

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

TOWN OF LAKEVILLE

and

LAKEVILLE PERMANENT FIREFIGHTERS
ASSOCIATION, IAFF, LOCAL 3188

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Case No.: MUP-09-5590

Date Issued:
March 22, 2012

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

Albert R. Mason, Esq. - Representing the Town of Lakeville

David Rome, Esq. - Representing Lakeville Permanent Firefighters
Association, IAFF, Local 3188

HEARING OFFICER'S DECISION

1 SUMMARY

2 The issue in this case is whether the Town of Lakeville (Town) violated Section
3 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter
4 150E, by unilaterally changing and increasing employees' job duties and workload in
5 February of 2009. I find that the Town violated the Law as alleged.

6 STATEMENT OF THE CASE

7 On August 14, 2009, the Lakeville Permanent Firefighters Association, IAFF,
8 Local 3188 (Association) filed a charge with the Department of Labor Relations

(Department)¹ alleging that the Town of Lakeville (Town) engaged in prohibited practices within the meaning of Sections 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. c.150E (the Law). Following an investigation, the Department issued a one-count complaint of prohibited practice on October 6, 2009 alleging that the Town violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. The Town filed an answer to the complaint on October 8, 2009. I conducted a hearing on September 15, 2010 at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The parties filed post-hearing briefs on October 15, 2010. Based on the record, which includes witness testimony, my observation of the witnesses' demeanor, stipulations of fact, and documentary exhibits, and in consideration of the parties' arguments, I make the following findings of fact and render the following opinion.

STIPULATIONS OF FACT

- a. The Town of Lakeville (Town) is a public employer within the meaning of Section 1 of G.L. Chapter 150E.
- b. Lakeville Permanent Firefighters Association, I.A.F.F., Local 3188 [Association] is an employee organization within the meaning of G.L. Chapter 150E.
- c. The [Association] is the exclusive bargaining representative for all permanent firefighters and permanent officers of the Town of Lakeville's Fire Department exclusive of the fire chief, deputy fire chief and call firefighters.
- d. Daniel Hopkins is the fire chief and an agent of the Town.
- e. David Goodfellow is the deputy fire chief and an agent of the Town.

¹ Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations' name is now the Department of Labor Relations.

- 1 f. Timothy Collins, Michael Moriarty, Thomas Dunlevy and William
2 Purcell hold the rank of lieutenant in the Town's fire department and
3 are public employees within the meaning of Chapter 150E, Section
4 1, and are included in the [Association's] bargaining unit described
5 in stipulation c.
6

7 FINDINGS OF FACT

8 Background

9 During the time period at issue, the Town Fire Department (Fire Department) had
10 a Fire Chief, Daniel Hopkins (Hopkins), a Deputy Chief, David Goodfellow (Goodfellow),
11 and four lieutenant firefighters, Timothy Collins (Collins), Michael Moriarty (Moriarty),
12 Thomas Dunlevy (Dunlevy) and William Purcell (Purcell). The Town and the
13 Association are parties to a collective bargaining agreement for the period July 1, 2007
14 through June 30, 2010 (Agreement). During negotiations for the Agreement, the Town
15 did not raise the issue of modifying lieutenants' job responsibilities. Article IV of the
16 Agreement prohibits changes or additions to the Fire Department Rules and
17 Regulations (Rules and Regulations) involving mandatory subjects of bargaining unless
18 the Board of Selectmen reviews the changes and the Association has an opportunity to
19 discuss the changes with the Board of Selectmen.² Section 14 of the Rules and
20 Regulations contains an officers' job description that pertains to lieutenants. The
21 officers' job description in the Rules and Regulations states in relevant part:

22 Work involves responsibility for and supervising and participating in fire
23 fighting and in house activities of the fire department during assigned
24 tour of duty, unless relieved by a superior.
25

26 * * *

27
28 Officers will exercise initiative and judgment in the protection of life and
29 property as it relates to the fire service.

² Additionally, Article XXVII of the Agreement sets forth the grievance procedure.

1 Illustrative examples[:]
2

- 3 1. Command[s] personnel during assigned tour of duty, callbacks,
4 maintains discipline, unless relieved by a superior.
5
- 6 2. When senior on duty, supervise and participate in alarm and
7 apparatus assignments, unless relieved by a superior.
8
- 9 3. When senior on duty, supervise and participate at all types of calls
10 to which the department responds, unless relieved by a superior.
11
- 12 4. When senior on duty, supervise and participate in the operation and
13 care/maintenance of departmental vehicles and equipment.
14
- 15 5. When senior on duty, supervise and participate in house duties.
16
- 17 6. When senior on duty, supervise and perform managing of paper
18 work and filing thereof.
19
- 20 7. When senior on duty, supervise and conduct inspections.
21
- 22 8. Participate and assist with departmental training.
23

24 Each lieutenant supervises a Fire Department personnel group during assigned
25 24-hour shifts. Prior to February of 2009, the lieutenants also responded to emergency
26 calls, secured fire scenes until relieved by higher command, enforced the Rules and
27 Regulations, conducted daily ambulance and truck checks and performed routine
28 maintenance, participated and assisted in personnel group training, and performed
29 inspections as assigned.

30 There is no dispute that at some point before February 17, 2009, Chief Hopkins
31 and Union President Collins had a conversation regarding lieutenants' job duties.³
32 Hopkins testified that he talked to Collins "probably at the end of January or beginning

³ Hopkins and Collins disagree about where the conversation occurred. Hopkins testified that it was "downstairs...out in the bays." However, Collins testified that Hopkins called him in for a meeting in the Chief's office. I need not resolve this issue because I do not find the location of the meeting to be a material fact.

1 of February.” It is also undisputed that Hopkins told Collins that he was contemplating
2 creating an updated lieutenant job description and assigning lieutenants to different
3 operational areas, and that Collins would do “the EMS side of it.”⁴ However, there is no
4 evidence that Hopkins provided any other information to Collins at the time. Hopkins
5 admitted that he did not “[draw] up the final conclusion[s]” until after meeting with
6 Collins. Also, after the meeting, Hopkins directed Deputy Chief Goodfellow to begin
7 drafting the duties set forth in the February 17 memorandum.⁵ Hopkins did not advise
8 Collins that he would implement his proposal effective February 17, 2009.

9 The record contains conflicting testimony about Collins’ reaction to Hopkins’
10 proposal. Hopkins testified that Collins “didn’t say anything negative about it, just ok,”
11 and did not ask questions. However, Collins testified that he told Hopkins, “when you
12 come up with something in writing, present it to the Union.” I credit Collins’ testimony on
13 this point because there is evidence that Hopkins’ oral proposal to Collins was
14 incomplete. Therefore, it is plausible that Collins asked for detailed information about
15 how certain aspects of lieutenants’ job descriptions would change as a result of
16 Hopkins’ general proposal to assign lieutenants to different operational areas.

⁴ There is conflicting evidence in the record about whether Hopkins told Moriarty and Dunlevy prior to February 17 about the “tasks” he wanted them to do. Hopkins testified that he did. However, Moriarty and Dunlevy testified that they did not become aware of their new duties until February 17. I do not credit Hopkins’ testimony on this point because he did not recount any substantive details about the conversations, or when the conversations occurred.

⁵ Goodfellow testified that he developed the February 17 memorandum through extensive planning sessions with Hopkins, but did not specify when those sessions occurred. However, Goodfellow testified that he did not begin developing the February 17 memorandum and “fine tun[ing] expectations” until after Hopkins and Collins met.

1 February 17, 2009 Meeting

2 On February 17, 2009, Chief Hopkins and Deputy Chief Goodfellow convened a
3 mandatory lieutenants' meeting and distributed the following memorandum (February
4 17 memorandum or memorandum):

5 In an effort to make the Department run more efficiently, the Chief has
6 implemented the following assignments to full-time officers. Each full-time
7 officer will be assigned a "function section" for them to spearhead and
8 facilitate the functions thereof. Creative management is encouraged and
9 there will be a fair amount of autonomy to [sic] sections that are run well.
10 The Chief and Deputy are committed to assisting in the development of
11 your sectional management programs. Periodic updates to the Deputy will
12 be required. Any requests for expenses associated with necessary work
13 will need to be approved by the Deputy through the Chief.

14
15 Function Sections:

16
17 Lt. Collins

18
19 EMS: Insure all the necessary components are in place and maintained
20 for the efficient and compliant running of emergency medical services at
21 the Lakeville Fire Department.

22 Insuring proper quantities of supplies are on hand both on and off
23 the ambulance.

24 Insure ambulances are in constant state of readiness.

25 Insure proper licenses and certifications are maintained by the
26 service and its personnel.

27 Assist in run report review for QA [quality assurance] and billing.

28 Any other EMS function that may be deemed necessary.
29

30 Lt. Moriarty

31
32 Training: Develop and implement departmental training for both full-time
33 and call personnel.

34 Create and maintain training schedules and curriculum.

35 Insure implementation of training.

36 Full-time training outlines of two hour duration weekly.

37 Insure shift officers are clear in the proper implementation of
38 curriculum.

39 Call training outlines of three hour duration monthly.

40 Insure proper training equipment and supplies are on hand.

41 Assist in the review of on-line training performed.

42 Any other training function that may be required.

1 Lt. Dunlevy

2
3 Maintenance: Develop and implement a program for the performance and
4 tracking of maintenance of all department apparatus and equipment.

5
6 Schedule required preventative maintenance.

7 Ensure the proper equipment and supplies are on hand.

8 Ensure that any required repairs are performed both in house
9 and outsourced.

10 Any other maintenance function that may be required.

11
12 Lt. Purcell

13
14 Fire Prevention and Education: Develop and expand a program for fire
15 prevention and fire safety education.

16
17 Assist in the performance of necessary inspections.

18 Assist in the review of plans submitted to the department.

19 Insure the necessary supplies are on hand for fire prevention
20 activities.

21 Assist in the procurement of grants for fire prevention activities.

22 Review reports and maintain departmental records.

23 Any other fire prevention and education function that may be
24 required.

25
26 It is understood that the nature of shift assignments may occasionally
27 create difficulties for the timely dispatch of assignments. In such cases
28 simple communication with the Deputy should be all that is necessary for
29 the proper assistance to be rendered to insure your success. We are
30 committed to assisting you in any way and will remain a resource and
31 participant in all of these outline[d] function sections.

32
33 Chief Hopkins left the February 17 meeting early. After Hopkins departed, either
34 Collins or Purcell told Goodfellow that the February 17 memorandum changed the
35 lieutenants' job description.⁶ Goodfellow disagreed, telling them that the memorandum
36 did not constitute a change and that the assignments were effective immediately.

⁶ Although Goodfellow's meeting minutes indicate that Purcell raised the issue, there is undisputed hearing testimony that Collins articulated that concern. Collins testified that he raised the issue, which Purcell did not dispute. Goodfellow did not deny that the Union raised the issue, either through Collins or Purcell.

1 Notably, Goodfellow admitted during the hearing that the memorandum changed the
2 concentration of effort in the lieutenants' assignments.

3 Lieutenant Collins – EMS⁷

4 The February 17, 2009 memorandum generally assigned Collins to "[e]nsure all
5 the necessary components are in place and maintained for the efficient and compliant
6 running of emergency medical services at the Lakeville Fire Department." The
7 memorandum also assigned certain specific duties to Collins. First, the memorandum
8 assigned Collins to ensure the availability of proper quantities of supplies on and off the
9 two Fire Department ambulances. Second, the February 17 memorandum assigned
10 Collins to ensure that the ambulances are in constant state of readiness. Prior to
11 February 17, 2009, all lieutenants conducted daily ambulance checks to ensure that the
12 proper quantities of supplies were available for both ambulances. Lieutenants notified
13 Deputy Chief Goodfellow of supply deficiencies, and he placed the necessary orders.
14 However, pursuant to the February 17 memorandum, supply ordering duties shifted
15 from management to Collins. Collins monitors supply quantities, enters supply orders
16 on a computer, procures Goodfellow's authorization, and orders supplies electronically.
17 Goodfellow admitted during the hearing that Collins was not responsible for these duties
18 prior to February 17.

19 Third, the February 17, 2009 memorandum assigned Collins to ensure that the
20 service and its personnel maintain proper licenses and certifications. Prior to that,
21 Deputy Chief Goodfellow checked licenses and certifications of department personnel
22 and vehicles. Fire Department personnel and vehicles have certain licensure and

⁷ At the time he testified, Collins was on injured leave.

1 certification requirements. Personnel licensure and certification requirements include
2 drivers' licenses, EMT paramedic certification, CPR, and advanced cardiac life support.
3 Drivers license and CPR card checks occur monthly. Other personnel certifications are
4 reviewed periodically throughout the year, particularly in March, because biannual
5 certifications are due in April. The Fire Department also maintains ambulance licensure
6 and controlled substance registrations. During the hearing, Goodfellow admitted that
7 his expectation pursuant to the February 17 memorandum was that Collins would assist
8 him in license and certification maintenance.

9 Fourth, the February 17, 2009 memorandum assigned Collins to assist in run
10 report reviews for quality assurance (QA) and billing. After shift runs, each lieutenant
11 submits run reports. Reports are reviewed monthly and submitted up through the chain
12 of command. Prior to February 17, lieutenants conducted run report reviews for their
13 personnel groups to identify deficiencies from an EMS standpoint, such as whether
14 personnel followed protocols. However, Deputy Goodfellow and the administrative
15 assistant reviewed run reports on a department-wide basis for QA and billing. Since
16 February 17, Collins has conducted an initial review of all department run reports before
17 giving them to Deputy Goodfellow. Goodfellow emphasized during his testimony that
18 although Collins is responsible for reviewing QA reports for the entire department,
19 Collins does so with Goodfellow. There is no dispute that, effective February 17, 2009,
20 Collins began spending up to 10% of his time on responsibilities that he did not
21 previously perform.

1 Lieutenant Moriarty – Training

2 The February 17, 2009 memorandum generally assigned Moriarty to “[d]evelop
3 and implement departmental training for both full-time and call personnel.”⁸ The
4 memorandum also assigned Moriarty to certain specific duties. First, the memorandum
5 assigned Moriarty to “create and maintain” training schedules and curriculum. On an
6 unidentified date, Goodfellow excused Moriarty from creating curriculum because
7 Moriarty lacked curriculum development certification. Instead, Goodfellow assigned
8 Moriarty to determine and select appropriate training materials. Second, the February
9 17 memorandum assigned Moriarty to the following other duties: ensure training
10 implementation; create⁹ two hour weekly training outlines for full-time employees and
11 three hour training outlines for call employees; ensure shift officers understand proper
12 curriculum implementation; ensure availability of proper training equipment and
13 supplies; and assist in reviewing on-line training.

14 Prior to February 17, 2009, lieutenants were responsible for training their
15 personnel groups. An hour of every shift was designated for training, but this was a
16 loosely enforced guideline. Moriarty participated and assisted in training drills when he
17 was working. Lieutenants did not coordinate or implement training on a department-
18 wide for all permanent and call firefighters prior to February 17. However, pursuant to
19 the February 17 memorandum, Moriarty creates and maintains department-wide
20 training schedules and selects training materials with Goodfellow, tasks Moriarty

⁸ Moriarty had been a recruitment instructor at the Massachusetts Firefighting Academy for nine years.

⁹ Although the February 17 memorandum does not include a verb in connection with Moriarty’s outline assignments, I use the word “create” based on the context of the February 17 memorandum and the hearing testimony.

1 previously did not have. Goodfellow approves Moriarty's training selections, and
2 Goodfellow and Moriarty implement trainings. Trainings generally run one Thursday per
3 month and consist of various activities such as large building and nursing home walk-
4 throughs, fire suppression, laddering, hose work, and pump operation. Moriarty has not
5 been given access to the on-line training programs.

6 Moriarty testified that he spends about 10% of his time on assignments he did
7 not perform before February 17, 2009. Goodfellow disagreed on the basis that he and
8 Moriarty have had only a couple of training discussions and Moriarty has provided only
9 one training schedule outline. However, I credit Moriarty's testimony based on the
10 overall credibility of his testimony, as well as Goodfellow's admission that the February
11 17 memorandum increased Moriarty's concentration of effort with respect to training.

12 Lieutenant Dunlevy – Maintenance

13 The February 17, 2009 memorandum generally assigned Dunlevy to "[d]evelop
14 and implement a program for the performance and tracking of maintenance of all
15 department apparatus and equipment." The memorandum also assigned Dunlevy the
16 following specific duties. First, the memorandum assigned Dunlevy to schedule
17 required preventative maintenance. Prior to February 17, 2009, lieutenants conducted
18 daily routine checks of fire trucks and ambulances to ensure that vehicles were ready to
19 operate at emergencies. Lieutenants reported maintenance issues to the administration
20 and performed routine maintenance, but did not schedule maintenance. Dunlevy did
21 not have any greater maintenance responsibilities than other lieutenants had. The Fire
22 Department did not have a formal maintenance schedule prior to February 17, 2009.

1 Pursuant to the February 17 memorandum, Dunlevy developed a rotating
2 preventative maintenance schedule for fire department vehicles based on vehicle
3 mileage and hours of use. Dunlevy's maintenance schedule accounts for auxiliary
4 vehicle mileage, oil changes, and inspections, Department of Transportation
5 inspections, yearly maintenance, and weekly small engine maintenance. Dunlevy
6 currently performs all maintenance, oil changes, and mechanical work.

7 Second, the memorandum assigned Dunlevy to ensure that the proper
8 equipment and supplies are on hand. Prior to February 17, 2009, lieutenants were not
9 responsible for ensuring that supplies and equipment were on hand beyond their own
10 vehicle. Since February 17, 2009, Dunlevy has been responsible for ensuring that
11 proper equipment and supplies are available on a department-wide basis.

12 Third, the memorandum assigned Dunlevy to ensure that any required repairs
13 are performed in-house or outsourced. Prior to February 17, 2009, the Chief or Deputy
14 Chief determined whether vehicles needed to be repaired in-house or by an outside
15 vendor. Although the Chief or Deputy Chief still makes that final determination, Dunlevy
16 makes recommendations. Additionally, since February 17, Dunlevy's duties have
17 included dealing with suppliers and outside vendors for heavy repair jobs that cannot be
18 done in-house. There is no dispute that the duties described in the paragraphs above
19 have comprised 25% of Dunlevy's workload since February 17, 2009.

20 Lieutenant Purcell – Fire Prevention and Education

21 The February 17, 2009 memorandum generally assigned Purcell to "[d]evelop
22 and expand a program for fire prevention and fire safety education." The memorandum
23 also assigned Purcell to perform the following specific duties. First, it assigned Purcell

1 to assist in the performance of necessary inspections. Prior to February 17, Deputy
2 Chief Goodfellow organized and supervised building inspections. Purcell performed
3 inspections on a limited basis, as assigned. Goodfellow acknowledged at the hearing
4 that he intended the February 17 memorandum to change the degree of Purcell's
5 participation with regard to inspections.

6 The February 17 memorandum also assigned Purcell to: assist in the review of
7 plans submitted to the department; ensure that the necessary supplies are on hand for
8 fire prevention activities; review reports and maintain departmental records; and assist
9 in the procurement of grants for fire prevention activities. Purcell had voluntarily
10 performed fire prevention and education duties until the Town created the Deputy Chief
11 position in 2005. However, from that point until February 17, 2009, Purcell did not have
12 fire prevention and education responsibilities, and did not review fire prevention and
13 education plans, ensure that educational supplies were available for fire prevention
14 education school visits, or procure grants. Since February 17, Purcell has performed
15 the above-referenced duties, with the exception of procuring grants.

16 During the hearing, Goodfellow denied that Purcell's workload changed as a
17 result of the February 17, 2009 memorandum and that Purcell spends 10% of his time
18 on new duties. However, Goodfellow admitted that he designed the February 17
19 memorandum to require Purcell to focus more on the fire prevention portion of his daily
20 duties than Purcell previously had done. Therefore, I do not credit Goodfellow's
21 testimony denying that Purcell spends 10% of his time on new duties.

1 Post-February 17, 2009 Events

2 By letter dated February 19, 2009, Union attorney David Rome (Rome)
3 demanded that the Town bargain before implementation about the changes in job duties
4 announced in the February 17, 2009 memorandum. On February 25, the Town's
5 attorney, Albert Mason (Mason) responded by email denying that the February 17
6 memorandum constituted a mandatory subject of bargaining, but stating that Chief
7 Hopkins would be willing to discuss the lieutenants' concerns. Rome responded by
8 email dated February 27, objecting to Mason's position and requesting to negotiate the
9 changes announced in the memorandum. There is no evidence that the Town
10 subsequently offered to rescind and bargain about the February 17 memorandum with
11 the Association.

12 OPINION

13 Timeliness

14 The Town argues that the charge is untimely because Chief Hopkins notified
15 Union President Collins about the assignments contained in the February 17, 2009
16 memorandum in late January, but the Union did not file the charge until August 14,
17 2009. The Department's Regulations provide that: "[e]xcept for good cause shown, no
18 charge shall be entertained by the [Department] based upon any prohibited practice
19 occurring more than six months prior to the filing of a charge with the [Department]."
20 456 CMR 15.03. A charge of prohibited practice must be filed with the Department
21 within six months from the date that the violation became known or should have
22 become known to the charging party except for good cause shown." Felton v. Labor
23 Relations Commission, 33 Mass. App. Ct. 926 (1992). The six-month period of

1 limitations begins to run when the party adversely affected receives actual or
2 constructive notice of the conduct alleged to be an unfair labor practice. Town of Lenox,
3 29 MLC 51, 52 (2002).

4 The record evidence in this case does not support a finding that the charge is
5 untimely. The Commonwealth Employment Relations Board (CERB) has held that the
6 information provided by the employer must be sufficiently clear for the union to
7 determine an appropriate response. Town of Hudson, 25 MLC 143, 148 (1999). A
8 union need not respond to rumors of proposed changes, speculation, or proposals so
9 indefinite that no response could be formulated. Dracut School Committee, 22 MLC
10 1013, 1023 (1995) (citing Commonwealth of Massachusetts, 8 MLC 1894, 1900 (1982)).

11 Here, Hopkins' testimony that he met with Collins on an unidentified date in late January
12 or early February is vague. Also, Hopkins had not fully formulated his proposal when he
13 met with Collins, and Goodfellow did not begin drafting the actual duties set forth in the
14 February 17 memorandum until after Hopkins and Collins spoke. Additionally, Collins
15 responded to Hopkins' statement that he was contemplating updating lieutenants' job
16 descriptions by requesting details about the proposed new job descriptions in writing.
17 Therefore, I do not find that Hopkins provided information to Collins regarding potential
18 changes to the lieutenants' job descriptions prior to the February 17 meeting that was
19 clear enough for the Union to formulate a response. On February 17, 2009, Hopkins
20 announced the specific changes to the lieutenants' job description. Thus, I find that the
21 charge in this case is timely filed.

1 Unilateral Change

2 A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of
3 the Law when it unilaterally changes a condition of employment or implements a new
4 condition of employment involving a mandatory subject of bargaining without first giving
5 its employees' exclusive collective bargaining representative notice and an opportunity
6 to bargain to resolution or impasse. Commonwealth of Massachusetts v. Labor
7 Relations Commission, 404 Mass. 124, 127 (1989); School Committee of Newton v.
8 Labor Relations Commission, 388 Mass. 557 (1983). The duty to bargain extends to
9 both conditions of employment established through custom and past practice, as well as
10 those conditions of employment established through a collective bargaining agreement.
11 City of Boston, 16 MLC 1429, 1434 (1989); Town of Wilmington, 9 MLC 1694, 1696
12 (1983). To establish a violation, an employee organization must show that: (1) the
13 employer altered an existing practice or instituted a new one; (2) the change affected a
14 mandatory subject of bargaining; and (3) the change was established without prior
15 notice and an opportunity to bargain. City of Boston, 26 MLC 177, 181 (2000).

16 1. Changes

17 The Town argues that it did not change lieutenants' job duties or workload
18 because of the officers' job description contained in the Rules and Regulations. With
19 respect to Collins, the Town maintains that no change in his job duties or workload
20 occurred because the Rules and Regulations require lieutenants to supervise and
21 participate in managing and filing paperwork, as well as equipment maintenance. The
22 Town advances similar arguments for Moriarty, Dunlevy and Purcell, because the Rules
23 and Regulations require lieutenants to supervise and assist in departmental training,

1 maintain departmental vehicles and equipment, and participate and supervise
2 inspections. For the reasons stated below, I reject the Town's arguments.

3 a. Collins

4 Based on the facts presented, I find that effective February 17, the Town
5 increased Collins' workload and changed his duties. The Town increased Collins'
6 workload in two respects. First, the Town assigned Collins to perform general,
7 department-wide EMS functions. Prior to February 17, lieutenants' EMS duties included
8 conducting daily ambulance checks, but no individual lieutenant was responsible for
9 EMS functions on a department-wide basis. Therefore, the general department-wide
10 EMS assignment increased Collins' workload.¹⁰ Second, the Town increased Collins'
11 workload by assigning him to review run reports on a department-wide basis for QA and
12 billing. Prior to February 17, lieutenants reviewed run reports within their assigned
13 groups, but Deputy Goodfellow and the administrative assistant reviewed them on a
14 department-wide basis. This assignment constitutes a workload increase because it
15 requires Collins to review more reports.

16 The Town also assigned Collins two new duties effective February 17. First, the
17 Town assigned Collins to ensure availability of proper quantities of supplies both on and
18 off the ambulances, which required him to order supplies. There is undisputed
19 testimony that lieutenants did not order supplies prior to February 17. Second, the
20 Town assigned Collins to ensure that the service and its personnel maintain proper
21 licenses and certifications. There is no dispute that prior to February 17, Deputy Chief

¹⁰ The February 17 memorandum also assigned Collins to ensure that ambulances are in constant state of readiness. However, prior to February 17, all lieutenants performed this duty. Therefore, this assignment is not a new duty and did not increase Collins' workload.

1 Goodfellow, not lieutenants, monitored licenses and certifications of department
2 personnel and vehicles. Therefore, supply-ordering duties and license and certification
3 maintenance are new duties.

4 b. Moriarty

5 The evidence also persuades me that effective February 17, 2009, the Town
6 increased Moriarty's workload and changed his duties. First, the Town generally
7 assigned Moriarty to spearhead department-wide training. There is no dispute that prior
8 to February 17, the Town had not assigned one particular lieutenant to coordinate
9 department-wide training functions. Moriarty merely participated and assisted in training
10 his group. Therefore, while lieutenants had existing training duties, this general,
11 department-wide assignment increased Moriarty's workload. Second, the Town
12 assigned Moriarty numerous other new duties including: creating and maintaining
13 training schedules and curriculum; developing weekly and monthly training outlines;
14 ensuring shift officers understand proper curriculum implementation; ensuring available
15 training equipment and supplies; and assisting in reviewing on-line training. Lieutenants
16 did not perform these duties prior to February 17, 2009.

17 c. Dunlevy

18 Additionally, I find that the Town increased Dunlevy's workload and changed his
19 duties effective February 17, 2009. The Town increased Dunlevy's workload in several
20 respects. First, the Town assigned Dunlevy to coordinate department-wide
21 maintenance functions. Second, the Town assigned Dunlevy to ensure that the proper
22 equipment and supplies are available on a department-wide basis and that required
23 repairs are performed either in-house, or by private entities. Prior to February 17,

1 lieutenants performed daily truck checks and routine maintenance and ensured
2 equipment and supply availability on assigned vehicles. However, no lieutenant
3 performed these duties on a department-wide basis or coordinated department-wide
4 maintenance functions. Currently, Dunlevy performs all oil changes and mechanical
5 work. There is no evidence in the record that other lieutenants assist him. Therefore,
6 the department-wide assignments referenced above increased Dunlevy's workload by
7 increasing the number of vehicles that he is responsible to maintain.

8 The Town also assigned Dunlevy new duties. Prior to February 17, the Fire
9 Department did not have a formal preventative maintenance schedule. Therefore, this
10 assignment is a new duty for Dunlevy. Dunlevy also coordinates heavy repairs by
11 outside vendors, a duty previously performed by the Chief or Deputy Chief. Although
12 the Chief still approves outside vendor maintenance work, Dunlevy's duty to coordinate
13 heavy repairs with outside vendors is a new duty.

14 d. Purcell

15 Similarly, I find that the Town assigned Purcell new duties and increased his
16 workload effective February 17. First, the Town assigned Purcell to coordinate fire
17 prevention and education functions by developing and expanding a fire prevention and
18 safety education program. From 2005 through February 17, 2009, the Deputy Chief
19 coordinated fire prevention and education functions. Therefore, this department-wide
20 assignment is a new duty. Second, the Town assigned Purcell numerous other duties
21 that lieutenants had not been responsible for after 2005 including: reviewing fire
22 prevention and education plans; ensuring that educational supplies are available for
23 school visits; assisting in the fire prevention grant procurement; reviewing reports and

1 maintaining departmental records. The Town also increased Purcell's workload by
2 assigning him to regularly assist with inspections. Prior to February 17, Purcell only
3 performed inspections on a limited basis. Goodfellow admitted during the hearing that
4 he intended to increase Purcell's participation in inspections. Therefore, I find that the
5 Town required Purcell to perform new duties and increased his workload.

6 2. Mandatory Subjects

7 Workload and job duties are mandatory subjects of bargaining. Medford School
8 Committee, 1 MLC 1250, 1252-1253 (1975); Town of Danvers, 3 MLC 1559, 1576
9 (1977). However, the Town argues that the February 17 assignments are a core
10 managerial prerogative pursuant to Town of Danvers, 3 MLC at 1559 and City of
11 Worcester v. Labor Relations Commission, 53 Mass. App. Ct. 106 (2001), rev'd, 438
12 Mass. 177 (2002). In this regard, the Town maintains that the February 17 assignments
13 "are duties that are intrinsic to a fire department and its staff and that could be assigned
14 by a chief to officers for dealing with on an initiative and judgment basis either on an
15 hourly, daily, weekly, monthly or until future notice basis."¹¹ The Town further contends
16 that the February 17 assignments improve the Fire Department's quality or level of
17 services and do not have a significant impact on workload. The Town insists that there
18 is "no legal, logical or common sense reason why such duties should be subject to
19 bargaining."

20 The Law allows public employers to exercise core managerial prerogatives
21 concerning the nature and level of its services without first bargaining with its
22 employees' exclusive bargaining representative over that decision. Newton School

¹¹ Emphasis in original omitted.

1 Committee v. Labor Relations Commission, 388 Mass. 557, 563 (1983). To decide
2 whether a subject properly falls within the scope of bargaining, the CERB balances a
3 public employer's interests in maintaining its managerial prerogative to effectively
4 govern against the impact on employees' terms and conditions of employment. Town of
5 Danvers, 3 MLC 1559, 1571 (1977). The CERB considers such factors as the degree
6 to which the subject has a direct impact on terms and conditions of employment, and
7 whether the subject involves a core governmental decision or is far removed from
8 employees' terms and conditions of employment. Id. at 1577. In Town of Danvers, the
9 CERB stated that it would be "ridiculous to require bargaining over whether a firefighter
10 is required to fight fires." Id. at 1576. But, in terms of whether "a firefighter is required
11 to paint the firehouse," the CERB did not find that "an employer's managerial
12 prerogatives go so far as to permit it to unilaterally determine and change at will all job
13 duties for a given position." Id. In applying the Danvers balancing test, the CERB has
14 decided that a public employer's decision to provide increased fire protection to better
15 preserve property directly involves level of municipal services and is reserved to
16 management. City of Newton, 16 MLC 1036, 1042 (1989).

17 Here, the Town stated in the February 17, 2009 memorandum that it was
18 implementing the function area assignments for Collins, Moriarty, Dunlevy, and Purcell,
19 in EMS, training, maintenance, and fire prevention and education, respectively, "[i]n an
20 effort to make the [Fire] Department run more efficiently." However, there is no
21 evidence that the Town's decision changed the level of services that the Town provides.
22 Nor does the record contain evidence of a public safety rationale. Rather, the evidence
23 demonstrates that the Town shifted some duties from management to bargaining unit

1 members, expanded bargaining unit members' responsibilities in certain areas, and
2 added new duties. As previously noted, the Town's decision impacts the lieutenants
3 terms and terms and conditions of employment by increasing their workloads and
4 adding new duties. Consequently, applying the Danvers balancing test to this case
5 demonstrates that the Town's February 17 memorandum required bargaining.

6 3. Prior Notice And An Opportunity To Bargain

7 The Town argues that it provided notice and an opportunity to bargain, and
8 asserts that the Union failed to request bargaining at any date prior to the hearing in this
9 case. If a public employer asserts the affirmative defense of waiver by inaction, it must
10 establish by a preponderance of the evidence that an employee organization had: 1)
11 actual knowledge or notice of the proposed action; 2) a reasonable opportunity to
12 negotiate about the subject; and 3) unreasonably or inexplicably failed to bargain or
13 request bargaining. Commonwealth of Massachusetts, 28 MLC 36, 40 (2001); Town of
14 Dennis, 26 MLC 203, 204 (2000); Holyoke School Committee, 12 MLC 1443, 1452
15 (1985); Boston School Committee, 4 MLC 1912, 1915 (1978).

16 As I previously determined in the section on timeliness, prior to the February 17
17 meeting, Hopkins did not provide Collins with information regarding potential changes to
18 lieutenants' job descriptions that was clear enough for the Union to formulate a
19 response. Hopkins had not fully formulated his proposal to change lieutenants' job
20 descriptions when he met with Collins on the unidentified date prior to February 17, and
21 additionally, did not finalize his conclusions until after the meeting. Therefore, I do not
22 find that the Union had actual knowledge or notice of the proposed action until the
23 February 17, 2009 meeting.

1 During the February 17, 2009 meeting, the Union requested to bargain about the
2 changes that Deputy Chief Goodfellow presented as a fait accompli. A fait accompli
3 exists where, under the attendant circumstances, it can be said that the employer's
4 conduct has progressed to the point that a demand to bargain would be fruitless. Town
5 of Hudson, 25 MLC 143, 148 (1999). The Board will not apply the waiver by inaction
6 doctrine in cases where a union is presented with a fait accompli. Massachusetts Port
7 Authority, 36 MLC 5, 13 (2009). Additionally, the Union, through its attorney, demanded
8 to bargain on two subsequent occasions.¹² Therefore, I find that the Town failed to
9 provide the Union with prior notice and an opportunity to bargain about assigning the
10 lieutenants new duties and increasing their workloads, and the Union did not waive its
11 right to bargain by inaction.

12 CONCLUSION

13 Based on the record, and for the reasons stated above, I conclude that the Town
14 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General
15 Laws, Chapter 150E, by unilaterally changing and increasing employees' job duties and
16 workload in February of 2009.¹³

17 ORDER

18
19 WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town
20 shall:

¹² The Fire Chief's willingness to "discuss" the lieutenants' concerns does not satisfy the Town's good faith bargaining obligation because the Town did not offer to suspend the immediate implementation of the February 17 memorandum or bargain within the meaning of the Law. See Taunton School Committee 28 MLC 378, 391 (2002) (stating that "good faith" implies an open and fair mind as well as a sincere effort to reach a common ground).

¹³ Because the parties fully litigated the case at the Department, the Town's post-hearing brief request that I defer the case to arbitration is denied.

1. Cease and desist from:

- a) Unilaterally changing employee workload and duties.
- b) In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

2. Take the following action that will effectuate the purposes of the Law.

- a) Immediately rescind the February 17, 2009 memorandum.
- b) Upon request, provide the Union with prior notice and an opportunity to bargain prior to any proposed change to job duties or workload.
- c) Post immediately in all conspicuous places where members of the Union's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the Town customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.
- d) Notify the DLR in writing of the steps taken to comply with this decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KATHLEEN GOODBERLET, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. Chapter 150E, Section 11 and 456 CMR 13.02(1)(j), to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Executive Secretary of the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF 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 has held that the Town of Lakeville (Town) has violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by unilaterally increasing the workload and changing the job duties of Timothy Collins, Michael Moriarty, Thomas Dunlevy and William Purcell. The Town posts this Notice to Employees in compliance with the Hearing Officer's order.

Section 2 of the Law gives public employees the following rights:

to engage in self-organization; to form, join or assist any union;
to bargain collectively through representatives of their own choosing;
to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

The Town hereby assures its employees that:

WE WILL NOT unilaterally change employee workloads or job duties.

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

WE WILL take the following affirmative action that will effectuate the purposes of the Law:

- 1) Immediately rescind the February 17, 2009 memorandum.
- 2) Upon request, provide the Union with prior notice and an opportunity to bargain prior to any proposed change to workload and/or job duties

Town of Lakeville

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