

CITY OF BEVERLY AND BEVERLY POLICE BENEVOLENT ASSOC., SI-40, MUP-2599, MUPL-2089,
2093, 2101 (10/27/76) Notice to Parties

(100 Impasse)
108.21 refusal of overtime

NOTICE TO PARTIES

On Monday, October 25, 1976, the City of Beverly (the City) filed a Petition with the Labor Relations Commission (the Commission) pursuant to G.L. c. 150E Section 9A (b) alleging that a withholding of services has occurred among the Police Officers of the city for whom the Beverly Police Benevolent Association is the exclusive bargaining representative.

The Commission, pursuant to its authority under General Laws, Chapter 9A(b) conducted an investigation of the above-described Petition on Tuesday, October 26, 1976 which disclosed the following facts:

1. The City of Beverly is a municipal corporation situated in the County of Essex in the Commonwealth of Massachusetts and is a "public employer" within the meaning of Section 1 of General Laws Chapter 150E (the Law).
2. The mayor of the city, the Honorable James Vitale, is the "chief executive officer" of the city within the meaning of section 1 of the Law.
3. The Beverly Police Benevolent Association is the exclusive bargaining representative of Police Officers in the rank of patrolman, sergeant and lieutenant employed by the city, and is an "employee organization" within the meaning of Section 1 of the Law.
4. The most recent collective bargaining agreement covering employees represented by the Association was in effect through June 30, 1976 and is continuing in effect on a month-to-month basis unless and until the parties complete negotiations on a new collective bargaining agreement.
5. The bargaining for a successor agreement began on or about February 27, 1976 when the Association presented its proposals.
6. On or about March 26, 1976 the City responded with its proposals.
7. During the spring the parties met in several negotiating sessions.
8. On August 3, 1976 the City filed a Complaint of Prohibited Practice charge with the Commission against the Association, alleging that the Association is insisting on negotiations regarding minimum manning and is attempting to present the minimum manning issue to fact finding. Case No. MUPL-2089.
9. On August 23, 1976 the City filed a Complaint of Prohibited Practice charge with the Commission against the Association repeating the



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allegations as noted in paragraph 8 above and adding an allegation that the Association is attempting through grievance arbitration to enforce an alleged minimum manning provision in the present collective bargaining agreement. Case No. MUPL-2093.

10. On September 15, 1976 the City by its labor relations counsel requested that the Commission stay the grievance arbitration proceeding regarding minimum manning under the present collective bargaining agreement. On September 17, 1976, the Commission denied this request.
11. On September 27, 1976 the City laid off sixteen police officers.
12. On October 7, 1976 the City by its labor relations counsel asked the Commission to take appropriate action as necessary to prevent fact-finding until the cases numbered MUPL-2089 and 2093 are resolved by the Commission. On October 12, 1976 this request was denied.
13. On October 15, 1976 the Association filed a Complaint of Prohibited practice with the Commission against the City, alleging in part that the layoff of the sixteen police officers was for the purpose of compelling the union to agree to a contract on the City's terms; that the City has unilaterally eliminated minimum manning; and that the mayor has failed to submit appropriations to fund police salaries. Case No. MUP-2599. In its Complaint the Association requested the Commission to seek preliminary injunctive relief in order to restore the status quo ante pending the Commission's determination on the merits of the Complaint. On October 18, 1976 the Commission held an informal conference on this Complaint. On October 20, 1976 the request that the Commission seek preliminary injunctive relief was denied.
14. The collective bargaining agreement between the City and the Association allows each police officer "to refuse overtime without reprisal or disciplinary action against him." (Agreement between City and Association, p. 28)
15. On October 21, 1976 the members of the Association voted to refuse to accept overtime assignments.
16. On October 22, 1976, John Bianchi, President of the Association, met with Captain Stackpole and Chief of Police Renoldo Angelini. Bianchi informed Stackpole and Angelini that the Association memaers had voted to refuse overtime and that overtime assignments would therefore be refused.
17. Since the meeting of October 22, 1976, the City has not scheduled overtime for police officers represented by the Association.
18. Police coverage in the City is now below normal levels.



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19. No police officer has actually refused an overtime assignment since October 22.
20. On October 26, 1976 the Commission issued its formal Complaint of Prohibited Practice in case number MUP-2599. An informal conference is scheduled in cases MUPL-2089 and 2093 for October 29, 1976.
21. On October 25, 1976 the City filed a Complaint of Prohibited Practice with the Commission against the Association alleging that the Association by its officers, members and representatives had engaged in a concerted withholding of services by refusing all overtime assignments. Case No. MUPL-2101.
22. A fact-finder, Paul J. Dorr, has been selected pursuant to Section 9 of the Law to hear evidence regarding the open contract issues between the parties and to issue his report. Fact finding was to have commenced on October 19, 1976 but that hearing date was adjourned, apparently because of the litigation between these parties before this Commission.

WHEREFORE, the Commission upon investigation finds that no violation of Section 9(A) (a) of the Law has occurred. Section 9(A)(a) of the Law makes it unlawful for a public employee or employee organization to engage in, induce, encourage or condone any strike, work stoppage, slowdown or withholding of services. Section 9(A)(a) must be read along with Section 1 of the Law, where "strike" is defined as:

A public employee's refusal, in concerted action with others, to report for duty, or his willful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring immediately preceding the alleged strike... (emphasis added).

The collective bargaining agreement between the City and the Association provides that a police officer may refuse overtime. Because of its voluntary nature, the Commission finds that overtime is not one of an officer's "duties of employment as established by an existing collective bargaining agreement", within the meaning of Section 1 and 9(A)(a) of the Law. Where overtime is voluntary for Beverly police officers, the Commission concludes that these police officers may collectively exercise their contractual right to refuse overtime, and that by so doing they would not be in violation of the strike prohibition contained in Section 9(A)(a) of the Law.

Since the members of the Association properly could have refused overtime assignments, the Association did not violate the Law when the members voted to refuse overtime. Where employees have achieved a right through the collective bargaining process, a union commits no violation of Section 9(A)(a) of the Law by encouraging its members to exercise that right.

Although it finds no violation of Section 9(A)(a) of the Law, the Commission is most concerned that the City and Association have lost sight of the true



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objective behind their present contract negotiations. That objective stated quite simply is: the negotiation and execution of a collective bargaining agreement. In reviewing the numerous prohibited practice complaints and counter-complaints filed by the parties, as well as other litigation, the Commission is unavoidably led to the conclusion that the parties are proceeding as adversaries in litigation before this Commission at the expense of meaningful participation in the negotiation process. This Commission will in due course decide each of the cases filed with it, but in the meantime the City and the Association should redouble their efforts to reach an agreement, notwithstanding the difficult times in Beverly and the differences between the parties. Accordingly, the Commission strongly suggests that the City and the Association do the following:

1. Unresolved contractual issues should be submitted to Fact Finder Paul Dorr at the earliest possible time. If issues remain unresolved after completion of factfinding, the parties should proceed to interest arbitration at the earliest possible time.
2. The City and Association should meet immediately to discuss the urgent matter of restoring police services in Beverly to normal levels. If the allegations in the outstanding prohibited practice charges are correct, both parties have contributed to the serious problem of insufficient personnel to provide police services in Beverly. The Commission suggests that the recall of at least some laid-off police officers, combined with the reasonable use of overtime, could result in restored levels of police services at the lowest possible cost to the City. A compromise along these lines will assist the parties in getting back to serious and positive negotiations.
3. The parties should call upon the services of a state mediator in addressing the above problem, as well as other open issues between them. The parties' animosity toward one another appears to be interfering with meaningful collective bargaining. The services of a mediator are especially useful in this instance. Should the parties require further assistance in the naming of a mediator, the Commission will, at the parties request, name a Mediator.
4. Either the City or the Association is free to contact the Commission at any time regarding the possible resolution of any or all of the prohibited practice charges outstanding between them.

James S. Cooper, Chairman

Madeline H. Miceli, Commissioner

