

1 Chapter 150E (the Law) by transferring bargaining unit work to a non-bargaining unit
2 employee without giving the Boston Police Superior Officers' Federation (Union) prior
3 notice and an opportunity to bargain to resolution or impasse. I find that the Employer
4 violated the Law as alleged.

5 STATEMENT OF THE CASE

6 On July 7, 2008, the Union filed a charge of prohibited practice with the former
7 Division of Labor Relations (DLR)² alleging that the Employer had violated Section
8 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by transferring bargaining unit
9 work to non-bargaining unit personnel. A DLR hearing officer subsequently investigated
10 the charge and issued a complaint of prohibited practice on February 20, 2009. The
11 Employer filed an answer to the complaint on March 19, 2009. On or about July 31,
12 2009, the Boston Police Detectives Benevolent Society (BPDBS) filed a Motion to
13 Intervene in the case. Neither the City nor the Union opposed the Motion, and I allowed
14 it.

15 I conducted a hearing on July 22, 2010, at which all parties had the opportunity to
16 be heard, to examine witnesses and to introduce evidence. The Employer and the
17 Union filed post-hearing briefs on or about September 24, 2010. The BPDBS did not
18 participate in the hearing or file a post-hearing brief. Based on the record, which
19 includes witness testimony, my observation of the witnesses' demeanor, stipulations of
20 fact, and documentary exhibits, and in consideration of the parties' arguments, I make
21 the following findings of fact and render the following opinion.

² Pursuant to Chapter 3 of the Acts of 2011, the Division of Labor Relations is now the Department of Labor Relations.

ADMISSIONS OF FACT

- 1. The Employer is a public employer within the meaning of Section 1 of the Law.
- 2. The Union is an employee organization within the meaning of Section 1 of the Law.
- 3. The Union is the exclusive bargaining representative for superior officers including captains, lieutenants, and sergeants employed by the City.

STIPULATIONS OF FACT

- 4. Captain Detective Dowd performs the same assignment that Federation members former Captain Michael Broderick and Captain Francis Armstrong performed prior to Captain Detective Dowd's assignment.
- 5. Overtime was available to captains assigned to the Evidence and Supply Management Division after November of 2005.

FINDINGS OF FACT

Evidence Management at the Bureau of Administrative Services

The executive head of the Boston Police Department (BPD) is the Police Commissioner. The BPD is structured into a series of organizational components that represent functional groupings of employees performing like activities. This BPD structure is organized into offices, bureaus, divisions, and units. In the late 1990's, one of those bureaus was called the Bureau of Administrative Services (BAS). The BAS provided services to support the BPD field activities by assisting with the management, personnel, fiscal, maintenance, communication, and procurement functions the BPD required to accomplish its mission.

In 1999, the BAS was comprised of separate divisions, including the Central Supply Division, the Information Technology Division, and the Fleet Management Division. On October 25, 1999, then Police Commissioner Paul Evans (Evans)

1 established the Evidence Management Division (EMD) within the BAS. The EMD was
2 responsible for providing: 1) a central evidence depository to secure and protect
3 evidence, 2) a transportation system to collect and distribute evidence Citywide, and 3)
4 a computerized tracking and inventory control system to maintain chain of custody of
5 evidence and property. EMD was also responsible for transporting for analysis all
6 seized drugs to the Commonwealth of Massachusetts Food and Drug Administration.
7 The evidence depository was placed in a BPD warehouse at 155 Hyde Park Avenue in
8 Boston. The BPD had procured this warehouse in 1992 to house the Central Supply
9 Division, which held lost and found property that the BPD had acquired.

10 The BPD transferred a variety of superior officers into and out of the EMD and
11 the warehouse between 1999 and 2005. However, the record contains little or no
12 evidence of the roles or duties of some of these officers during their tenure. On January
13 21, 2000, Evans assigned Sergeant Detective Grady Durden (Durden) to the EMD, but
14 the record does not describe his role or duties. On April 14, 2000, Evans assigned
15 Lieutenant Detective John Fedorchuk (Fedorchuk) to EMD to work at the warehouse as
16 the head of the Central Supply Division.³ Fedorchuk was assigned elsewhere in March
17 of 2001.

18 The BPD transferred Sergeant Christine McKenna (McKenna) to the EMD at
19 some unidentified date, and transferred her out on June 12, 2003, when the BPD
20 transferred Durden back in. Durden transferred out of EMD on June 27, 2003, when the

³ Fedorchuk testified that during his tenure at the Central Supply Division, Deputy Superintendent Eager was "in charge" of the warehouse. I credit Fedorchuk's testimony, but because there is no evidence of what Eager did, I make no findings on his specific duties or supervisory responsibilities.

1 BPD transferred in Sergeant Detective Mary Crowley (Crowley). There is no evidence
2 of the duties that McKenna, Durden or Crowley performed during that time.

3 At some point prior to June 30, 2004, the BAS became the Bureau of
4 Administration and Technology (BAT). BAT provided a diverse range of technical,
5 financial and communications assistance and expertise throughout the BPD. On June
6 30, 2004, then Police Commissioner Kathleen O'Toole (O'Toole) transferred Sergeant
7 Detective Susan Handy (Handy) to the EMD. There is no evidence of Handy's duties or
8 the length of her assignment.

9 In October of 2005, O'Toole transferred Sergeant Detective William Bradley
10 (Bradley) and Police Officer Heather MacKenzie (MacKenzie) to what the BPD now
11 called the "Evidence and Property Management Division (EPMD)." The record does not
12 disclose their roles or functions at that time. In October and November of 2005, O'Toole
13 transferred civilian employee James Sullivan (Sullivan) back and forth between Human
14 Resources and the Central Supply Division. Sullivan remained at the Central Supply
15 Division.

16 **Greland's Assignment to the Warehouse**

17 In November of 2005, Deputy Superintendent Pat Crossen (Crossen) told
18 Captain John Greland (Greland) to "take command of the warehouse."⁴ Greland sought
19 to clarify the supervisory hierarchy there by asking BAT Chief Christopher Fox (Fox)

⁴ Greland did not recall the specific name of the division to which he was assigned because it had been called many different things. He referred to the entity that he commanded as "the warehouse." Because the BPD referred to the division as the EPMD in October of 2005, I describe Greland's assignment as the commander of the EPMD and the warehouse.

1 whether Sullivan reported to him. Fox confirmed that Greland was running the
2 warehouse and would oversee Sullivan's duties. Greland was the only captain
3 assigned to the warehouse, and he reported to Deputy BAT Chief Ed Callahan
4 (Callahan). Greland did not replace any other employee when he took over the
5 warehouse, and no other employee transferred out of the warehouse when Greland
6 transferred into it.

7 When Greland commanded the EPMD, it contained the following units which
8 were all housed at the warehouse: 1) Archives (old evidence and memorabilia), 2)
9 Evidence Control (various kinds of evidence in criminal cases), 3) Property (abandoned
10 lost property, i.e. recovered bikes and property from prisoners), 4) Central Supply
11 (officers' badges, helmets, desks, computers, etc...), and 5) the Central Drug
12 Repository (drugs seized during investigations and arrests). Greland took responsibility
13 for all of these units, overseeing the management of the warehouse and everything in it.
14 At this point, Central Supply was no longer a separate division from EPMD; Central
15 Supply was now a unit within the EPMD.⁵

16 Various employees worked under Greland's command at the warehouse,
17 including Karen Wells (Wells),⁶ Sullivan, and Bradley. Sullivan was responsible for

⁵ The BPD uses organizational code #32000 to refer to the EMD, EPMD, and ESMD in transfer orders for variety of positions, ranks, and ratings, including police officer, sergeant, sergeant detective, and lieutenant detective. Captain Francis Armstrong (Armstrong) testified that this organizational code is used to track employee transfers and overtime payments. He also stated that 32000 would be the overtime code for the commander of the ESMD. Because the evidence shows that organizational code 32000 is used on ESMD transfer orders for a wide variety of positions and ranks, I do not find that it pertains solely to the commander position.

⁶ There is no evidence of Wells's title, rank, or rating.

1 Central Supply and Property,⁷ and Wells oversaw Archives. At some point after he
2 arrived, Greland met with the warehouse staff and told them what they would be doing.
3 Greland told Sullivan that he would report to Greland, and that Sullivan should be “on
4 the floor” ensuring that employees did their jobs. Greland told Bradley to oversee the
5 drug repository.

6 During his tenure at the warehouse, Greland instituted a variety of procedural
7 changes, including: 1) new overtime documentation procedures, 2) evidence pick up
8 arrangements with various police districts, 3) a protocol for collection and delivery of
9 evidence and latent prints from headquarters to the Evidence Control Unit, 4) starting up
10 the drug repository, 5) creating more space for archives, 6) arranging for the Central
11 Supply staff to help the Archives staff, and 6) setting up “spot audits” of drugs held in
12 the warehouse. Greland continued his EPMD responsibilities until April of 2006 when
13 the BPD transferred him to a command post at District 11.

14 **EPMD Assignments After Greland**

15 When Greland left EPMD in April of 2006, the BPD immediately replaced him
16 with Captain Frank Armstrong. Armstrong reported to Fox, and worked with employees
17 Sergeant Detective Susan Handy (Handy), Sergeant James Meredith (Meredith) and
18 McKenna. McKenna worked in Central Supply, but the record does not show what
19 Handy or Meredith did. During his tenure at EPMD, Armstrong became concerned with
20 the way that evidence in the warehouse was stored and chronicled, and he ordered an

⁷ Sullivan may previously have been assigned to the Evidence Control Unit. The parties avoided describing the problems that precipitated Greland's assignment, but Greland testified that the warehouse was in “chaos” when he arrived. The evidence shows that the BPD assigned Greland to the warehouse to fix a pre-existing problem, and suggests that Sullivan was somehow involved.

1 audit to be conducted. Armstrong remained at the EPMD until he transferred to Area E-
2 18 in December of 2006.

3 In December of 2006, the BPD replaced Armstrong with Captain Michael
4 Broderick (Broderick). Broderick remained in that assignment until May of 2008.

5 By 2008, the EPMD was known as the "Evidence and Supply Management
6 Division" (ESMD). The record does not explain the name change, but it appears to
7 reflect the inclusion of the Central Supply Unit within the ESMD. On or about May 28,
8 2008, Police Commissioner Ed Davis (Davis) transferred Broderick out of the ESMD
9 and transferred Captain Detective Thomas Dowd into Broderick's commander position.
10 Dowd performs the same assignment that Broderick and Armstrong performed prior to
11 Dowd's assignment.

12 The City did not give the Union prior notice of its decision to assign Dowd to the
13 ESMD. On or about June 3, 2008, after learning of Dowd's transfer, Union Vice
14 President Mark Parolin (Parolin) sent a letter to the City demanding to bargain over the
15 issue. The City did not respond to Parolin's demand, and no bargaining occurred.

16 OPINION

17 The Law requires a public employer to give the exclusive collective bargaining
18 representative of its employees prior notice and an opportunity to bargain before
19 transferring bargaining unit work to non-bargaining unit personnel. Commonwealth of
20 Massachusetts vs. Labor Relations Commission, 60 Mass. App. Ct. 831 (2004). To
21 determine whether an employer has unlawfully transferred bargaining unit work, the
22 CERB considers the following factors: 1) whether the employer transferred bargaining
23 unit work to non-unit personnel; 2) whether the transfer of unit work to non-unit

1 employees has an adverse impact on individual employees or the unit itself; and 3)
2 whether the employer gave the bargaining representative prior notice and
3 an opportunity to bargain over the decision to transfer the work. Id. at 833.

4 The Union argues that the evidence satisfies all three parts of the test.
5 Specifically, the Union contends that the work at issue is commanding the
6 EPMD/ESMD, the City transferred the work to the BPDBS, the transfer adversely
7 impacted the Union's bargaining unit by removing a promotional opportunity and
8 potential overtime earnings, and the City failed to notify the Union of the proposed
9 transfer and failed to bargain the issue. The City portrays the disputed work as
10 performing interrelated supervisory tasks at the warehouse, and argues that the Union
11 shared this supervisory work with the BPDBS. The City asserts that the 2½ year
12 assignment to the Union's bargaining unit does not constitute a binding practice, the
13 assignment of previously shared work to Dowd was not a calculated displacement of
14 shared work, there was no adverse impact on the bargaining unit, and the deployment
15 at issue was a lawful exercise of the City's non-delegable right of assignment.

16 To determine whether the City transferred bargaining unit work, I must first define
17 the bargaining unit work at issue by assessing the nature of the functions performed.
18 See Town of Watertown, 8 MLC 1376, 1378 (1981); see also, Town of Norwell, 13 MLC
19 1200, 1207-1208 (1986). The Union invites me to focus narrowly on the command
20 responsibilities of the ESMD/EPMD. The Union posits that when the formerly separate
21 divisions of Central Supply and EMD merged in 2005, and the City assigned Greland to
22 command the newly-merged division, Greland's enlarged responsibilities differed from

1 the duties previously held by EMD supervisors and became exclusive bargaining unit
2 work. I agree.

3 The BPD transferred Greland to the EPMD to take command of the warehouse
4 and fix a problem. When Greland arrived, Fox confirmed the supervisory hierarchy that
5 placed Greland above Sullivan. Greland subsequently issued assignments, telling
6 Sullivan to ensure that others did their jobs, and telling Bradley to oversee the drug
7 repository. At that point, Central Supply was a part of EPMD and not a separate
8 division. Only Greland had overall command of EPMD; Bradley and Sullivan did not
9 share his responsibilities. Accord, City of Boston, 28 MLC 369 (2002) (duty of
10 identifying and analyzing latent fingerprints at crime scenes was unique to patrol officers
11 and was not shared by non-unit detectives). The BPD later replaced Greland with
12 Armstrong, and Armstrong with Broderick, thereby creating a 2½ year practice of
13 assigning the EPMD/ESMD command functions to members of the Union's bargaining
14 unit.

15 The City argues that the warehouse supervision has historically been shared
16 between civilians and members of both supervisory bargaining units, noting that many
17 individuals have been assigned to the warehouse since 1992. This argument is not
18 persuasive, however, because there was no evidence of what most of these individuals
19 did, and no evidence that anyone other than Greland, Armstrong, and Broderick ever
20 commanded the entire EPMD. Fedorchuk found the warehouse in 1992 and set up the
21 Central Supply Division there. However, the Central Supply Division was
22 organizationally separate from EMD at that point, and Fedorchuk had no responsibility

1 for the merged entity that the BPD later created.⁸ Although employees in different
2 bargaining units may have shared the responsibility for cataloguing evidence and
3 transporting it to and from various locations, there is no evidence that an employee from
4 any other bargaining unit ever had command responsibility for the overall warehouse,
5 including Central Supply. In short, the fact that many employees staffed the warehouse
6 over the years does not show that they all shared the same work.⁹

7 I next consider the City's argument that sequentially assigning three bargaining
8 unit captains to command the warehouse over 2½ years does not constitute a binding
9 practice. To support its argument, the City cites Boston Police Superior Officers
10 Federation, 20 MLC 1603, 1609 (1994) where the CERB found that "the only constant in
11 the Police Department's deployment of [police] supervisors is that the deployment has
12 been inconsistent." Boston Police Superior Officers Federation is not controlling here
13 because it addressed an allegation that the City unilaterally changed the number of
14 patrol supervisors assigned to specific areas of the City. The CERB found that there
15 was no unlawful change because the deployment past practice had been sporadic
16 rather than uniform. There was no allegation in Boston Police Superior Officers
17 Federation that the City had transferred patrol supervisor work to another bargaining
18 unit, and consequently, no question about whether bargaining unit members owned a

⁸ I reject the City's argument that Durden, Fedorchuk and Eager must have been warehouse commanders because their transfer orders contain organizational code 32000. 32000 is the organizational code for ESMD and not for specific positions. Also, Police Officer MacKenzie's October 28, 2005 transfer order uses the 32000 code, and there is no evidence that the City ever assigned warehouse command responsibilities to a non-superior officer.

⁹ Because the command responsibilities were not shared work, I need not address the calculated displacement analysis.

1 set of duties for a period of time. The City cites no other persuasive case law
2 demonstrating that work successively and consistently assigned to the same bargaining
3 unit for 2½ years does not become that unit's work.

4 The City further argues that the BPD's warehouse supervisory assignments
5 concern the deployment of police officers, which is a core governmental function. It
6 contends that the Union had no viable expectation that the warehouse staffing pattern
7 would continue in view of the BPD's non-delegable right of assignment. I disagree.
8 The Law allows public employers to exercise core managerial prerogatives concerning
9 the nature and level of its services without first bargaining over that decision with unions
10 representing its employees. Newton School Committee v. Labor Relations
11 Commission, 388 Mass. 557 (1983). The Law also does not require the BPD to bargain
12 over its law enforcement priorities and public safety decisions. City of Boston, 32 MLC
13 4 (2005); City of Worcester v. Labor Relations Commission, 438 Mass. 177 (2000).
14 However, not every assignment of police personnel is insulated from bargaining on that
15 basis.

16 To decide whether a subject properly falls within the scope of bargaining, the
17 CERB balances a public employer's interests in maintaining its managerial prerogative
18 to effectively govern against the impact on employees' terms and conditions of
19 employment. City of Boston, 32 MLC at 11 (citing Town of Danvers, 3 MLC 1559, 1571
20 (1977)). The CERB considers such factors as the degree to which the subject has a
21 direct impact on terms and conditions of employment, and whether the subject involves
22 a core governmental decision or is far removed from employees' terms and conditions
23 of employment. Town of Danvers, 3 MLC at 1577.

1 Here, the City articulated no specific reason for its decision to assign the
2 EPMD/ESMD command post to a member of the BPDBS, and there was no evidence
3 that any particular purpose or policy governed the transfer. The decision did not change
4 the level of services that the BPD provides. The decision also did not change the
5 nature of the duties performed; it merely changed the bargaining unit whose members
6 performed those duties. The record contains no evidence of a public safety rationale.
7 However, as previously noted, the decision impacts employee terms and conditions of
8 employment by depriving the members of the Union's bargaining unit of a promotional
9 position and an opportunity for overtime earnings. Consequently, applying the Danvers
10 balancing test to this case demonstrates that the BPD's decision to assign the ESMD
11 command work to the BPDBS required bargaining. Compare, City of Boston, supra
12 (BPD not required to bargain over the decision to assign riot control work to non-unit
13 detectives in a special tactical unit; assignment implicated public safety determination
14 that first responder police officers should continue staffing district police stations).

15 The remaining aspects of the transfer analysis merit little discussion. The City
16 acknowledges that it did not give the Union prior notice of its decision to assign Dowd to
17 the position formerly occupied by Broderick, Armstrong and Greland, and the City did
18 not bargain in response to the Union's demand. The City stipulated that Dowd
19 performs the same work that Broderick and Armstrong performed, and that overtime
20 was available to captains assigned to the ESMD after November of 2005. These
21 stipulations establish that the BPD transferred bargaining work from the Union's
22 bargaining unit to non-unit employees, and the transfer adversely affected bargaining
23 unit members' ability to work overtime and to secure a promotional position. See

1 Commonwealth of Massachusetts v. Labor Relations Commission, 60 Mass. App. Ct. at
2 834.

3 CONCLUSION

4 Based on the record and for the reasons explained above, I conclude that the
5 City of Boston unlawfully transferred bargaining unit work from the Boston Police
6 Superior Officers Federation to the Boston Police Detectives Benevolent Society.

7 ORDER

8 WHEREFORE, based upon the foregoing, I hereby ordered the City of Boston to:

9 1. Cease and desist from:

- 10 a) Failing to bargain in good faith by unlawfully transferring bargaining unit
- 11 work to employees outside of the Union's bargaining unit;
- 12
- 13 b) In any like or related manner, interfering with, restraining or coercing
- 14 employees in the exercise of their rights guaranteed under the Law.
- 15
- 16

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

- 18
- 19 a) Restore the status quo ante by returning the duties of commanding the
- 20 Evidence and Supply Management Division to the Union's bargaining unit
- 21 until the City satisfies its obligation to bargain over the decision to transfer
- 22 those duties to non-unit employees and the impact of that decision;
- 23
- 24 b) Upon request, bargain in good faith with the Union to resolution or
- 25 impasse over the decision to transfer the duties of commanding the
- 26 Evidence and Supply Management Division to non-unit employees and
- 27 the impact of that decision;
- 28
- 29 c) Make whole any bargaining unit employee who suffered an economic loss
- 30 as the result of the City's unlawful conduct, plus interest on any sums
- 31 owing at the rate specified in M.G.L. c.321, s.6I compounded quarterly;
- 32
- 33 d) Post immediately in all conspicuous places where members of the Union's
- 34 bargaining unit usually congregate and where notices to these employees
- 35 are usually posted, including electronically, if the Employer customarily
- 36 communicates to its employees via intranet or email, and maintain for a
- 37 period of thirty (30) consecutive days thereafter, signed copies of the
- 38 attached Notice to Employees.

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, 456 CMR 13.02(1)(j), and 456 CMR 13.15, 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 violated Section 10(a)(5) and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by unlawfully transferring bargaining unit work from the Boston Police Superior Officers' Federation (Federation) to the Boston Police Detectives' Benevolent Society. 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 unlawfully transferring bargaining unit work to non-bargaining unit personnel.

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

- Make whole any bargaining unit employees who suffered any economic loss from the City's unlawful conduct.
- Restore the duties of commanding the Evidence and Supply Management Division to the Federation's bargaining unit until the City satisfies its bargaining obligation.

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).