherst Campus.  
21 University employees work at those other locations and students carry out research there,  
22 but the locations are not residential properties. In Belchertown, the University owns  
23 approximately 100 acres of fruit orchards, which are open to the public in the Fall for fruit

1 picking, and which generate significant cash receipts. UMPD officers are sometimes  
2 called to be present at the end of the day when the orchards are shutting down and the  
3 bank deposits are being prepared. In Deerfield, the University operates a turf farm, a  
4 dairy farm, and a crop management site. UMPD patrol officers previously have responded  
5 to calls about open gates and trespassers at the Deerfield sites. In Montague and  
6 Leverett, the University owns a wooded area, which includes a mountain peak, and  
7 approximately twenty years ago, the UMPD patrol officers helped search for lost hikers  
8 there. The University also has properties in Sunderland, Pelham, Hadley and Shutesbury  
9 to which the UMPD patrol officers have responded to calls.<sup>14</sup>

10 Further away from the Amherst Campus, the University has a Center for Urban  
11 Sustainability in Waltham, a Marine Research Station in Gloucester, a Cranberry Station  
12 in Wareham, and exercises custodial responsibility for the state over the W.E.B. Du Bois  
13 Homestead in Great Barrington. The UMPD did not respond to any calls at those four  
14 sites from 1994 to 1999, although local municipal police departments did respond to calls  
15 at three of the sites during that time. The Waltham Police responded to calls regarding  
16 the theft of vegetables, dogs running loose, and intrusion alarms for buildings and  
17 vehicles at the Center for Urban Sustainability. The Gloucester Police responded to  
18 intrusion alarms at the Marine Research Station, while the Wareham Police responded to  
19 suspicious behavior and intrusion alarms at the Cranberry Research Station.

20 University's Purchase of the Mount Ida College Campus

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<sup>14</sup> The frequency and dates when UMPD patrol officers responded to calls at those sites are not included in the record.

1 In early April 2018, Mount (Mt.) Ida College, a private, residential college in  
2 Newton, announced its closure. At that time, Mt. Ida College and Lasell College, another  
3 private college in Newton, had a combined public safety department, known as the  
4 Colleges Combined Public Safety Department (CCPSD), which provided security and  
5 police responses for all calls for service on property owned and operated by both colleges.  
6 Lasell College employed the CCPSD employees, but Mt. Ida College was responsible for  
7 paying its share of wages and employee costs to Lasell College. The CCPSD included  
8 sworn police officers, who held special state police appointments, and non-sworn security  
9 officers on both colleges' campuses. Mt. Ida College was the site of the dispatch center  
10 for both colleges. The most recent agreement in effect between Mt. Ida College and  
11 Lasell College regarding the CCPSD initially was due to expire on July 31, 2018.

12 Events in April through June 2018

13 On April 6, 2018, University Chancellor Kumble Subbaswamy (Chancellor  
14 Subbaswamy) sent an email (April 6, 2018 email) mail to the University community stating  
15 that UMass Amherst had reached a preliminary agreement to acquire the campus of Mt.  
16 Ida College. Thereafter, members of the NEBPA's local leadership team informally  
17 approached UMPD Chief Tyrone Parham (Chief Parham) on several occasions to inquire  
18 whether the UMPD would provide services to the former Mt. Ida College Campus (Mt. Ida  
19 Campus), if the University completed its purchase of the property. On April 12, 2018,  
20 Lisa Kidwell Billiel (L. Billiel), the NEBPA's local secretary, sent an email to Brian  
21 Harrington (Harrington), the University's Director of Labor Relations, and Chief Parham  
22 stating in pertinent part:

1           We realize this is early, but the executive board would like to know what the  
2           intent is with the takeover of Mt. Ida. This would be a clear bargaining  
3           obligation and we would like to stay out in front of this.

4   L. Billiel and other members of the NEBPA leadership continued to informally approach  
5   Chief Parham about the status of the purchase of the Mt. Ida campus, and he indicated  
6   that he was waiting for more information. Also, L. Billiel emailed NEBPA unit members a  
7   copy of a newspaper article concerning the University's intent to purchase the Mt. Ida  
8   Campus.

9           On May 17, 2018, Chancellor Subbaswamy sent an email to the University  
10   community stating that the University had completed the real estate transaction that would  
11   establish the Mt. Ida Campus of UMass Amherst. On May 29, 2018, then NEBPBA local  
12   president Bill Chapman (Chapman) sent an email to Harrington and Chief Parham stating:

13           We have yet to have any contact as to the status of this matter. We as in  
14           the NEPBA Local 190 wish to inform you of our desire to negotiate this  
15           matter. We understand that this is time sensitive so as to go to a ULP.

16   On or about that time, Chief Parham informed the leadership of the NEPBA and the IBPO  
17   that the University was going to use a private consulting firm to conduct an assessment  
18   of the security and policing needs<sup>15</sup> on the Mt. Ida Campus.<sup>16</sup> Also, in April, May or June  
19   2018, the University approached Chief Parham about the possibility of UMPD providing  
20   services to the Mt. Ida Campus.<sup>17</sup> The Police Chief had questions about the duties that

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<sup>15</sup> Chief Parham contended that the assessment was needed because of the UMPD was used to providing services to a large, public university rather than a small private college.

<sup>16</sup> Because Mt. Ida College had closed, the Mt. Ida Campus did not have any students or faculty there in the Summer of 2018.

<sup>17</sup> Chief Parham could not recall who approached him on behalf of the University or the month when the inquiry was made. The record does not show that the NEPBA or the IBPO was aware of the inquiry at the time or Chief Parham's response to the inquiry.

1 UMPD would need to provide at the Mt. Ida Campus. When Chief Parham was told about  
2 the possible duties, he responded that the duties sounded like security guard duties and  
3 that the UMPD did not have any security guards that he could send to the Mt. Ida campus.  
4 He also indicated that it was not feasible for the UMPD to provide services at the Mt. Ida  
5 Campus because: a) the Mt. Ida Campus lacked the necessary infrastructure to provide  
6 police services, including an adequate police station and a working communications  
7 system;<sup>18</sup> b) the UMPD already had a staffing shortage; c) the Mt. Ida Campus was  
8 vacant; and d) the CCPSD was still under contract to provide services to Mt. Ida College  
9 until August 1, 2018.

10 On June 22, 2018, the University met with the NEPBA and the IBPO to discuss  
11 members of the two bargaining units providing services at the Mt. Ida Campus. The  
12 meeting lasted between sixty and ninety minutes. Harrington<sup>19</sup> and Chief Parham  
13 represented the University,<sup>20</sup> while members from both the NEPBA's and the IBPO's  
14 executive boards represented the two unions.<sup>21</sup> L. Billiel, Chapman and Mike Billiel (M.  
15 Billiel) represented the NEBPA,<sup>22</sup> and Matt Malo, local president, and Alan Silva, vice-

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<sup>18</sup> CCPSD owned the telecommunications equipment and planned to remove it from the Mt. Ida campus when the CCPSD contract ended.

<sup>19</sup> Harrington acted as the University spokesperson although both he and Chief Parham actively participated in the discussion.

<sup>20</sup> Chief Parham was unsure whether one or both deputy police chiefs also were present for the University.

<sup>21</sup> The two unions requested to negotiate together with the University.

<sup>22</sup> L. Billiel, Chapman and M. Billiel subsequently retired on or about July 2018 and did not testify at the hearing.

1 president, represented the IBPO. At the meeting, the two unions jointly presented a  
2 written proposal, which the unions referred to as a long-term proposal (Joint June 22,  
3 2018 Long-Term proposal) to create a Mt. Ida Division and an Amherst Division of the  
4 UMPD. The comprehensive Joint June 22, 2018 Long-Term proposal addressed various  
5 topics, which included: 1) staffing the Mt. Ida Campus with a captain, two lieutenants, six  
6 sergeants and fifteen police officers, 2) implementing a four-step salary upgrade, 2)  
7 creating the position of captain within the IBPO unit, 3) purchasing take home police  
8 cruisers,<sup>23</sup> and 4) allotting two hours of travel time each way for trips between the two  
9 campuses.

10 At the June 22, 2018 meeting, the representatives from both unions went over the  
11 proposal line by line. Harrington and Chief Parham primarily listened to the NEPBA's and  
12 IBPO's presentation, but Chief Parham asked certain clarifying questions about parts of  
13 the proposal. He informed the unions that he believed that their staffing proposal for the  
14 Mt. Ida Campus was too broad and not consistent with the nature of the Mt. Ida Campus.  
15 The Police Chief also reminded the two unions that the UMPD had not received any  
16 additional funds from the University to cover the costs of providing services to the Mt. Ida  
17 Campus. At this meeting, Harrington also confirmed that the University had entered into  
18 a contract with a private consulting firm, Margolis Healy, to assess the security and  
19 policing needs at the Mt. Ida Campus. Harrington also indicated that the University would  
20 forward the Joint June 22, 2018 Joint Long-Term proposal to Margolis Healy.

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<sup>23</sup> In June 2018, the UMPD only provided Chief Parham and the two deputy chiefs police vehicles that they could take home (take home vehicles).



1 On June 25, 2018, Chief Parham sent an email to the UMPD staff that stated in  
2 pertinent part:

3 Mt Ida: UMass Amherst purchased Mt. Ida last month so the impact of this  
4 acquisition and how it affects UMPD is still being determined. The  
5 Lasell/Mt. Ida Police Student contract will end 8/1/18 so it will become the  
6 Lasell College PD. This coming Fall, about 120 Vet Tech students will be  
7 living in in one residence hall and there will be less than 200 Vet Tec  
8 students in classes throughout the day. Regis College will teach less than  
9 200 Dental Hygiene students throughout the day, but these students won't  
10 live in the residence halls. The long-term vision and our role are still being  
11 determined. Vice Chancellor Mangels has hired the prominent university  
12 police consulting firm Margolis Healy to conduct a staffing and impact study.  
13 They'll look at dispatching needs, radio communication, IT, police staff,  
14 supervisor staff, etc. They will be starting the study immediately and will  
15 want to hear from you. They will also speak to Lasell/Mt. Ida Police, Newton  
16 Police, and others. They'll want to hear from UMass Amherst administration  
17 about the long-term vision of that campus and what the new campus will  
18 look and feel like. We will work together with all of you to hear your feedback  
19 with this transition. ...

20  
21 As always, feel free to provide input and feedback as we embark upon these  
22 various initiatives.

23 On June 26, 2018, Chief Parham sent an email to the UMPD command staff  
24 that stated in pertinent part:

25 Last Friday at 10am, UMass Amherst Labor Management Director Brian  
26 Harrington scheduled two meetings with both police unions at the same time  
27 but in different locations in our building. Just prior to our meeting, both  
28 unions had agreed to combine it into one, so it was moved into the Chief's  
29 Conference room. When I began to discuss the police consultant who Vice  
30 Chancellor Mangels hired for an assessment, both unions presented the  
31 attached document [Joint June 22, 2018 Long-Term Proposal] as  
32 suggestions. As of this morning, I realize that there are still some of you  
33 who haven't seen this yet so it's attached. The document will be shared  
34 with the consultant and taken under advisement like all other input. As I  
35 mentioned yesterday, the consultants will be reaching out to everyone for  
36 input.

1 On June 27, 2018, David Ortiz (Ortiz), a UMPD patrol officer for twenty-six years  
2 and a member of prior NEPBA bargaining teams for successor contracts, sent an email  
3 to Chief Parham stating in pertinent part:

4 Chief, thank you for the update keeping in mind that this is essentially the  
5 first communication with NEPBA membership regarding this significant  
6 change. I have to this point read no fewer than three articles in the Amherst  
7 Bulletin concerning the Mt. Ida acquisition by the Amherst campus, to  
8 include a hearing in Boston on how the acquisition was conducted quietly,  
9 and with little notice to the public, state government, or the Mt. Ida  
10 community. The Amherst Bulletin is a free newspaper disseminated to  
11 Amherst, Pelham, Shutesbury. Hadley and Leverett residents.  
12

13 Based on the information you have provided I have a few questions thus  
14 far. You say that the "Contract" with the Mt. Ida Police Dept. expires on  
15 Aug. 1<sup>st</sup>. What contract are you referring to and who is the other concerned  
16 party in the contract?" Second, you say that "it" will become the Lasell  
17 College P.D. Is the Police Dept. at Mt. Ida, or the employees responsible  
18 for providing police services at Lasell College?  
19

20 Finally, in the interest of transparency, I think it might be a good idea to post  
21 or otherwise make available to the membership this contract that expires on  
22 Aug. 1<sup>st</sup> as it will no doubt raise additional questions. Thank you for your  
23 time and consideration regarding this matter.

24 Chief Parham replied via email to Ortiz on June 28, 2018 at 3:07 p.m. by stating:

25 You're most welcome. Last week, Labor Relations Director Brian Harrington  
26 met with the NEPBA E-Board. For additional contract and NEPBA  
27 questions, I'd defer you to your E-Board and Mr. Harrington.

28 In a June 28, 2018 email at 3:37 p.m., Ortiz responded:

29 Ok Chief,  
30

31 So I understand this correctly, you don't have any information as to the  
32 questions I asked, and I should seek clarification from labor relations. This  
33 is transparency? Message received.

34 July and August 2018

35 *July 19, 2018 Meeting*

1           On July 19, 2018, representatives from the University, the NEPBA, and the IBPO  
2 met again to discuss members of the two bargaining units providing services to the Mt.  
3 Ida Campus. Chief Parham, Deputy Chief Cyr, Harrington and Nicholas Marshall, the  
4 former Director of Labor Relations, represented the University. Ortiz as well as unit  
5 members Fran Henderson and Kevin Shaw represented the NEPBA. Ward, Malo,  
6 James Sullivan, and Bob Dickson, the business agent, represented the IBPO. The  
7 parties met for sixty to ninety minutes. The University confirmed that Margolis Healy had  
8 started collecting UMPD policies and procedures and would be on the Amherst Campus  
9 the week of July 30, 2018. The University noted that it would schedule specific times for  
10 UMPD officers to meet with Margolis Healy, and that Margolis Healy had the Joint June  
11 22, 2018 Long-Term Proposal. Harrington indicated that the University expected 150  
12 residential students on the Mt. Ida Campus in the Fall of 2018. He noted that the  
13 University already had posted openings for dining commons employees as well as  
14 resident assistants for the Mt. Ida campus. Harrington stated that it was the University's  
15 intention to hire unionized UMPD officers for the Mt. Ida Campus in the future. He also  
16 noted that there would be an increased UMPD presence at the Mt. Ida Campus by  
17 January 2019, if not, by September 2019, or by the following January 2020.

18           Chief Parham indicated that the UMPD officers could not physically work at the  
19 Mt. Ida Campus without radio communications and that the UMPD could not staff the Mt.  
20 Ida Campus due to staffing shortages, including officers out on injury leave. However,  
21 he indicated that in the long term, UMPD officers would work there permanently. He  
22 noted that the solution was to have more NEBPA and IBPO bargaining unit members.

1           In response to an inquiry, Harrington indicated that the Lasell College police were  
2 still policing the Mt. Ida Campus until August 1, 2018. Harrington also commented that  
3 the University did not have enough information to know what to do about police services  
4 at the Mt. Ida Campus and wanted to consult with both unions to figure out the best way  
5 to do things. Shaw then remarked that the Lasell College police were leaving in two  
6 weeks and that there was no plan in place about who was going to police the Mt. Ida  
7 Campus. Harrington responded that right now, the University did not know what it was  
8 going to do, it might have the Newton police cover the Mt. Ida campus. Ortiz indicated  
9 that the NEPBA and the IBPO needed to give the University permission to contract out  
10 and under their contracts, the unions were to provide services at the Mt. Ida Campus on  
11 August 1, 2018.

12           Harrington inquired whether any UMPD officers wanted to go to the Mt. Ida  
13 Campus. Ortiz responded that he would purchase a new car, work off the costs, and  
14 "write the whole thing off." He also stated that he believed that other UMPD officers  
15 would be willing to work on the Mt. Ida Campus as it would be guaranteed overtime.  
16 Chief Parham then queried whether UMPD officers in general wanted to work at the Mt.  
17 Ida campus. Sullivan responded that he could think of a few UMPD officers, both IBPO  
18 and NEBPA unit members, who would be interested. Chief Parham raised the possibility  
19 that because the Mt. Ida Campus would be an upperclassmen environment, it might not  
20 be the policing environment in which UMPD officers would want to work. Ortiz indicated  
21 that there must be compensation to unit members if the University was going to hire  
22 outside of the contracts and that the union contracts must be followed. The parties talked

1 about how a bill was still before the Legislature to make UMPD officers eligible for group  
2 four retirement.

3 The parties then discussed the number of officers needed to patrol the Mt. Ida  
4 Campus and the minimum of officers that were needed to ensure UMPD officers' safety.  
5 The unions proposed three officers per shift, and Chief Parham indicated that the UMPD  
6 did not have sufficient staffing to have three officers working at the Mt. Ida Campus right  
7 away. The unions suggested that the University fill certain details, including student  
8 moving in/out days and football games, at its Amherst Campus with municipal officers  
9 using its mutual aid agreements with nearby communities and place UMPD officers at  
10 the Mt. Ida Campus. Chief Parham opposed moving UMPD officers to a nearly empty  
11 Mt. Ida Campus, while using officers from nearby municipal police departments to  
12 provide services at the Amherst Campus. Chief Parham indicated he needed additional  
13 data about the Mt. Ida Campus. He raised concerns that the Mt. Ida Campus'  
14 infrastructure deficiencies, including the absence of communications equipment and the  
15 inferior police station, could affect the UMPD's accreditation if the UMPD served both  
16 campuses. He reminded the parties that the UMPD had not received any additional  
17 funds to provide services to the Mt. Ida Campus.

18 *July 25, 2018 Meeting*

19 On July 25, 2018, the University, the NEBPA and the IBPO met again to discuss  
20 their members providing services to the Mt. Ida Campus. Harrington and Chief Parham  
21 were present on behalf of the University. Justin Green (Green), who became local union  
22 president in mid-July 2018, and Ortiz were present on behalf of the NEBPA. Malo, Ward,  
23 and Silva were present on behalf of the IBPO. The NEBPA and the IBPO contended

1 that they had several unit members who wanted to permanently relocate to the Mt. Ida  
2 Campus, a contention which Chief Parham challenged.<sup>24</sup> The University reiterated that  
3 Margolis Healy was in the process of conducting a site survey of security measures at  
4 the Mt. Ida Campus and was examining police staffing levels at the Amherst Campus,  
5 which included the UMPD's operations at the Amherst Campus. The University indicated  
6 that the purpose of engaging the services of Margolis Healy was to determine how many  
7 students and staff would need to be at the Mt. Ida Campus to trigger the need for the  
8 UMPD's presence there. The University indicated that the Margolis Healy report was  
9 expected in September 2018 and that the University wanted to wait until it received the  
10 report<sup>25</sup> before making a permanent commitment to how many UMPD officers would staff  
11 the Mt. Ida Campus. The University acknowledged that pursuant to its collective  
12 bargaining agreements with the unions, UMPD unit members would need to work at the  
13 Mt. Ida Campus in the future and that the University was trying to figure how to make  
14 that happen. However, the University also informed the unions that it was looking into  
15 the use of a private security company at the Mt. Ida Campus rather UMPD officers.<sup>26</sup>  
16 The University noted that the contract with Lasell College to provide police services to

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<sup>24</sup> Both Harrington and Chief Parham claimed at hearing that the NEPBA and the IPBO never provided them with the names of any unit members who wanted to permanently transfer to the Mt. Ida Campus for their regular rate of pay not overtime.

<sup>25</sup> Although the Margolis Healy report would contain recommendations not requirements, the University intended to follow the recommendations unless the recommendations were completely unfounded.

<sup>26</sup> At the hearing, Harrington indicated that Steve Reynolds, the Mt. Ida Campus manager, had decided somewhere between July 19 and July 25, 2018 to engage the services of a private security firm at the Mt. Ida Campus.

1 the Mt. Ida Campus was about to expire and that Lasell College had recently declined to  
2 extend the contract.

3 The NEPBA and the IBPO then presented the University with a written proposal  
4 (Joint July 25, 2018 proposal), prepared by executive board members from both unions,  
5 which bore the title: "Short-Term Staffing Proposal (0-6 months) UMass Amherst Mt.  
6 Ida." (Joint July 25, 2018 Short-Term Proposal). The unions contended that because  
7 the proposal paid NEPBA and IBPO unit members overtime for their travel time and work  
8 hours at the Mt. Ida Campus, it would not cause the Amherst Campus to be further short-  
9 staffed or interfere with the minimum shift coverage there. The proposal provided for the  
10 payment of two hours of travel time each way to the Mt. Ida Campus, which would be  
11 calculated using the yellow overtime rate as well as for the payment of tolls and mileages  
12 costs. Green described the proposal at hearing as incentivizing bargaining unit members  
13 to work at the Mt. Ida Campus by paying them overtime calculated at the highest step<sup>27</sup>  
14 of their salary grades to provide the Mt. Ida Campus with the same level of service as  
15 the Amherst Campus. As part of the proposal, Green had calculated the yearly cost of  
16 overtime coverage at the Mt. Ida Campus with two officers on each shift as  
17 \$3,062,640.80<sup>28</sup> as the high rate and \$1,676,988.90 as the low rate.<sup>29</sup> The Joint July 25,  
18 2018 proposal also addressed other subjects including: 1) the immediate purchase of

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<sup>27</sup> Patrol officers had seven steps in the Grade 16 salary grade of the 2017-2022 MOA.

<sup>28</sup> The projected cost of the total overtime coverage for the Mt. Ida Campus for the first year was approximately half of the UMPD's total budget.

<sup>29</sup> The high cost was calculated using the top step of the patrol officer's grade 16 salary scale, while the low cost was calculated using bottom step of the patrol officer's grade 16 salary scale.

1 four police cruisers, 2) the immediate hiring of six new patrol officers, and 3) the  
2 implementation of a four-step salary upgrade.

3 The University did not respond in writing to the Joint June 22, 2108 Long-Term  
4 Proposal or the Joint July 25, 2018 Short-Term proposal<sup>30</sup> and did not present any written  
5 counterproposals at the June 22, 2018, July 19, 2018, or July 25, 2018 bargaining  
6 sessions. Chief Parham reminded the unions that the UMPD had not received any  
7 additional funds to provide services to the Mt. Ida Campus.<sup>31</sup> At hearing, Harrington  
8 characterized the parties as having a “vast gulf” between the unions’ proposals and the  
9 University’s willingness to agree to those proposals<sup>32</sup> after the bargaining session. Chief  
10 Parham indicated at the hearing that he had no authority to agree to a proposal before  
11 the University received the Margolis Healy Report because he needed the report to ask  
12 for additional funds from the University, which the proposals would require.

13 On July 25, 2018, after the bargaining session, the University notified the NEBPA  
14 that effective August 1, 2018, employees of private security vendor Internal Security  
15 Associates, LLC (ISA) would provide security at the Mt. Ida Campus on behalf of the  
16 University.<sup>33</sup> On or about that same time, the University notified the Union that effective

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<sup>30</sup> The University also did not respond in writing to the IBPO’s June 26, 2022 Short-Term Proposal.

<sup>31</sup> At hearing, both Harrington and Chief Parham described the July 25, 2018 proposal as economically not feasible although the record does not reveal that the University used that term during negotiations.

<sup>32</sup> At hearing, Green stressed that the NEBPA had submitted the June 22, 2018 and July 25, 2018 proposals as its initial proposals and was waiting for the University’s counterproposals.

<sup>33</sup> Since 2018, the University has not taken any funds from the UMPD budget to pay the costs of ISA providing security services to the Mt. Ida Campus.



1 August 1, 2018, officers employed by the Newton Police Department (NPD) would provide  
2 supplemental security at the Mt. Ida Campus on behalf of the University.<sup>34</sup> On July 25,  
3 2018 at 5:08 PM, Chief Parham sent the following email message to the UMPD Command  
4 staff:

5 Just as an update, this morning Brian Harrington and I met with the police  
6 unions again. We informed them that as of this date, UMPD has not been  
7 tasked at Mt. Ida oversight but after the consultant study, a transition plan  
8 will take place. The unions presented the attached documents as  
9 suggestions. It sounds like there are some of you who have not seen this,  
10 so I've attached it. As of today, UMPD has not received any additional  
11 funding for that campus and again we (UMPD) have not transitioned to it  
12 yet. Brian let them know that UMPD will not be policing the campus  
13 beginning August 1<sup>st</sup> as the University has hired an unarmed private security  
14 firm wearing blazers to initially staff the campus. This document will also  
15 be shared with the administration and consultants.

16 On August 1, 2018, ISA personnel began performing security work at the Mt. Ida  
17 Campus with the NPD providing additional support if needed. In a written agreement<sup>35</sup>  
18 with the University, the ISA described its scope of services at the Mt. Ida Campus as  
19 providing two unarmed security officers 24/7 under the terms of Statewide Security  
20 Contract FAC 93 and noted that the University could terminate its agreement with ISA  
21 with a reasonable advance notice. The unarmed security officers would: a) patrol the  
22 entire campus, walking through each building and locking doors and checking for issues,  
23 b) monitor the radio, cameras, and incoming phone calls, and c) perform crowd control  
24 and visitor management. The written agreement provided that ISA would provide GPS

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<sup>34</sup> Chief Parham indicated that NPD's agreement to provide services to the Mt. Ida Campus was based on a handshake deal and the University has not taken any funds from the UMPD budget to reimburse the NPD for the costs of providing supplemental security.

<sup>35</sup> The hearing record is devoid of the written agreement that ISA and the University entered into for ISA to begin providing services at the Mt. Ida Campus.

1 tracking for a patrol vehicle,<sup>36</sup> incident logging and reporting, a guard tour system, and  
2 on-site cellular phone. The University would supply any radios, vehicles, fuel, and  
3 computers, etc. that were needed to provide services to the Mt. Ida Campus.<sup>37</sup>

4 On or after the July 25, 2018 bargaining session, Harrington and Chief Parham  
5 provided copies of the Joint June 22, 2018 Long-Term Proposal and the Joint July 25,  
6 2018 Short Term Proposal to the University's Office of the Vice-Chancellor of  
7 Administration and Finance and the Office of the Vice-Chancellor of Student Affairs  
8 respectively.<sup>38</sup> Both offices subsequently indicated that there were no additional monies  
9 available to fund the costs of the proposals, including items such as the purchase of  
10 additional police vehicles.<sup>39</sup>

11 *August 17, 2018 Meeting*

12 On August 17, 2018, the University and the NEPBA and the IBPO met again for  
13 sixty to ninety minutes to discuss unit members providing services at the Mt. Ida Campus.  
14 Harrington and Chief Parham represented the University. Green and Ortiz represented  
15 the NEPBA, while Malo, Ward, Ortiz, and Sullivan represented the IBPO. Chief Parham  
16 confirmed that representatives from Margolis Healy had spent 1.5 days at both the

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<sup>36</sup> The University received the patrol vehicle as part of the purchase of the Mt. Ida Campus.

<sup>37</sup> The University submitted a copy of the March 1, 2019 through June 30, 2019 agreement between ISA and University into evidence to illustrate the scope of services that ISA has provided to the Mt. Ida Campus since August 2018 and continuing.

<sup>38</sup> The record does not indicate when Harrington and Chief Parham forwarded those proposals to the offices of the vice-chancellors to whom they reported.

<sup>39</sup> The record does not indicate when the offices of the vice-chancellor of administration and finance and the vice-chancellor of student affairs notified Harrington and Chief Parham respectively of their determinations.

1 Amherst Campus and the Mt. Ida Campus viewing the infrastructure and speaking with  
2 staff as well as the Newton Police, ISA staff and the Lasell Police. He indicated that the  
3 University expected a report from the consulting firm in September or October 2018.  
4 Chief Parham also remarked that Margolis Healy representatives were surprised that the  
5 UMPD did not respond to student lockouts. Sullivan commented that at the Amherst  
6 Campus the residence life staff handled student lockouts, while the UMPD focused on  
7 law enforcement. Chief Parham commented that Margolis Healy would be “crunching the  
8 data” and looking into the supervision model to be put in place relative to the Mt. Ida  
9 Campus and its interaction with the UMPD. Chief Parham noted that seventy-three  
10 students would be living on the Mt. Ida Campus in the Fall of 2002 as part of the veterinary  
11 technician and dental hygiene programs. He also confirmed that the NPD was now  
12 handling police functions on the Mt. Ida Campus. Silva asked when Chief Parham was  
13 approached about the UMPD providing services at the Mt. Ida Campus. Chief Parham  
14 indicated that he was asked in April about the likelihood of UMPD staffing the Mt. Ida  
15 Campus by a date certain. Silva asserted that the Police Chief’s response was  
16 contradictory to his alleged prior statements that the University had not approached him  
17 on the matter, and the Police Chief disagreed with that assertion.<sup>40</sup>

18 Ortiz inquired as to where the funds came from to pay the ISA and to pay Lasell  
19 College until July 31, 2018. Harrington requested that Ortiz send him a request for the  
20 information as Harrington did not have any materials with him. Harrington noted that the  
21 University could not pay overtime to bargaining unit members for travel to the Mt. Ida  
22 Campus because the University does not pay employees even regular pay to travel to

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<sup>40</sup> I need not resolve this controversy as it is not pertinent to the issue before me.

1 work. The University and the two unions disagreed as to whether the Mt. Ida Campus  
2 needed security services or police services.

3 Sullivan also described how he called the Mt. Ida Campus police phone, and an  
4 ISA employee answered the phone by stating UMass Department of Public Safety. When  
5 Sullivan asked the employee whether he worked for ISA or the University, the employee  
6 replied that he worked for the University. When Sullivan then identified himself as a  
7 UMPD sergeant, the employee clarified that he worked for ISA. Harrington indicated that  
8 he took notes on Sullivan's statements and that would follow up the issue.

9 On September 12, 2018, Green sent a letter to Harrington stating in pertinent part:

10 The New England Police Benevolent Association ("the union"), as the  
11 exclusive bargaining representative for the UMass Amherst Police Union  
12 Local #190, requests that the University of Massachusetts (Amherst)  
13 forward the below listed information pursuant to G.L. c.150E as it is relevant  
14 to the Union's performance of its duties as exclusive bargaining  
15 representative, including,  
16

17 Any and all correspondence, contract, written documentation, and/or  
18 agreements UMass Amherst and UMass Statewide System has created,  
19 sent, received and/or maintained, addressed to and/or received from Mt.  
20 Ida/Lasell Police Department, City of Newton, Ma dated January 1, 2016  
21 until August 2, 2018.  
22

23 The budgetary source(s) that provided funding for compensation to  
24 employees of Lasell/Mt. Ida College to continue to provide police services  
25 through August 1, 2018 and to the Private Security Firm-Internal Security  
26 Associates contracted to provide security services from August 1, 2018  
27 through the present time.  
28

29 Although the University subsequently provided Green with certain information, he then  
30 informed the University that he believed the response was incomplete.

31 Margolis Healy Report

32 On November 20, 2018 and December 25, 2018, Green sent email messages to  
33 University Vice-Chancellor Andrew Mangels requesting a copy of the Margolis Healy

1 Report, which the NEPBA expected to receive in mid-October 2018. The University  
2 subsequently received the Margolis Healy Report <sup>41</sup> on or about January 2, 2019. In its  
3 report, Margolis Healy recommended that the University maintain 24/7 coverage by trained  
4 security professionals and an emergency response capability at the Mt. Ida Campus.  
5 Margolis Healy opined that the non-sworn security staff from ISA could adequately meet  
6 the Mt. Ida Campus' needs for security, community caretaking, and concierge type  
7 services. It advised the University not to replicate the staffing scheme at the Amherst  
8 Campus but to take an incremental approach to building the safety and security programs  
9 based on the campus population and to use sworn police officers as the campus  
10 population increased.

11 March 2019

12 On or about March 2019, the UMPD assigned Lieutenant David While (White),<sup>42</sup>  
13 to work at the Mt. Ida Campus. White had volunteered for the assignment at a February  
14 2019 meeting between the UMPD command staff and the UMPD's lieutenants because  
15 he wanted to try a new assignment and because he previously oversaw the expansion of  
16 the Town of Westhampton's police department. White had been Westhampton's part-  
17 time police chief since 2005. He described the purpose of his assignment<sup>43</sup> as ensuring  
18 that when the Mt. Ida Campus population grew, its infrastructure could support the UMPD

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<sup>41</sup> Margolis Healy had informed the University that the report was delayed due to the consulting firm's work at two other academic institutions conducting investigations into a school shooting and sexual harassment allegations.

<sup>42</sup> White had worked for the UMPD since 2007 and was a member of the IBPO bargaining unit.

<sup>43</sup> At hearing, White described the purpose of his assignment as his "marching orders".

1 officers who would work there. White met with Reynolds at some point in or after March  
2 2019. White typically traveled to the Mt. Ida Campus on Tuesdays. He would meet with  
3 a group from the campus, walk around the campus and check on certain buildings. At  
4 that time, the Mt. Ida Campus had approximately thirty-five students living in a residence  
5 hall, who were overseen by two residence directors and two resident assistants.  
6 Approximately, fifteen other students traveled to the campus to participate in laboratories  
7 for a veterinary technician program. White observed that there were six employees  
8 working in the dining commons, eight employees working in the administration building,  
9 and several people working in the library. He noted that that there were two ISA personnel  
10 on duty and ISA provided 24/7 staffing. One ISA employee sat at a desk in the former  
11 police station answering the phone, opening mail, and monitoring security cameras on  
12 the property.<sup>44</sup> The other ISA employee patrolled the campus in the unmarked vehicle  
13 that Mt. Ida College had left, checked to make buildings were secured, and performed  
14 heat checks on buildings in the winter.

15 Additional Data about the Mount Ida Campus

16 Between August 1, 2018 and April 23, 2019, the NPD responded to eighteen calls  
17 at the Mount Ida Campus. The NPD responded to eleven fire alarm calls on August 3,  
18 2018, August 4, 2018, August 30, 2018, October 4, 2018, November 22, 2018, November  
19 23, 2018, December 15, 2018, December 19, 2018 (separate calls), January 12, 2019,  
20 and January 30, 2019. On September 7, 2018, the NPD responded to a call involving a  
21 motor vehicle accident, and on September 14, 2018, the NPD responded to a call

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<sup>44</sup> White believed that the ISA personnel communicated with each other using push-to-talk telephones.

1 involving a road rage incident. On January 12, 2019, the NPD responded to a call  
2 involving an unleashed dog. On January 22, 2019, the NPD responded to two separate  
3 calls regarding carbon monoxide detectors. On February 5, 2019, the NPD responded to  
4 a report of a dental patient having a gun, which turned out to be pepper spray, and on  
5 April 17, 2019, the NPD responded to a hang up call on the emergency line.

6 As of December 9, 2019, the Mt. Campus had a total population of 171 students  
7 and faculty staff. The Mt. Ida Campus had 119 students of which 40 were residential  
8 students and 79 were commuter students. The Mt. Ida Campus had 52 faculty and staff  
9 members, which included 20 faculty members, 28 staff members and 4 contractors.

#### 10 Opinion

#### 11 Count I

12 Section 10(a)(5) of the Law requires a public employer to give the exclusive  
13 collective bargaining representative prior notice and an opportunity to bargain to  
14 resolution or impasse before transferring bargaining unit work to non-unit personnel. City  
15 of Cambridge, 23 MLC 26, 28, MUP-9171 (June 28, 1988), aff'd sub nom. Cambridge  
16 Police Superior Officers Association v. Labor Relations Commission, 47 Mass. App. Ct.  
17 1108 (1999). As a preliminary matter, I must determine whether the University had an  
18 obligation to bargain over the decision to use ISA and the NPD to perform security  
19 functions at the Mt. Ida Campus. The genesis of this dispute arose when the University  
20 purchased the campus of the former Mt. Ida College, which closed in the Spring of 2018.  
21 Mt. Ida College did not have its own police force but previously had entered into an  
22 agreement with Lasell College to have a combined public safety department for both  
23 schools, an agreement which ended on July 31, 2018.

1 Prior to the Summer of 2018, the NEPBA's unit members had not performed any  
2 work at the Mt. Ida Campus. The facts of this case do not involve a situation where an  
3 employer relocated workers or removed their duties to another work site. After the  
4 University purchased the Mt. Ida Campus, NEBPA unit members, who were armed, sworn  
5 police officers, continued to perform their same law enforcement duties at the Amherst  
6 Campus. The University's decision as to whether it would protect the Mt. Ida Campus  
7 using sworn law enforcement personnel, security guards, or a combination of both  
8 implicated the University's ability to set its law enforcement priorities. City of Worcester,  
9 438 Mass. 177, 181 (2002); see also Burlington v. Labor Relations Commission, 390  
10 Mass. 157, 164 (1983) (finding that town had prerogative to reassign duties formerly held  
11 by police prosecutors to town counsel). Here, the University determined that the Mt. Ida  
12 Campus, which was vacant in the Summer of 2018, and was scheduled to have a  
13 relatively small number of staff and students there in the Fall of 2018, could be adequately  
14 protected by security guards, who were unarmed and who were not sworn officers of the  
15 law. A public employer need not defend the wisdom of a policy choice that it has made  
16 in order to have that choice recognized as a core managerial prerogative. Id. at 183.  
17 Additionally, the University was faced with a staffing shortage at the UMPD, which  
18 previously had resulted in NEPBA members being forced to work significant amounts of  
19 mandatory overtime. The University decided that it needed to utilize the NEPBA unit  
20 members at the Amherst Campus with its large contingent of staff, students, and visitors  
21 rather than exacerbating the UMPD's staffing shortage by diverting some of those NEPBA  
22 unit members to the Mt. Ida Campus. Also, the University declined to divert some NEPBA  
23 members to the Mt. Ida Campus, while relying on neighboring police departments with



1 which it had mutual aid agreements, to work details at football games and at student  
2 moving in/out days at the Amherst Campus, which the NEPBA and the IBPO had  
3 proposed at the July 19, 2018 meeting.

4 The NEPBA contends that the University's decision to engage the services of ISA  
5 and the NPD was a cost saving measure that should be subject to bargaining. The  
6 NEPBA notes that Chief Parham had commented several times during bargaining that  
7 the University had not provided any additional monies in the UMPD's budget to pay for  
8 security services at the Mt. Ida Campus, and that the Joint July 25, 2018 proposal would  
9 cost half of the UMPD's budget. In City of Fall River, 27 MLC 47, MUP-1961 (November  
10 21, 2000), the Commonwealth Employment Relations Board (CERB) concluded that  
11 when an employer continued to have the same work performed at a lower cost by  
12 reassigning dispatch duties from fire fighters to civilians, it was an economically motivated  
13 decision to transfer work that was particularly suitable to collective bargaining. Id. at 51.  
14 However, the City of Fall River case is inapposite to the particular facts of the present  
15 case because the University's decision involved an initial determination as to what type  
16 of security was needed at the Mt. Ida Campus rather than a decision to have non-unit  
17 personnel perform the same duties that NEPBA unit members previously had performed  
18 there. Accordingly, the University was not obligated to bargain over the decision to use  
19 ISA and the NPD to perform security functions at the Mt. Ida Campus.

#### 20 Duty to Bargain Over the Impacts

21 In cases where an employer is excused from the obligation to bargain over a  
22 decision, it is still required to bargain with the exclusive representative regarding the  
23 impacts its decision will have on mandatory subjects of bargaining before it implements

1 that decision. Higher Education Coordinating Council, 22 MLC 1662, 1670-71, SUP-4078  
2 (April 11, 1996). The NEPBA asserts that its unit members historically have performed  
3 all police services within the jurisdiction of the University's Amherst Campus, that the  
4 University's Amherst Campus jurisdiction was extended to include the Mt. Ida Campus  
5 when the University purchased the property, and that "security/policing duties" at the Mt.  
6 Ida Campus therefore became its bargaining unit work. The NEPBA contends when the  
7 University made the managerial decision to use ISA and the NPD to perform security  
8 functions at the Mt. Ida Campus, the University's decision impacted unit members' terms  
9 and conditions of employment by assigning work outside of the bargaining unit. The  
10 assignment of bargaining unit work outside the bargaining unit is a mandatory subject of  
11 bargaining. Melrose School Committee, 9 MLC 1713, 1722, MUP-4507 (March 24, 1983).  
12 To establish that an employer unilaterally transferred bargaining unit work to non-unit  
13 personnel, an employee organization must demonstrate that: 1) the employer transferred  
14 bargaining unit work to non-unit personnel; 2) the transfer of unit work had an adverse  
15 impact on individual employees or the bargaining unit itself; and 3) the employer failed to  
16 give the employee organization prior notice and an opportunity to bargain to resolution or  
17 impasse over the transfer. Commonwealth v. Labor Relations Commission, 60 Mass.  
18 App. Ct. 831, 8233 (2004); City of Gardner, 10 MLC 1216, 1219, MUP-4917 (September  
19 14, 1983).

20 I turn now to consider in seriatim whether the University transferred alleged  
21 NEPBA unit work at the Mt. Ida Campus to the ISA and/or the NPD.

22 *ISA*

1           ISA employees, who work at the Mt. Ida Campus, sit at a desk at the former Mt.  
2   Ida College police station where they monitor surveillance cameras and the radio. They  
3   answer incoming phone calls and open the mail. They are responsible for visitor  
4   management and crowd control. They patrol the seventy-four-acre campus in a single,  
5   unmarked vehicle, which previously belonged to Mt. Ida College. They also walk through  
6   buildings to ensure that doors are locked and that there are no problems. They also  
7   monitor heat settings in the buildings during the winter.

8           The University argues that the duties that ISA employees perform at the Mt. Ida  
9   Campus are not law enforcement functions, which NEPBA unit members perform, but  
10   non-sworn security functions that at the Amherst Campus are performed by other non-  
11   unit personnel, including the ISOs, the cadets, and Green Mountain employees. At the  
12   Amherst Campus, ISOs work at the Campus Center and the adjacent Student Union. The  
13   ISOs protect the building, which includes making periodic rounds of the building and  
14   conducting security checks. The ISOs lock and unlock conference rooms, provide  
15   information to the public, and respond to emergency situations by administering first aid  
16   and summoning assistance. The cadets monitor radio traffic and respond to all calls  
17   addressed to them. They assist residence life staff, which includes addressing persons  
18   who fail to cooperate with residence hall security or residence life staff, and they register  
19   guests at the residence halls, who are minors or without identification. The cadets provide  
20   crowd control in busy residence hall lobbies and during fire alarms. They also provide  
21   walking escorts when requested. Green Mountain employees perform bag checks and  
22   pat downs of attendees at football games and events at the Student Union.

1           In contrast, the primary duty of NEPBA unit members is the enforcement of all  
2   applicable state and local laws and the enforcement of the University's traffic rules and  
3   regulations. They identify, apprehend and when appropriate detain individuals who are  
4   suspected of violating these laws. They conduct preliminary and follow-up investigations  
5   into both routine and complex offenses, misdemeanors, and felony criminal activities.  
6   They prepare, write, and execute arrest and search warrants. They conduct  
7   investigations into motor vehicle and pedestrian accidents. The primary focus of  
8   NEBPA's unit members' job duties is law enforcement. Although they may perform  
9   certain security functions, including patrolling the campus and answering questions from  
10   the public, those security functions are performed in the context of their law enforcement  
11   roles. They patrol the University campus to ensure the protection of persons and property  
12   and to deter criminal activity. They provide assistance to the public that runs the gamut  
13   from visitors seeking directions to crime victims and witnesses needing referrals to social  
14   service agencies.

15           Upon review, the duties that ISA personnel perform are closely related to the duties  
16   that ISOs and cadets perform, and those duties at the Amherst Campus are not NEPBA  
17   bargaining unit work. Further, the record does not show that ISA personnel perform any  
18   law enforcement functions. Therefore, the University's decision to use ISA at the Mt. Ida  
19   Campus did not impact NEBPA unit members by transferring bargaining unit work.

20           *NPD*

21           The NEPBA also contends that the University's decision to rely upon the NPD to  
22   respond to calls at the Mt. Ida Campus in situations that required a law enforcement  
23   presence also impacted unit members by constituting a transfer of their bargaining unit

1 work. Here, I must examine whether prior to August 2018, the NEPBA bargaining unit  
2 shared their law enforcement duties with other outside law enforcement agencies. At the  
3 Amherst Campus, certain municipal police departments with mutual aid agreements with  
4 the NEPBA, regularly would perform details there if NEPBA unit members declined the  
5 opportunity to work those details. More significant to the issue before me, the University  
6 used the services of municipal departments to respond to calls at University properties in  
7 Waltham, Gloucester, and Wareham. However, UMPD officers have responded to calls  
8 at University properties in Belchertown, Deerfield, Montague, Leverett, Sunderland,  
9 Pelham, Hadley and Shutesbury. In cases where job duties have traditionally been  
10 shared by bargaining unit members and individuals who are not members of that  
11 bargaining unit, the CERB has held that the work at issue is not exclusive bargaining unit  
12 work. Higher Education Coordinating Council, 23 MLC 90, 92, SUP-4090 (September 17,  
13 1996). In shared work situations, an employer does not have to bargain over every  
14 incidental variation in work. Town of Saugus, 28 MLC 13, 17, MUP-2343, CAS-3388  
15 (June 25, 2001); City of Somerville, 23 MLC 256, 259, MUP-8160 (May 2, 1997). Rather,  
16 the duty to bargain arises only if there has been a calculated displacement of unit work.  
17 Town of Bridgewater, 23 MLC 103, 104, MUP-8650 (December 30, 1998). Whether there  
18 has been a calculated displacement of unit work is determined by examining whether  
19 bargaining unit members performed an ascertainable percentage of work, and the  
20 employer has taken action that results in a significant reduction in that percentage, with  
21 a corresponding increase in the percentage of work performed by non-unit personnel.  
22 Commonwealth of Massachusetts, 27 MLC 52, 56, SUP-4091 (November 21, 2000); City  
23 of New Bedford, 15 MLC 1732, 1737, MUP-6488 (May 31, 1989).

1           The NEBPBA argues that a calculated displacement of unit work took place  
2 because it was the NPD that responded to calls at the Mt. Ida Campus requiring law  
3 enforcement personnel,<sup>45</sup> rather than NEBPA unit members. In shared work cases, our  
4 analysis focuses on the pre-existing pattern of shared work and the impact of any change  
5 that pattern may have on the allegedly aggrieved party. See City of Boston, 28 MLC 194,  
6 195, MUP-2185 (January 4, 2002); City of Quincy, Quincy City Hospital, 15 MLC 1239,  
7 1241, MUP-6490 (November 9, 1988). Here, the focus of the analysis must be how the  
8 University has handled calls for law enforcement assistance at University properties other  
9 than the Amherst Campus, properties where NEPBA unit members were not regularly  
10 assigned. A review of the facts before me shows that NEPBA unit members previously  
11 responded to calls at UMass properties in nearby communities, while since 1994, local  
12 municipal departments, not NEPBA unit members, responded to calls at University  
13 properties that were a significant distance from the Amherst Campus. The University's  
14 use of the NPD at the Mt. Ida Campus was consistent with this prior pattern of shared  
15 work as the Mt. Ida Campus was approximately 2 to 2.5 hours from the Amherst Campus.  
16 Accordingly, I do not find that the University's use of the NPD caused a calculated  
17 displacement of shared bargaining unit work that triggered a bargaining obligation.

18           Additionally, the record before me does not show that the University's decision to  
19 use ISA and the NPD to provide services to the Mt. Ida Campus resulted in other

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<sup>45</sup> The University in its post-hearing brief challenged whether all of the calls that the NPD responded to from August 1, 2018 through April 23, 2019 actually required law enforcement personnel. In particular, the NPD responded to eleven fire alarm calls, two calls regarding carbon monoxide detectors, and a call regarding an unleashed dog. However, as the record contains no other information as to who made the calls or the reasons that the NPD responded to those calls, I make no finding as to whether the use of the NPD to respond to those calls was a mistaken use of law enforcement personnel.

ascertainable impacts on NEBPA unit members' terms and conditions of employment. Unit members' wages, hours and working conditions remained the same, especially in light of the fact that NEBPA unit members previously had not worked at the Mt. Ida Campus. Also, the bargaining unit suffered no erosion of unit work as a result of the University's decision and continued to perform the same amount of work and likely even more work at the Amherst Campus. See generally Chief Justice for Administration and Management of the Trial Court, 79 Mass. App. Ct. 374, 387 (2011) (finding that hypothetical detriments do not justify purposeless impact bargaining).

#### Count II-Surface Bargaining

A party engages in surface bargaining "if, upon examination of the entire course of bargaining, various elements of bad faith bargaining are found, which considered together, tend to show that the dilatory party did not seriously try to reach a mutually satisfactory basis for agreement, but intended to merely shadowbox to an impasse." Everett School Committee, 43 MLC 55, 59, MUP-09-5665 (August 31, 2016) (quoting Bristol County Sheriff's Dep't, 32 MLC 159, 160-161, MUP-09-2971 (March 13, 2003)). When a public employer, for example, rejects a union's proposal, tenders its own, and does not attempt to reconcile the differences, it is engaged in surface bargaining. Bristol County Sheriff's Deep'd, 32 MLC at 161; Town of Saugus, 2 MLC 1480, 1484, MUP-591 (May 5, 1976). A categorical rejection of a union's proposal with little discussion or comment does not comport with the good faith requirement. Revere School Committee, 10 MLC 1245, 1249, MUP-5008 (September 29, 1983). Also, a failure to make any counterproposals may be indicative of surface bargaining. Local 466, Utility Workers of America, AFL-CIO, 8 MLC 1193, 1197, MUPL-2363 (July 1, 1981).

Here, the Complaint alleges that the University engaged in surface bargaining by notifying the NEBPA of its decision to engage the services of ISA and the NPD to provide security at the Mt. Ida Campus without first considering the Joint July 25, 2018 proposal that the NEBPA and the IBPO submitted at the July 25, 2018 bargaining session. However, because the University's decision to engage the services of ISA and the NPD implicated the University's right to set its law enforcement priorities, the University had no statutory obligation to bargain to resolution or impasse over that decision. City of Boston, 31 MLC 25, 31, MUP-1758 (August 2, 2004) (finding that decision to prioritize paid details directly implicated employer's ability to set law enforcement priorities and was not a mandatory subject of bargaining). Further, because the University's decision did not result in ascertainable impacts on unit members' terms and conditions of employment, the University did not have to engage in further bargaining over the impacts of the decision before implementation. Thus, the University did not engage in surface bargaining in violation of Section 10(a)(5) and (1) of the Law when it engaged the services of ISA and the NPD without making a counterproposal to the NEBPA's and IBPO's Joint July 25, 2018 proposal.

## CONCLUSION

Based on the record and for the reasons stated above, I conclude that the University did not violate Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner alleged in the Amended Complaint.



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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MARGARET M. SULLIVAN  
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 be final and binding on the parties.