

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

CITY OF SOMERVILLE

and

SOMERVILLE POLICE EMPLOYEES  
ASSOCIATION

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Case No. MUP-15-4657

Date Issued:

September 28, 2016

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Hearing Officer:

Kerry Bonner, Esq.

Appearances:

Shannon T. Phillips, Esq.:

Representing the City of Somerville

Kristen A. Barnes, Esq.:

Representing the Somerville Police  
Employees Association

HEARING OFFICER'S DECISION

Summary

1       The issue in this case is whether the City of Somerville (City or Employer) violated  
2       Sections 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws  
3       Chapter 150E (the Law) by repudiating an oral agreement with the Somerville Police  
4       Employees Association (Union or SPEA). Based on the record and for the reasons  
5       explained below, I conclude that the City did not repudiate an agreement with the Union  
6       and dismiss the Complaint.

Statement of the Case

1        On June 26, 2015, the Union filed a Charge of Prohibited Practice with the  
2        Department of Labor Relations (DLR) alleging that the City had engaged in prohibited  
3        practices within the meaning of Sections 10(a)(1) and 10(a)(5) of the Law. On October  
4        6, 2015, a DLR investigator issued a Complaint of Prohibited Practice and Partial  
5        Dismissal, dismissing an allegation that the City failed to bargain in good faith when it  
6        failed to provide the Union with requested information. On October 14, 2015, the Union  
7        filed a Request for Review of the partial dismissal. The City did not respond to the Union's  
8        request. On January 19, 2016, the Commonwealth Employment Relations Board (Board)  
9        remanded the matter to the investigator to issue a complaint relative to the Union's  
10       information request allegation. On January 19, 2016, the investigator issued an Amended  
11       Complaint of Prohibited Practice on Remand (Complaint). The City filed its Answer to the  
12       Complaint on May 4, 2016.

13       I conducted a hearing on June 1, 2016. Prior to the start of hearing, the parties  
14       resolved Counts II and III of the Complaint, and the Union withdrew those allegations.  
15       The parties were afforded a full opportunity to be heard, to examine and cross-examine  
16       witnesses, and to introduce evidence. Following the close of hearing, the Union and City  
17       each timely filed post-hearing briefs. On the entire record, including my observation of  
18       the demeanor of witnesses, I make the following findings:

Stipulations of Fact

- 1       1. The [City] is a public employer within the meaning of Section 1 of [the Law]. At  
2       times material, David Fallon has served as Chief of Police and Paul Trant has  
3       served as Deputy Chief of Police. Both [Chief] Fallon and [Deputy Chief] Trant are  
4       agents of the City.  
5
- 6       2. The [Union] is an employee organization within the meaning of Section 1 of the  
7       Law. In that capacity, SPEA serves as the exclusive bargaining agent for all patrol  
8       officers employed by the City within its Police Department (Department). At times  
9       material, Michael McGrath [(President McGrath)] has served as President of the  
10      Union.  
11
- 12     3. The City and Union were parties to a collective bargaining agreement (CBA)  
13      covering the period of July 1, 2011 to June 30, 2012. The agreement was  
14      continued in force and effect through June 30, 2014 pursuant to a two-year  
15      extension while the parties negotiated over a successor agreement. Negotiations  
16      for a successor agreement have continued to the present without concluding a  
17      successor agreement. The parties are presently engaged in proceedings before  
18      the Joint Labor Management Committee.  
19
- 20     4. The parties have negotiated a drug-testing program set out at Article XXI of the  
21      CBA. Pursuant to the terms of Article XXI, Section I, the City may require a  
22      bargaining unit member to undergo a drug test based on reasonable suspicion of  
23      drug use.  
24
- 25     5. On May 4, 2015, a member of the bargaining unit referenced in paragraph 2,  
26      referred to herein as "Officer AC," was ordered to attend a meeting with Deputy  
27      Chief Paul Trant (Trant) in Trant's office. Officer AC; Trant; Captain James  
28      Donovan; and Officer Julian Turner, from the Boston Police Stress Unit, were  
29      present at that meeting. The City did not notify the Union of the meeting and no  
30      Union official was present at the meeting.  
31
- 32     6. During the May 4, 2015 meeting referenced in paragraph 5, Trant told Officer AC  
33      that the City had reasonable suspicion to require him to submit to a drug test, but  
34      that Officer Turner had arranged for him to enter a rehabilitation program as an  
35      alternative. Officer AC declined to enter the rehabilitation program Officer Turner  
36      recommended. Trant gave Officer AC a written order from Chief of Police Fallon  
37      (Fallon), dated May 4, 2015, to immediately submit to a drug test based on  
38      reasonable suspicion.

1 7. Thereafter, Officer AC left the meeting referenced in paragraph 6 and did not report  
2 immediately for the drug test as ordered or agree to enroll in the drug rehabilitation  
3 program.  
4

5 8. On May 5, 2015, Fallon issued a letter to Officer AC, stating, in part:  
6

7 In accordance with Article XXI of the SPEA contract, an employee's  
8 refusal to submit to a test when directed will be deemed to have  
9 tested positive and will be immediately placed on leave. This is your  
10 second positive test and as discipline, I am removing you from your  
11 assignment in the Detective Bureau and ordering you to report to  
12 patrol upon completion of a rehabilitation program. You will be  
13 subject to unannounced testing for thirty-six months, upon your  
14 return to duty.  
15

16 Please be advised that pursuant to the collective bargaining  
17 agreement, "A third positive test will result in termination."  
18

19 You are hereby ordered, by close of business on Thursday May 7,  
20 2015, to meet with Captain Donovan and sign a Rehabilitation  
21 Agreement with the Department and abide by its terms and  
22 conditions. By close of business on Friday May 8, 2015, you are to  
23 provide Captain Donovan with documentation of entry into a  
24 rehabilitation program which is certified and recognized by the  
25 Massachusetts Department of Public Health. Before returning to  
26 work you will provide my office with proof of successful completion  
27 of said program. Failure to fully cooperate and participate with the  
28 rehabilitation program may result in additional discipline, up to and  
29 including termination.  
30

31 9. Prior to May 4, 2015, the Department had never before ordered a member of the  
32 bargaining unit referenced in paragraph 2 to submit to a drug test based upon  
33 reasonable suspicion and the Department had not made a reasonable suspicion  
34 determination concerning a member of the bargaining unit referenced in paragraph  
35 2.  
36

37 10. In or about April 2016, [Chief] Fallon submitted an application of involuntary  
38 retirement for Officer AC.<sup>1</sup>  
39

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<sup>1</sup> The parties stipulated to this fact prior to the close of hearing on June 1, 2016.

Relevant Contract Language

Article XXI of the parties' CBA provides as follows, in relevant part:

**V. Refusal to Submit to Testing**

An employee's refusal to submit to a test when directed will be deemed to have tested positive and will be immediately placed on leave. Failure or refusal to submit to such tests as directed include the failure to proceed directly to the testing facility as directed, failure to provide adequate amount of urine for testing, or failure to complete all of the necessary paperwork. Additionally, notwithstanding any other provision of this policy, such employee may be subject to serious disciplinary action, up to and including discharge.

Findings of Fact**May 4 and 5, 2015**

Prior to the meeting with Officer AC on May 4, 2015 described in stipulation 6, Chief Fallon authorized Deputy Chief Trant to order Officer AC to immediately take a drug test, or allow him to enter a drug rehabilitation program as an alternative to the drug test. At approximately 10 AM, Deputy Chief Trant then met with Officer AC, Captain Donovan, and Officer Turner. At the meeting, Deputy Chief Trant explained to Officer AC that the Department had reasonable suspicion to order him to undergo a drug test, but that they were also offering him the opportunity to enter a drug rehabilitation program. Officer AC was also permitted to speak with Officer Turner privately. Once Officer AC declined to

1 take the test or enter a rehabilitation program,<sup>2</sup> Deputy Chief Trant gave him Chief Fallon's  
2 written order, which provides in relevant part:

3 . . .

4 You are hereby ordered to immediately report to All One drug testing in  
5 Woburn and submit to a drug test. Prior to leaving the building, you are to  
6 surrender your department issued firearm, additional clips and ammunition  
7 and license to carry to your superior officer. Pursuant to the Agreement  
8 between the City of Somerville and the Somerville Police Employees  
9 Association, Article XXA,<sup>3</sup> Drug Testing Program, you are hereby notified  
10 you are being placed on Administrative Leave from the Somerville Police  
11 Department with pay.

12  
13 You are not to return to work pending receipt of the test results, or until a  
14 determination is made that reasonable suspicion was not substantiated.  
15 Enclosed please find a copy of M.G.L. c. 31, sections 41-45, for your review.  
16

17 After receiving the written order, Officer AC removed his firearm, put it on Deputy Chief  
18 Trant's desk, and left the station in an agitated state.

19 Following the meeting, which lasted approximately one hour, Deputy Chief Trant  
20 told Chief Fallon what happened and that he would immediately file a written report about  
21 it. He also directed Captain Donovan to file a report.

22 At or around noon, Deputy Chief Trant called President McGrath. He explained to  
23 President McGrath that the Department had a reasonable suspicion that Officer AC was

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<sup>2</sup> According to President McGrath, Deputy Chief Trant told him that Officer AC refused to go to the drug test because his wife, who was expecting, had "an emergency scheduled doctor's visit." In addition, President McGrath testified that Officer AC did not refuse drug rehabilitation, but instead wanted to attend a different program than the one to which the Department was intending to send him. These details are not relevant to my decision.

<sup>3</sup> This appears to be a typographical error, as the relevant provision of the CBA is XXI.

1 using drugs, described what happened in the meeting with Officer AC, and advised  
2 President McGrath that Officer AC had left in an agitated state. President McGrath  
3 agreed that he would attempt to contact Officer AC to check on him.<sup>4</sup>

4 Over the course of the next few hours, Deputy Chief Trant and President McGrath  
5 spoke a few times about President McGrath's attempts to contact Officer AC. During one  
6 of these conversations, President McGrath asked if Officer AC would still be permitted to  
7 take the drug test if he returned to the station.<sup>5</sup> Deputy Chief Trant responded that he  
8 would need to get authorization from Chief Fallon, who was not currently at the station,  
9 but that President McGrath should try to get Officer AC to the station so that it would not  
10 be too late in the event that Chief Fallon agreed.<sup>6</sup>

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<sup>4</sup> During this conversation, President McGrath also asked Deputy Chief Trant what reasonable suspicion the Department had to order Officer AC to take a drug test. President McGrath testified that Deputy Chief Trant did not want to discuss it at that time, while Deputy Chief Trant testified that he explained that the reasonable suspicion was spelled out in Chief Fallon's order. Because this is not relevant to the issue before me, I need not resolve this conflicting testimony.

<sup>5</sup> President McGrath testified that during his first telephone conversation with Deputy Chief Trant, Deputy Chief Trant was the one to suggest that if President McGrath could get Officer AC to return to the station before the end of the day, he would be permitted to take the drug test, and did not say that he would first need to obtain Chief Fallon's authorization. For the reasons explained below, I decline to credit President McGrath's testimony on this issue.

<sup>6</sup> Deputy Chief Trant credibly testified that he would either have someone take Officer AC to Woburn for the test, or possibly have someone from the testing facility come to the station. He also contacted Professional Standards to determine what time the drug testing facility closed. However, he did not make an appointment for the test because he first needed Chief Fallon's approval.

1           At approximately 3:30 - 4:00 PM, Officer AC returned to the station and President  
2 McGrath called Deputy Chief Trant to tell him that Officer AC was back and would take  
3 the drug test. Deputy Chief Trant responded that he needed to check with Chief Fallon.<sup>7</sup>  
4 At or about that time, Chief Fallon also returned to the station, and Deputy Chief Trant  
5 asked him if he would permit Officer AC to now take the drug test. Chief Fallon refused,  
6 explaining to Deputy Chief Trant that Officer AC had refused a direct order so he would  
7 not now be permitted to take the drug test.<sup>8</sup> Deputy Chief Trant then called Officer  
8 McGrath and told him that Chief Fallon refused to let Officer AC now take the drug test.<sup>9</sup>

9           On May 5, 2015, Chief Fallon issued Officer AC the disciplinary letter described in  
10 stipulation 8, above. Following the issuance of this letter, there is no evidence that  
11 President McGrath contacted Chief Fallon or Deputy Chief Trant to address his  
12 allegations that he had reached an agreement with Deputy Chief Trant to allow Officer

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<sup>7</sup> There is no evidence that President McGrath said anything in response to Deputy Chief Trant advising him of this.

<sup>8</sup> President McGrath testified that he also called Chief Fallon that afternoon at around 2:00 PM to ask what his reasonable suspicion to order Officer AC to take a drug test was based on, but that Chief Fallon did not want to discuss it. According to President McGrath, during this short conversation, Chief Fallon informed him that he was recusing himself from Officer AC's situation because of his relationship with Officer AC, and that President McGrath should deal directly with Deputy Chief Trant. President McGrath did not testify about any other discussions during this call. For the reasons explained below, I decline to credit this testimony.

<sup>9</sup> President McGrath testified that he did not recall what he said to Deputy Chief Trant in response.



1 AC to take the drug test the prior day if he returned to the station, or that Chief Fallon had  
2 recused himself from the matter.

3 **President McGrath's Prior Negotiations with the City**

4 Deputy Chief Trant is in charge of administration and investigation, and has been  
5 in this position for approximately 18 months. Deputy Chief Trant, Deputy Chief  
6 Carrabino,<sup>10</sup> and Chief Fallon have negotiated with President McGrath on a number of  
7 union-related issues, including discipline, and they have entered into written and oral  
8 agreements with the Union. Although Chief Fallon has the ultimate authority over what  
9 occurs in the Department,<sup>11</sup> Deputy Chief Trant and Deputy Chief Carrabino have  
10 negotiated agreements with President McGrath without informing President McGrath that  
11 they needed Chief Fallon's authorization to reach agreement, or that they had received  
12 prior authorization from Chief Fallon. Thus, in such cases, President McGrath has  
13 assumed that they had the authority to reach an agreement.

14 **Witness Credibility**

15 This case rests on what was said in conversations between Deputy Chief Trant  
16 and President McGrath, who have each given conflicting accounts of those  
17 conversations. For the following reasons, I do not credit President McGrath's testimony

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<sup>10</sup> Deputy Chief Carrabino is the other deputy chief in the Department. He is in charge of patrol services.

<sup>11</sup> Deputy Chief Trant and Chief Fallon both credibly testified that Deputy Chief Trant could not enter into any agreement without Chief Fallon's approval, which he sometimes provides prior to Deputy Chief Trant's negotiations with President McGrath.

1 that Deputy Chief Trant made the proposal that if Officer AC came back to the station  
2 before the end of the day, the Department would permit him to take the drug test; that  
3 Deputy Chief Trant did not tell President McGrath that Chief Fallon would have to approve  
4 allowing Officer AC to take the test if he came back to the station; or that that Chief Fallon  
5 told President McGrath that he was recusing himself from the situation with Officer AC.

6 First, it is highly unlikely that after Officer AC refused a direct order to immediately  
7 take a drug test or go to a rehabilitation program and left the station, Deputy Chief Trant  
8 would reach out and offer him another chance to take the test.<sup>12</sup> I find the more likely  
9 scenario to be that once President McGrath learned what happened with Officer AC, he  
10 proposed that Officer AC be permitted to return to the station by the end of the day to take  
11 the drug test.<sup>13</sup>

12 Second, the surrounding facts do not support President McGrath's contention that  
13 Deputy Chief Trant never told him that he needed Chief Fallon's approval for Officer AC

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<sup>12</sup> Although Deputy Chief Trant's testimony was at times inconsistent about minor details, this does not discredit his testimony. Deputy Chief Trant did not waver in his testimony that President McGrath proposed that Officer AC be permitted to return to take the test by the end of the day, and that he advised President McGrath that he needed Chief Fallon's approval. Further, as described below, I consider the surrounding facts and circumstances to be more compelling than Deputy Chief Trant's lack of a clear memory in determining whose version of events is more credible in this case.

<sup>13</sup> The Union argues that "it is unclear why Trant would have asked McGrath to ask an agitated officer, suspected to be under the influence of drugs, to return to the Department without knowing whether or not Officer AC would be permitted to take the drug test." However, Deputy Chief Trant testified that he told President McGrath to get Officer AC to the station so that it would not be too late for him to take the test in the event that Chief Fallon allowed it. In addition, Deputy Chief Trant contacted Professional Standards to determine what time the drug testing facility closed, which shows that he was concerned with the timing.

1 to return and take the test. President McGrath admitted that when Officer AC returned to  
2 the station at approximately 3:30 - 4:00 PM, President McGrath called Deputy Chief Trant  
3 and told him that Officer AC was back and willing to take the test. On cross-examination,  
4 President McGrath agreed that Deputy Chief Trant then told him that he had to "check  
5 with Chief Fallon." Deputy Chief Trant then called President McGrath back and said that  
6 the Chief would not allow Officer AC to take the test. Had President McGrath been under  
7 the impression that Deputy Chief Trant either did not need, or had already received, Chief  
8 Fallon's authorization, he likely would have asked Deputy Chief Trant why he had to check  
9 with Chief Fallon once Officer AC returned to the station. Further, once Deputy Chief  
10 Trant told him that Chief Fallon would not allow the test, President McGrath would have  
11 explained to Deputy Chief Trant that they already had an agreement on the matter, rather  
12 than simply accepting the decision without further discussion. However, there is no  
13 evidence that he said anything of this nature in response. I do not find it plausible that if  
14 President McGrath was not aware that Chief Fallon had to authorize allowing Officer AC  
15 to take the test and believed that he and Deputy Chief Trant had reached an agreement  
16 on the matter, he would not have addressed this in some way with Deputy Chief Trant  
17 once he learned of Chief Fallon's decision.

18 Lastly, the surrounding facts also do not support President McGrath's testimony  
19 that Chief Fallon told him in a telephone conversation on May 4, 2015 that he was  
20 recusing himself from the matter with Officer AC because of their relationship, and that  
21 President McGrath should deal directly with Deputy Chief Trant on the matter. Although

1 Chief Fallon did not recall having a telephone conversation with President McGrath that  
2 afternoon, he did admit that it may have occurred. However, he was adamant that he did  
3 not tell anyone that he was recusing himself from the matter with Officer AC. Indeed,  
4 Chief Fallon issued the May 4, 2015 order directing Officer AC to submit to the drug test;  
5 prior to Deputy Chief Trant's meeting with Officer AC on May 4, Chief Fallon authorized  
6 Deputy Chief Trant to give Officer AC the option of taking the drug test or entering  
7 rehabilitation; Chief Fallon refused to allow Officer AC to take the test later that day (just  
8 hours after the phone call where he allegedly recused himself from the situation); and  
9 Chief Fallon issued the May 5, 2015 discipline letter to Officer AC. These actions by Chief  
10 Fallon refute President McGrath's testimony.<sup>14</sup> Further, when asked on cross-  
11 examination about his relationship with Officer AC, Chief Fallon testified that they went to  
12 the police academy together.<sup>15</sup> In response to the question of whether they were friendly,  
13 he testified, "as I moved up through the ranks I'd say no" and that over the past ten years  
14 they have seen each other socially approximately 5-6 times. Thus, there is no evidence

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<sup>14</sup> I also find it unlikely that, if President McGrath had in fact had a telephone conversation with Chief Fallon about Officer AC that afternoon while he was in the midst of trying to get Officer AC to return to the station to take the drug test, President McGrath would not have explained this to Chief Fallon.

<sup>15</sup> Chief Fallon has been with the Department approximately 18 years.

1 that Chief Fallon and Officer AC had a close relationship which would support Chief  
2 Fallon's alleged statement that he was recusing himself from Officer AC's situation.<sup>16</sup>

3 Opinion

4 The Complaint alleges that the City violated Section 10(a)(5) of the Law by  
5 repudiating an agreement between Deputy Chief Trant and President McGrath to allow  
6 Officer AC to take the drug test by the end of the day on May 4, 2015. Section 6 of the  
7 Law requires public employers and unions that represent public employees to meet at  
8 reasonable times to negotiate in good faith regarding wages, hours, standards of  
9 productivity and performance, and any other terms and conditions of employment. The  
10 statutory obligation to bargain in good faith includes the duty to comply with the terms of  
11 a collectively bargained agreement. Commonwealth of Massachusetts, 26 MLC 165,  
12 168, SUP-3972 (March 13, 2000). Repudiating a collectively-bargained agreement by  
13 deliberately refusing to abide by or to implement an agreement's unambiguous terms  
14 violates the duty to bargain in good faith. Town of Falmouth, 20 MLC 1555, MUP-8114  
15 (May 16, 1994), aff'd sub nom., Town of Falmouth v. Labor Relations Commission, 42  
16 Mass. App. Ct. 1113 (1997). If the evidence is insufficient to find an agreement or if the  
17 parties hold differing good faith interpretations of the language at issue, the Board will

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<sup>16</sup> In its brief, the Union admits that Chief Fallon did not adhere to any initial decision to recuse himself from matters pertaining to Officer AC. However, it offers no reasonable explanation as to why Chief Fallon would have told President McGrath that he was recusing himself when he was, in fact, involved every step of the way. Nor does the Union explain why President McGrath never raised this alleged recusal with Deputy Chief Trant or Chief Fallon after Chief Fallon refused to allow Officer AC to take the drug test.

1 conclude that no repudiation has occurred. Commonwealth of Massachusetts, 18 MLC  
2 1161, 1163, SUP-3356 (October 16, 1986).

3 In determining whether an employer and a union reached an agreement, the Board  
4 considers whether there has been a meeting of the minds on the actual terms of the  
5 agreement. Town of Ipswich, 11 MLC 1403, 1410, MUP-5248 (February 7, 1985). To  
6 achieve a meeting of the minds, the parties must manifest an assent to the terms of the  
7 agreement. Suffolk County Sheriff's Department, 30 MLC 1, 6, MUP-2747 (August 19,  
8 2003). The Board has long recognized that a meeting of the minds can occur without an  
9 agreement being reduced to writing or signed by either party. Chief Justice for  
10 Administration and Management of the Trial Court, 35 MLC 171, 173, SUP-04-5150  
11 (January 30, 2009) (an oral agreement between a public employer and a union is effective  
12 and enforceable under the Law if the agreement is otherwise valid) (citing Service  
13 Employees International Union, Local 509 v. Labor Relations Commission, 410 Mass.  
14 141, 145 (1991)).

15 Here, there was no meeting of the minds because Deputy Chief Trant informed  
16 President McGrath that Chief Fallon would have to approve President McGrath's proposal  
17 that Officer AC be allowed to return to the station and take the drug test by the end of the  
18 day. Although Deputy Chief Trant told President McGrath to try to get Officer AC to the  
19 station, he did so because he wanted to ensure that they would be able to get Officer AC  
20 to the drug testing facility in Woburn, or have someone from the facility come to the  
21 station, in the event that Chief Fallon allowed Officer AC to take the test. Once Officer

1 AC returned to the station, Deputy Chief Trant confirmed with President McGrath that he  
2 needed to check with Chief Fallon before allowing Officer AC to take the drug test. When  
3 Deputy Chief Trant asked Chief Fallon if he would allow Officer AC to take the test, Chief  
4 Fallon refused. Thus, because Deputy Chief Trant had advised President McGrath that  
5 any agreement was contingent on Chief Fallon's approval, Chief Fallon's ultimate refusal  
6 to allow Officer AC to take the drug test was not a repudiation of an agreement.<sup>17</sup>

7 Conclusion

8 Based on the record and for the reasons explained above, I find that the City did  
9 not repudiate an oral agreement with the Union in violation of Section 10(a)(5) and,  
10 derivatively, Section 10(a)(1) of the Law. Accordingly, I dismiss the complaint.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

  
KERRY BONNER

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<sup>17</sup> Moreover, regarding the issue of authority, because I have found that Deputy Chief Trant informed President McGrath that Chief Fallon would have to allow Officer AC to take the test that day, Deputy Chief Trant did not have actual or apparent authority to reach agreement with the Union. Cf. Commonwealth of Massachusetts, 28 MLC 339, SUP-4333 (May 17, 2002) (union entitled to rely on apparent authority of bargaining representative where he did not inform union of any limitations on his authority during negotiations); Town of Ipswich at 11 MLC 1410 n.7 (unless communication of a limitation in one's authority is presented to the other party, an individual in charge of a transaction is held to have broad apparent authority).

**APPEAL RIGHTS**

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 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.