

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of *
*
CITY OF BOSTON * Case No. MUP-06-4699
*
and * Date Issued: March 30, 2012
*
BOSTON POLICE SUPERIOR OFFICERS' *
FEDERATION *
*

Board Members Participating:

Marjorie F. Wittner, Chair
Elizabeth Neumeier, Board Member
Harris Freeman, Board Member

Appearances:

Robert J. Boyle, Jr., Esq. - Representing the City of Boston
Leah Barrault, Esq. - Representing the Boston Police Superior
Ian O. Russell, Esq. Officers' Federation

DECISION ON APPEAL OF HEARING OFFICER DECISION

1 On September 12, 2011, a duly-designated Department of Labor Relations
2 (Department) hearing officer issued a decision in this matter.¹ The hearing officer held
3 that the City of Boston (City) repudiated a settlement agreement (2005 Agreement)
4 between the City and the Boston Police Superior Officers' Federation (Union) but did
5 not unlawfully transfer bargaining unit work to non-unit members. The City filed a timely
6 notice of appeal, and both parties filed supplementary statements.

¹ The Hearing Officer's decision is reprinted in its entirety at the end of this decision.

1 At the outset, we note that neither party contests the hearing officer's dismissal of
2 the transfer of bargaining unit work allegation. The hearing officer dismissed this count
3 on grounds that the allegedly transferred work was not bargaining unit work because it
4 had not previously been performed by bargaining unit members.² In the absence of
5 any factual or legal objections by the parties on this point, we summarily affirm the
6 dismissal of this aspect of the complaint.

7 The City appeals from the hearing officer's ruling that it repudiated the 2005
8 Agreement. For the first time on appeal, the City asserts that, even assuming it
9 repudiated the 2005 Agreement by not assigning certain work to bargaining unit
10 members, the 2005 Agreement was void as a matter of Law because it required the City
11 to unilaterally take work away from two other bargaining units³ and give it to the Union.
12 Because the hearing officer held that the work at issue was not exclusively bargaining
13 unit work, the City argues that it could not lawfully enter into a contract that violated the
14 rights of other unions without bargaining with those unions. The City alternatively urges
15 the Board to vacate the decision, provide proper notice to the representatives of the two
16 other bargaining units it claims are affected by the decision and require a new hearing in
17 this matter.

18 These arguments are improperly raised for the first time on appeal. See Joseph
19 R. Anderson v. Commonwealth Employment Relations Board, 73 Mass. App. Ct. 908,
20 909, n.7 (2009) (citing McCormick v. Labor Relations Commission, 412 Mass. 164, 170

² Neither party challenged the hearing officer's factual findings.

³ The Boston Police Detectives Benevolent Association and the Salaried Employees of North America, USW, Local 9158.

1 (1992)) (approving Board's policy of not considering information or arguments raised for
2 the first time on appeal).

3 Even if we were to consider these arguments, the fact that the City raises them
4 for the first time on appeal affects their merits as well. Because the City never placed
5 the issue of whether the 2005 Agreement violated the Law or whether compliance with it
6 would constitute an unlawful transfer of bargaining unit work before the Department,
7 there is no factual basis for the Board to void the 2005 Agreement as illegal.
8 Furthermore, nothing in the 2005 Agreement prevents the City from satisfying whatever
9 bargaining obligations may arise from compliance with its terms. The fact that the two
10 bargaining units the City claims are affected by the Board's order were not parties to
11 this proceeding does not change this result. The time for the City to argue that they are
12 necessary and/or interested parties was before the hearing took place, not after a full
13 hearing and decision.

14 For the foregoing reasons, we summarily affirm the hearing officer's decision in
15 its entirety.

16 Order

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

19
20 1. Cease and desist from:

- 21
22 a) Failing to bargain in good faith by repudiating the 2005 Agreement with
23 the Union;
24
25 b) In any like or related manner, interfering with, restraining or coercing
26 employees in the exercise of their rights guaranteed under the Law.
27

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

- 29
30 a) Adhere to the terms of the 2005 Agreement.

- 1
- 2 b) Make whole any bargaining unit employee who suffered an economic loss
- 3 as the result of the City's unlawful conduct, plus interest on any sums
- 4 owing at the rate specified in M.G.L. c.321, s.6I compounded quarterly;
- 5
- 6 c) Post immediately in all conspicuous places where members of the Union's
- 7 bargaining unit usually congregate and where notices to these employees
- 8 are usually posted, including electronically, if the Employer customarily
- 9 communicates to its employees via intranet or email, and maintain for a
- 10 period of thirty (30) consecutive days thereafter, signed copies of the
- 11 attached Notice to Employees.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
 DEPARTMENT OF LABOR RELATIONS
 COMMONWEALTH EMPLOYMENT
 RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, BOARD MEMBER

HARRIS FREEMAN, BOARD MEMBER

APPEAL RIGHTS

12 Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor
 13 Relations Commission, 400 Mass. 745 (1987), this determination is a final order within
 14 the meaning of M.G.L. c. 150E, § 11. Any party aggrieved by a final order of the Board
 15 may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L.
 16 c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of**
 17 **Appeal with the Commonwealth Employment Relations Board within thirty (30)**
 18 **days of receipt of this decision.** No Notice of Appeal need be filed with the Appeals
 19 Court.
 20
 21



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
COMMONWEALTH EMPLOYMENT RELATIONS BOARD

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board (Board) has held that the City of Boston has violated Section 10(a)(5) and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by repudiating a settlement agreement with the Boston Police Superior Officers' Federation (Federation). The City of Boston posts this Notice to Employees in compliance with the hearing officer's order.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

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

WE WILL NOT fail to bargain in good faith by repudiating a settlement agreement with the Federation.

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

- Adhere to the July 19, 2005 Settlement Agreement.
- Make whole any bargaining unit employees who suffered any economic loss from the City's unlawful conduct.

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