

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

\*\*\*\*\*

In the Matter of

CITY OF BOSTON

and

BOSTON POLICE SUPERIOR OFFICERS  
FEDERATION

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

Case No. MUP-06-4699

Date Issued:

September 28, 2017

\*\*\*\*\*

Hearing Officer:

Susan L. Atwater, Esq.

Appearances:

Robert J. Boyle, Jr., Esq.

- Representing the City of Boston

Leah Barrault, Esq.  
Jillian Ryan, Esq.

- Representing the Boston Police Superior  
Officers' Federation

HEARING OFFICER'S DECISION ON COMPLIANCE

1 SUMMARY

2 The issue in this case is whether the City of Boston (City) has complied with the  
3 make whole remedy that the Commonwealth Employment Relations Board (CERB)  
4 ordered in its March 30, 2012 decision in the above-captioned case, and if not, to  
5 determine the sum of money that it is required to pay. I find that the City did not comply  
6 with the CERB's March 2012 order, and it is required to pay \$125,618.00 (plus interest  
7 as described in the order) proportionally divided between the individuals who held a  
8 sergeant position that was in the Boston Police Superior Officers Federation's (Union or  
9 Federation) bargaining unit from April 12, 2006 to January 22, 2011, and July 23, 2011

1 to June 16, 2012, based on their tenure in a sergeant position during those time  
2 periods; and \$12,628.57 (plus interest as described in the order), proportionally divided  
3 between the individuals who held a sergeant position that was in the Federation's  
4 bargaining unit between February 29, 2016 and September 24, 2016, based on their  
5 tenure in a sergeant position during that time period.

6 STATEMENT OF THE CASE

7 On May 24, 2006, the Union filed a charge of prohibited practice with the former  
8 Labor Relations Commission, now known as the Department of Labor Relations (DLR),  
9 alleging that the City had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of  
10 the Law by repudiating the terms of a settlement agreement dated July 19, 2005 (2005  
11 Agreement) and by transferring bargaining unit work to non-bargaining unit personnel.  
12 Following an investigation, the DLR issued a complaint of prohibited practice on August  
13 6, 2009.

14 I held a hearing on July 20, 2010, and issued a decision on September 12, 2011.  
15 In my decision, I found that the City had repudiated the 2005 Agreement that it had  
16 made with the Federation, but had not unlawfully transferred bargaining unit work to  
17 non-unit personnel. To remedy the violation, I ordered the City to adhere to the terms of  
18 the Agreement, post a notice, and make whole any bargaining unit employee who had  
19 suffered an economic loss as the result of the City's unlawful conduct.

20 The City appealed my decision to the CERB, and in a decision dated March 30,  
21 2012, the CERB affirmed my 2011 decision and order. The "make whole" part of the  
22 CERB's order stated specifically: "[m]ake whole any bargaining unit employee who  
23 suffered an economic loss as the result of the City's unlawful conduct, plus interest on

any sums owing at the rate specified in M.G.L. c.[231], s.6I compounded quarterly.”  
The City appealed the CERB’s decision, and on July 28, 2015, the Appeals Court affirmed the CERB’s decision and order pursuant to its Rule 1:28.

On August 11, 2016, the Federation filed a petition for enforcement of the CERB’s order, alleging that the City had failed to fully comply with it. The City filed a Response to the Federation’s petition, stating that the City was in compliance with the decision and asking the DLR to dismiss the petition.<sup>1</sup> The DLR determined that there was a genuine dispute as to compliance and ordered a compliance hearing. See DLR Rule 16.08, 456 CMR 16.08.

I conducted a compliance hearing on January 31 and April 28, 2017, 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 July 28, 2017. 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. General Stipulations from the Compliance Case**

1. The allegations in the charge of prohibited practice that the Federation filed on August 12, 2016, and the DLR docketed as case no. MUP-16-5429 will be incorporated into this proceeding, and the Union hereby withdraws MUP-16-5429.
2. The City and the Federation corresponded and met in 2012 and 2013 to discuss and attempt to resolve the CERB’s Order in MUP-06-4699. The City

---

<sup>1</sup> The parties focused their arguments on the City’s failure to assign a bargaining unit member to what they refer to as the City Hall Security Position.

- 1        advised the Federation of its plans for complying with the Order, which  
2        included asking then Sergeant Detective Joseph Dashner to surrender his  
3        detective rating, which would place him into the Federation's bargaining unit.  
4        The Federation made a proposal to settle the case, but the parties were  
5        unable to reach agreement.  
6
- 7        3.     The Federation has not identified any specific named individual to have  
8        suffered an economic loss as a result of the City's failure to assign a  
9        Federation member to the City Hall Security position at issue as required by  
10       the CERB's March 30, 2012 decision.  
11
- 12       4.     The City has not forwarded any payment to the Federation in response to the  
13       CERB's make whole order in its March 30, 2012 decision.  
14
- 15       5.     The City has complied with the posting requirement contained in the CERB's  
16       March 30, 2012 decision.  
17
- 18       6.     The individual filling the City Hall Security [position] is eligible to receive  
19       overtime and detail work.  
20
- 21       7.     Daniel Linskey received a stipend of \$480 per week as a sergeant and a  
22       lieutenant while he was in the City Hall Security position. Subsequent  
23       sergeants assigned to the City Hall Security position received a stipend of  
24       \$425 per week.  
25
- 26       8.     The City gave the document marked as Employer Exhibit no. 3 to the  
27       Federation at a September 13, 2016 bargaining session.  
28
- 29       9.     The City can remove a detective's rating involuntarily if it complies with the  
30       requirements explained in Boston Police Commissioner v. Fedorchuck, 48  
31       Mass. App. Ct. 543 (2000).  
32
- 33       10.    The City is a public employer within the meaning of Section 1 of the Law.  
34
- 35       11.    The Boston Police Superior Officers Federation ("The Federation") is an  
36       employee organization within the meaning of Section 1 of the Law.  
37
- 38       12.    The Federation is the exclusive bargaining representative of non-detectives  
39       sergeants, lieutenants, and captains (superior officers) of the Boston Police  
40       Department [BPD].  
41
- 42       13.    The Department of Labor Relations ("DLR") issued a Complaint of Prohibited  
43       Practice on September 9, 2006.  
44
- 45       14.    A full hearing in Case no. MUP-06-4699 was held on July 20, 2010.  
46

- 1 15. On September 12, 2011, the DLR issued a decision and order in MUP-06-  
2 4699.
- 3 16. The Commonwealth Employment Relations Board ("CERB") affirmed the  
4 Hearing Officer's decision in MUP-06-4699 on March 30, 2012.
- 5
- 6 17. The Massachusetts Appeals Court affirmed CERB's decision on or about July  
7 28, 2015.
- 8
- 9 18. The stipend received by Federation members assigned to City Hall Security  
10 at Boston City hall is included in the member's regular compensation for  
11 purposes of retirement.
- 12
- 13 19. Overtime and detail payments are not included in a member's regular  
14 compensation for purposes of retirement.
- 15
- 16 20. Daniel Linskey, as a sergeant and a lieutenant, was paid a weekly stipend of  
17 \$480 when he was assigned to the City Hall Security position.
- 18
- 19 21. For the period of time between April 12, 2006 and June 16, 2012, a  
20 Federation member would have earned \$150,000 in stipend pay in the City  
21 Hall Security position if the stipend was \$480 per week. If the stipend was  
22 \$425 per week, the Federation member would have earned \$133,450.
- 23
- 24 22. Since at least 2006, Superior Officers assigned to Boston City Hall in the  
25 position of City Hall Security are eligible to work Overtime and Details.
- 26
- 27 23. Since at least 2006, Officers assigned to Boston City Hall in the position of  
28 City Hall Security are assigned to Area F for purposes of details.
- 29
- 30 24. Since at least 2006, officers assigned to Boston City Hall in the position of  
31 City Hall Security are eligible to take patrol officer and supervisor paid details.
- 32
- 33 25. From May 21, 2004 to March 31, 2006, Daniel Linskey received a stipend for  
34 his assignment to City Hall Security.
- 35
- 36 26. From June 8, 2007 to February 13, 2009, Sgt. Detective Daniel Downey  
37 received a stipend for his assignment to City Hall security.
- 38
- 39 27. From February 13, 2009 to January 14, 2011, Sgt. Detective Steven Whitman  
40 received a stipend for his assignment to City Hall security.
- 41
- 42 28. From January 22, 2011 to January 10, 2015, Joseph Dashner received a  
43 stipend for his assignment to City Hall security.
- 44
- 45 29. From January 10, 2015 to February 29, 2016, Sgt. Daniel Keeler received a  
46 stipend for his assignment to City Hall security.

- 1  
2 30. On or about July 19, 2005, the parties entered into a settlement agreement  
3 that said in part,  
4  
5 *"The parties agree that the assignment, Commander, Special Police*  
6 *Unit, Bureau of Field Services, currently held by Lieutenant Daniel*  
7 *Linskey, in whatever rank or rating he may hold, shall be a "red-*  
8 *circled" and shall revert to a position exclusive to the Federation*  
9 *bargaining unit upon Lieutenant Linskey's voluntary or involuntary*  
10 *departure from such assignment."*  
11  
12 31. On or about April 12, 2006, the Department reassigned Daniel Linskey from  
13 the Special Police Unit to the Office of the Police Commissioner  
14  
15 32. On or about May 5, 2007, the Department assigned Sergeant Detective  
16 Daniel Downey to City Hall Security.  
17  
18 33. Immediately prior to May 5, 2007, Sergeant Detective Daniel Downey was  
19 assigned to District 11.  
20  
21 34. On or about January 23, 2009, the Department assigned Sergeant  
22 Detective Steven Whitman to City Hall Security.  
23  
24 35. Prior to City Hall Security, Sergeant Detective Steven Whitman was assigned  
25 to the Office of Police Commissioner.  
26  
27 36. On November 22, 2008, Sergeant John Michael Cuniffe replaced  
28 Sergeant Detective Whitman at in the Office of the Police  
29 Commissioner.  
30  
31 37. Sergeant Detective Whitman was assigned to Human Resources/MIS until  
32 January 23, 2009.  
33  
34 38. Joseph Dashner was a Sergeant when he was assigned to City Hall  
35 Security on January 22, 2011 and he did not receive a Detective's rating until  
36 July 23, 2011.  
37  
38 39. That is, Sergeant Joseph Dashner received his detective's rating while  
39 assigned to City Hall Security. He surrendered his rating and officially  
40 returned to the ranks of sergeants on June 16, 2012.  
41  
42 40. Joseph Dashner's assignment prior to January 22, 2011 was at District A-I.  
43  
44 41. On or about January 10, 2015, the Department assigned Daniel Keeler to  
45 City Hall Security. He was a Sergeant Detective, but he agreed to drop his  
46 rating and become a Sergeant prior to taking the assignment on January 10.

42. On or about February 29, 2016, Sergeant Keeler retired and on or about September 24, 2016, Sergeant Michael Donovan was assigned to the City Hall Security.

43. The City stated in its August 22, 2016 Response to the Petition for Enforcement, "The Federation has been unable to identify a member who has allegedly incurred financial loss," and, "the City asked the Federation to identify any individuals claiming to have incurred financial harm and the Federation has been unable to do so."

**B. Excerpted Stipulations from the 2011 Decision**

1. From 1994 to 2002 the City assigned a Boston Police Deputy Superintendent to serve as the senior commanding officer of the Special Police Division per the MOU. First the City assigned Deputy Superintendent Gerard McHale. He was succeeded by Deputy Superintendent Phillip Vitti. Deputy Superintendent Vitti retired in November, 2002.
2. Sergeant Arthur McCarthy was assigned to the Special Police Division from approximately July 15, 1994 to October 11, 1995.
3. Captain Mary Evans was assigned to the Special Police Division from approximately September of 1995 to September 4, 1996.
4. Lieutenant Christine Michalowsky was assigned to the Special Police Division from approximately October 2, 1996 to September 21, 2002. She was promoted to Captain on or about December 7, 2001, while she was assigned to the Special Police Division.
5. Sergeant Detective Daniel Linskey was assigned to the Special Police Division from approximately April 17, 2004 to April 12, 2006, when he was promoted to Deputy Superintendent and transferred to the Office of the Police Commissioner.
6. On or about July 23, 2004, the Federation filed an unfair labor practice in Case no. MUP-04-4191. The Division of Labor Relations (then known as the Labor Relations Commission) issued a complaint in this case on or about November 9, 2005.
7. The parties resolved Case No MUP-04-4191 through a settlement agreement signed on or about July 19, 2005.

**C. Financial Stipulations from the Compliance Case**

**I. Stipulations For A Six Year Period And For The Periods When A Sergeant Detective Was Assigned to City Hall Security.**

1. From April 12, 2006 to June 16, 2012, a Federation member would have earned \$136,607 in stipend pay if the stipend rate was \$425 per week.
2. From April 12, 2006 to June 16, 2012, a Federation member would have earned \$154,286 in stipend pay if the stipend rate was \$480 per week.
3. From May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012, a Federation member would have earned \$102,425 in stipend pay if the stipend rate was \$425 per week.
4. From May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012, a Federation member would have earned \$115,680 in stipend pay if the stipend rate was \$480 per week.
5. A Sergeant with less than 5 years of experience would have earned \$523,666.56 in base wages from April 12, 2006 to June 16, 2012.
6. A Sergeant with less than 5 years of experience would have earned \$402,838.70 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
7. A Sergeant with at least 5 years of experience but less than 20 years of experience would have earned \$537,623.83 in base wages from April 12, 2006 to June 16, 2012.
8. A Sergeant with at least 5 years of experience but less than 20 years of experience would have earned \$413,440.13 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
9. A Sergeant with 20 years of experience would have earned \$551,586.08 in base wages from April 12, 2006 to June 16, 2012.
10. A Sergeant with 20 years of experience would have earned \$424,045.23 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
11. A Sergeant with a Quinn qualifying Associate's degree would have earned \$566,543.70 in base wages from April 12, 2006 to June 16, 2012.
12. A Sergeant with a Quinn qualifying Associate's degree would have earned \$435,373.03 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.



- 1 13. A Sergeant with a Quinn qualifying Bachelor's degree would have earned  
2 \$609,026.47 in base wages from April 12, 2006 to June 16, 2012.  
3
- 4 14. A Sergeant with a Quinn qualifying Bachelor's degree would have earned  
5 \$467,508.81 in base wages from May 5, 2007 to January 22, 2011 and July 23,  
6 2011 to June 16, 2012.  
7
- 8 15. A Sergeant with a Quinn qualifying Master's degree would have earned  
9 \$630,253.58 in base wages from April 12, 2006 to June 16, 2012.  
10
- 11 16. A Sergeant with a Quinn qualifying Master's degree would have earned  
12 \$483,566.62 in base wages from May 5, 2007 to January 22, 2011 and July 23,  
13 2011 to June 16, 2012.  
14
- 15 17. A Lieutenant with less than 5 years of experience would have earned  
16 \$608,965.37 in base wages from April 12, 2006 to June 16, 2012.  
17
- 18 18. A Lieutenant with less than 5 years of experience would have earned  
19 \$468,201.35 in base wages from May 5, 2007 to January 22, 2011 and July 23,  
20 2011 to June 16, 2012.  
21
- 22 19. A Lieutenant with at least 5 years of experience but less than 20 years of  
23 experience would have earned \$622,923.03 in base wages from April 12, 2006 to  
24 June 16, 2012.  
25
- 26 20. A Lieutenant with at least 5 years of experience but less than 20 years of  
27 experience would have earned \$478,802.87 in base wages from May 5, 2007 to  
28 January 22, 2011 and July 23, 2011 to June 16, 2012.  
29
- 30 21. A Lieutenant with 20 years of experience would have earned \$636,884.34 in  
31 base wages from April 12, 2006 to June 16, 2012.  
32
- 33 22. A Lieutenant with 20 years of experience would have earned \$489,407.33 in  
34 base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16,  
35 2012.  
36
- 37 23. A Lieutenant with a Quinn qualifying Associate's degree would have earned  
38 \$658,891.58 in base wages from April 12, 2006 to June 16, 2012.  
39
- 40 24. A Lieutenant with a Quinn qualifying Associate's degree would have earned  
41 \$506,076.64 in base wages from May 5, 2007 to January 22, 2011 and July 23,  
42 2011 to June 16, 2012.  
43
- 44 25. A Lieutenant with a Quinn qualifying Bachelor's degree would have earned  
45 \$708,358.70 in base wages from April 12, 2006 to June 16, 2012.  
46

26. A Lieutenant with a Quinn qualifying Bachelor's degree would have earned \$543,487.95 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
27. A Lieutenant with a Quinn qualifying Master's degree would have earned \$733,075.64 in base wages from April 12, 2006 to June 16, 2012.
28. A Lieutenant with a Quinn qualifying Master's degree would have earned \$562,181.89 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
29. A Captain with less than 5 years of experience would have earned \$708,076.92 in base wages from April 12, 2006 to June 16, 2012.
30. A Captain with less than 5 years of experience would have earned \$544,144.06 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
31. A Captain with at least 5 years of experience but less than 20 years of experience would have earned \$722,051.37 in base wages from April 12, 2006 to June 16, 2012.
32. A Captain with at least 5 years of experience but less than 20 years of experience would have earned \$554,762.58 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
33. A Captain with 20 years of experience would have earned \$736,012.15 in base wages from April 12, 2006 to June 16, 2012.
34. A Captain with 20 years of experience would have earned \$565,366.54 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
35. A Captain with a Quinn qualifying Associate's degree would have earned \$766,193.39 in base wages from April 12, 2006 to June 16, 2012.
36. A Captain with a Quinn qualifying Associate's degree would have earned \$588,224.54 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
37. A Captain with a Quinn qualifying Bachelor's degree would have earned \$823,775.57 in base wages from April 12, 2006 to June 16, 2012.
38. A Captain with a Quinn qualifying Bachelor's degree would have earned \$631,765.00 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.

39. A Captain with a Quinn qualifying Master's degree would have earned \$852,547.30 in base wages from April 12, 2006 to June 16, 2012.
40. A Captain with a Quinn qualifying Master's degree would have earned \$653,521.61 in base wages from May 5, 2007 to January 22, 2011 and July 23, 2011 to June 16, 2012.
41. From May 21, 2004 to May 27, 2005, during his first year assigned to City Hall Security, Daniel Linskey earned \$18,633.54 in overtime pay, \$2,026.00 in detail pay and \$24,943.08 in stipend pay.
42. From May 27, 2005 to March 31, 2006, during his second year assigned to City Hall Security, Daniel Linskey earned \$19,520.65 in overtime pay, \$4,264.00 in detail pay and \$20,867.31 in stipend pay.
43. From May 23, 2003 to May 21, 2004, one year before being assigned to City Hall Security, Daniel Linskey earned \$65,610.47 in overtime pay and \$0 in detail pay.
44. From May 24, 2002 to May 23, 2003, two years before being assigned to City Hall Security, Daniel Linskey earned \$58,528.47 in overtime pay and \$0 in detail pay.
45. From May 25, 2001 to May 24, 2002, three years before being assigned to City Hall Security, Daniel Linskey earned \$59,402.96 in overtime pay and \$0 in detail pay.
46. From May 26, 2000 to May 25, 2001, four years before being assigned to City Hall Security, Daniel Linskey earned \$48,387.81 in overtime pay and \$0 in detail pay.
47. From June 8, 2007 to February 13, 2009 Sergeant-Detective Daniel Downey received a stipend for his assignment to City Hall Security.
48. From June 8, 2007 to February 13, 2009, during his time assigned to City Hall Security, Sergeant-Detective Daniel Downey earned \$65,673.86 in overtime pay and \$36,975.00 in stipend pay.
49. From June 8, 2006 to June 8, 2007, one year before being assigned to City Hall Security, Sergeant-Detective Daniel Downey earned \$62,454.97 in overtime pay and \$0 in detail pay.
50. From June 8, 2005 to June 8, 2006, two years before being assigned to City Hall Security, Sergeant-Detective Daniel Downey earned \$58,442.00 in overtime pay and \$0 in detail pay.

- 1 51. From June 8, 2004 to June 8, 2005, three years before being assigned to City  
2 Hall Security, Sergeant-Detective Daniel Downey earned \$52,598.61 in overtime  
3 pay and \$0 in detail pay.  
4
- 5 52. From June 8, 2003 to June 8, 2004, four years before being assigned to City Hall  
6 Security, Sergeant-Detective Daniel Downey earned \$46,249.74 in overtime pay  
7 and \$0 in detail pay.  
8
- 9 53. From June 8, 2002 to June 8, 2003, five years before being assigned to City Hall  
10 Security, Sergeant-Detective Daniel Downey earned \$41,368.19 in overtime pay  
11 and \$0 in detail pay.  
12
- 13 54. From February 13, 2009 to January 14, 2011 Sergeant-Detective Steven  
14 Whitman received a stipend for his assignment to City Hall Security.  
15
- 16 55. From February 13, 2009 to February 13, 2010, during his first year assigned to  
17 City Hall Security, Sergeant-Detective Steven Whitman earned \$18,346.19 in  
18 overtime pay, \$4,092.00 in detail pay and \$22,950.00 in stipend pay.  
19
- 20 56. From February 13, 2010 to January 14, 2011, during his second year assigned to  
21 City Hall Security, Sergeant-Detective Steven Whitman earned \$16,235.65 in  
22 overtime pay, \$7,088.00 in detail pay and \$19,975.00 in stipend pay.  
23
- 24 57. From February 13, 2008 to February 13, 2009, one year before being assigned  
25 to City Hall Security, Sergeant-Detective Steven Whitman earned \$45,075.21 in  
26 overtime pay and \$0 in detail pay.  
27
- 28 58. From February 13, 2007 to February 13, 2008, two years before being assigned  
29 to City Hall Security, Sergeant-Detective Steven Whitman earned \$50,400.58 in  
30 overtime pay and \$6,528.00 in detail pay.  
31
- 32 59. From February 13, 2006 to February 13, 2007, three years before being  
33 assigned to City Hall Security, Sergeant-Detective Steven Whitman earned  
34 \$37,278.24 in overtime pay and \$18,978.00 in detail pay.  
35
- 36 60. From February 13, 2005 to February 13, 2006, four years before being assigned  
37 to City Hall Security, Sergeant-Detective Steven Whitman earned \$33,196.53 in  
38 overtime pay and \$6,690.00 in detail pay.  
39
- 40 61. From February 13, 2004 to February 13, 2005, five years before being assigned  
41 to City Hall Security, Sergeant-Detective Steven Whitman earned \$28,503.28 in  
42 overtime pay and \$13,060.00 in detail pay.  
43
- 44 62. From January 22, 2011 to January 10, 2015 Joseph Dashner received a stipend  
45 for his assignment to City Hall Security.  
46

- 1 63. From January 22, 2011 to January 22, 2012, during his first year assigned to City  
2 Hall Security, Joseph Dashner earned \$17,688.17 in overtime pay, \$5,952.00 in  
3 detail pay and \$22,100.00 in stipend pay.  
4
- 5 64. From January 22, 2012 to January 22, 2013, during his second year assigned to  
6 City Hall Security, Joseph Dashner earned \$15,972.14 in overtime pay,  
7 \$6,028.00 in detail pay and \$22,100.00 in stipend pay.  
8
- 9 65. From January 22, 2013 to January 22, 2014, during his third year assigned to  
10 City Hall Security, Joseph Dashner earned \$30,009.13 in overtime pay,  
11 \$4,136.00 in detail pay and \$22,100.00 in stipend pay.  
12
- 13 66. From January 22, 2014 to December 31, 2014, during his fourth year assigned to  
14 City Hall Security, Joseph Dashner earned \$23,942.32 in overtime pay,  
15 \$3,344.00 in detail pay and \$20,825.00 in stipend pay.  
16
- 17 67. From January 29, 2010 to January 21, 2011, one year before being assigned to  
18 City Hall Security, Joseph Dashner earned \$14,181.39 in overtime pay and  
19 \$24,092.00 in detail pay.  
20
- 21 68. From January 23, 2009 to January 22, 2010, two years before being assigned to  
22 City Hall Security, Joseph Dashner earned \$19,709.69 in overtime pay and  
23 \$32,552.00 in detail pay.  
24
- 25 69. From January 18, 2008 to January 23, 2009, three years before being assigned  
26 to City Hall Security, Joseph Dashner earned \$25,022.95 in overtime pay and  
27 \$24,364.00 in detail pay.  
28
- 29 70. From January 26, 2007 to January 18, 2008, four years before being assigned to  
30 City Hall Security, Joseph Dashner earned \$23,813.16 in overtime pay and  
31 \$22,780.00 in detail pay.  
32
- 33 71. From January 22, 2006 to January 22, 2007, five years before being assigned to  
34 City Hall Security, Joseph Dashner earned \$35,010.08 in overtime pay and  
35 \$14,374.00 in detail pay.  
36
- 37 72. From January 10, 2015 to February 29, 2016 Sergeant Daniel Keeler received a  
38 stipend for his assignment to City Hall Security.  
39
- 40 73. From January 10, 2015 to February 29, 2016, during his time assigned to City  
41 Hall Security, Sergeant Daniel Keeler earned \$14,543.66 in overtime pay and  
42 \$25,075.00 in stipend pay.  
43
- 44 74. From January 10, 2014 to January 10, 2015, one year before being assigned to  
45 City Hall Security, Sergeant Daniel Keeler earned \$0 in overtime pay and \$0 in  
46 detail pay.

- 1  
2 75. From January 10, 2013 to January 10, 2014, two years before being assigned to  
3 City Hall Security, Sergeant Daniel Keeler earned \$45,436.27 in overtime pay  
4 and \$16,748.00 in detail pay.  
5  
6 76. From January 10, 2012 to January 10, 2013, three years before being assigned  
7 to City Hall Security, Sergeant Daniel Keeler earned \$68,222.03 in overtime pay  
8 and \$30,408.00 in detail pay.  
9  
10 77. From January 10, 2011 to January 10, 2012, four years before being assigned to  
11 City Hall Security, Sergeant Daniel Keeler earned \$77,112.80 in overtime pay  
12 and \$45,336.00 in detail pay.  
13  
14 78. From January 10, 2010 to January 10, 2011, five years before being assigned to  
15 City Hall Security, Sergeant Daniel Keeler earned \$73,939.36 in overtime pay  
16 and \$40,236.00 in detail pay.  
17

18 **II. Stipulations Provided In Response to the Hearing Officer's March 20, 2017,**  
19 **Email.<sup>2</sup>**  
20

- 21 79. From April 12, 2006 to January 22, 2011 and July 23, 2011 to June 16, 2012, a  
22 Federation member would have earned \$125,618 in stipend pay if the stipend  
23 rate was \$425 per week.  
24  
25 80. From April 12, 2006 to January 22, 2011 and July 23, 2011 to June 16, 2012, a  
26 Federation member would have earned \$141,875 in stipend pay if the stipend  
27 rate was \$480 per week.  
28  
29 81. A Sergeant with less than 5 years of experience would have earned \$479,104.50  
30 in base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
31 16, 2012.  
32  
33 82. A Sergeant with at least 5 years of experience would have earned \$491,938.09  
34 in base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
35 16, 2012.  
36  
37 83. A Sergeant with at least 20 years of experience would have earned \$504,776.44  
38 in base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
39 16, 2012.  
40

---

<sup>2</sup> On March 20, 2017, in the course of preparing for the hearing, I emailed the parties a request to consider drafting additional stipulations. The parties provided the stipulations listed in Part II (79-107) in response to my request.

- 1 84. A Sergeant with a Quinn qualifying Associate's degree would have earned  
2 \$518,933.21 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
3 2011 to June 16, 2012.  
4
- 5 85. A Sergeant with a Quinn qualifying Bachelor's degree would have earned  
6 \$558,771.70 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
7 2011 to June 16, 2012.  
8
- 9 86. A Sergeant with a Quinn qualifying Master's degree would have earned  
10 \$578,681.17 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
11 2011 to June 16, 2012.  
12
- 13 87. A Lieutenant with less than 5 years of experience would have earned  
14 \$557,091.23 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
15 2011 to June 16, 2012.  
16
- 17 88. A Lieutenant with at least 5 years of experience would have earned \$569,925.01  
18 in base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
19 16, 2012.  
20
- 21 89. A Lieutenant with at least 20 years of experience would have earned  
22 \$582,762.62 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
23 2011 to June 16, 2012.  
24
- 25 90. A Lieutenant with a Quinn qualifying Associate's degree would have earned  
26 \$603,468.80 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
27 2011 to June 16, 2012.  
28
- 29 91. A Lieutenant with a Quinn qualifying Bachelor's degree would have earned  
30 \$649,857.74 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
31 2011 to June 16, 2012.  
32
- 33 92. A Lieutenant with a Quinn qualifying Master's degree would have earned  
34 \$673,040.84 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
35 2011 to June 16, 2012.  
36
- 37 93. A Captain with less than 5 years of experience would have earned \$647,705.31  
38 in base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
39 16, 2012.  
40
- 41 94. A Captain with at least 5 years of experience would have earned \$660,556.12 in  
42 base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
43 16, 2012.  
44

- 1 95. A Captain with at least 20 years of experience would have earned \$673,393.23 in  
2 base wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to June  
3 16, 2012.  
4
- 5 96. A Captain with a Quinn qualifying Associate's degree would have earned  
6 \$701,691.84 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
7 2011 to June 16, 2012.  
8
- 9 97. A Captain with a Quinn qualifying Bachelor's degree would have earned  
10 \$755,691.61 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
11 2011 to June 16, 2012.  
12
- 13 98. A Captain with a Quinn qualifying Master's degree would have earned  
14 \$782,678.24 in base wages from April 12, 2006 to January 22, 2011 and July 23,  
15 2011 to June 16, 2012.  
16
- 17 99. A Sergeant with less than 5 years of experience would have earned \$628,387.94  
18 in overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
19 June 16, 2012.  
20
- 21 100. A Sergeant with at least 5 years of experience would have earned \$645,404.51  
22 in overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
23 June 16, 2012.  
24
- 25 101. A Sergeant with at least 20 years of experience would have earned \$662,487.31  
26 in overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
27 June 16, 2012.  
28
- 29 102. A Lieutenant with less than 5 years of experience would have earned  
30 \$731,725.37 in overtime wages from April 12, 2006 to January 22, 2011 and July  
31 23, 2011 to June 16, 2012.  
32
- 33 103. A Lieutenant with at least 5 years of experience would have earned \$748,700.97  
34 in overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
35 June 16, 2012.  
36
- 37 104. A Lieutenant with at least 20 years of experience would have earned  
38 \$767,747.94 in overtime wages from April 12, 2006 to January 22, 2011 and July  
39 23, 2011 to June 16, 2012.  
40
- 41 105. A Captain with less than 5 years of experience would have earned \$851,742.86  
42 in overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
43 June 16, 2012.  
44



1 106. A Captain with at least 5 years of experience would have earned \$868,735.89 in  
2 overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
3 June 16, 2012.

4  
5 107. A Captain with at least 20 years of experience would have earned \$885,714.80 in  
6 overtime wages from April 12, 2006 to January 22, 2011 and July 23, 2011 to  
7 June 16, 2012.

8  
9 **III. Stipulations Regarding the Time Period in 2016 When No Sworn Member Was**  
10 **Assigned to City Hall Security (Between Sgt. Keeler & Sgt. Donovan).**  
11

12 108. From February 29, 2016 to September 24, 2016, a Federation member would  
13 have earned \$12,628.57 in stipend pay if the stipend rate was \$425 per week.

14  
15 109. From February 29, 2016 to September 24, 2016, a Federation member would  
16 have earned \$14,262.86 in stipend pay if the stipend rate was \$480 per week.

17  
18 110. A Sergeant with less than 5 years of experience would have earned \$57,626.63  
19 in base wages from February 29, 2016 to September 24, 2016.

20  
21 111. A Sergeant with at least 5 years of experience would have earned \$58,913.72 in  
22 base wages from February 29, 2016 to September 24, 2016.

23  
24 112. A Sergeant with at least 20 years of experience would have earned \$64,868.17  
25 in base wages from February 29, 2016 to September 24, 2016.

26  
27 113. A Sergeant with a Quinn qualifying Associate's degree would have earned  
28 \$61,888.63 in base wages from February 29, 2016 to September 24, 2016.

29  
30 114. A Sergeant with a Quinn qualifying Bachelor's degree would have earned  
31 \$66,150.62 in base wages from February 29, 2016 to September 24, 2016.

32  
33 115. A Sergeant with a Quinn qualifying Master's degree would have earned  
34 \$68,281.62 in base wages from February 29, 2016 to September 24, 2016.

35  
36 116. A Lieutenant with less than 5 years of experience would have earned \$66,951.26  
37 in base wages from February 29, 2016 to September 24, 2016.

38  
39 117. A Lieutenant with at least 5 years of experience would have earned \$68,238.67  
40 in base wages from February 29, 2016 to September 24, 2016.

41  
42 118. A Lieutenant with at least 20 years of experience would have earned \$74,193.11  
43 in base wages from February 29, 2016 to September 24, 2016.

44  
45 119. A Lieutenant with a Quinn qualifying Associate's degree would have earned  
46 \$71,912.60 in base wages from February 29, 2016 to September 24, 2016.

120. A Lieutenant with a Quinn qualifying Bachelor's degree would have earned \$76,873.95 in base wages from February 29, 2016 to September 24, 2016.
121. A Lieutenant with a Quinn qualifying Master's degree would have earned \$79,354.62 in base wages from February 29, 2016 to September 24, 2016.
122. A Captain with less than 5 years of experience would have earned \$77,787.89 in base wages from February 29, 2016 to September 24, 2016.
123. A Captain with at least 5 years of experience would have earned \$79,074.98 in base wages from February 29, 2016 to September 24, 2016.
124. A Captain with at least 20 years of experience would have earned \$85,029.11 in base wages from February 29, 2016 to September 24, 2016.
125. A Captain with a Quinn qualifying Associate's degree would have earned \$83,561.98 in base wages from February 29, 2016 to September 24, 2016.
126. A Captain with a Quinn qualifying Bachelor's degree would have earned \$89,336.07 in base wages from February 29, 2016 to September 24, 2016.
127. A Captain with a Quinn qualifying Master's degree would have earned \$92,223.12 in base wages from February 29, 2016 to September 24, 2016.
128. A Sergeant with less than 5 years of experience would have earned \$76,404.00 in overtime wages from February 29, 2016 to September 24, 2016.
129. A Sergeant with at least 5 years of experience would have earned \$78,132.00 in overtime wages from February 29, 2016 to September 24, 2016.
130. A Sergeant with at least 20 years of experience would have earned \$86,148.00 in overtime wages from February 29, 2016 to September 24, 2016.
131. A Lieutenant with less than 5 years of experience would have earned \$88,944.00 in overtime wages from February 29, 2016 to September 24, 2016.
132. A Lieutenant with at least 5 years of experience would have earned \$90,672.00 in overtime wages from February 29, 2016 to September 24, 2016.
133. A Lieutenant with at least 20 years of experience would have earned \$98,676.00 in overtime wages from February 29, 2016 to September 24, 2016.
134. A Captain with less than 5 years of experience would have earned \$103,512.00 in overtime wages from February 29, 2016 to September 24, 2016.

1 135. A Captain with at least 5 years of experience would have earned \$105,240.00 in  
2 overtime wages from February 29, 2016 to September 24, 2016.

3  
4 136. A Captain with at least 20 years of experience would have earned \$113,244.00 in  
5 overtime wages from February 29, 2016 to September 24, 2016.

6 **IV. Stipulations for the Time Period from April 12, 2006 to January 22, 2011**

7 137. A Sergeant with less than 5 years of experience would have earned \$396,984.14  
8 in base wages from April 12, 2006 to January 22, 2011.

9 138. A Sergeant with at least 5 years of experience but less than 20 years would have  
10 earned \$407,784.45 in base wages from April 12, 2006 to January 22, 2011.

11 139. A Sergeant with at least 20 years of experience would have earned \$418,590.02  
12 in base wages from April 12, 2006 to January 22, 2011.

13 140. A Sergeant with a Quinn qualifying Associate's degree would have earned  
14 \$432,661.51 in base wages from April 12, 2006 to January 22, 2011.

15 141. A Sergeant with a Quinn qualifying Bachelor's degree would have earned  
16 \$468,347.67 in base wages from April 12, 2006 to January 22, 2011.

17 142. A Sergeant with a Quinn qualifying Master's degree would have earned  
18 \$486,181.96 in base wages from April 12, 2006 to January 22, 2011.

19 143. A Lieutenant with less than 5 years of experience would have earned  
20 \$461,626.93 in base wages from April 12, 2006 to January 22, 2011.

21 144. A Lieutenant with at least 5 years of experience but less than 20 years would  
22 have earned \$472,427.92 in base wages from April 12, 2006 to January 22,  
23 2011.

24 145. A Lieutenant with 20 years of experience would have earned \$483,232.25 in base  
25 wages from April 12, 2006 to January 22, 2011.

26 146. A Lieutenant with a Quinn qualifying Associate's degree would have earned  
27 \$503,171.95 in base wages from April 12, 2006 to January 22, 2011.

28 147. A Lieutenant with a Quinn qualifying Bachelor's degree would have earned  
29 \$544,727.22 in base wages from April 12, 2006 to January 22, 2011.

30 148. A Lieutenant with a Quinn qualifying Master's degree would have earned  
31 \$565,494.61 in base wages from April 12, 2006 to January 22, 2011.

32 149. A Captain with less than 5 years of experience would have earned \$536,733.44  
33 in base wages from April 12, 2006 to January 22, 2011.

1 150. A Captain with at least 5 years of experience but less than 20 years would have  
2 earned \$547,551.46 in base wages from April 12, 2006 to January 22, 2011.

3 151. A Captain with 20 years of experience would have earned \$558,355.79 in base  
4 wages from April 12, 2006 to January 22, 2011.

5 152. A Captain with a Quinn qualifying Associate's degree would have earned  
6 \$585,095.78 in base wages from April 12, 2006 to January 22, 2011.

7 153. A Captain with a Quinn qualifying Bachelor's degree would have earned  
8 \$633,470.03 in base wages from April 12, 2006 to January 22, 2011.

9 154. A Captain with a Quinn qualifying Master's degree would have earned \$657,645.23  
10 in base wages from April 12, 2006 to January 22, 2011.

11 **V. Stipulations Regarding the Quinn Qualifying Educational Levels of Federation**  
12 **Members and Backfilling During Days Off.**

13 155. Between April 2006 and April 2012, approximately 64% of the Federation  
14 members held a Quinn qualifying Master's degree.

15 156. The Department did not have a practice of backfilling the City Hall Security  
16 position with officers on overtime while the officer assigned to the City Hall  
17 Security was on days off, including but not limited to, vacation, regularly  
18 scheduled days off, personal days, sick days.

19 **FINDINGS OF FACT**

20 **Relevant Facts Reprinted from the 2011 Decision**

21 **The 2005 Settlement Agreement**

22 On July 23, 2004, the Union filed a charge at the DLR alleging that the City had  
23 unlawfully transferred bargaining unit work to a non-bargaining unit employee when it  
24 assigned Linskey to the SPU [Special Police Unit]. The DLR docketed the charge as  
25 MUP-04-4191, investigated the charge, and issued a complaint of prohibited practice.  
26 In July of 2005, Union and BPD representatives, including Police Commissioner  
27 Kathleen O'Toole (O'Toole) and Union Vice President Mark Parolin (Parolin) discussed  
28 how to resolve MUP-04-4191 and two other cases. In the course of their discussions,  
29 O'Toole asked the Union to do her a "favor" and allow Linskey to remain in his SPU

1 position. She explained that Linskey would soon be promoted to another position, and  
2 as soon as he left, the job would revert back to the Union. The Union agreed to wait  
3 until Linskey left his position. The Union and the BPD drafted and signed a settlement  
4 agreement that provides in pertinent part as follows:

5 The Parties agree that the assignment, Commander, Special Police Unit,  
6 Bureau of Field Services, currently held by Lieutenant Daniel Linskey, in  
7 whatever rank or rating he may hold, shall be a (sic) "red-circled" and shall  
8 revert to a position exclusive to the Federation bargaining unit upon  
9 Lieutenant Linskey's voluntary or involuntary departure from such  
10 assignment.

11  
12 **Linskey's Transfer Out of the Special Police Unit**

13 On April 12, 2006, the BPD promoted Linskey to Deputy Superintendent and  
14 transferred him out of the SPU and into the Office of the Police Commissioner. After  
15 Linskey left the SPU, the BPD did not assign any of Linskey's former duties to  
16 employees in the Union's bargaining unit. Non-bargaining unit employees Steven  
17 Whitman and Dan Downey took over the City Hall and mayoral security functions,<sup>3</sup> and  
18 Linskey's investigative duties fell to non-unit members of various different police  
19 districts.

20 **Facts from the Compliance Hearing**

21 ***Staffing Levels***

22 The Boston Police Department does not have a contractual minimum staffing  
23 provision or a set minimum number of sergeants that it employs at any given time.<sup>4</sup> It  
24 tries to keep the number of sergeants as high as it can, but sergeant staffing levels

---

<sup>3</sup> The City Hall function referenced in these facts from the 2011 decision is the City Hall Security position at issue in this compliance proceeding.

<sup>4</sup> The record does not contain similar evidence regarding staffing levels for the other bargaining unit positions of lieutenant and captain.

1 fluctuate significantly depending on certain variables such as retirements, promotions  
2 and other types of transfers.<sup>5</sup> The lowest number of sergeants that the BPD needs to  
3 meet its operational needs and provide proper supervision is between 130-135.

4 In the period of time between 2011 and 2017, the staffing level for sergeants has  
5 ranged from the high 140s to over 180.<sup>6</sup> The BPD employed the following number of  
6 sergeants on the following dates: 184 on April 27, 2006; 178 on May 1, 2007; 175 on  
7 January 20, 2009; and 173 on January 20, 2011. The BPD staffing level of between  
8 173-184 sergeants on April 27, 2006, May 1, 2007, January 20, 2009 and January 20,  
9 2011 would have enabled it to assign a sergeant in the bargaining unit to the City Hall  
10 Security position at those times.<sup>7</sup>

11 ***City Hall Security Assignments After Linskey***

12  
13 After Lieutenant Linskey<sup>8</sup> left the City Hall Security position at issue on April 12,  
14 2006, no one filled it until May 5, 2007, when the BPD assigned it to non-unit member  
15 Sergeant Detective Daniel Downey (Downey). Downey held the City Hall position until

---

<sup>5</sup> Certain investigative units, such as anti-corruption, homicide, and internal affairs, are staffed with detectives. However, sergeants who don't yet possess a detective rating may be assigned to those departments while they are working towards their detective rating.

<sup>6</sup> This is the period of time that Former Superintendent Chief of Bureau of Field Services Bernard O'Rourke (O'Rourke) held a superintendent position.

<sup>7</sup> O'Rourke, a 39 year veteran of the BPD, testified to his opinion that if the City had 173-184 sergeants within its strength or its staffing, it would have had the ability to assign a sergeant to City Hall. The Union offered no evidence or argument to contradict that assertion, and consequently, I find it as a fact.

<sup>8</sup> Linskey was a sergeant when he received the City Hall assignment at issue, but the BPD promoted him to the rank of lieutenant effective April 8, 2005.

1 January 23, 2009, when the BPD assigned it to non-unit member Sergeant Detective  
2 Steven Whitman (Whitman). Whitman held it from then until January 22, 2011, when the  
3 BPD assigned it to unit member Sergeant Joseph Dashner (Dashner). Dashner held  
4 the position as a sergeant from January 11, 2011 to July 23, 2011, when he received a  
5 detective rating and moved into a different bargaining unit. On June 16, 2012, Dashner  
6 surrendered his detective rating, remained in the City Hall Security position, and  
7 returned to the Federation's bargaining unit. Dashner continued to hold the City Hall  
8 Security position until January 10, 2015, when the City assigned it to Sergeant  
9 Detective Daniel Keeler (Keeler). Keeler dropped his detective rating that same day, so  
10 he took the position as a member of the Federation's bargaining unit. Keeler held the  
11 position until February 29, 2016, the effective date of his retirement. The BPD did not  
12 assign anyone to the City Hall Security position until September 24, 2016, when the  
13 BPD assigned it to bargaining unit member Sergeant Michael Donovan (Donovan). In  
14 sum, the City did not fill the City Hall Security position with a bargaining unit member for  
15 the following periods of time after it promoted Linskey out of the position:

- 16 • April 12, 2006 to January 22, 2011;
- 17 • July 23, 2011 to June 16, 2012, and
- 18 • February 29, 2016 to September 24, 2016.

19 Most of the officers who filled the position after Linskey left it were veteran  
20 sergeants,<sup>9</sup> rather than recent promotees. The City advised the Federation at a  
21 September 13, 2016 bargaining session that the City considers the 2005 Agreement to

---

<sup>9</sup> The record does not disclose the exact seniority dates of the sergeants who filled the position.

1 be an unenforceable minimum shift staffing provision, and that the City will not bargain  
2 to continue the City's compliance with it beyond the term of the parties' current  
3 collective bargaining agreement.

4 ***Compensation received in the City Hall Position***  
5

6 Boston City Hall is in the A1 police district, and that district has certain  
7 responsibilities involving security for special events that are held on City Hall Plaza.  
8 There is only one City Hall Security position, and it is a day tour position. The individual  
9 filling it receives a base salary that is determined by their years of service and any  
10 educational degrees that they may possess. The incumbent also receives a weekly  
11 stipend for holding the position and is eligible to receive overtime and detail work. The  
12 City Hall stipend is included in regular compensation for purposes of retirement, but  
13 overtime and detail payments are not. Although Linskey received a stipend of \$480 per  
14 week as both a sergeant and a lieutenant while he held the City Hall Security position,  
15 subsequent sergeants assigned to the position received a stipend of \$425 per week.

16 A comparison of the pay that Linskey and the individuals who succeeded him in  
17 the City Hall position shows that in some years, they made less total compensation  
18 while they were in the City Hall position than they did in the positions they held prior to  
19 the City Hall position. In other years, they made more total compensation in the City  
20 Hall position than in prior years. For example, Whitman made more total compensation  
21 in his first year in the City Hall position (2009-2010) than he did in the year immediately  
22 prior to his City Hall assignment (2008-2009); however he made less in his second year  
23 at City Hall (2010-2011) than he did in each of the three years prior to his City Hall  
24 assignment (2006-2007, 2007-2008, and 2008-2009).



1           Dashner made more in each of his four years in the City Hall position (2011-  
2   2012, 2012-2013, 2013-2014 and January 2014 – December 2014) than he did in the  
3   year before he worked at City Hall (2010-2011).<sup>10</sup> However, Dashner made more in  
4   2009-2010, before he worked in City Hall than he did in his 1<sup>st</sup>, 2<sup>nd</sup> or 4<sup>th</sup> year at City  
5   Hall.

6           Keeler made more in his City Hall position in 2015-2016 than he did in the year  
7   immediately preceding it (2014-2015). However, Keeler made less in his City Hall  
8   position than he did in the other prior years, specifically: 2013-2014, 2012-2013, 2011-  
9   2012, and 2010-2011.<sup>11</sup> As noted in the stipulations, the individual holding the City Hall  
10   Security position is eligible to work overtime and details, and there is no evidence in the  
11   record to show that that individual in the City Hall assignment would necessarily earn

---

<sup>10</sup> The City argues that the record evidence of Dashner's earning was skewed by the fact that he was on injury leave and "assigned to medical" from November 10, 2010 to January 21, 2011, and consequently, the evidence of his earnings in 2010-2011 should be "thrown out." I decline to do so. Although Dashner's payroll records show that he was on paid sick leave during that time, there was no testimony to prove that Dashner was "assigned to medical" or to explain the abbreviations on the relevant personnel order. His payroll 2010 records show that he received overtime and sick time during three payroll periods (June 19 – 25; August 21 – 27, and September 25 – October 1), and there was no testimony discussing his ability to earn overtime or work details when he was receiving sick pay. Moreover, it is possible that even if Dashner was not out sick between November 2010 and January 2011, he still would have made less money from 2010 – 2011 than he did when he took the City Hall position in 2011.

<sup>11</sup> The City also argues that Keeler was injured and incapable of obtaining extra income through overtime and details from February 3, 2014 to March 24, 2014, and August 21, 2014 to October 2, 2014. However, as noted in footnote 10, the personnel orders alone do not permit me to find that Keeler was on a medical leave in 2014 since no witness explained the abbreviations. Additionally, the evidence shows that Keeler did not earn any overtime or detail payments during the time that he was not allegedly out on medical leave in 2014. Thus, it is possible that Keeler would still have earned less in 2014-2015, the year before he received the City Hall assignment, than he did when he held the City Hall assignment.

1 any more or less in detail and overtime work than a Federation member in any other  
2 assignment or position.

3 OPINION

4 Section 11 of the Law authorizes the CERB to issue orders "requiring the  
5 charged party to cease and desist from such prohibited practice and take such further  
6 affirmative action as will comply with the provision of this section." This language gives  
7 the CERB broad discretion in fashioning a remedy that is designed to effectuate the  
8 purposes of the Law and vitiate the effects of the violation. Boston Police Patrolmen's  
9 Association, Inc., 8 MLC 1993, 2002, MUPL-2049, MUPL-2050 (February 2, 1982 and  
10 March 23, 1982); Secretary of Administration and Finance v. Labor Relations  
11 Commission, 434 Mass. 340 (2001). The CERB has a strong interest in preventing  
12 parties from gaining an advantage by committing prohibited practices and reaping a  
13 benefit from their unlawful actions. Amesbury School Committee, 13 MLC 1196, 1197,  
14 MUP-5254 (October 9, 1986)(supplementary decision and order on compliance); City of  
15 Everett, 2 MLC 1471, MUP-2126 (May 5, 1976), aff'd, Labor Relations Commission v.  
16 City of Everett, 7 Mass. App. Ct. 826 (1979).

17 **Positions of the Parties**<sup>12</sup>

18 The Union argues that the City has failed to comply with the make whole portion  
19 of the CERB's order because it has made no financial payment to any bargaining unit  
20 member, and that back pay is due because a Federation member would have been  
21 assigned to the City Hall position but for the City's unlawful conduct. It believes that the

---

<sup>12</sup> The parties agree that the City complied with the posting requirement of the CERB's order, and that a bargaining unit member is currently placed in the City Hall position.

1 CERB's order required the City to pay the equivalent of a captain's salary (calculated  
2 with a Quinn Bill-qualifying master's degree) for one position at an overtime rate for all  
3 compensable time periods.<sup>13</sup> Alternatively, it argues that back pay at an overtime rate is  
4 required even if the remedy is calculated at a sergeant's rank. The Union also contends  
5 that the back pay award should include the amount of the stipend pay lost, and the  
6 stipend amount should be calculated at \$480 per week, rather than \$425 per week.

7 The City believes that it has complied with the CERB's order despite the lack of  
8 payment. It contends that no payment is due because: 1) the 2005 Agreement is an  
9 unenforceable infringement on the Police Commissioner's non-delegable rights; 2) the  
10 Union has failed to identify any specific individual who has incurred a financial loss; and  
11 3) no employee could have lost pay by not being assigned to the City Hall position  
12 because employees who held the City Hall position made less in that assignment than  
13 they did in other assignments. Alternatively, the City argues that any remedy due  
14 should be calculated using a straight time wage rate rather than an overtime rate,  
15 because the City had enough officers at all relevant times to have staffed the position  
16 on a straight time basis. Additionally, the City argues that any remedy should be  
17 calculated based on the wage rate of a sergeant, rather than a captain or lieutenant.  
18 Finally, the City argues that back pay can only be awarded during the periods of time  
19 that the City filled the City Hall position with a sergeant detective, and that no payment

---

<sup>13</sup> The Union argues that compensation is due for all tours of duty during the periods of non-compliance. However, it does not define those time periods, and does not address the City's argument that no compensation is due for periods of time in which the City Hall position was vacant.

1 is due for time periods in which the City Hall position was temporarily vacant after  
2 Linskey was promoted in April of 2006.

3 ***Whether Compensation is Due***  
4

5 I first address the City's argument that the 2005 Agreement cannot be enforced  
6 because it contravenes the Boston Police Commissioner's non-delegable rights as  
7 codified in the Boston Police Commissioner statutes, St. 1962, Chapter 322, as  
8 interpreted by the Supreme Judicial Court in City of Boston v. Boston Police Superior  
9 Officers Federation, 466 Mass 210 (2013), and St. 1950, c.735. I dismissed the City's  
10 non-delegability issue in my 2011 decision, stating that: "[a]dditionally, the City gains no  
11 ground by arguing that the Union's interpretation of the 2005 Agreement contravenes a  
12 non-delegable right not to replace Linskey or to consolidate its police departments."  
13 The City did not raise the non-delegability issue to the CERB, but renewed it before the  
14 Appeals Court. The Appeals Court did not consider the merits of the City's non-  
15 delegability argument because it found that the City had waived it by failing to raise it  
16 before the CERB. City of Boston v. Commonwealth Employment Relations Board,  
17 (Mass. App. Ct. 2014-P-0324, Rule 1:28 dec. iss'd. July 28, 2015). The Court then  
18 affirmed the CERB's decision and order.

19 I am not persuaded by the City's contention that arguments waived before the  
20 CERB are not waived in this compliance proceeding because the compliance decision  
21 will be a separate appealable final order. In its supplemental decision on compliance in  
22 City of Fitchburg, 16 MLC 1567, MUP-5896 (February 12, 1990), the CERB declined to  
23 entertain the city's arguments regarding the propriety of the notice requirements where  
24 the city had failed to appeal the CERB's underlying decision and order. Consequently, I

1 cannot consider the City's non-delegability argument in this proceeding where the City  
2 failed to raise it to the CERB. Also, the City has cited no case law for the proposition  
3 that I have the authority, in a compliance proceeding, to modify or reject a CERB order  
4 that the Appeals Court subsequently affirmed. Consequently, I decline to reconsider the  
5 City's non-delegability arguments.<sup>14</sup> See generally, Triple A Fire Protection, Inc., 353  
6 NLRB 838 (2009).

7 I next address the City's argument that no payment is due because the Union  
8 has not identified any individual who lost work. It argues that any remedy that is not  
9 based on proof of an actual financial loss is an improper punitive sanction on the City  
10 and a windfall to any individual who receives it. It further argues that no Federation  
11 member incurred an economic loss when the City assigned a sergeant detective, rather  
12 than a Federation member, to the City Hall Security position, and that there was "ample"  
13 available overtime and detail work.

14 However, the City does not dispute that it could have assigned the position to a  
15 Federation member following Linskey's promotion, and it emphasizes that it could have

---

<sup>14</sup> My original decision did not discuss the SJC's decision in City of Boston v. Boston Police Superior Officers Federation, 466 Mass 210 (2013), because that case had not been decided at the time that I issued my decision. However, the Appeals Court affirmed the CERB's order notwithstanding the City's argument that the order contravened the City of Boston decision. Since the Appeals Court did not view City of Boston as a barrier to enforcing the CERB's order, I need not address that case. For the same reason, I need not address the City's argument that the 2005 Agreement illegally intrudes on the Police Commissioner's non-delegable right to leave a position vacant. Finally, I am not persuaded by the City's argument that St. 1950, c.735 relieves the Police Commissioner of the obligation to comply with the 2005 Agreement. The City cites no case holding that the Commissioner has unlimited authority to assign detectives, and the SJC has found that Commissioner's decision to reassign detectives to ranks they previously held is subject to review by the Trial Board referenced in that statute. Murphy v. Police Commissioner of Boston, 369 Mass. 469 (1976).

1 removed the rating from a detective who held the position, thereby placing that  
2 individual into the Federation's bargaining unit. The fact that I cannot determine which  
3 particular bargaining unit member would have received the position if the City had  
4 complied with the CERB's order does not defeat an award of back pay, since it is clear  
5 that the City could have assigned a bargaining unit member to it. See Unitog Rental  
6 Services, Inc., 318 NLRB 880 (1995)(supplemental decision and order)(NLRB orders  
7 compensation based on fact that one of a group of discriminatees would have received  
8 a promotional position even though it was not possible to determine which specific  
9 person would have received it). Consequently, the City cannot escape the economic  
10 consequences of its non-compliance by arguing that its inaction prevents the CERB  
11 from enforcing its order.

12 I also reject the City's argument that no one suffered a compensable loss  
13 because every bargaining unit member received a base salary and the opportunity to  
14 earn detail and overtime pay. Anyone in the City Hall Security position earns a  
15 pensionable stipend in addition to receiving a base salary and overtime and detail  
16 opportunities. The lost opportunity to earn that stipend is a tangible, compensable  
17 economic loss because a bargaining unit member<sup>15</sup> would and should have received  
18 that stipend if the City had complied with the CERB's order. Although the City argues  
19 that the stipend is offset by the availability of overtime and paid details, it is undisputed  
20 that the individual assigned to City Hall Security receives the stipend *in addition to* the  
21 opportunity to work overtime and details, and that there is no limit on the overtime

---

<sup>15</sup> Since the City assigned the City Hall Security position to various different individuals during the time periods at issue here, various bargaining unit members could have received the assignment and the stipend at different points in time.

1 and/or detail work that they can accept. In short, an individual holding the City Hall  
2 assignment receives a guaranteed stipend which gives them additional pensionable  
3 wages that they would not otherwise receive, and boosts their future retirement  
4 income.<sup>16</sup>

5 Finally, a financial order is not inappropriately punitive. In Amesbury School  
6 Committee, supra, the CERB held that a financial remedy directed to all bargaining unit  
7 members who were forced, as a result of the employer's unlawful actions, to complete  
8 more work in less time, was compensable rather than punitive where the employer had  
9 benefitted financially from its unlawful conduct. Amesbury School Committee, 13 MLC  
10 at 1198. The City has similarly benefitted financially from its unlawful conduct in this  
11 case, because its failure to assign anyone to the position at various times after  
12 Linskey's promotion saved it from paying the stipend.

13 ***The Time Periods during which Compensation is Due***

14 The Union argues that compensation is due for the time periods following  
15 Linskey's promotion when the City did not fill the position with a Federation unit  
16 member.<sup>17</sup> The City argues that its liability, if any, should not begin to run until May 5,  
17 2007, when it assigned non-unit member Detective Downey to the position, and that it is

---

<sup>16</sup> I reject the City's arguments that are based on what individuals in the City Hall assignment were capable of earning in overtime and details, or their average detail and overtime earnings. It is undisputed that some individuals who filled the City Hall Security assignment after Linskey made more money after the assignment than they made before, and the City's argument ignores the fact that the stipend would have given unit members additional, pensionable income that they would not otherwise have received.

<sup>17</sup> As previously noted, the Union did not directly address the City's argument that compensation is not due for time periods during which the City left the position vacant.

1 not liable for any period of time when the position was vacant. I am not persuaded by  
2 the City's arguments and find that its back pay liability started to run on April 12, 2006,  
3 when Linskey was promoted, and continued to run when the position was vacant.

4 ***April 12, 2006 – May 5, 2007***

5 The remedy covers the period of time when the position was vacant immediately  
6 following Linskey's promotion (April 12, 2006 – May 5, 2007) because the 2005  
7 Agreement states that Linskey's assignment shall revert to a position in the Federation's  
8 bargaining unit "upon Linskey's voluntary or involuntary departure from such  
9 assignment." The parties' use of the phrase "upon his departure" indicates that the  
10 position should become a Federation position as soon as Linskey left it. The facts  
11 found in the 2011 decision show that the parties negotiated the 2005 Agreement after  
12 then Police Commissioner Kathleen O'Toole explained to Union Vice President Mark  
13 Parolin that Linskey would soon be promoted to another position, and *as soon as he*  
14 *left*, the job would revert back to the Union (emphasis supplied). Thus, the City was  
15 obligated to fill the position with a bargaining unit member from April 12, 2006 on  
16 because it agreed to do so, and its liability flows from its non-compliance with its  
17 agreement.<sup>18</sup>

18 Second, I reject the City's argument that it had the right to leave the position  
19 vacant temporarily and that no back pay liability accrued during any vacancy. As noted,

---

<sup>18</sup> The City argues that the fact that it did not fill the City Hall position on an overtime basis when the person assigned to it took days off shows that the parties did not interpret the Agreement to prevent the City from leaving the position vacant temporarily. I disagree, and find that the language of the Agreement does not permit that conclusion. There was no evidence demonstrating that the incumbent in the position ever took a long term leave, and failing to fill the position for a few days is different than deciding not to fill it at all.



1 in my 2011 decision, I rejected the City's argument that it had a non-delegable right not  
2 to replace Linskey, and thus I need not reconsider that issue in the compliance hearing.

3 ***February 29, 2016 to September 24, 2016***

4 February 29 to September 24, 2016 is the time period at issue in MUP-16-5429.  
5 As noted in the stipulations, the parties agreed that the allegations in that case will be  
6 incorporated into this proceeding, and the Union withdrew that charge. The City argued  
7 in its opening statement that it was not "losing any defenses" in MUP-16-5429 when it  
8 agreed to include that case into this proceeding. However, I cannot segregate this time  
9 period for purposes of assessing the City's defenses. The compliance petition that the  
10 Union filed on August 11, 2016 stated that the City did not fill the City Hall position with  
11 a Federation member after Sergeant Daniel Keeler left the assignment on February 29,  
12 2016, and consequently, the February 29 to September 24, 2016 time frame is properly  
13 part of the compliance case notwithstanding the Union's separate charge. Additionally,  
14 because the DLR did not hold an investigation into MUP-16-5429 or issue a complaint, I  
15 cannot, in this compliance proceeding, consider the parties' allegations and defenses as  
16 if MUP-16-5429 was new, separate case. Consequently, I view the period of February  
17 29 to September 24, 2016 as an additional time period within which the City was  
18 obligated to comply with the 2012 CERB order that the Appeals Court effectively  
19 enforced. I do not reconsider my determination that the City had no non-delegable right  
20 not to replace Linskey, and therefore find that the City is also liable for the period from  
21 February 29, 2016 to September 24, 2016, when the position was vacant between  
22 Sergeant Keeler's retirement and Sergeant Donovan's appointment.

23 In sum, the make whole remedy covers the following periods of time:

1 1) April 12, 2006 to January 22, 2011 (Linskey's departure until the City assigned  
2 bargaining unit member Sergeant Dashner);

3  
4 2) July 23, 2011 to June 16, 2012 (Dashner occupied the position while holding a  
5 detective rating); and

6  
7 3) February 29, 2016 to September 24, 2016 (When the position was vacant  
8 between Keeler's retirement and Donovan's appointment.)  
9

10 **The Amount of Compensation Due**

11 The CERB's remedies include compensation to employees who lost  
12 opportunities for additional income as the result of an employer's unlawful action.  
13 Plymouth County House of Correction and Jail, 6 MLC 1523, MUP-2234, MUP-2429  
14 (October 24, 1979). Difficulty in determining the precise amount of compensation due is  
15 not a legitimate reason for denying employees all remedial compensation, Id. at 1526;  
16 City of Everett, 2 MLC at 1476, and any uncertainty concerning the appropriate amount  
17 of make-whole relief is appropriately resolved in favor of the injured party and against  
18 the respondent as the wrongdoer. See Newton School Committee, 8 MLC 1538, 1546,  
19 MUP-2501 (November 16, 1981), aff'd sub nom. School Committee of Newton v. Labor  
20 Relations Commission, 388 Mass. 577 (1983); Commonwealth of Massachusetts, 4  
21 MLC 1869, 1879, n.13, SUP-2156, SUP-2159 (April 13, 1978), aff'd sub nom., Group  
22 Insurance Commission v. Labor Relations Commission, 381 Mass. 199 (1980); In Re  
23 Webco Industries Inc., 340 NLRB 10, 11 (2003)(citing Kansas Refined Helium Co., 252  
24 NLRB 1156, 1157 (1980), enf'd sub nom. Angle v. NLRB, 683 F. 2d 1296 (10<sup>th</sup> Cir.  
25 1982)). In cases where it is difficult to specify the amount of back pay due, or the parties  
26 present differing calculations, the National Labor Relations Board (NLRB) uses as close  
27 an approximation as possible and adopts formulas reasonably designed to produce

1 such approximations. Colorado Forge Corporation, 285 NLRB 530 (1987)(supplemental  
2 decision and order)(citing NLRB v. Brown & Root, 311 F.2d 447, 452 (8<sup>th</sup> Cir. 1963)).

3 The Union seeks a make whole remedy that is equivalent to the salary of one  
4 position at the rank of captain with a Quinn Bill-qualifying Master's degree, calculated on  
5 an overtime basis. Additionally, it seeks payment of the stipend, which it asserts should  
6 be calculated at the rate of \$480 per week. The Union argues that this is the most fair,  
7 reasonable, and appropriate remedy because the City deprived the Federation and its  
8 members of an additional position by repudiating the 2005 Agreement; the City Hall  
9 position was usually filled by a captain before it was assigned to Linskey; most  
10 bargaining unit members hold Quinn Bill-qualifying Master's degrees; and since all  
11 Federation members were working their regular assignments during the time period at  
12 issue, the City would have had to fill the City Hall Security position on an overtime basis.

13 The City denies that overtime payment is required, citing Superintendent  
14 O'Rourke's testimony that the City had enough sergeants at all relevant times to assign  
15 a sergeant to the position on a straight time basis, and noting that the City did not  
16 backfill the position on an overtime basis when the person assigned to the position was  
17 on vacation or a leave.<sup>19</sup>

18 The City has shown that it could and would have assigned an existing bargaining  
19 unit member to the City Hall Security position rather than adding another position to the  
20 bargaining unit to fill that assignment. See generally, Aneco, Inc., 33 NLRB 691, 692  
21 (2001), enf. den'd on other grounds, Aneco, Inc. v. NLRB, 285 F.3d 326 (2002)

---

<sup>19</sup> The City did not address the question of whether any stipend awarded should be calculated at the weekly rate of \$480 or \$425.

1 (respondent has the evidentiary burden to bridge the gulf from could to would when  
2 disputing the propriety of a back pay period); In Re: Diamond Walnut Growers, Inc., 340  
3 NLRB 1129 (2003)(same); American Girl Place, Inc. d/b/a/American Girl Place, New  
4 York, 355 NLRB 479 (2010)(appropriate remedy in case where employer violated the  
5 National Labor Relations Act (NLRA) by suspending consideration of a wage increase  
6 included presumption that employer would have paid employees a wage increase, and  
7 employer had the burden to establish at the compliance proceeding that it would not  
8 have done so.) The record demonstrates that the City maintained a fluctuating rather  
9 than consistent staffing level, and on each date that it assigned a detective to the City  
10 Hall Security position, it had enough sergeants to have assigned a bargaining unit  
11 member to the position while still meeting its operational needs. No contrary evidence  
12 was introduced; thus I find that the City did not need to cover the City Hall position by  
13 adding another person to the bargaining unit and would not have done so. Since the  
14 City would not have added another bargaining unit member to the unit to cover the  
15 position, it need not pay back base wages for such a position.

16 The staffing level evidence also persuades me that the City did not need to fill the  
17 City Hall position by assigning it to a bargaining unit member on an overtime basis. The  
18 evidence shows that the number of sergeants employed fluctuates without  
19 compromising the BPD's ability to provide proper police supervision. Consequently, the  
20 City could have re-deployed a bargaining unit member from that person's existing  
21 assignment to the City Hall Security position without negatively impacting its operations.  
22 The City's ability to fill the position on a straight time basis demonstrates that it did not  
23 need to fill it, and would not have filled it, with a bargaining unit member on an overtime

1 basis. Thus, the City's repudiation of the 2005 Agreement did not deprive a bargaining  
2 unit member of any overtime that they would have earned if the City had complied with  
3 the Agreement. See generally, Town of Marion, 30 MLC 11, MUP-02-3329 (August 20,  
4 2003)(CERB declines to issue make whole order to remedy unlawful transfer of  
5 bargaining unit work where there was no evidence that unit members would have  
6 performed work on an overtime basis); Town of Falmouth, 25 MLC 24, MUP-8114,  
7 August 7, 1998)(supplemental decision and order)(CERB fashions a remedy that will be  
8 the least speculative by using the average of the number of details that unit members  
9 actually worked before and after the period in question to determine the most accurate  
10 indication of how many details they would have worked during the compensable time  
11 period.)<sup>20</sup>

12 However, the City's ability to fill the City Hall Security position after Linskey's  
13 promotion on a straight time basis with its existing complement of sergeants does not  
14 mean that bargaining unit members did not suffer an economic loss. They did because,  
15 as previously noted, they lost the opportunity to earn the stipend that is attached to the  
16 City Hall Security position. The lost opportunity to earn a pensionable stipend is an  
17 economic loss that the City is obligated to pay. However, because the amount of the  
18 stipend for sergeants (\$425 per week) is lower than the amount of the stipend for  
19 lieutenants (\$480 per week), I next consider whether to use the sergeant or lieutenant  
20 stipend amount to calculate the City's liability.

---

<sup>20</sup> Although the Union argued that the position had to be assigned on an overtime basis because each unit member was filling their regular assignments, it offered no evidence to contradict the City's evidence that it could redeploy unit members from their regular assignments to the City Hall position.

1 Although Linskey was promoted to lieutenant during his tenure in the City Hall  
2 Security position, after his promotion, the City filled the position with employees (both  
3 superior officer and detective) who had attained the rank of sergeant. The consistency  
4 in the City's staffing decisions shows that it believed that an employee in the rank of  
5 sergeant was best suited to fulfill the demands and responsibilities of the position.<sup>21</sup>  
6 Sergeants who filled the position after the City promoted Linskey received a stipend  
7 amount of \$425 per week, rather than the \$480 per week that Linskey received as both  
8 a sergeant and a lieutenant. I am not persuaded by the Union's argument that the  
9 stipend level should be set at \$480 because that was the amount paid to Linskey at the  
10 time of the 2005 Agreement.<sup>22</sup> The stipend amount was not referenced in the 2005  
11 Agreement, and it is undisputed that the City paid bargaining unit sergeants Dashner,  
12 Keeler, and Donovan \$425 per week when they filled the City Hall Security position.  
13 Consequently, the City's liability will be calculated using the \$425 sergeant stipend  
14 level. Based on the parties' stipulations, is as follows:

- 15 • April 12, 2006 – January 22, 2011, and July 23, 2011 – June 16, 2012:  
16 \$125,618.00<sup>23</sup>  
17
- 18 • February 29, 2016 to September 24, 2016: \$12,628.57<sup>24</sup>

---

<sup>21</sup> I am not persuaded by the Union's argument that the stipend rate should be \$480 because some of the individuals who filled the position before Linskey were captains because, as described in the 2011 decision, the position included additional responsibilities prior to Linskey's assignment.

<sup>22</sup> The fact that Linskey received a uniquely higher sergeant stipend while he held the City Hall position does not persuade me otherwise, because the record indicates that Linskey received singular treatment at various points in time, such as when O'Toole asked the Union to allow him to remain in the position as a favor to her.

<sup>23</sup> The parties' stipulation covers both periods of time.

**Who Should Receive Compensation**

Finally, I consider who is eligible to share in the back pay award. Although the parties have not addressed this issue in their briefs, I will clarify who is entitled to payment to ensure that the remedy goes to the individuals who were impacted by the City's unlawful actions. See Amesbury School Committee, supra. (employee whose workload was unaffected by employer's unlawful action was not entitled to payment).

Because the City consistently filled the City Hall Security position only with sergeants following Linskey's departure, only those members of the bargaining unit who were sergeants during the relevant time periods were harmed by the City's failure to comply with the 2005 Agreement. Consequently, only those individuals are entitled to payment. Thus, the individuals who are entitled to share in the back pay award are those who held a sergeant position that was in the Federation's bargaining unit during the periods of time that the City unlawfully failed to assign the City Hall Security position to a bargaining unit member. Specifically: \$125,618.00 (plus accrued interest at the rate specified in M.G.L. c. 231, §6I, compounded quarterly) should be divided between individuals who held a sergeant position that was in the Federation's bargaining unit at any point in time between April 12, 2006 and January 22, 2011, and between July 23, 2011 to June 16, 2012; and each such individual should receive a proportionate share based on the length of their tenure in a sergeant position during those time periods. Likewise, \$12,628.57 (plus accrued interest at the rate specified in M.G.L. c. 231, §6I,

---

<sup>24</sup> Because I find that the City is only obligated to repay the amount of the stipend, I need not address the Union's arguments based on the percentage of officers who possessed advanced degrees, and the evidence that the City staffed the City Hall position with veteran officers.

1 compounded quarterly) should be divided between all of the individuals who held a  
2 sergeant position that was in the Federation's bargaining unit between February 29,  
3 2016 and September 24, 2016, and each such individual should receive a proportionate  
4 share based on the length of their tenure in a sergeant position during that time  
5 period.<sup>25</sup> This order includes individuals who were employed in a sergeant position in  
6 the Federation's bargaining unit during the relevant periods of time, but are no longer  
7 employed by the City, or have left the Federation's bargaining unit. Additionally, for  
8 purposes of this decision, I have presumed that all of the bargaining unit members who  
9 held sergeant positions during the relevant time periods were eligible to have received  
10 the City Hall Security position, even those who were assigned to the anti-corruption,  
11 homicide, and internal affairs departments while they were working towards their  
12 detective rating.

### 13 CONCLUSION

14 Based on the record and for the reasons explained above, I conclude that the  
15 City of Boston failed to comply with the CERB's decision and order and owes:

- 16 1) \$125,618,00 plus interest at the rate specified in M.G.L. c. 231, §6I,  
17 compounded quarterly, which should be proportionately divided between all of

---

<sup>25</sup> The parties may calculate each person's individual award in the following manner:

- 1) Calculate the interest and add it to the amount owed for each period of non-compliance to determine a total unit award for each period;
- 2) Determine how many months each eligible individual worked during each period of non-compliance;
- 3) Add together the number of months that each eligible recipient worked during each period of non-compliance to obtain a total number of months for each period;
- 4) Divide the total unit award for each period of non-compliance by the total number of months for each period to calculate the monthly individual rate; and
- 5) Multiply each eligible individual's number of months worked during each period of non-compliance by the monthly individual rate for that period; and,
- 6) Add each individual's award for each period of non-compliance to establish their individual share of the total unit award.



1 the individuals who held a sergeant position that was in the Superior Officers  
2 bargaining unit at any point in time between April 12, 2006 and January 22, 2011,  
3 and July 23, 2011 to June 16, 2012, based on their tenure in the sergeant  
4 position during those time periods; and

5  
6 2) \$12,628.57, plus interest at the rate specified in M.G.L. c. 231, §6I,  
7 compounded quarterly, which should be proportionately divided between all of  
8 the individuals who held a sergeant position that was in the Superior Officers'  
9 bargaining unit at any point in time between February 29, 2016 and September  
10 24, 2016 based on their tenure in the sergeant position during that time period.

11  
12 ORDER

13 WHEREFORE, based upon the foregoing, it is hereby ordered that the City of Boston  
14 shall:

15 1) Pay \$125,618.00 plus interest at the rate specified in M.G.L. c. 231, §6I,  
16 compounded quarterly, proportionately dividing it between all of the individuals  
17 who held a sergeant position that was in the Federations' bargaining unit at  
18 any point in time between April 12, 2006 and January 22, 2011, and July 23,  
19 2011 to June 16, 2012, based on their tenure in the sergeant position during  
20 those time periods; and

21  
22 2) Pay \$12,628.57, plus interest at the rate specified in M.G.L. c. 231, §6I,  
23 compounded quarterly, proportionately dividing it between all of the individuals  
24 who held a sergeant position that was in the Federation's bargaining unit at  
25 any point in time between February 29, 2016 and September 24, 2016 based on  
26 their tenure in the sergeant position during that time period; and

27  
28 3) Post immediately in all conspicuous places where members of the Union's  
29 bargaining unit usually congregate and where notices to these employees are  
30 usually posted, including electronically, if the Employer customarily  
31 communicates to its employees via intranet or email, and maintain for a period of  
32 thirty (30) consecutive days thereafter, signed copies of the attached Notice to  
33 Employees; and

34  
35 4) Notify the DLR within ten days of this decision of the steps taken to comply  
36 herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



SUSAN L. ATWATER, ESQ.  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, and 456 CMR 13.19 to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the 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.



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 City of Boston has failed to comply with a 2012 decision and order of the Commonwealth Employment Relations Board in Case No. MUP-06-4699. The City of Boston posts this Notice to Employees to comply with the hearing officer's compliance order.

WE WILL COMPLY with the CERB's decision in Case No. MUP-06-4699 by paying:

- 1) \$125,618.00, plus interest at the rate specified in M.G.L. c. 231, §6I, compounded quarterly, to the individuals who held a sergeant position that was in the Federation's bargaining unit at any point between April 12, 2006 and January 22, 2011, and July 23, 2011 to June 16, 2012; proportionately dividing that amount between individuals based on their tenure in a sergeant position during those time periods; and
- 2) \$12,628.57, plus interest at the rate specified in M.G.L. c. 231, §6I, compounded quarterly, to the individuals who held a sergeant position that was in the Federation's bargaining unit at any point between February 29, 2016 and September 24, 2016, proportionately dividing that amount between individuals based on their tenure in a sergeant position during that period of time.

\_\_\_\_\_  
City of Boston

\_\_\_\_\_  
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, 1<sup>st</sup> Floor, 19 Staniford Street, Boston, MA 02114 (Telephone: (617) 626-7132).