COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

CITY OF LAWRENCE
and
FIREFMEN AND OILERS
LOCAL 3 UNION/SEIU

Case No. MUP-14-3753
Date Issued: January 20, 2017

Hearing Officer:

Brian K. Harrington, Esq.

Appearances:

Robert D. Hillman, Esq. - Representing the City of Lawrence
Nicole H. Decter, Esq.
Paige W. McKissock, Esq. - Representing the Firemen and Oilers, Local 3/SEIU

HEARING OFFICER'S DECISION AND ORDER

SUMMARY

1 The issues in this matter are whether the City of Lawrence (City) violated
2 Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General
3 Laws Chapter 150E (the Law) by implementing a dress code and changing the
4 City's parking policy for City employees without first giving the Firemen and
5 Oilers, Local 3/SEIU (Union) prior notice and opportunity to bargain to resolution
6 or impasse about the decision to change the City's parking policy and
7 implement a dress code and the impact of those decisions on employees'
terms and conditions of employment. Based on the record and for the reasons explained below, I conclude that the City did fail to bargain in good faith with the Union by implementing a dress code and changing the City's parking policy for City employees without providing the Union with notice and an opportunity to bargain over the changes and thus, did violate Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law in the manner alleged.

STATEMENT OF THE CASE

On June 6, 2014, the Union filed a charge with the Department of Labor Relations (DLR) alleging that the City had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law. The City filed a Written Response to this charge on June 19, 2014. Following an investigation, the DLR issued a Complaint of Prohibited Practice on November 24, 2014, alleging that the City had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law by implementing a dress code and changing the City's parking policy for City employees without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision to implement a dress code and change the parking policy and the impacts of those decisions. The City filed an Answer to the Complaint on November 26, 2014.

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1 This case was consolidated for hearing with MUP-14-4215 which concerned a holiday issue. The Union withdrew MUP-14-4215 at the start of the second day of hearing on May 3, 2016.

2 This case was originally filed by AFSCME, Council 93. Local 3 assumed responsibility for the case as the successor bargaining agent in August, 2015.
I conducted two days of hearing on February 26 and May 3, 2016, at which both parties had the opportunity to be heard, to examine witnesses and to introduce evidence. The parties filed post-hearing briefs on or about June 29, 2016. 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 decision.

STIPULATED FACTS

1. The City is a public employer within the meaning of Section 1 of G. L. c. 150E ("the Law").

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

3. The parties, Local 3, Firemen and Oilers, Service Employees International Union ("Union") (and its predecessor, AFSCME Council 93) and the City of Lawrence ("City") (collectively "Parties") have bargained collectively for over thirty (30) years.

4. In late August 2015, the Union was recognized as the exclusive bargaining representative of the City of Lawrence's nine (9) Inspectors. At all relevant times to this matter, prior to recognition, the Inspectors were represented by AFSCME, Council 93, which filed the instant charge.

5. In 2011, the City installed parking meters on Common, Essex and other streets abutting the Campone Common and extending several blocks through downtown Lawrence.

6. Prior to January 15, 2014, City Inspectors were provided with a special placard to display on their dashboard that allowed them to park in any metered spot near City Hall free of charge during working hours.

7. In January, 2014, the City prohibited public parking in all spaces around City Hall for longer than 15 minutes.

8. On January 15, 2014, the City announced for the first time that it would no longer honor the placards and that Inspectors were personally responsible for paying for parking during work hours.
9. The City imposed this change to its parking policy on or around January 15, 2014 as a fait accompli.

10. Since the City imposed this change, the Inspectors have been required to pay for parking when parked at a metered parking space at or near City Hall or to incur the cost of traffic tickets for failing to do so.

11. Union inspectors incurred the following parking fines as a result of this change:

<table>
<thead>
<tr>
<th>Inspector</th>
<th>Ticket Amount</th>
<th>Penalty</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fleming</td>
<td>$75</td>
<td>$0</td>
<td></td>
<td>$75</td>
</tr>
<tr>
<td>Gilbert</td>
<td>$100</td>
<td>$200</td>
<td></td>
<td>$300</td>
</tr>
<tr>
<td>Hanson</td>
<td>$25</td>
<td>$30</td>
<td></td>
<td>$55</td>
</tr>
<tr>
<td>Santiago</td>
<td>$25</td>
<td>$30</td>
<td></td>
<td>$55</td>
</tr>
<tr>
<td>Miller</td>
<td>$50</td>
<td>$0</td>
<td></td>
<td>$50</td>
</tr>
<tr>
<td>Hester</td>
<td>$350</td>
<td>$535</td>
<td>$160(^3)</td>
<td>$1,045</td>
</tr>
</tbody>
</table>

12. For many years prior to January 15, 2014, there was no dress code for Inspectors.

13. On January 15, 2014, the City announced that all male City employees were required to wear neckties when working in an “office environment.”

14. The City imposed this change to its dress code policy immediately thereafter as a fait accompli.

15. Since this policy was imposed, the City has required Inspectors to wear neckties. As a result, some Inspectors have been required to expend funds on neckties and/or have had neckties damaged while at work.

Findings of Fact

Prior to January 15, 2014, while there was no formal dress code for inspectors, the City expected inspectors to dress in “professional attire,” meaning collared shirts and no jeans. Hester, who was a City building inspector for over 30 years, followed this informal practice, as did the other inspectors, until January 15, 2014. Hester incurred the expense of purchasing and cleaning

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\(^3\) This amount reflects the RMV fee for re-registration of Lawrence Hester's (Hester) personal vehicle.
neckties as a result of the City’s unilateral implementation of the dress code. Some of the ties that he purchased were damaged at work and no longer usable. Inspectors generally begin their day at City Hall, may leave the building to perform inspections at sites throughout the City and then return, usually multiple times per day. Building inspectors use their own personal vehicles to travel to and from these inspection sites. Prior to January 15, 2014, there were various systems in place which allowed inspectors to park for free around City Hall in the performance of their duties, most recently a parking placard which they would place on their dashboard.

Opinion

Count I: Dress Code

The issues in this matter are whether the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by implementing a dress code and changing the City’s parking policy for City employees without first giving the Union prior notice and opportunity to bargain to resolution or impasse about the decision to change the City’s parking policy and implement a dress code and the impact of those decisions on employees’ terms and conditions of employment.

Except for its application to a different union, this case is identical to City of Lawrence, 43 MLC 96, MUP-14-3666 (September 21, 2016). In the prior City of Lawrence case, the City pursued exactly the same course of action on both counts against a union representing public health nurses. No evidence or argument was presented in this matter which persuades me to deviate from the
ruling in that case. Therefore, I largely repeat the reasoning and conclusion of the
Commonwealth Employment Relations Board (CERB) and the Hearing Officer in
that action.

A public employer violates Section 10(a)(5) and, derivatively, 10(a)(1) of the
Law when it unilaterally changes an existing condition of employment or
implements a new condition of employment involving a mandatory subject of
bargaining without first giving its employees' exclusive bargaining representative
notice and an opportunity to bargain to resolution or impasse. Commonwealth
of Massachusetts v. Labor Relations Commission, 404 Mass. 124 (1989);
School Committee of Newton v. Labor Relations Commission, 388 Mass. 557
(1983). The CERB has held that grooming standards are a mandatory subject of
bargaining. Town of Dracut, 7 MLC 1342, MUP-3699 (September 30, 1980) (town
unilaterally implemented standards restricting police officer hair length, beards,
and mustaches in violation of the Law.) The CERB has also found that the Law
requires employers to give unions notice and an opportunity to bargain before
implementing a dress code that governs wearing pins and other accoutrements
on uniforms. Sheriff of Worcester County, 27 MLC 103, 106, MUP-1910
(January 11, 2001) (Sheriff altered practice of allowing bargaining unit
members to wear various pins on their uniforms, including union insignia
pins). The National Labor Relations Board (NLRB) has held that the
implementation of a dress code is a mandatory subject of bargaining and that a
change in dress code without giving the union an opportunity to bargain violates
Section 8(a)(5) of the National Labor Relations Act. Transportation Enterprises
Inc. 240 NLRB 551, 560 (February 5, 1979). See also St. Luke's Hospital, 314
NLRB 434, 440 (1994); Public Service Company of New Mexico, 337 NLRB
No. 31 (2001) (appropriate wearing apparel at the workplace is a mandatory
bargaining subject). The significance of appearance in the workplace
underscores the value of dress codes as a mandatory subject of bargaining.
See generally, Karl E. Klare, Power/Dressing: Regulation of Employee
Appearance, 26 New Eng. L. Rev. 1395, 1426, 1447 (Summer 1992) (noting dress
codes as a mandatory subject of bargaining and discussing the collectively
bargained dress code as an approach to appearance regulation that
enhances autonomy, welfare, and fairness regarding appearance practices in the
workplace.)

Dress codes are a mandatory subject of bargaining under the Law. Sheriff
of Worcester County, 27 MLC at 106; Town of Dracut, supra. The stipulations
reflect that, prior to January 15, 2014, the City had not adopted a formal dress
code applicable to members of the Union. On January 15, 2014, the Mayor sent
a letter to all City employees that required, among other things, that “all males
working in an office environment regardless of the department,” wear a tie for
the purpose of maintaining a professional environment. The mere fact that the
Mayor's letter cites the policy reasons for the new standard does not obviate the
City's duty to bargain over the change under the Law. City of Lawrence, supra.

For the above reasons, I find that the City violated the Law by implementing
a dress code without providing the Union with prior notice and an opportunity
to bargain to resolution or impasse over the decision and impacts of the
decision on employee terms and conditions of employment.

Count II: Parking Policy

Section 6 of the Law provides, in relevant part, "[t]hat the employer
and the exclusive bargaining representative shall . . . negotiate in good faith
with respect to wages, hours, standards of productivity and performance, and
any other terms and conditions of employment." An employer's failure to
bargain in good faith constitutes a prohibited practice under Section
10(a)(5) of the Law. The CERB has consistently held that inherent in the duty
to bargain is the obligation of the employer to refrain from changing
established terms and conditions of employment without first bargaining with the
exclusive representative. Town of North Andover, 1 MLC 1103, 1106, MUP-
529 (September 3, 1974); City of Boston, 3 MLC 1450, 1457, MUP-2646
(February 4, 1977); Boston School Committee, 4 MLC 1912, 1915, MUP-2611
(April 27, 1978). The CERB has specifically determined that free employee
parking is a mandatory subject of bargaining. City of Lawrence, 43 MLC at
96; Commonwealth of Massachusetts, 27 MLC 11, 13, SUP-4378 (August 24,
2000); Commonwealth of Massachusetts, 9 MLC 1634, 1638, SUP-2513
(February 9, 1983).

Article XXII, Section 7 of the parties' CBA states that "Because the
performance of their duties require frequent going in and out of City Hall, the City
will...establish a 'sticker system' or equivalent that will enable the inspectors to
park in the area of City Hall during the course of their duties." Consistent with
this provision, prior to January 15, 2014, Inspectors were provided with parking
placards enabling them to use parking spaces in the area of City Hall at no cost
during working hours. On January 15, 2014, without giving the Union notice or
an opportunity to bargain, the City’s Mayor issued a memorandum stating that
employees were “expected not to park in parking spaces” (emphasis in original),
but instead to use “municipal garage or surfaced lots at your own expense.” The
Mayor further directed employees to “discontinue from using City placards.”
Because this directive eliminated the Inspectors’ ability to park for free on days
when they were travelling in the field, I find that the City was required to bargain
over this change. Id. The City failed to do so, and therefore, it violated the Law
as alleged.

CONCLUSION

Based on the record and for the reasons explained above, I conclude
that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the
Law when it unilaterally implemented a dress code and changed a parking
policy on January 15, 2014.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED THAT
the City of Lawrence shall:

1. Cease and desist from:

   a. Failing and refusing to bargain in good faith with the Union over the
decision to implement a dress code and the impacts of that decision on
bargaining unit members’ terms and conditions of employment.
b. Failing and refusing to bargain in good faith with the Union over the
decision to change a parking policy and the impacts of that decision on
bargaining unit members' terms and conditions of employment.

c. In any like manner, interfering, restraining and coercing any employees
in the exercise of their rights guaranteed under the Law.

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

a. Rescind the dress code that the Mayor implemented on January
   15, 2014.

b. Upon request of the Union, bargain in good faith to impasse or
   resolution with the Union over the decision to implement a dress
   code and the impacts of that decision on bargaining unit members' 
terms and conditions of employment.

c. Restore all terms of the free parking policy benefit for all bargaining
   unit members as in effect prior to the City's unilateral change
   thereto.

d. Upon request of the Union, bargain in good faith to impasse or
   resolution with the Union over the decision to change a parking
   policy and the impacts of that decision on bargaining unit members' 
terms and conditions of employment.

e. Make whole employees for economic losses suffered, if any, as a
direct result of the City's actions, plus interest on any sums owed at
the rate specified in M.G.L. c. 231, Section 61, compounded
quarterly.

f. Sign and post immediately in all conspicuous places where
employees usually congregate or where notices to employees are
usually posted, including electronically, if the City customarily
communicates with these unit members via intranet or email and
maintain and display for a period of thirty (30) days thereafter
signed copies of the attached Notice to Employees.
SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

BRIAN K. HARRINGTON, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.15, 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 Executive Secretary of 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 the ten days, this decision shall become final and binding on the parties.
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 City of Lawrence (City) violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E when it unlawfully implemented a dress code and changes a parking policy without first giving the Firemen and Oilers, Local 3/SEIU (Union) notice and an opportunity to bargain to resolution or impasse over the decisions and impacts of the decisions.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the Department of Labor Relations; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The Employer assures its employees that:

WE WILL NOT implement a formal dress code without first giving the Union notice and an opportunity to bargain to resolution or impasse over the decision and impacts of that decision.

WE WILL NOT change the parking policy without first giving the Union and an opportunity to bargain to resolution or impasse over the decision and impacts of that decision.

WE WILL NOT fail or refuse to bargain in good faith with the Union to resolution or impasse over the decisions and impacts of the decisions to implement a dress code or change the parking policy.

WE WILL rescind the dress code that applies to bargaining unit members, restore all terms of the free parking policy applicable to bargaining unit members and make whole all affected employees.

_________________________  ____________________________
For the City  Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED
This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Charles F. Hurley Building, 1st Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).